

## **British Steel Pension Scheme**

### **Response to Public Consultation**

ITS Limited is a professional corporate trustee. Over recent years we have acted as Trustee for a number of schemes with employers facing high profile corporate restructuring. As such we have been involved in the consideration and implementation of a number of re-structuring proposals inside and outside the PPF, some of which have been successful in securing member benefits above PPF levels, two of the most notable examples being the Uniq Pension Scheme and the MIRA Scheme. As professional trustee of the Halcrow Pension Scheme we have direct experience of some of the proposed solutions for the BSPS.

Our overall view is that any special measures allowed for a particular scheme in order to support an industry would be misguided and could lead to “Black Swan” consequences. Further, the problem with the British steel industry should be addressed by means other than adjusting pension benefits. However, where scheme specific restructuring results in an outcome for members better than inevitable PPF entry then we strongly believe that pensions can form part of solvent consensual restructuring between all stakeholders. To the extent that any changes are made to the mechanisms available to restructure pensions in distress situations (beyond PPF entry) then these new mechanisms should be made available to all schemes. Our detailed comments on the proposals are below.

#### **Question 1**

We believe without additional measures the existing levers such as an RAA or an FAA are unlikely to be sufficient in this instance as the company is not able to fund the scheme above PPF levels and the scheme would remain attached to the new employer. From the information provided it is understood that a successful sale requires the scheme to be separated from the business before it is sold. The assumption would be that a special purpose employer would be used, funded with for example a mitigation payment from the RAA and an equity stake from the buyer of the old company, a usual prerequisite requirement for the clearance of an RAA. After the RAA the new employer would need to suffer an insolvency in order for the scheme to enter a PPF assessment period and would only exit this on a scheme rescue members may then begin transfer options towards more affordable benefits or through the use of WULS. The key to this approach is to ensure that the SPV is appropriately capitalised and PPF eligibility preserved.

Any choice to move to a new scheme with revised benefits above PPF levels would need to take place before the RAA occurred. Without additional measures this would require member consent. The non-consenting members would remain in the old scheme and be subject to the RAA. There would still need to be decisions about which employer was attached to the remaining schemes.

### **Question 2 and 3**

By allowing the BSPS trustee to modify benefits in order to protect the sustainability of the scheme the Government would be setting a dangerous precedent and introducing a level of subjective judgment in place of the actuarial test under s67. There is no guarantee that the modification would provide the sustainability required over the longer term as the pensions may still prove unaffordable to a potential buyer of British Steel. Whether or not a Scheme is able to adopt CPI rather than RPI will depend on the drafting of Rules written before the distinction arose, and is largely down to chance. However, whilst we do not believe it is right to dis-apply s67 in particular instances, any change to Rules to allow a different method of indexation should be a matter for primary legislation and could form part of a new workable framework for consensual restructuring.

### **Question 4**

The High Court recently considered the issue of transfer to a new scheme without consent in the case of *Pollock v Reed* and concluded that the Scheme Actuary could not take into account security of benefits when comparing benefits in the transferring and receiving schemes. ITS supported the application to Court in this case (and would see the court as the appropriate decision maker) on the basis that Commercial Confidentiality could only be maintained by the without consent approach. Failure to mention that Commercial Confidentiality would have significantly damaged the restructuring process and hence the better than PPF outcome being sought.

The consultation does not suggest removing the anomaly of “High/Low” members identified in the document, whereby members who enter the PPF with a bridging pension retain that additional pension for the remainder of their lives. We understand the Government could remove this via secondary legislation as the primary legislation to fix this is already in place. Bridging pensions of this type are reasonably common and there will already be a significant number of PPF pensioners benefitting from this feature of PPF rules through the accident of timing. If BSPS enters the PPF this will add a further 5,800 pensioners with estimated windfall benefits of £500million. We agree with the BSPS trustees that offering a transfer with consent is likely to result in “high” members preferring to enter the PPF which cannot be good for the long term viability of the PPF. We would therefore wish to see the removal of this anomaly as part of this review

### **Question 5**

We have no comments in response to this question

### **Question 6**

We suggest the scheme should be wound up with member benefits augmented.

ITS Limited

23.06.16