In this issue

NEW LAW
Changes to disclosure requirements:  ...more
Action required

AUTO-ENROLMENT
Annual thresholds’ review  ...more

CASES
Aggregate FSD liability: Re Storm Funding Limited (Lehmans)  ...more
Buy-outs: Rigid Containers Group Staff Pension Fund  ...more

POINTS IN PRACTICE
PPF Levy 2013/14: final determination issued  ...more
Changes to the scheme return for DB Schemes  ...more
Regulator updates statutory employer statement  ...more
GMP Reconciliation Service  ...more
PPF’s role in restructurings  ...more

MISCELLANEOUS
Pensions Law Update Seminar  ...more

To access our Employment/Employee Benefits Bulletin click here. Contents include:
• Remuneration Reports: New Year’s resolutions
• Employment law in 2014: what to expect
• Knowledge of disability: limitations of relying on occupational health assessment
• ‘Statutory requirement’ defence did not apply to age discriminatory redundancy scheme
• ECJ rules on sexual orientation discrimination in civil partnerships versus marriages
• Scientologists, pagans and Labour party activists…all protected
• Executive remuneration: amendments to Listing Rules
• CIPD guide to vetting candidates on social media
• Zero-hours contracts: consultation on reform

Back issues can be accessed by clicking here. To search them by keyword, click on the search button to the left.

Find out more about our pensions and employment practice by clicking here.

For details of our work in the pensions and employment field click here.

For more information, or if you have a query in relation to any of the above items, please contact the person with whom you normally deal at Slaughter and May or Rebecca Hardy. To unsubscribe click here.
New Law

1. Changes to disclosure requirements: Action required

A. Overview

1. A consolidated version of the disclosure regulations for occupational and personal pension schemes takes effect on 6th April, 2014.

2. Most of the changes to the existing regulations are permissive. The 3 main changes we have identified at this stage are referred to in C.1, C.3 and C.4 below.

3. The new regulations set out:

   3.1 (in Part 2 and Schedule 2) the basic scheme information that has to be disclosed automatically to new and prospective members,

   3.2 (in Part 3) what changes to that information must be notified and how,

   3.3 (in Part 4 and Schedule 3) the information to be given on request,

   3.4 (in Part 5 and Schedule 4) the information that must be given about scheme funding (for defined benefit schemes) and benefit statements and illustrations (for money purchase schemes and defined benefit schemes with money purchase benefits),

   3.5 (in Part 6) the information that must be given on lifestyling and on accessing benefits on retirement or death, and

   3.6 (in Part 8 and Schedule 8) the information that must be given where a scheme is winding-up.

4. Part 9 deals with how information should be given, including additional flexibility on providing information electronically.

5. The new Regulations follow a consultation in February, 2013 (Pensions Bulletin 13/04). According to the DWP, the intention is:

   5.1 to simplify the structure and language,

   5.2 for personal pension schemes, to reduce overlap with the Financial Conduct Authority’s information requirements,

   5.3 to reduce the differences in disclosure requirements for different types of scheme, and

   5.4 to simplify the basic information requirements for occupational pension schemes.

6. Note though that the requirements for provision of information:

   6.1 to early leavers remain in the preservation legislation,

   6.2 regarding stakeholder pension schemes remain within the stakeholder legislation, and

   6.3 on divorce remain within the pension sharing legislation.

B. New statement of trustees’ responsibility

1. Pension scheme trustees or managers have a new overriding responsibility “for ensuring that information or documents are given in accordance
with these Regulations whether they give the information or documents:

(a) directly, or

(b) indirectly, through a third party”.

2. At first blush, this appears to impose a statutory liability on trustees, breach of which would render them liable for damages, providing yet another reason for having a sole corporate trustee rather than individuals.

3. But the new Regulations provide\(^5\) for civil penalties for failure to comply without reasonable excuse\(^6\). In other words, the specific remedy in the Regulations displaces a remedy, under the law of tort, for a member to sue the trustees directly for damages suffered as a result of the trustees’ breach of statutory duty imposed by the new Regulations.

4. The Pensions Regulator can, however, impose civil penalties if the trustees have failed to comply with their new overriding responsibility referred to in 1.1 above without reasonable excuse. In other words, the liability here is not strict liability, but liability, in summary, to use reasonable skill and care to discharge the statutory duties imposed on the trustees by the new Regulations.

5. However, where a member brings a complaint before the Pensions Ombudsman, the member may assert that the trustees’ failure to comply with their obligations under the new Regulations referred to in B.1 above amounts to maladministration and ask the Pensions Ombudsman to provide a remedy based on maladministration.

6. A point to watch out for is that some Trust Deeds will impose, under the terms of the Trust Deed, a duty on the trustees to comply with applicable legislation. Wording to that effect should, in general, be avoided.

7. It confers on the beneficiaries of the trust (e.g. the members) a right to claim against the trustee for breach of trust. Any such claim against the trustee will, in turn, be subject to, in general, the terms of any exoneration clause in the Trust Deed.

C. New information requirements

1. Information on lifestyling: Mandatory

1.1 If a scheme has money purchase benefits in it and provides "lifestyling” (see below), the scheme is required to notify members and prospective members about lifestyling.

1.2 The required information is to explain:
   - what lifestyling is,
   - the advantages and disadvantages, and
   - the extent to which lifestyling will apply to a member’s retirement account (e.g. if it is the default investment option).

1.3 “Lifestyling” is defined as meaning “an investment strategy which aims progressively to reduce the potential for significant variation caused by market conditions in the value of the member’s rights”.

1.4 This information about lifestyling must be provided:
   - first, as part of the basic scheme information, and

---

\(^5\) In Regulation 5

\(^6\) Note that this is the same as the existing position under Regulation 11 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996
second, between 5 and 15 years before a member’s normal retirement date.

1.5 The DWP intends the requirement to apply to all types of lifestyling, including the use of target date funds.

2. Changes to SMPIs: Permissive

2.1 SMPIs are simplified so as to remove the specific annuity requirements. Schemes will, at least on the face of the new Regulations, no longer have to assume the purchase of an annually increasing annuity and provision of a dependant’s pension.

Note: Revised SMPI guidance from the Financial Reporting Council is awaited. However, the expectation is that more flexibility will be allowed.

2.2 No SMPI now needs to be provided for a member in the first year of membership, where:

- no contributions have been credited for that member, or
- the member has a right to opt-out under the auto-enrolment legislation.

3. Changes to the investment report: Mandatory

Trustees of schemes which provide defined benefit benefits must now include in their investment report a statement of the trustees’ policy (if any) in relation to:

3.1 the rights (including voting rights) attaching to investments, and

3.2 the extent (if at all) to which social, environmental or ethical considerations are taken into account for investment decisions.

Comment 1: This change was not included in the February 2013 consultation draft.

Comment 2: Note that this information should already be contained in the scheme’s Statement of Investment Principles7 (and so can be copied over into the scheme’s investment report).

4. Change to timing to provide information about material changes to basic scheme information: Mandatory

4.1 Information about “material alterations” to basic scheme information must be provided “as soon as possible” after the decision to make the change has been made, in place of the current requirement to provide it before the change takes effect “where practicable”.

4.2 Introduction of the words “as soon as possible” make this requirement more difficult to satisfy in our view. The increased use of electronic communications leaves trustees with little excuse for delaying notifying changes. But where changes are not “material”, they can be notified with the next regular member communication.

5. Simplification of information about transfers: Permissive

5.1 The information to be given about whether benefits can be transferred out of the scheme is simplified.

5.2 However, it must include a statement that more detailed information is available on request.

---

7 See Regulation 2(3) of the Occupational Pension Schemes(Investment ) Regulations 2005
6. Easement in respect of benefit statements for DB schemes: Permissive

6.1 There remains no legislative requirement for DB schemes automatically to produce benefit statements (although DB schemes that provide money purchase benefits, and all money purchase schemes, must provide an SMPI).

6.2 Where DB schemes do produce benefit statements, though, they may now choose an assumed retirement date, rather than having to use the scheme’s normal pension age.

D. Electronic communications made easier

1. The Regulations simplify the requirements, introduced in December 2010, that allow pension schemes to communicate electronically with members. For example, where schemes make information available on a website, they need only write twice to recipients asking for their email address instead of 3 times, as now.

2. But members will still be able to opt out of receiving information electronically. In addition, those who were members on 1st December, 2010 must be notified of the scheme’s intention to provide information electronically and their ability to opt-out.

3. The Regulations extend the ability to use electronic communications to the disclosure requirements in other DWP regulations such as those relating to contracting-out, preservation, transfers out, winding-up, scheme funding, employer consultation and pension sharing on divorce.

Comment: The updated Regulations, which use simpler language, reflect developments in electronic communications, and permit additional flexibility, are, in general, to be welcomed.

E. Action points

1. The 3 main substantive changes identified in C.1, C.3 and C.4 above should be picked up by schemes and included in the appropriate processes which schemes use for complying with their existing requirements under the Disclosure Regulations.

2. Schemes may wish to look again at the way in which they communicate with members to see if more communication can be provided electronically (or via a website).

3. Schemes may also wish to revalidate their existing processes for complying with the disclosure information requirements to check that they are fully up to date with the requirements in the new Regulations.

4. If schemes have an investment report being finalised shortly after 5th April, 2014, it would be advisable to include now, within that investment report, the additional requirements referred to in C.3 above (about voting rights attached to the investment and the extent to which social and environmental considerations are taken into account in the investment decisions).

Auto-enrolment

1. Annual thresholds’ review


The Government intends to lay an order before Parliament providing that:

• the automatic enrolment earnings trigger (the level of earnings from which people are automatically enrolled) will be £10,000 (the PAYE personal tax allowance for 2014/15). The 2013/2014 figure is £9,440,
• the lower limit of the qualifying earnings band will be £5,772 (the NICs lower earnings limit for 2014/15). The 2013/2014 figure is £5,668, and

• the upper limit of the qualifying earnings band will be £41,865 (the NICs upper earnings limit for 2014/15). The 2013/2014 figure is £41,450.

The qualifying earnings band is the band of earnings by reference to which contributions are assessed.

The Government’s analysis supporting the proposed revised thresholds is on the DWP website.

B. Facts

1. On 13th September, 2010, the Pensions Regulator’s Determinations’ Panel issued an FSD against 6 Lehman Group entities requiring them to put in place financial support for the Lehman Brothers pension scheme (the “Scheme”). The Scheme’s sponsoring employer had entered administration in September 2008 triggering a Section 75 debt calculated at £119 million.

2. The estimates of the Scheme’s deficit on a buy-out basis in the first half of 2013 ranged from £214 million to £275 million.

3. The administrators of the Lehman Group companies applied to the High Court for directions on the correct construction of the legislation concerning the aggregate amount that may be recovered under 2 or more contribution notices issued in respect of the same non-compliance with an FSD. The Court was asked to consider whether, in circumstances where 2 or more contribution notices are issued, the aggregate amount that may be specified in, or recovered under them, is limited to the shortfall sum (in this case £119 million).

4. The issue was purely one of construction: there was no issue as to whether it would be reasonable for the Regulator to issue contribution notices that in aggregate exceed the “shortfall sum”.

C. Decision

1. The Judge rejected the administrators’ arguments and held that contribution notices following non-compliance with an FSD may be issued to more than one target which in aggregate specify a sum in excess of the maximum “shortfall sum”.

2. In his view, there was little basis for linking the aggregate amounts which may be stated in contribution notices to the Section 75 debt. The purpose of an FSD was as much to keep an active scheme going as it was to provide for a scheme being wound up.

3. Nor was there any basis in insolvency law for restricting the targets’ liability to the Section 75 debt of the employer.

4. The Lehmans companies are in a position now to make distributions to their unsecured creditors and will have to make a reserve against their contingent liabilities to contribute to the Scheme.

Comment: This is a somewhat surprising decision, giving the Regulator (who has yet to comment)
the ability, prima facie, to permit a scheme to recover more than the full amount of the Section 75 debt owed to the scheme (so that the scheme then moves into surplus) by issuing multiple FSDs.

2. Buy-outs: Rigid Containers Group Staff Pension Fund

A. Overview

1. On 20th December, 2013, the Court of Appeal upheld the High Court decision that the trustees of the Rigid Containers Group Staff Pension Fund (the "Scheme"), the rules of which provided that, on a winding-up, the members’ benefits had to be provided “as nearly as practicable the same” as their entitlement under the Scheme, were, by implication, permitted to buy out the members’ entitlement in a two-stage process in order to maximise the value of the scheme assets.

2. In so deciding, the Court followed the Court of Appeal decision in Headway plc v. Easterly [2009] EWCA Civ 793.

3. The Court of Appeal in Headway confirmed that trustees could carry out a partial buy-out of the scheme’s liabilities on a winding-up, apply the assets in buying out a proportion of the liabilities, and then fix the “applicable time”, thereby triggering the Section 75 debt at a time when the assets were nil, and use the funds recovered to buy out the remaining liabilities. The effect was to increase the amount of employer debt due.

B. Facts

1. Two occupational DB pension schemes, the Rigid Containers Group Staff Pension Fund and the Rigid Containers Group Works Pension Fund, both of which shared the same employer, went into winding-up in July, 2000 following the service of notices by the employer to terminate them which took effect on 31st May, 2000. The legislation in force at that time provided for the liabilities to be calculated on the MFR basis.

2. The trustees wished to implement a “Headway” arrangement to increase the amount recoverable from the employer, which would result in an overall increase in funding of £3.5 million. The employer opposed the arrangement.

3. Under the legislation as it then stood, unless the employer was insolvent, trustees could choose the date on which to undertake their calculation of employer debt (the “applicable time”).

4. Both sets of scheme rules provided the trustees with power to wind-up the scheme by buying insurance policies but that the benefits provided must be “as nearly as practicable the same” as the members’ entitlement under the Scheme.

C. Decision

1. The employer’s appeal against the High Court decision was dismissed. The Court of Appeal noted that pension scheme rules have to be construed in a purposive way, in the sense of being given a meaning that respects the context in which they were drafted and the purpose they were intended to achieve.

2. The relevant rule in this case said nothing about whether the buy-out had to be carried out as a single exercise or in stages. Both were equally consistent with the stated objective and purpose of the trustees’ express duty under the rules, which was to provide as nearly as practicable the entitlements under the scheme.

3. If by carrying out the duty as a two stage process the trustees were able to increase the value of the assets available to fund the purchase of annuities, that would seem more, rather than less, consistent with their duty.

4. The powers to be implied should be those that gave the trustees the maximum flexibility to carry out their duty.
Comment (1): Since 11th June, 2003, an employer in a similar position to the employer here would have been liable for the full buy-out cost in any event. However, the trustees would need to proceed with care as to exactly when to fix a time for calculating the Section 75 debt so as to seek to avoid an outturn under which the amount of the debt proves, as a result of subsequent market movements, to be insufficient, assuming the debt is recovered in full, for the scheme to become fully funded so as to secure with one or more insurance companies scheme benefits in full.

Comment (2): The decision contrasts with the 2009 High Court decision in Independent Trustee Services v Hope (Pensions Bulletin 09/20), where the Court refused to sanction the purchase of annuities prior to a scheme entering the PPF, citing "public policy" grounds.

Points in Practice

1. PPF Levy 2013/14: final determination issued

   On 11th December, 2013, the PPF Board published the final version of the 2014/15 determination which sets out the rules for calculating the PPF levy for 2014/15.

2. Changes to the scheme return for DB schemes

   In December 2013, the Pensions Regulator published a guide highlighting new questions in the scheme return that DB schemes must submit from January, 2014 onwards.

   The new questions relate to:

   - hybrid schemes (i.e. schemes that combine both DB and DC benefits), including whether the scheme has an underpin and, if so, how this is best described, and information about the DC benefits (including AVCs) within the scheme including whether any of the scheme members are invested in a default strategy,
   - asset backed contribution ("ABC") arrangements, requesting details, and
   - incentive exercises, including details of any invitation to members to transfer or modify their scheme benefits in the 12 month period up to the latest scheme year end date.

   The guide is on the Regulator’s website.

3. Regulator’s update on scheme record keeping

   On 4th December, 2013, the Pensions Regulator issued a press release urging schemes to improve the quality of record keeping by correcting errors in "common data" and by putting plans in place to improve the quality of "conditional data".

   "Common data" are data applicable to all members of all schemes, and include NI numbers, names, address, dates of birth and membership status.

   "Conditional data" are dependent on the type of scheme and a member’s status in the scheme. Examples for a DC scheme include investment split, and units bought and sold.

   The Regulator’s 2013 corporate plan indicated there would be a review of its record-keeping guidance last year. But the Regulator now says it intends to review its record keeping guidance this year following passage of the current Pensions Bill and the outcome of its thematic review of record keeping, which covers a sample of 250 schemes of different sizes. The Regulator is concerned that schemes may have stalled on progress amid speculation it intends to set stringent targets for the presence of conditional data in scheme records.

   The Regulator confirms it will not be setting targets for conditional data in the same way as it did for
common data but that it “absolutely” expects schemes to be able to demonstrate that they have credible plans in place to improve conditional data. It may set targets around the timings for these plans to be implemented.

The Regulator notes that, as thematic reviews are expected to be used routinely in the regulation of DC schemes, trustees should ensure that their contact details and those of their advisers are kept up-to-date on Exchange.

The press release is on the Regulator’s website.

Comment: Even if your scheme has not been selected for review, you can expect record-keeping deficiencies to be picked up on. Inaccurate scheme data cause difficulties for DB schemes negotiating buy-out or buy-in arrangements, or longevity swaps, and may affect the pricing of such arrangements. For DC schemes accurate record keeping is fundamental. Schemes should review their data by reference to the Regulator’s September, 2012 checklist.

3. Regulator updates statutory employer statement

The Regulator has (December, 2013) updated its statement “Identifying your statutory employer” in light of the Court of appeal’s decision in Olympic Airlines.

The Court in that case decided that Olympic did not have an “establishment” in the UK for the purposes of the EU Insolvency Regulation. The Court could not make a winding-up order under the Insolvency Act 1986 so no UK insolvency event could take place and the UK pension scheme could not enter the PPF.

The Regulator is encouraging trustees of DB schemes with an overseas employer to monitor the extent of the employer’s economic activity in the UK, particularly if there is a risk of the employer entering insolvency. In particular the trustees are asked to consider the scheme’s ongoing funding position, the enforcement of debts in the employer’s jurisdiction, the risk of assets moving out of the UK, and the scheme’s ability to enter the PPF. The Regulator comments “this is a complex area and trustees are encouraged to seek legal advice as soon as possible when there is a concern over this issue”.

The updated statement is on the Regulator’s website.

Comment: The Court of Appeal’s decision in Olympic Airlines is expected to be appealed to the Supreme Court. If the decision is upheld, the lack of PPF protection for the UK DB schemes of a company incorporated in another EU member state could lead to a claim for damages being brought against the UK Government for a breach of law on 2 grounds:

(a) first, that the UK Government is in breach of its obligations to transpose properly EU Directive 80/987/EEC on the protection of employees in the event of insolvency of their employer following the decisions in Robins10 and Hogan11, and

(b) second, there is discrimination against a company incorporated in another EU Member State carrying on business in the UK since such company will, in effect, pay the cost of the PPF levy without its UK DB pension scheme obtaining adequate protection in the event of insolvency of that company.

This could constitute an indirect restriction on the freedom to set up a secondary establishment contrary to Article 49 of the Treaty on the Functioning of the European Union (“TFEU”). The principle of freedom

9 Directive 80/987/EEC was replaced by Consolidating Directive 2008/94/EC of 22nd October, 2008 on the protection of employees on the event of the insolvency of their employer
10 Robins and Others v Secretary of State for Work and Pensions (Case C-278/05) [2007] I.C.R. 779
11 Hogan & Ors v Minister of Social and Family Affairs, Ireland (Case C-398/11) [2013] Pens. L.R. 185
of establishment is one that the CJEU has applied rigorously.

4. PPF’s role in restructurings

On 13th January, 2014, the PPF published a factsheet on its involvement in restructuring or rescue deals affecting employers that otherwise face insolvency. Publication follows recent high-profile cases such as Dawson International, Jessops and UK Coal.

The PPF explains why it enters agreements with employers in such situations and sets out the principles it uses to reach its decisions.

The principles are:

• insolvency is inevitable, so that the PPF will have to take on the pension debt,

• the pension scheme will receive money or assets "significantly" better than it would have received on insolvency,

• what is offered to the pension scheme is "fair" compared to what other creditors and shareholders will receive as part of the deal,

• the pension scheme is given 10% equity in the new company if future shareholders are not currently involved and 33% if they are ("anti-embarrassment protection"),

• the pension scheme would not have been better off by the Regulator issuing a contribution notice or financial support direction,

• where the deal involves a refinancing, the fees charged by the banks are reasonable, and

• the other party pays the PPF’s and scheme trustees' legal fees.

The factsheet is on the PPF website.

Comment: Although the principles are drawn from those in the PPF’s 2009 guidance for Insolvency Practitioners, the factsheet is a useful reminder of the position.

5. GMP Reconciliation Service

HMRC has announced that it will allow scheme administrators and trustees of schemes that are currently contracted-out to reconcile the membership and GMP data held on scheme records against HMRC’s records in advance of the end of contracting-out in April, 2016.

The GMP reconciliation service has, until now, been available only to schemes that are winding up or that have surrendered their contracting-out certificates. It provides a list of contracted out periods and GMP data for members who have left contracted out employment. HMRC will provide the data requested from April 2014, although requests can be made from December 2013.

The announcement is on HMRC’s website.

Miscellaneous

Pensions Law Update Seminar

An invitation to our next Pensions Law Update Seminar, which takes place on Wednesday 12th February, 2014, between 9.30 am and 1.00 pm, accompanies this bulletin.
PPF Levy: 2014/15 Levy Determination

A. Background

1. On 11th December, 2013, the PPF Board published the final version of the 2014/15 determination which sets out the rules for calculating the PPF levy for 2014/15.

2. Alongside its final determination for the 2014/15 determination levy, the PPF also published its:

   2.1 levy practice guidance – this sets out principles and case studies showing how the PPF expects to exercise its discretionary powers in relation to scheme data and deficit reduction contributions,

   2.2 guidance for bespoke stress calculations for assessing investment risk – this is applicable to schemes with protected liabilities of £1.5 billion or more,

   2.3 guidance for calculating and certifying block transfers, and

   2.4 contingent asset guidance – this has been updated to reflect certain changes to the contingent asset regime (described below) and, according to the PPF Board, to reduce repetition and improve clarity.

3. The PPF has confirmed that:

   3.1 the levy estimate will be increased to £695 million from £630 million, and

   3.2 the levy parameters will remain the same as they were for the 2013/14 levy year, as follows:

       - Risk-based levy scaling factor – 0.73
       - Risk-based levy cap – 0.75% of smoothed liabilities
       - Scheme-based levy multiplier – 0.000056

   Comment: The 2014/15 levy year is the third year of the “New Levy Framework” (see C below). Under the New Framework, the PPF committed to keep the levy parameters (i.e. the levy scaling factor, scheme based levy multiplier and risk-based levy cap) fixed for 3 years except in limited circumstances. The limited circumstances do not apply in respect of the 2014/15 levy.

4. The determination, along with the PPF’s consultation response on the 2014/15 levy proposals and the guidance listed above, is available from the PPF website (www.pensionprotectionfund.org.uk).

B. Key changes from 2013/14 PPF Levy

1. The key changes from last year’s levy (besides changes in dates for submission of information and documentation) are, in summary, as follows:

   1.1 the levy estimate has increased by £65 million to £695 million;

   1.2 the postal address for submitting hard copy contingent-asset documentation has changed (see Rule A2.2(2) of the determination);

   1.3 there has been a change in policy regarding recertification of contingent assets (see F.2 below);

   1.4 there has been a change in policy regarding partial recognition of contingent assets. For the 2014/15 levy year, these will only be recognised in exceptional circumstances (see F.4.4 below); and

   1.5 the contingent asset guidance contains further clarification and detail as to what the Trustee should consider when deciding whether it can give the certification as to Guarantor strength (and what the PPF will consider when assessing Guarantor strength) (see further F.4.2 – 4.3 below).

2. For further detail regarding changes from the 2013/14 levy, see Appendix A to this note.
C. The New Levy Framework – a recap

1. The New Levy Framework was introduced for the 2012/13 levy year. The 2014/15 levy marks the final year of the first triennium of the New Levy Framework.

Comment: A consultation on the levy rules for the second triennium (i.e. the 3 years up to 2017/18) is expected in early 2014, with a consultation on the final levy rules for the 2015/16 levy expected in autumn 2014.

2. By way of reminder, key features of the New Levy Framework introduced in 2012/13 include:

2.1 Levies are calculated based on the funding position of the scheme over a 5 year period up to the end of March immediately before the start of the levy year. Funding levels are smoothed using market data for each working day in the 5 year period up to the end of March immediately before the start of the levy year.

Comment: A consultation on the levy rules for the second triennium (i.e. the 3 years up to 2017/18) is expected in early 2014, with a consultation on the final levy rules for the 2015/16 levy expected in autumn 2014.

2.2 The measurement of underfunding for the purposes of the risk-based levy incorporates an assessment of investment risk. The PPF achieves this by applying stresses to the asset and liability values submitted on Exchange.

Comment: Schemes with protected liabilities of more than £1.5 billion at their most recent section 179 valuation (the "Investment Stress Threshold") must carry out their own bespoke stress calculation as part of the scheme return in accordance with the Investment Risk Appendix of the determination and the guidance on the bespoke stress calculation. Schemes with protected liabilities of less than £1.5 billion can voluntarily submit a bespoke stress calculation and should consider it if they have derivative investments.

Action point: It is important to check your scheme's asset breakdown, as reported on Exchange, as this could have a significant impact on the Scheme's levy bill. The PPF recommends that schemes that are considering reporting substantial allocations to the "insurance" or "other" categories should instead consider recording the underlying assets held in a pooled fund, as it says this could lead to a significant levy reduction.

2.3 Insolvency risk for the purposes of the risk-based levy is measured using the average Dun & Bradstreet ("D&B") failure score of each employer over a 12 month period, measured on the last working day of each month, from 30th April, 2013 to 31st March, 2014 for the 2014/2015 levy. Employers are then allocated to one of 10 insolvency bands based on this average failure score, each with an associated levy rate.

Comment 1: Where a scheme has more than one employer, each employer will be placed in a band and the weighted average of the applicable bands will be assigned to the scheme.

Comment 2: Note that D&B will be implementing a new scoring methodology in the UK from early 2014. The PPF Board have confirmed that they have not amended their Levy Rules in light of this change in methodology. Therefore, scores provided by D&B during the last 2 or 3 months of 2013/14 using this new methodology will be included in the 12 month average calculations for the purposes of the 2014/15 levy in the same way as the failure scores using the old methodology.

Comment 3: Note that the PPF is to switch to Experian as its new insolvency provider for the 2015/16 levy year. There will be a handover period in the meantime, during which Experian is to work with the PPF to develop a bespoke model for calculating insolvency. The PPF had intended to make an announcement about the new model by the end of 2013 and to make access to the new insolvency risk scores available from early 2014. However this has not been achieved. The PPF will continue to provide updates on progress.
and remains committed to giving levy payers as much time as practically possible to understand any new methodology before it is used in levy calculations.

2.4 in relation to contingent assets, a new certification requirement as to the strength of a Type A guarantor was introduced, and

2.5 the process for reporting partial block transfers was removed so that the PPF now only recognises new full transfers or previously recognised transfers (i.e. transfers which the Board of the PPF was required to take into account under the terms of a previous levy determination).

D. Deadlines

1. PPF Levy 2014/15

The deadlines for the 2014/15 levy for the submission of information and certificates and the calculation dates are summarised below but you should check the Action Plan for further details:

- 5-year period to Monday 31st March, 2014
  - reference period over which funding is smoothed.
- 5.00 p.m. on Monday 31st March, 2014
  - for submission of scheme data (including Section 179 or MFR valuation and bespoke stress calculation) for use in levy calculations;
  - for putting contingent assets in place (they must come into effect no later than 1st April, 2014);
  - for certifying or re-certifying contingent assets;
  - for making deficit reduction contributions;
  - for completing full block transfers in or out.
- 5.00 p.m. on Wednesday 30th April, 2014
  - for submitting deficit reduction certification (where deficit reduction contributions are made before 1st April, 2014).
- 5.00 p.m. on Monday 30th June, 2014
  - for notification of, and certification of, full block transfers (where the full block transfer occurred prior to 1st April, 2014).

2. Date of payment of the 2014/15 Levy

The 2014/15 Levy is payable on the earliest of the following dates:

- 2.1 the date upon which the person liable to pay a scheme’s levy is sent notification (or a revised notification if applicable) of the amount payable,
- 2.2 the date on which any scheme ceases to be an eligible scheme for PPF coverage, and
- 2.3 31st March, 2015.

3. Interest on late payments

- 3.1 The PPF charges interest on levy payments that are not received within the 28 day time limit at a daily rate of the Bank of England base rate plus 5%, unless a decision is taken to waive the interest.

Note: The base rate as at January, 2014 is 0.5%.
3.2 The Levy Practice Guidance for the 2014/15 levy year reiterates that, where a levy invoice is disputed, the PPF may decide to charge interest even where that levy invoice is successfully appealed. For example, the guidance explains that, if a dispute relates to an aspect of the risk-based levy only, the PPF would expect the scheme to pay at least the undisputed portion of the levy invoice (i.e. the scheme-based levy, and any risk-based levy which would remain due if the appeal were successful).

4. PPF Levy 2015/16

The provisional deadlines for the 2015/16 levy have not yet been published but see the Action Plan for our predicted deadlines based on the deadlines for the 2014/15 levy.

E. Transfers

1. Only a full or a previously recognised block transfer (i.e. a transfer which the Board of the PPF was required to take into account under a previous determination) may serve to reduce a scheme’s levy. Since the levy year 2012/13, the PPF has not recognised any new partial transfers.

2. A full transfer is one of 100% of liabilities, resulting in the transferring scheme becoming exempt from the levy.

Note that what a scheme might regard as a full transfer for the purposes of Exchange may not in practice always meet the definition of a full transfer for PPF purposes. The definition of a full transfer is set out in the PPF determination and noted at the start of the PPF’s Guidance for calculating and certifying block transfers. It is where, on any date or dates prior to 1st April, 2014:

(a) there are fewer than 2 members remaining in a scheme; and

(b) the transferring scheme has transferred (in groups of 2 or more members) members to one or more other PPF-eligible schemes, and there remain fewer than 2 members in the transferring schemes on 1st April, 2014.

3. Note that the full transfer definition assesses the position as at 1st April for each levy year. The PPF’s guidance on block transfers clarifies that the key point is whether the definition applies at that point, not whether any one transfer during the levy year necessarily meets the definition.

4. The PPF expects notification of full transfers which occur prior to 1st April, 2014. Notification of, and certification of, these transfers must be provided to the PPF by 5.00 p.m. on Monday, 30th June, 2014.

5. The PPF will penalise the receiving scheme if it does not notify the PPF of transfers it expects notification of. However, the PPF has a discretion as regards the extent to which it will penalise a scheme, if at all. This discretion will be exercised if the PPF Board is satisfied that the Trustees of any receiving scheme have made all efforts that were reasonable in the circumstances to submit by 5.00 p.m. on Monday, 30th June, 2014. The PPF Board has also indicated in its Levy Practice Guidance for the 2014/15 levy that it may also exercise this discretion if penalising the receiving scheme would result in a levy that is inappropriately low.
F. Contingent Assets

1. Overview

1.1 In order to keep their risk-based levies to a minimum, employers need to start thinking now about possible reduction mechanisms, such as making deficit reduction payments or putting contingent asset arrangements in place.

1.2 There are three types of contingent assets:

1.2.1 Type A: intra group guarantees;

1.2.2 Type B: security (in the form of a first priority legal mortgage or fixed charge given by an Employer’s Associate in favour of the trustees of the scheme) over:
   – sterling cash;
   – real estate; or
   – securities; and

1.2.3 Type C: a letter of credit or bank guarantee in favour of the scheme trustees.

1.3 The PPF only recognises contingent asset arrangements that are put in place using its standard form documentation and that are accompanied by a legal opinion and any other necessary supporting documentation, such as a certificate of title for a Type B contingent asset comprising real estate. These are not documents that can easily be produced at the last minute, so early contact with the legal advisers is recommended.

1.4 The Board has not revised its standard form contingent asset agreements for 2014/15. But it has made the changes outlined in 2, 3, and 4 below to the contingent asset regime.

2. New policy regarding re-certification

2.1 Previously, if a scheme certified a contingent asset in one levy year but did not recertify it in the following levy year, the scheme had to resubmit it as a new contingent asset (with all the attendant documentation) for it to be recognised again for the purposes of reducing the PPF levy.

2.2 From 2014/15, the PPF Board has changed its policy so as to allow a scheme to resubmit a contingent asset that was not certified in the immediately preceding levy year as a re-certification rather than as a new contingent asset, provided certain requirements are met.

2.3 These requirements are that:

(a) the general requirements for recertification as set out in Rule G2.5(2) of the Levy Determination are met;

(b) the Board receives confirmation in the contingent asset certificate that either the trustees do not believe that the legal position has changed since the levy year in respect of which the contingent asset was last certified, or, if they have reason to believe the legal position may have changed, that the trustees have submitted a revised legal opinion;

(c) the contingent asset agreement has remained in place since the levy year in respect of which the contingent asset was last certified; and

(d) the contingent asset was last certified in respect of a levy year no earlier than the 2009/10 levy year (i.e. not more than 5 levy years previously).

2.4 To accommodate this change in policy, we understand (although we have not verified this at present) that the Exchange system has been changed to allow schemes to roll forward a contingent asset from a previous levy year.
3. Trustees’ certification as to strength of guarantor (Type A contingent assets)

3.1 For the 2011/12 and 2013/14 levy years, the trustees of a scheme submitting a Type A contingent asset were required to certify that:

“The Trustees have no reason to believe that each certified guarantor, as at the date of the certificate, could not meet its full commitment under the contingent asset as certified.”

3.2 The PPF put forward proposals, in the consultation on the 2014/15 Levy, to change this certification wording from a positive to a negative form, following feedback from stakeholders indicating that it was felt that the negative wording “created uncertainty for trustees as to the degree of investigation of the guarantor’s financial position which would be required before they could give the certification.”

3.3 The PPF have now confirmed that the proposed changes to the certification wording will not be implemented for the 2014/15 levy year, but will instead be delayed until the 2015/16 levy year.

3.4 The PPF have, however, attempted to address the concerns with the existing certification wording for the 2014/15 levy year, by clarifying in their contingent asset guidance that “Trustees can still feel able to give the certification even where they are aware of an isolated negative factor regarding the guarantor’s financial position where this is clearly outweighed by a number of positive factors.”, noting that “It is not the intention of the current form of drafting to prevent trustees certifying in these circumstances.”

3.6 The PPF further comments, in its contingent asset guidance for 2014/15, that “The certification is designed to allow trustees to take a rounded view of whether it is reasonable to believe the amount certified could be met by the guarantor, without having to obtain absolute certainty as to guarantor’s ability to do so.”

Comment: The guidance reiterates from 2013/14 that the PPF Board considers that trustees need to be comfortable (rather than certain) that the guarantor could meet its full commitment under the guarantee if called upon to do so.

4. Changes to contingent asset guidance

4.1 The contingent asset guidance has been amended to reflect the new policy on recertification and the new certification wording as to the strength of the guarantor in relation to Type A contingent assets.

4.2 In connection with the certification requirements as to the strength of the guarantor, besides the amendments referred to at 3 above, the guidance also contains further clarification and detail as to what is required for such certification. In particular, it states that:

(a) Trustees must not attribute value to investments in the sponsoring employer (or businesses controlled by it) in their assessment of the guarantor unless they can be confident that value would survive an insolvency,

(b) where the guarantor and employer are part of a group of companies, the Trustee should consider the indirect effect of an employer’s insolvency, in particular whether the employer’s insolvency could lead to the insolvency of the guarantor.

Comment: The PPF gives the example of where the group is reliant on an employer for most (or a considerable part) of its revenue or assets, noting that the Trustee needs to consider whether the guarantor could meet its certified
obligations if that employer failed. The PPF further notes, in this context, that the Trustees should think about all the circumstances in which an employer might fail, including those where other group members also fail,

(c) in respect of a guarantor that is also an employer in a multi-employer scheme, the trustees should consider the impact on the guarantor of the insolvencies of other scheme employers. In particular, the trustees should consider whether the guarantor would be able to meet the other employers’ obligations to the scheme in addition to its own.

Comment: The guidance specifically notes that trustees are free to consider a guarantee from an employer in a last man standing scheme, and states that the Board will assess such guarantees in the same way as for guarantees relating to other scheme structures,

(d) Trustees should take particular care to consider not just the guarantor’s net asset value compared to the guaranteed amount, but also the nature and location of the guarantor’s assets.

Comment: The PPF further notes, in this context, that where the guarantor’s assets include intangible assets, such as brand value, or primarily consist of intercompany accounts and investments in employer subsidiaries, then trustees should consider whether these assets are likely to deliver any real value to the guarantor if the employer becomes insolvent,

(e) Trustees should consider how readily the guarantor’s assets could be realised in order to meet its certified obligations if required to do so,

(f) the Guidance reiterates that the PPF Board expects trustees to seek guarantees from companies which are independently able to meet their commitment under the guarantee.

Comment 1: The Guidance clarifies that it is therefore likely always to be inappropriate to seek to certify a guarantor whose ability to meet its full commitment under the guarantee is dependent on a cross-guarantee being provided by an employer.

Comment 2: Note that in last year’s Guidance the PPF stated that “it will always be inappropriate to seek to certify a guarantor where the cross-guarantee is from the sponsoring employer”,

(g) Trustees may wish to consider obtaining a letter of comfort from the guarantor as to the guarantor’s financial position so as to provide them with added confidence that they can give the required certification, and

(h) the Board is not prescriptive (and does not intend to be prescriptive in future levy years) about the information trustees should consider. What is appropriate is ultimately for the trustees to decide, based on the guarantor’s circumstances.

Comment: The Guidance states that, as a general example, trustees could consider any available information about the guarantor’s financial position, including its most recent accounts. However, the key factor (as stated in the 2013/14 guidance) is whether the information enables the trustees to consider whether the guarantor is good for the certified amount under the guarantee.
4.3 The guidance also contains further clarification and detail as to what the PPF will consider when assessing guarantor strength. A key issue the PPF Board will consider is whether meeting the certified amount would be likely to trigger the insolvency of the guarantor. Where a guarantor is also an employer, the PPF Board will expressly consider whether the guarantor could meet its certified obligations in respect of the other guaranteed employers while continuing to trade (or, if it ceased to trade, whether it could meet both its own Section 75 debt and its certified obligations under the guarantee).

Comment: Note that trustees can find examples of what the PPF would consider to be strong or weak guarantors in the “Observations on guarantor strength” document for 2012/13, accessible via the PPF website at www.pensionprotectionfund.org.uk

4.4 In relation to the PPF’s discretion to recognise partially a contingent asset, the 2014/15 guidance specifies that for the 2014/15 levy year, the PPF Board will only partially recognise a contingent asset in exceptional circumstances. The Board comments that partial recognition:

“is not a mechanism to enable schemes which have certified at an unrealistic level to have a second opportunity to secure recognition, in circumstances where they could reasonably have been expected to have certified for a lower amount at the outset.”

4.5 Other limited changes to the guidance have been made to reduce repetition and improve clarity generally.

5. Action points

5.1 Trustees will need to consider whether they can give the certificate as to the guarantor’s financial strength before they obtain a new Type A contingent asset or certify an existing one.

5.2 The submission of contingent asset certificates will be via the Pension Regulator’s scheme maintenance system, Exchange. However, hard copies of the supporting documents, including a print out of the contingent asset certificate, must be submitted to the PPF by the deadline for doing so, i.e. 5 p.m. on Monday 31st March, 2014 (see Action Plan).

Comment: Please make sure that any hard copy documents submitted are sent either by courier (with a receipt confirming delivery being obtained) or by guaranteed overnight delivery or similar method (again with signed for evidence of receipt being obtained) to arrive before the deadline.

5.3 The PPF Board will continue to recognise contingent asset arrangements put in place for previous levy years provided trustees re-certify these before 5.00 p.m. on Monday, 31st March, 2014, confirming that the arrangement will remain in place for 2014/15.

Comment: Note change in re-certification policy referred to above.

5.4 Further guidance is available in the contingent assets annex of the determination and in the PPF’s guidance on contingent assets, republished in December, 2013 (www.pensionprotectionfund.org.uk).

5.5 We have advised a number of clients in relation to putting in place contingent asset arrangements including providing the necessary legal opinion.

5.6 Please contact the usual person you deal with at Slaughter and May for further advice.
G. **Future changes**

1. The 2015/16 levy year will mark the switch from Dun & Bradstreet to Experian as the PPF’s new insolvency risk provider.

2. There is to be a handover period in the meantime, during which Experian is to work with the PPF to develop a bespoke model for calculating insolvency risk. The intention is that access to the new insolvency risk scores will be available from early 2014.

3. The 2015/16 levy year also marks the start of the second triennium of the New Levy Framework. A consultation on the rules for the second triennium (i.e. for the three years to 2017/18) is expected in early 2014. This consultation is expected to include information on how Experian’s methodology for assessing insolvency risk differs from Dun & Bradstreet’s methodology.

4. A further consultation on the final levy rules for 2015/16 is then expected in autumn 2014.

*Slaughter and May (PFJB/PGE/RFH)*  
*January, 2014*
Annex A

Key changes from 2013/14 Levy Year

A. Introduction

1. This Annex sets out, in Sections B – D respectively, the substantive changes in each of the following documents as compared with the equivalent documents from the 2013/14 levy year:

   1.1 The PPF Levy Determination under section 175(5) of the Pensions Act 2004
   1.2 The Contingent Asset Appendix
   1.3 The Contingent Asset Guidance

2. This note does not refer to the following types of changes:

   2.1 date changes (i.e. changes to the references to the levy year and changes to the dates for submission of information and documentation to the PPF).

2.2 tidying-up changes to improve clarity generally but which do not affect the rules or the essence of the guidance.

3. Note that there has been no change in the levy parameters as compared to last year. These therefore remain as follows:

   – Risk-based levy scaling factor – 0.73
   – Risk-based levy cap – 0.75% of smoothed liabilities
   – Scheme-based levy multiplier – 0.000056

B. Changes to PPF Levy Determination

1. There are two key changes to the PPF Levy Determination for the 2014/15 Levy Year. These are:

   1.1 a change to the postal address for submitting hard-copy contingent asset documentation; and
   1.2 a change in policy regarding re-certification of contingent assets.

   Comment: This requires documents to be delivered to the postal address for general enquiries that is stated on the Board’s website as at the date of submission of the documentation, addressed to the Board of the Pension Protection Fund and marked for the attention of “Head of Legal Re: Contingent assets”

2. Regarding the change at 1.1 above, see Rule A2.2(2) of the Levy Determination.

C. Changes to Contingent Asset Appendix

The key change to the Contingent Asset Appendix is that it has been amended in respect of each type of contingent asset to reflect the change in policy regarding re-certification of contingent assets.

Comment: Paragraphs 27(2), 30(2), 34(2), 37(2), 40(2) and 43(2) (dealing, in respect of each type of contingent asset, with the requirements for submitting hard copy documentation in the case of re-certification of an existing contingent asset) have been amended to reflect the new rule (at G2.6 of the Determination) allowing re-certification, in certain circumstances, of an existing contingent asset which was not certified in the immediately preceding levy year.

Comment: This requires documents to be delivered to the postal address for general enquiries that is stated on the Board’s website as at the date of submission of the documentation, addressed to the Board of the Pension Protection Fund and marked for the attention of “Head of Legal Re: Contingent assets”

3. Regarding the change at 1.2 above, see Rules G2.5 and G2.6 of the Levy Determination and Section F2 of the note to which this Appendix A is attached.
D. Changes to Contingent Asset Guidance

1. There are 5 key changes to the Contingent Asset Guidance as compared with the 2013/14 Levy Year. These are as follows:

1.1 reference to the change of postal address for submitting hard-copy contingent asset documentation referred to at B1.1 and B2 above;

Comment: See Section 3.2.3 of Guidance.

1.2 reference to the change in recertification policy referred to at B1.2 and B3 above (and consequential amendments as a result of such change in policy).

Comment: See Sections 4.1.8 and 9.3.3-9.3.4 of Guidance.

1.3 further guidance regarding:

(a) what the Trustee should consider in determining whether it can give the certification as to Guarantor strength; and

Comment: See Sections 5.1.6 and Sections 5.1.12-5.1.34 of Guidance.

(b) what the PPF will consider in assessing Guarantor strength

Comment: See Section 5.2 of Guidance.

1.4 details on the change in policy regarding partial recognition of contingent assets;

Comment: See Section 5.3.3 of Guidance; and

1.5 the insertion of the form of contingent asset certificates for Type B(i), B(iii) and C(i) contingent assets (which were not included in last year’s guidance).

Comment: See Appendix 2 of Guidance.

2. Regarding the changes referred to at 1.3 above, see Sections F4.2 and F4.3 of the note to which this Appendix A is attached.

3. Regarding the change referred to at 1.4 above, see Section F4.4 of the note to which this Appendix A is attached.
## PENSION PROTECTION FUND LEVIES ("PPF Levies") 2014/15 and 2015/16: ACTION PLAN

<table>
<thead>
<tr>
<th>No.</th>
<th>Requirement</th>
<th>Calculation date/ Information submission date</th>
<th>Action points/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Part A – Preliminary matters to consider</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Section 179 valuation</td>
<td></td>
<td>Liaise with Scheme Actuary over appropriate date (see B1. and C1. below).</td>
</tr>
<tr>
<td>2.</td>
<td>Each employer’s current Dun &amp; Bradstreet (&quot;D&amp;B&quot;) failure score</td>
<td></td>
<td>Consider how to improve this, if necessary (see B2. and C2. below).</td>
</tr>
<tr>
<td>3.</td>
<td>Data held by Regulator</td>
<td></td>
<td>Check online system to ensure data is accurate and up to date (see B3. and C3. below).</td>
</tr>
<tr>
<td>4.</td>
<td>Transfers</td>
<td></td>
<td>Ensure relevant conditions are met, and relevant information provided to the PPF to ensure transfers in or out are taken account of (see B5. B9. C4. and C9. below).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Note:</strong> Liabilities in respect of money purchase benefits, and the assets supporting such benefits, are disregarded for Section 179 valuation purposes.</td>
</tr>
<tr>
<td>5.</td>
<td>What steps could be taken to improve funding position (e.g. putting in place contingent assets, making deficit reduction payment (see B4. B6. B8. C5. C6 and C8. below)),</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>In the case of a multi-employer scheme (i.e. a scheme with 2 or more employers) consider the correct categorisation of the scheme (see further B3 and C3 below)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Requirement</td>
<td>Calculation date/Information submission date</td>
<td>Action points/Comments</td>
</tr>
<tr>
<td>-----</td>
<td>-------------</td>
<td>---------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td><strong>Part B – 2014/15 PPF Levy</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 1. | **Section 179 Valuation** at any date other than 31st March, 2014 is altered by PPF Board to roll forward/roll back figures. Figures smoothed using market data for each working day over 5 year period to 31st March, 2014. **Must be submitted by Monday, 31st March, 2014** | As at Monday, 31st March, 2014, (but smoothed over 5 year period). | - PPF to use average of monthly D&B failure scores over 1 year period to 31st March, 2014.  
- Check D&B failure score. If not satisfied, investigate how it has been calculated and whether there are any grounds to appeal.  
- Submit any relevant information to D&B. Information submitted to D&B by each month end will be reflected in failure score by following month end at latest.  
- Can appeal D&B failure score within 28 days of receipt of 2014/15 PPF levy invoice. **Comment:** Grounds of appeal can be limited. If you think this may apply to your scheme, please contact the person you normally deal with here on pension matters for further advice. |
<p>| 2. | <strong>D&amp;B failure score</strong> of each employer (and guarantor used for a Type A contingent asset (see B6, below)). | Last working day of each month from 30th April, 2013 to 31st March, 2014. | |</p>
<table>
<thead>
<tr>
<th>No.</th>
<th>Requirement</th>
<th>Calculation date/Information submission date</th>
<th>Action points/Comments</th>
</tr>
</thead>
</table>
| 3.  | Check/change **data** held in relation to the scheme on the Pension Regulator’s Exchange system (scheme return). | Monday, 31st March, 2014, 5pm                 | 3.1 Ensure data submitted by **5pm, 31st March 2014**  
3.2 PPF will, in very limited cases, take account of data submitted after **5pm, 31st March 2014**.  
3.3 For multi-employer scheme, check which category applies for PPF purposes:  
• section 4 of the Scheme Return requires multi-employer schemes to select a structure that best describes their scheme,  
• the type of structure selected will affect the risk profile of the scheme, and  
• there are particular problems in categorising schemes where, on cessation of a participating employer, the trustee is obliged to segregate if the principal employer so directs.  
**Comment**: If you think this may apply to your scheme, please contact the person you normally deal with here on pensions matters for further advice.  
3.4 Please check carefully that the correct employer information has been submitted.  
**Note 1**: This could materially affect the amount of your levy.  
**Note 2**: If a company no longer employs active members it may or may not still count as an employer.  
**Comment**: If you think this may apply to your scheme, please contact the person you normally deal with here on pensions matters for further advice. |
<table>
<thead>
<tr>
<th>No.</th>
<th>Requirement</th>
<th>Calculation date/ Information submission date</th>
<th>Action points/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3.5 Please check carefully that the correct asset information has been submitted, as the PPF will be using this information in its calculation of underfunding for the purposes of the risk based levy. Note 1: Consider recording underlying assets held in pooled funds rather than allocating assets to the &quot;insurance&quot; or &quot;other&quot; categories, as this could lead to a significant levy reduction. Note 2: If your scheme has protected liabilities of more than £1.5 billion, you must carry out bespoke stress calculations and submit as part of scheme return.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>If using contingent assets, re-certify existing contingent asset or put new contingent assets in place and submit, via Pensions Regulator’s Exchange System, contingent assets certificate. Accompanying supporting documents for new Contingent Assets must be sent in to be received by same deadline. Note 1: Note the change of postal address for sending in hard-copy documents. They must be sent to the postal address for general enquiries that is stated on the Board’s website as at the date of submission of the documentation, addressed to the Board of the Pension Protection Fund and marked for the attention of “Head of Monday 31st March, 2014, 5pm</td>
<td></td>
<td>4.1 There are 3 types of contingent asset: • parent group company guarantees (Type A), • security over cash, real estate or securities (Type B), and • letters of credit and bank guarantees (Type C). 4.2 The PPF Board only recognises contingent asset arrangements; • that are put in place using its standard form documentation, • that are accompanied by a legal opinion, and • in relation to Type B contingent assets comprising real estate, that are accompanied by a certificate of title.</td>
</tr>
<tr>
<td>No.</td>
<td>Requirement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>-------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Legal Re: Contingent Assets” (see Rule A2.2(2) of Determination and Section 3.2.3 of the contingent asset guidance).</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note 2:</strong> The PPF no longer contacts schemes about re-certification of existing contingent assets. Re-certification will be via Pensions Regulator’s Exchange system.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note 3:</strong> PPF standard form agreements issued December 2013 for 2014/15 levy year are unchanged from previous year.¹</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note 4:</strong> Trustees certifying new and existing contingent assets will need to make a certification in respect of the guarantor’s financial strength. Trustees will need to take specific advice as to whether such certification can be given. This process should be started promptly. It is only 11 weeks from Monday, 13th January until Monday, 31st March, 2014 (the last day for the Trustees to recertify an existing Type A contingent asset or certify a new Type A contingent asset).</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note:</strong> We are able to provide the necessary legal opinion where the law of England and Wales is applicable. Alternatively, where for example, a non-UK guarantor is involved, we can liaise with overseas lawyers on the necessary opinion.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>4.3</strong> Any decision by an employer to offer a contingent asset needs to be considered carefully: savings on the levy may be outweighed by a trustee with a PPF guarantee ratcheting its funding demands.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Comment:</strong> An alternative approach is to make any parent company guarantee conditional on:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>– the trustee following an appropriate investment strategy acceptable to the guarantor, and</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>– the trustee agreeing not to exercise any powers available to it under the trust deed which would accelerate the funding of the scheme over and above that provided for in the schedule of contributions from time to time in force under the Pensions Act 2004.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Note</strong> that such a guarantee would not qualify as a PPF contingent asset.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>4.4</strong> Further guidance is available in the PPF’s guidance on contingent assets, republished in December, 2013 (<a href="http://www.pensionprotectionfund.org.uk">www.pensionprotectionfund.org.uk</a>).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ There is a statement to this effect on the PPF’s website at www.pensionprotectionfund.org.uk
<table>
<thead>
<tr>
<th>No.</th>
<th>Requirement</th>
<th>Calculation date/ Information submission date</th>
<th>Action points/Comments</th>
</tr>
</thead>
</table>
| 5.  | **Full transfers** which are not reflected in the most recent section 179 valuation.\(^2\) | **Monday, 31st March, 2014, 5pm**                    | Relevant conditions are that: \[ \begin{align*} \text{\bullet prior to 1st April, 2014 all members, or all but one member, transfer to one or more schemes, and} \\
\text{\bullet by 5pm on 30th June, 2014 both transferring and receiving scheme:} \\
\text{\bullet notify the PPF via Exchange, and} \\
\text{\bullet send actuarial transfer information to the PPF via Exchange.} \end{align*} \] \textbf{Note:} If above information is not provided PPF might decide to penalise schemes when calculating PPF levy. |  

| 6.  | **Last date for making deficit reduction contributions** which count for levy calculation purposes (they must be made in full). | **Monday, 31st March, 2014, 5pm**                    | Must submit deficit-reduction certificate by **30th April, 2014, 5pm** |  

| 7.  | **Start of financial year for 2014/15 PPF levy**                            | **Tuesday, 1st April, 2014**                         |                                                                                                                                                        |

| 8.  | **Deficit reduction contributions** – deadline for sending to PPF Actuary’s certificate in relation to deficit reduction contribution(s) | **Wednesday, 30th April, 2014, 5pm**                 | See B6. above                                                                                                                                            |

\(^2\) Note that money purchase liabilities and the assets supporting them are disregarded for Section 179 valuation purposes.
<table>
<thead>
<tr>
<th>No.</th>
<th>Requirement</th>
<th>Calculation date/Information submission date</th>
<th>Action points/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.</td>
<td><strong>Full transfers</strong> that took place on or before 5pm on 31st March, 2014 – deadline for notifying PPF and for providing actuarial transfer information.</td>
<td>Monday, 30th June, 2014, 5pm</td>
<td>See B5. above. Names and pension scheme reference numbers of transferring and receiving schemes required.</td>
</tr>
<tr>
<td>10.</td>
<td>Last day of financial year for 2014/15 PPF levies.</td>
<td>Tuesday, 31st March, 2015</td>
<td></td>
</tr>
</tbody>
</table>

**Part C – 2015/16 PPF Levy**

**Note:** Dates below are provisional as the final rules for 2015/16 PPF Levy will not be known until PPF’s Determination is issued sometime in December 2014. The information below also assumes that the methodology for Experian, the new insolvency risk provider for 2015/16 onwards, will be the same as the current D&B methodology (which is unlikely to be the case)

<p>| 1.  | <strong>Section 179 Valuation</strong> at any date other than 31st March, 2015 is altered by PPF Board to roll forward/roll back figures. Figures smoothed using market data for each working day over 5 year period to 31st March, 2015 | As at 31st March, 2015 (but smoothed over 5 year period) | Must be submitted by 31st March, 2015 |</p>
<table>
<thead>
<tr>
<th>No.</th>
<th>Requirement</th>
<th>Calculation date/ Information submission date</th>
<th>Action points/Comments</th>
</tr>
</thead>
</table>
| 2.  | Experian failure score of each employer (and guarantor used for a Type A contingent asset (see C4. below)). | Last working day of each month from 30th April, 2014 to 31st March, 2015 | • PPF to use average of monthly Experian failure scores over 1 year period to 31st March, 2015.  
• Check Experian failure score and investigate options for improving it.  
• Submit any relevant information to Experian. Information submitted to Experian by each month end will be reflected in failure score by following month end at latest.  
• Can appeal Experian failure score within 28 days of receipt of 2015/16 PPF levy invoice.  
  
  **Comment:** Grounds of appeal can be limited. If you think this may apply to your scheme, please contact the person you normally deal with here on pension matters for further advice. |
<table>
<thead>
<tr>
<th>No.</th>
<th>Requirement</th>
<th>Calculation date/Information submission date</th>
<th>Action points/Comments</th>
</tr>
</thead>
</table>
| 3.  | Check/change data held in relation to the scheme on the Pension Regulator’s Exchange system (scheme return). | 31st March, 2015, 5pm                         | 3.1 Ensure data submitted by 5pm, 31st March 2015  
3.2 PPF will in very limited cases take account of data submitted after 5pm, 31st March 2015.  
3.3 For multi-employer scheme, check which category applies for PPF purposes:  
  - Section 4 of the Scheme Return requires multi-employer schemes to select a structure that best describes their scheme.  
  - The type of structure selected will affect the risk profile of the scheme.  
  - There are particular problems in categorising schemes where, on cessation of a participating employer, the trustee is obliged to segregate if the principal employer so directs.  
    Comment: If you think this may apply to your scheme, please contact the person you normally deal with here on pensions matters for further advice.  
3.4 Please check carefully that the correct employer information has been submitted.  
   Note 1: This could materially affect the amount of your levy.  
   Note 2: If a company no longer employs active members it may or may not still count as an employer.  
    Comment: If you think this may apply to your scheme, please contact the person you normally deal with here on pensions matters for further advice. |
<table>
<thead>
<tr>
<th>No.</th>
<th>Requirement</th>
<th>Calculation date/ Information submission date</th>
<th>Action points/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td><strong>Full transfers</strong> which are not reflected in the most recent section 179 valuation.³</td>
<td>31st March, 2015, 5pm</td>
<td>Relevant conditions are that:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Prior to 1st April, 2015 all members, or all but one member, transfer to one or more schemes, and</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• by 5pm on 30th June, 2015 both transferring and receiving scheme:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>– notify the PPF via Exchange, and</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>– send actuarial transfer information to the PPF via Exchange.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Note:</strong> If above information is not provided PPF might decide to penalise schemes when calculating PPF levy.</td>
</tr>
<tr>
<td>5.</td>
<td>If using <strong>contingent assets</strong>, re-certify existing contingent asset or put new contingent assets in place and submit, via Pensions Regulator’s Exchange System, contingent assets certificate. Accompanying supporting documents for new contingent assets must be sent in by same deadline.</td>
<td>31st March, 2015, 5pm</td>
<td>See comments in B4. above.</td>
</tr>
<tr>
<td>6.</td>
<td>Last date for making <strong>deficit reduction contributions</strong> which count for levy calculation purposes (they must be made in full).</td>
<td>31st March, 2015, 5pm</td>
<td>Must submit deficit reduction certificate by 30th April, 2015, 5pm</td>
</tr>
</tbody>
</table>

³ Note that money purchase liabilities and the assets supporting them are disregarded for Section 179 valuation purposes.
<table>
<thead>
<tr>
<th>No.</th>
<th>Requirement</th>
<th>Calculation date/ Information submission date</th>
<th>Action points/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.</td>
<td>First day of financial year for 2015/16 PPF levies</td>
<td>1st April, 2015</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Deficit reduction contributions – deadline for sending certificate</td>
<td>30th April, 2015, 5pm</td>
<td>See C6. above.</td>
</tr>
<tr>
<td>9.</td>
<td><strong>Full transfers</strong> that took place on or before 5pm on 31st March, 2014 – deadline for notifying PPF and for providing actuarial transfer information.</td>
<td>30th June, 2015, 5pm</td>
<td>See C4. above.</td>
</tr>
<tr>
<td>10.</td>
<td>Last day of financial year for 2015/16 PPF levies</td>
<td>31st March, 2016</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** PPF levies will not be payable until invoice sent to scheme.

**Note:** No faxes accepted by the PPF – only post or deliveries by hand.

**Note:** Certificates must be submitted via the Pensions Regulator’s Exchange system.

**Note:** The PPF will charge interest on levy payments that are not received within the 28 day time limit at a daily rate of the Bank of England base rate plus 5%.

*Slaughter and May (PFJB/PGE/RFH)*

January, 2014

This table is intended to give general information only. It does not seek to give legal advice or to be an exhaustive statement of the law and readers should take specific legal advice on any particular matter which concerns them.
This Bulletin is prepared by the Pensions and Employment Group of Slaughter and May in London.

We advise on a wide range of pension matters, acting both for corporate sponsors (UK and non-UK) and for trustees. We also advise on a wide range of both contentious and non-contentious employments matters, and generally on employee benefit matters.

Our pensions team is described in the 2012 edition of *The Legal 500* as "extremely knowledgable" and as having "strength in depth". Our recent work includes advising:

- **Unilever Plc** on the creation of an innovative pension funding vehicle under which a unit-linked life policy was established to fund centrally certain overseas unfunded retirement benefit obligations

- **General Motors**, on the pensions aspects of the sale of Millbrook Proving Ground Limited (the test and engineering technology centre). The sale was dependent on structuring a pensions reorganisation so that the Millbrook Pension Plan and all pension liabilities were retained in the General Motors group

- **ConocoPhillips**, on complying with its auto-enrolment duties, including analysing how different categories of employees would be provided with pension benefits in compliance with those duties and setting up a new DC pension plan and a new registered life cover pension plan

- **Royal Mail** on a benefit change exercise which enabled Royal Mail to use some of the c£2bn of assets remaining in the Royal Mail Pension Plan following the 2012 transfer of its pension liabilities to HM Government to fund a £300 million a year gap which would otherwise have opened up between the pension contributions which it could afford and the amount which was required to keep the Plan open for the future accrual of benefits. We had previously advised on the 2012 transfer of approximately £30 billion of Royal Mail’s historic pension liabilities to HM Government

- **The Trustee of the General Motors UK Retirees Pension Plan**, on the surrender in October, 2012 of 2 insurance policies and the purchase of a bulk purchase annuity policy with Rothesay Life. The transaction covered all or substantially all of the Plan’s benefit obligations and had an aggregate value of approximately £230 million

- **The Trustee of ConocoPhillips Pension Plan**, on the UK pensions issues arising from the demerger of the ConocoPhillips "downstream" oil business in May, 2012, including establishment of a new mirror image defined benefit pension scheme for the "downstream" UK business. ConocoPhillips is a US company and a number of cross-border issues arose from the pension demerger as a result. We coordinated our advice on these issues with legal advice from Cravath Swaine & Moore in the US

- **GlaxoSmithKline plc** on an arrangement under which from 1st April, 2013 increases in basic salary for employees in one of its defined benefit pension plans are capped at 2% pa. Pay increases which would otherwise have been awarded above that 2% pa level take the form of a non-pensionable salary supplement.

If you would like to find out more about our Pensions and Employment Group or require advice on a pensions, employment or employee benefits matters, please contact Jonathan Fenn jonathan.fenn@slaughterandmay.com or your usual Slaughter and May adviser.