DWP Consultation: Protecting Defined Benefit Pension Schemes – A Stronger Pensions Regulator

BVCA Response

21st August 2018

The following response was submitted electronically by the BVCA via the government's online consultation portal.

1. What is your name?

Gurpreet Manku

2. Are you answering on behalf of:

An organisation (in an official capacity)

British Private Equity and Venture Capital Association (BVCA)

3. Which of the following best describes you?

Representative Body

4. Trustees - Which of the following best describes you?

Not Applicable

5. Employers – Which of the following best describes your organisation

Not Applicable

6. Pension Professionals - Which option best describes your profession?

Not Applicable

7. Representative bodies - Who are you responding on behalf of?

With a membership of over 700 firms, the BVCA represents the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers and investors. Our members have invested over £32 billion in nearly 2,500 UK-based companies over the last five years. Companies backed by private equity and venture capital in the UK employ around 692,000 people, and 83% of UK investments in 2017 were directed at small and medium-sized businesses. In 2017, 16 companies experiencing trading difficulties were rescued by BVCA member firms, helping safeguard around 2,800 jobs.

8. We have set out a number of proposed changes to the existing notifiable events framework. Do these proposals strike the right balance between improved regulations on business and protecting pensions?

A: No.

Given the increased sanctions proposed, it must be absolutely clear whether a notifiable event has arisen at any point in time. This must be clear to any person who has an obligation to notify or could be exposed to any sanction.

The applicable funding level for determining whether notifiable event obligations apply should be defined (e.g. PPF level at last valuation as under current guidance).

The notifiable events should be clearly referable to the stated objectives of the proposal, namely to ensure the Regulator is "better sighted" on business transactions and events that may have a detrimental impact on the pension scheme. In particular, there should be a connection between the level of underfunding (i.e. risk to pensions) and the impact of the transaction (e.g. reducing EBITDA or net asset headroom).

It is not proportionate to criminalise directors of sponsoring employers on a strict liability basis simply for obtaining independent pre-appointment insolvency/restructuring advice without notifying the Pensions Regulator or for failing to notify the deferral, amendment or waiver of a banking covenant or the appointment of a director by a lender, particularly if in the circumstances there is no detriment to the pension scheme. The severity of the sanctions may deter individuals from accepting appointments.

Whether a balance is being struck between the legitimate interests of shareholders and the needs of business and the protection of pensions depends on the consequences of making a notification to the Pensions Regulator (not stated but assumed to be pro-active intervention by the Pensions Regulator in the transaction) and the materiality of the actual or potential impact to the scheme.

9. Alternatively, are there any other significant business events which you think should be captured?

No.

Under current law and the proposals, takeovers are generally not notifiable unless a shareholder has direct or indirect control of 33% of the voting power in the sponsoring employer and ceases to have such control as a result of the takeover. There is however a regime for engagement with trustees under the Takeover Code and the trustees are able to involve the Pensions Regulator. It would seem inappropriate to introduce additional notifiable events relating to takeovers unless such events are aligned with the Takeover Code (e.g. so that no notifiable event arises before announcement or before the obligation to inform trustees under the Takeover Code).

10. Have we captured the right criteria for a significant change in the make-up of a board of directors?

It is standard practice for private equity investors to have one or more representatives on the board of investee companies (usually at the Topco, but sometimes lower in the group as well) in order to monitor their investment, and for such directors to be replaced from time to time. Does the Regulator really wish to know about all such appointments, including when such directors are changed? Similarly, it is fairly common where there is a change of Chairman or CEO for there to also be a change in CFO without such changes being a sign of something going wrong in the company, therefore we question whether notification of changes to at least two out of three is always necessary.

The appointments that require notifying should be clear (i.e. including what would qualify as a monitoring role and who would qualify as an external party). Additionally, the role titles quoted (chief restructuring officer and chief transformation officer) are, as we understand, not common ones so care will be needed in defining exactly what kinds of board appointments need to be notified.

Note also that whilst reference is made to changes to the employer's board of directors, changes referred to are often made at a higher level than the employing company e.g. the parent or holding company level.

11. We are proposing to bring forward or specify more clearly the timing of reporting of certain events, for instance to the point at which Heads of Terms are agreed for some transactions. Is this appropriate or is there a better time/event to pin the reporting notification to?

Bringing forward the notification of proceedings is unlikely to be beneficial to the Pension Regulator in relation to a private equity / venture capital transaction. The nature of the deal will not necessarily be clear as the level of details in Heads of Terms vary widely and may change, and there remains the risk of the transaction not actually completing.

It should be noted that not all transactions proceed with a Heads of Terms agreement. For example, it is not uncommon to see a private equity transaction take place by way of an auction sale without Heads of Terms. Typically, in an auction process of this kind, the company looking to sell a business will compile an information memorandum to stimulate interest in potential buyers and provide sufficient information about the business to be sold to elicit meaningful bids. Following a first round of bids, the second stage will allow increased access to a select group of bidders to the company being sold. A preferred bidder (sometimes more) will be given a period of time (often a short period of time, and sometimes a matter of hours) to complete the transaction with the seller and exchange contracts.

12. What is the likely impact (either direct or indirect) on business of sponsoring employers being required to report earlier?

This would depend on the likely response of the Pensions Regulator being known and understood. If it may result in the Pensions Regulator or the trustees being involved in the transaction, this may be seen as a confidentiality and business risk. If the Regulator's involvement will be limited to ensuring compliance with clear expectations which only avoid detriment and do not risk confidentiality, there may be no material impact.

Directors may defer seeking pre-appointment insolvency or restructuring advice or taking other steps, which may result in a company that could have been rescued becoming insolvent. There will also need to be a careful attempt to define what counts and what does not count as pre-appointment insolvency or restructuring advice. Similarly, company directors may be put in a difficult position in relation to their duties to give due regards to other creditors and shareholders.

13. How could the framework be modified to ensure that any adverse impact is mitigated?

Relevant events should be notifiable only where there is underfunding to which the transaction would be material. The basis for determining underfunding should also be specified and we would suggest the PPF basis in line with the existing notifiable events legislation.

The sanctions should be made proportionate and increased sanctions should be linked to whether actual detriment has been caused to the scheme.

No person should be exposed to sanctions if they were not aware of all matters required to identify a notifiable event and the date on which it became notifiable or if they had good reasons to believe a notification had been made.

14. Are there any additional changes that could further improve the design of the framework for sponsoring employers, trustees and the Regulator?

The current framework under the Regulator's guidance for exemptions to the obligation to notify should be maintained (e.g. no obligation to notify if no underfunding on PPF basis and no failure to pay contributions).

15. We have set out a number of proposed transactions which would trigger a Declaration of Intent. Do these proposals strike the right balance between improved regulations on business and protecting pensions?

No. These proposals do not strike the right balance. The requirement to consult the trustees presents a risk to business in terms of confidentiality, timing and control of negotiations. The requirement to "confirm the agreement of the trustees (or otherwise)" suggests the trustees will be given an effective veto over the proposed transactions backed up by the threat of serious penalties for directors and other connected persons. This is not proportionate.

Current law gives protection from contribution notices on the material detriment basis to parties who unilaterally undertake the steps required under a Declaration of Intent (under the statutory defence process under the Pensions Act 2004). If a Declaration of Intent with an explanation of the planned transaction and an explanation of any detriment to the scheme and how this is mitigated is adopted it should not be necessary for the trustees to be involved, particularly where the transaction is confidential. The sanction of a £1m fine on any director for failing to comply with a Declaration of Intent process and the risk of contribution notices where material detriment is actually caused should be seen as sufficient protections for the scheme. Giving trustees a right to be involved in the transactions of shareholders of a sponsoring employer is not required and does not maintain a proper balance between the interests of shareholders and of business and protecting pensions.

In fact, we are concerned that an employer's quite proper failure to agree a course of action with the trustees could be used against it, for example in putting together a case for a contribution notice or as grounds for a "wilful or reckless behaviour" prosecution. This could put directors of the employer in a difficult conflict situation vis-à-vis duties owed to shareholders and other stakeholders, where their interests may differ from the wishes of the trustees.

The proposed risk-based criteria need to be clarified and need to be genuinely risk-based so as to strike the right balance. The meaning of detriment should be clearly related to risk to members' pensions: for instance, in terms of a risk of "material detriment to the likelihood of scheme benefits being received" (one of the current tests for contribution notices).

Finally, the consultation paper does not indicate the consequences of any failure to act in accordance with a Declaration of Intent (whether for improper or good reasons).

17. Is there any further information which could be included in a Declaration of Intent to improve understanding of the proposals to strengthen the position of the pension scheme?

The information will depend on the transaction. Regulation should focus on defining the criteria for determining in clear and certain terms when the obligation to have a Declaration of Intent applies.

18. At which point in the transaction process should sponsoring employers a) engage with trustees and b) issue a Declaration of Intent to them?

Sponsoring employers should not be required to engage with the trustees at any time, particularly where there may be a risk to confidential information, unless they need the trustees to agree mitigation or to vary some existing obligation, at least where they independently take steps to ensure there is no detriment to the scheme or the detriment is fully mitigated.

A Declaration of Intent should be issued once a decision to proceed with the transaction is taken and all the terms of the transaction are fully agreed. This would normally be the time of signing the agreement for the transaction. The Declaration would otherwise be based on assumptions that may not be borne out as negotiations progress and the issue of the Declaration may impact negotiations.

19. What would be the impact (both direct and indirect) of our proposals on businesses, for example on transactions or administration costs of notification?

Advance notification and any advance engagement with trustees over a Declaration of Intent is likely to be disruptive to transactions and is likely to increase advisory costs and the complexity of negotiations. Indirectly, this may be detrimental to sponsoring employers and their ability to attract investment.

The sanctions regime is likely to be detrimental to the ability of sponsoring employers and their shareholders to attract senior staff.

Additionally as noted above, there will be confidentiality risk will be a concern, as any information disclosed to trustees or the Regulator in advance of a transaction being in the public domain could be leaked.

20. What more could we do to increase trustees' involvement in negotiations to ensure there is due consideration of the potential risks to pension schemes?

We do not consider that increasing the involvement of trustees in negotiations of the sponsoring employer or its shareholders on transactions to which the trustees are not a party is the right approach to protecting pensions or to securing due consideration of the potential risks to pension schemes. The proposals for the Declaration of Intent, backed up by the enhanced notifiable events regime and proportionate sanctions and the contribution notice regime, should adequately ensure due consideration of potential risks by sponsoring employers and shareholders. Key in ensuring due consideration is to have clear and objective principles about what constitutes detriment and adequate mitigation.

Engagement with trustees is likely to be needed only where detriment is identified and can't be adequately mitigated without the trustees' involvement in the sale process or where legal obligations to the trustees need to be varied.

Trustees' involvement in all corporate and financial transactions relating to the sponsoring employers may indirectly impact investment in sponsoring employers which may indirectly harm pension schemes.

21. Are these the right areas for the Pensions Regulator to focus on in relation to improvements to their existing guidance?

It is difficult to comment on proposed changes to the guidance (such as to the definition of "material detriment" or to event types) without knowing what those changes will be.

The definition of "material detriment" should be consistent with the definition in legislation for contribution notices, i.e. "materially detrimental to the likelihood of scheme benefits being received". Not only should guidance match the related legislation (avoiding gaps between legal requirements and "expectation") but the statutory concept is also appropriate as it clearly focusses on the protection of pensions (i.e. whether the benefits will be received). This is an essential element of the test.

While we would welcome more information on how clearance works, this should not be used to restrict access to clearance.

We would welcome clearer guidance on circumstances in relation to clearance for financial support directions, recognising this is not a transaction or event-based power.

The Pensions Regulator's practice in recent years has been to refuse to consider clearance applications where no "material detriment" is identified. This is in our view a breach of its obligations under legislation and an unfair restriction on the availability of clearance, particularly given the fact that being a party to a transaction that causes "material detriment" to a pension scheme is not a requirement for the imposition of liability under financial support directions (which are not "event based" and, under recent case-law, do not require fault or blame).

Voluntary clearance should be available, as provided for under current legislation, so that persons who are or anticipate becoming associated or connected with a sponsoring employer and are engaging in some transaction or series of transactions or other events can gain certainty that those matters will not create a risk of liability to contribution notices or financial support directions. Given the exceptional nature of the Pensions Regulator's powers to pierce the corporate veil and impose liability without demonstration of either legal duty, moral blame, fault or causation, it is entirely legitimate (and vital for investment in groups that have defined benefit pension schemes) that commercial parties and individual directors and shareholders should have a process to enable them to gain certainty about exposure to such liability.

It would be helpful to have a "traffic light" system or safe-harbour criteria, so that potential applicants can see clearly (a) when applying for clearance is unnecessary (i.e. when there is no risk of financial support directions or contribution notices), (b) when there is some risk and it would be prudent to apply and (c) when it would be strongly advisable to apply. The clearance principles should, of course, be consistent with the principles that would inform the Pensions Regulator's decision on contribution notices and financial support directions.

It is a fundamental of good regulation that the rules and principles should be clear to the regulated population and reliable. We would expect the clearance guidance to state clearly the criteria for determining whether imposition of a contribution notice or financial support direction would be "reasonable" in the opinion of the Pensions Regulator.

22. Should anything else be considered?

See above.

23. What are the likely effects and impacts on business and trustees of the introduction of this proposed new system of penalties?

These are severe sanctions for new offences or regulatory breaches that may be committed by omission and without actual knowledge and where the ingredients of the offence or the regulatory requirements are not clearly defined. This may have an adverse impact on investment in companies that have defined benefit pension schemes or the willingness of individuals to accept board appointments connected with such companies.

There are unspecified proposals to extend the scope of parties to whom a financial support direction can be issued. It is impossible to comment in any detail on proposals that have not been set out, but there are concerns about this for private equity firms, as regards the risk of one company in which they invest (or people connected with it) being held responsible for pension liabilities of another investee company when there is no connection between those companies except for the involvement of the same private equity firm. Any proposals for extending the range of parties to whom a financial support direction can be issued should be spelled out and consulted upon. Commercial counterparties, investors, lenders and even individuals taking up directorship appointments will always be concerned to understand which entities or appointments are exposed to pensions risk, even if that risk is theoretical or a low risk. Widening the range of potential targets of contribution notices and financial support directions and other sanctions will have an impact.

The new criminal offence and £1m civil fines for failing to comply with the notifiable events framework likewise requires absolute clarity about when a duty to report a notifiable event arises, who is subject to that duty and whether awareness of the material facts is required for an offence or civil fine.

Civil fines of £1m should not be capable of being imposed for a failure to provide required information to trustees unless there is greater clarity about the information that is required to be provided to trustees, particularly where provision of such information may be or may risk a breach of duty to another party or some commercial detriment. The legislation providing for such civil fines should define the related information requirement and not leave that to be defined by statutory instrument or by the Pensions Regulator as this would amount to granting the Pensions Regulator the power to legislate for fines of £1m.

There should not be civil fines of £1m for breaches of the DB funding code as this is not law and only trustees are under any obligation to comply with it. In particular, persons who are associated or connected with a sponsoring employer do not have any obligations under law for the funding of DB schemes (absent a financial support direction or contribution notice) or for procuring compliance with the DB funding code (and may have no ability to secure such compliance). Creating such obligations would be a very material change in law.

Generally, no person should be a proposed target of a suggested penalty, civil or criminal, if they are not under an associated legal obligation under clear and precise law.

24. Are there other behaviours that should attract sanctions? If so, what are they?

Any unauthorised disclosure of information relating to or provided by another party and which has been provided to trustees or to others pursuant to pensions requirements.

25. We have proposed a new civil penalty (up to a maximum £1m) for example to take action for non-compliance with providing a declaration of intent. Will this deter wrongdoing? If not, what would be a suitable deterrent?

A civil penalty of up to £1m is a very serious deterrent for any individual.

It is likely to deter investment or the taking of appointments in sponsoring employers or groups which have a defined benefit pension scheme particularly as it is not adequately targeted at "wrongdoing" or avoidance. Such civil penalty could be incurred without substantive "wrongdoing" and even without harm to the pension scheme, because it may be imposed simply for proceeding with a lawful transaction (the sale of a sponsoring employer or of business and assets or the grant of security for debt) without a compliant "declaration of intent", i.e. without prior consultation with trustees, assessment of the impact of the transaction on the pension scheme and mitigation of any detriment and publication in a declaration.

26. We have proposed a new criminal offence for wilful or reckless behaviour in relation to a pension scheme, and for failures to comply with Contribution Notices and the Notifiable Events Framework. Do you agree with these proposals? Will they deter wrongdoing? If not, what would be a suitable deterrent?

We do not agree with these proposals because they are not sufficiently clear as to the behaviour that is to be criminalised or as to the breach of regulatory duty that is to give rise to the civil fines. "Wrongdoing" is not a clear or certain concept. "Wilful or reckless behaviour" is not clear or certain either and does not identify the relevant behaviour.

As above, no person should be a proposed target of a suggested penalty, civil or criminal, if they are not under an associated legal obligation under clear and precise law.

The offence of "wilful or reckless behaviour in relation to a pension scheme" as an offence that can be committed by persons with <u>no legal obligation</u> to a pension scheme (but who may have conflicting duties to other parties) needs clearer definition, identifying relevant behaviours and the extent of any new duty to the pension scheme which is being created by this legislation, the circumstances giving rise to such duty and how it is to be reconciled with conflicting duties.

Failure to comply with a contribution notice should only be an offence or give rise to a civil fine for a person who is under an obligation to comply with such contribution notice. It cannot be an offence for persons who are under no such duty and are merely associated with a company or an individual that has been issued with a contribution notice.

The new criminal offence and £1m civil fines for failing to comply with the notifiable events framework likewise requires absolute clarity about when a duty to report a notifiable event arises, who is subject to that duty and whether awareness of the material facts is required for an offence or civil fine.

Criminal offences and civil fines of up to £1m are very serious sanctions and will have a strong influence on behaviour. They may deter involvement with a sponsoring employer or any person actually or potentially associated or connected with a sponsoring employer.

There is a reasonableness requirement for the Pensions Regulator when issuing a financial support direction or contribution notice. In line with this, there should be a reasonableness requirement for any new power to issue a substantial fine or to bring a criminal prosecution.

27. If yes, should the maximum penalty for these offences be: Unlimited fines? Custodial sentence and/or fine for the worst offenders – do you have views on the appropriate maximum term?

It is not possible to give a meaningful answer as to the appropriate maximum penalty when the offence has not been clearly defined and it is not clear who could commit the offence and whether it is a strict liability offence and what defences might be available. Custodial offences are presumably only appropriate for individuals but the offences appear to be capable of being committed by corporate entities.

28. What more can we do to support the Pensions Regulator in enforcing legal requirements in an effective and proportionate way?

Clearly defining legal requirements and providing sanctions only for persons who are subject to such legal requirements and ensuring those sanctions are proportionate to the seriousness of their own knowing breach of such legal requirement.

29. We have set out a number of proposed changes to the way Contribution Notices function. Do these proposals strike the right balance between improved regulations on business and protecting pensions?

We consider that it would be appropriate to amend the "reasonableness" test to provide a greater focus on loss or risk caused to a scheme by the "act" which the target was a party to (liability to follow causation). Provision for consideration of any justification of the "act" would also seem appropriate and should be available to any potential target (rather than just the employer).

A specific mechanism to address delay in payment such as by reference to inflation indices would be appropriate and reasonable.

These proposals however seem at odds with the other proposal that the time for capping the liability for a contribution notice should be a date closer to the date of determination, rather than the start of proceedings or the date of the "act". It can result in the liability of the target being increased by delay in the proceedings or actions by other parties. We do not think this is consistent with the policy statement of providing appropriate protections for potential targets.

We strongly oppose any additional limb to the "material detriment" test that would weaken the focus on protection of pension promises. Participation in a transaction that may (or may risk) weakening an employer should only give rise to a "contribution notice" (i.e. personal liability for individuals and piercing of the corporate veil to extend liability to associated entities) if it also undermines the likelihood of benefits being received. If benefits are not less likely to be received, there can be no justification for such liability. There is no reason to amend the existing clear provision in a way that would also make the protective purpose of the legislation less clear.

There is a proposal for the Pensions Regulator to be able to issue a contribution notice to parties associated or connected with a recipient of a financial support direction that is not complied with. The intended scope of this needs to be spelled out and consulted on. Again, there are concerns for private equity firms, as regards the risk of one company in which they invest (or people connected

with it) being held responsible for pension liabilities of another investee company when there is no connection between those companies except for the involvement of the same private equity firm.

30. Alternatively, what else could we do to improve the way Contribution Notices work?

Contribution notices are working extremely well as a deterrent. The vast majority of corporate groups and investors already consider the impact of any transaction on any defined benefit transactions within the group.

31. What would be the most appropriate way of protecting the value of the Contribution Notice through uprating? What are the likely impacts of this?

The same treatment as for judgment debts.

32. What could be the impacts of changing the date at which the cap was calculated to a date closer to the final determination?

It weakens the connection between the target's conduct, including fault and the causation of loss, and the target's ultimate liability, which will be a reflection of market movements in the intervening period rather than their conduct. A six year period is already a considerable time for the development of loss following the "act". Extending this in an unlimited way is contrary to fairness and principles of limitation of liability in other areas (absent concealment or fraud).

33. What would be the likely impacts on business of a more streamlined Financial Support Direction regime?

It would be helpful to have a more streamlined regime for financial support directions as the uncertainty surrounding these powers can be a deterrent to investment. We consider that the quantum of a liability is critical to the reasonableness of its imposition. It is likely to be easier for businesses, trustees and the Pensions Regulator to agree financial support (i.e. to settle potential cases) if the form and content of the obligations under a financial support direction are more clearly defined under a streamlined process.

A key risk with financial support directions and contribution notices is that the risks associated with a defined benefit pension scheme are overestimated so that sponsoring employers and their schemes are viewed as "toxic" because the parameters of liability are ill-defined and not clearly quantifiable.

Extending financial support directions to a wider range of individuals is not "streamlining". It is muddling the distinction between (1) fault-based contribution notices (based on acts) and (2) financial support directions which are not fault-based but instead address avoidance (intentional or not) in the sense of an unfair limitation of a group's pension liabilities arising from its corporate structure. Individuals should only be exposed to liability based on personal fault.

34. How could we best amend the 'insufficiently resourced' test to make it simpler and clearer?

The "insufficiently resourced" test is a technical threshold test. The purpose of the test is unclear so it is difficult to suggest how it should be made clearer. It does not identify or define avoidance. It is effectively arbitrary. What needs to be simpler and clearer is the criteria for the "reasonableness" test. The DWP identifies financial support directions as "anti-avoidance powers". The tests for financial support directions should include an element of "avoidance", even widely defined, either as

part of the reasonableness test or as an additional test or in substitution for the “insufficiently resourced” test.

35. We propose to tighten up the forms of financial support the target is required to make to the scheme to include cash payments or statutory guarantees. What would the impact of this approach be on business?

It is generally assumed that financial support will need to take the form of cash or a guarantee. Making this explicit may not have adverse impacts on business. Greater clarity on the principles determining the reasonableness of imposing a financial support direction and principles for assessing the quantum of such liability would enhance the ability of business to assess the risks involved in being or becoming associated with a sponsoring employer.

36. Are there other forms of support we should take into consideration?

It may be appropriate for targets to be able to discharge liability under a financial support direction by providing security over assets or transferring other assets to the scheme.

37. What would be the impact on business of a longer lookback period?

This would be very negative. It increases uncertainty and the margin required for unquantified pensions risk. This is particularly serious for liability which is not fault based and largely market-driven.

38. The proposals in this consultation are suggested as ways in which the Pensions Regulator’s powers could be increased or improved in order to clamp down on corporate wrongdoing and ensure improved compliance with all legal responsibilities by sponsoring employers. Do these proposals strike the right balance between improved regulations on business and protecting pensions?

No. These proposals do not sufficiently focus on:

- The reasonable expectation that legal obligations shall be clear and that no person shall suffer consequences, let alone criminal or serious financial liability, unless they were subject to a clear obligation which they have knowingly breached and could reasonably have avoided breaching;

- The expectation that sanctions shall be proportionate to the actual offence or breach of obligation or to the harm knowingly and culpably caused;

- The reasonable expectation that businesses should be able to carry out transactions, including raising finance or selling businesses, without having to involve trustees where they reasonably assess that there is no detriment to the pension scheme (a declaration of intent should not require prior consultation or indeed agreement by trustees);

- Protecting pensions: proposals to widen the concept of “material detriment” may lose the focus on actual risk to pensions;

- Clarity on the meaning of “wrongdoing” and avoidance and what is culpable behaviour and the link between culpability and liability.

39. Alternatively, do you think there are other areas where the Pensions Regulator's powers could be increased or improved to achieve our intended outcomes?

Greater clarity on the criteria and quantum for liability under contribution notices and financial support directions (defining criteria for "reasonableness") would improve the ability of the Pensions Regulator to use its powers and the ability of businesses to comply with the requirements and quantify pensions risk. Clear principles linked to risk to the pension benefits should be clearly explained and consistently applied in relation to clearance, contribution notices, financial support directions and defining adequate declarations of intent and the liability of parties where an adverse impact cannot be avoided. Divergence between legal requirements and "expectations" (or notions of undefined "wrongdoing") should be eliminated.