The Pensions Regulator

Regulatory intervention report

Issued in relation to Johnston Press Pension Plan

March 2019

Case summary

Johnston Press plc and Johnston Publishing Limited are the sponsoring employers of the Johnston Press Pension Plan. These employers and most of the rest of the companies in the Johnston Press Group went into administration on 17 November 2018 and substantially all their business and assets were then sold to a company owned by the Group's bondholders (JPI Media Group) under a 'pre-pack' arrangement.

We opened an anti avoidance investigation to establish whether there were any activities in respect of the pre-pack and the events preceding it that would cause us to use our anti avoidance powers. We have found no evidence to date that would support the use of either a Financial Support Direction (FSD) or a Contribution Notice (CN) and we have concluded that we will not currently pursue the use of our anti avoidance powers.

Illustrated summary

PPF shortfall **£109m** (estimated as at 31 December 2017)

Buy-out deficit estimated at **£305m** (as at 30 June 2018)

November 2018 contribution due **c.£885k**

Background

Johnston Press was a well-established newspaper owner, publishing titles including the i, the Scotsman and the Yorkshire Post. The Group included the sponsoring employers of the Johnston Press Pension Plan, which had 4,771 members and an estimated buyout deficit as at 30 June 2018 of £305m.

Despite a steady decline in the regional newspaper sector, Johnston Press successfully raised £360m to repay its existing debts in 2014. The new funding comprised £140 million in equity and £220 million in secured bonds, which were scheduled for repayment in full in June 2019.

However, following the refinancing, trading deteriorated and in March 2017, a formal strategic review of the business began. Initially the possibility of a consensual debt for equity swap was explored. However, due to the value of the business compared with the size of its liabilities, it was not possible to agree an appropriate solution with its financial stakeholders. Independent advisers acting for the Group had been in conversations about the possibility of raising further funding for the business, but these were unsuccessful.

In July 2018, Johnston Press approached TPR and the Pension Protection Fund (PPF) to explore the possibility of a regulated apportionment arrangement (RAA). An RAA is an agreement which allows a company to free itself from its financial obligations to a pension scheme in order to avoid insolvency, provided that certain conditions are met and that the PPF does not object. In this case, the indicative proposals did not meet PPF published guidance and were not progressed further.

The sale of the company

The last phase of the strategic review was to run a formal sales process seeking offers for the entire business or for any of its constituent parts. Bids received only for the business excluding the pension scheme were substantially less than the outstanding value of the bonds, and were rejected.

During the strategic review an alternative contingency plan had been agreed with a committee of bondholders in the event of there being no solvent solution for refinancing and no viable bids for the sale. It was agreed that, in the event of no other options, the bondholders would buy the Group's businesses and assets via a pre-pack sale in administration. Following the end of the formal sales process, the directors concluded late on 16 November that there was no alternative for the Group to avoid insolvency and that they should file for administration immediately.

The administrators sold the businesses and assets to JPI Media Group for £181 million, which they advised represented the best outcome for the Group's creditors and was at the top end of an independent valuation of the business and assets. The transaction was completed on 17 November 2018.

Regulatory action

Our enquiries focused on the following issues:

- Whether there was any viable alternative to the company entering administration.
- Whether the timing of the administration had been artificially engineered to avoid the deficit repair contribution (DRC) of around £885,000 that had been due to be paid to the scheme on 19 November 2018 under the schedule of contributions.
- Whether there were any acts before the administration requiring further scrutiny.
- Whether there was a case to support a FSD or CN.

Outcome

We found no evidence to suggest that insolvency was avoidable nor that the administration was planned to circumvent payment of the DRC, nor that there were any acts pre-dating the administration worthy of further investigation. The administrators have also confirmed to us that their enquiries have not established any previous transactions which might require further investigation by them. We have liaised with the administrator and the PPF to ensure that should any new and relevant evidence be uncovered by them this will be provided to TPR, and this may lead to us considering opening an investigation.

Our approach

Pre-pack insolvencies are a legitimate means of preserving jobs and value in a business which could otherwise end up in liquidation. However, where an insolvency occurs, stakeholders (including the pension scheme) may lose out. Where pre-pack insolvencies result in the removal of sponsor support from a defined benefit scheme, the parties to the transaction should expect us to investigate whether there are grounds for us to take anti-avoidance action, particularly in circumstances where there is an association between the new owners and the previous owners or other stakeholders.

Timeline

November 2018
Johnston Press enters administration with pre-pack sale to JPI Media Limited

November 2018
TPR begins investigation into circumstances leading up to administration

December 2018
TPR gathers and reviews information, liaises with the PPF and other parties

January 2019
Follow up information received and reviewed

February 2019
TPR decides to close case

The regulator's consideration and approach to individual cases is informed by the specific circumstances presented by a case, not all of which are referred to or set out in this summary report.

This summary report must be read in conjunction with the relevant legislation. It does not provide a definitive interpretation of the law. The exercise of the regulator's powers in any particular case will depend upon the relevant facts and the outcome set out in this report may not be appropriate in other cases. This statement should not be read as limiting the regulator's discretion in any particular case to take such action as is appropriate. Employers and other parties should, where appropriate, seek legal advice on the facts of their particular case.

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