

Regulatory intervention report

issued under s89 of the Pensions Act 2004 in relation to the Database
Group Ltd Retirement Benefit Scheme

October 2016

The Pensions
Regulator

In this case, the potential use of our anti-avoidance powers acted as a deterrent to ensure members of a defined benefit (DB) scheme will continue to receive full benefits following the sale of the sponsoring employer.

Background

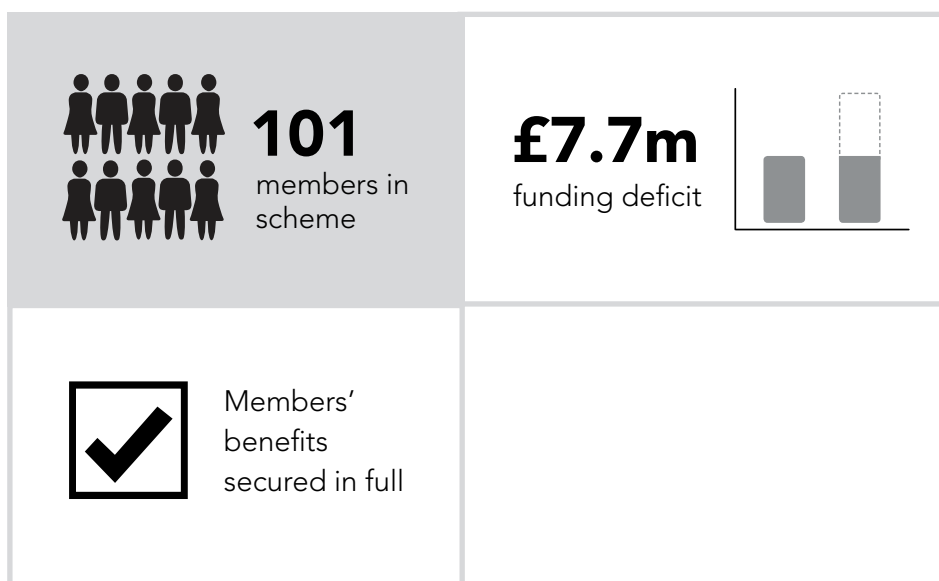
The Database Group ('the Group') is a well-established provider of data management services.

A trading company within the Group, the Database Group Ltd (TDG), was the sole sponsor of the Database Group Ltd Retirement Benefit Scheme ('the Scheme') – a closed scheme with around 100 members and, as at 31 May 2015, an estimated buy-out funding deficit of £7.7 million.

TDG was acquired by the Group in 2006. It was a mature business that was in decline and had been up for sale for a number of years. Due to the Scheme, no other parties were interested in acquiring TDG. The Group transferred clients and existing revenue from its trading entities and moved this revenue into TDG to help turn the business around. The Group increased its revenue from £2.5 million to £11.1 million.

From 2010 onwards, income generated by TDG declined due to, among other things, changes in group invoicing policy and the transferring of significant client contracts to its direct parent company, DBG One Limited (DBG1). DBG1 had previously operated as a cost centre within the group and did not generate any external revenue until FY12.

Illustrated summary



The transaction

In 2015, an offer was made by an unconnected third party trade acquirer, Merkle Inc (Merkle), to purchase the shares in the Group. The offer was made on the condition that no entity within the Group had any liability to the Scheme at the point of purchase. In order to achieve this, the Group proposed that:

- ▶ the trade and assets of TDG be acquired by DBG1 for approximately £1 million in excess of the estimated market value
- ▶ a subset of the current Group shareholders would then acquire the shares in TDG for £1 (thereby removing TDG from the Group)
- ▶ Merkle would then acquire the Group with the scheme liabilities removed
- ▶ the Scheme would run as a closed scheme, with no trading covenant to support it, but with the additional capital generated by the sale to DBG1 which we understood would have brought the total cash support to £1.7 million

This proposal formed the basis of an application for clearance by a number of Group entities. Clearance is a voluntary process and if it is granted, it gives assurance that we will not use our anti-avoidance powers in relation to the circumstances set out in the application. Merkle made clearance a condition of the transaction, although it did not apply for clearance itself. We were contacted by the Scheme trustee, in conjunction with the Group, at an early stage and presented with a draft application. This enabled us to take an active role in negotiations between the Group and the trustee.

The transfer of trade away from TDG from 2010 concerned us. It meant that the current offer, although in excess of the estimated market value as at 2015, did not reflect the covenant which had potentially been lost as a result of restructure of Group operations. Therefore, we considered that the proposal did not represent a fair return for the Scheme in the circumstances. We opened an avoidance investigation in relation to these issues.

We also noted that the removal of the Scheme from the Group generated value for shareholders, as the sale of the Group to Merkle would only occur if the Scheme and TDG were removed.

Having explored a number of options with the applicants, we concluded that the only sum that would adequately mitigate the transfer of trade from TDG and the risks arising from the transaction would be an amount sufficient to secure members' benefits in full.



Clearance gives assurance that we will not use our anti-avoidance powers in relation to a transaction.

The outcome

Alongside our avoidance investigation, negotiations with the applicants continued, and we believed there was a potential case for a Financial Support Direction (FSD) and/or a Contribution Notice (CN). Following lengthy discussions, the applicants agreed to buy out scheme members' benefits in full.

Once we received the final revised clearance application, we acted quickly and clearance was granted. We closed our investigation before making a formal finding as to whether there was a case for an FSD or a CN. With members' benefits secured in full with an insurer, the Scheme will continue to run on nominally in order that the new shareholders of TDG may benefit from various bought-in annuity contracts paying significantly in excess of members' pension payments. The new shareholders provided an indemnity for any post-completion increases in buying-out costs, which provided us with additional comfort.

Our approach

This case demonstrates that we will consider using our anti-avoidance powers in respect of smaller schemes where appropriate.

It also shows that protecting members' benefits where there is an avoidance investigation can be achieved without a lengthy process involving us, the Determinations Panel and/or the Upper Tribunal.

We will consider all credible proposals and if we receive one, we will act promptly.

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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Database Group Ltd

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