Sackers

PPF levy determination for 2018/19

Alert | 18 January 2018

Introduction

On 19 December 2017, the PPF published its final levy rules for the 2018/19 levy year.

Key points

- The PPF has made several changes to its bespoke insolvency risk model and simplified the process for certifying deficit reduction contributions. For details, please see our Alert.
- New rules for the levy year 2018/19 amount, in effect, to a requirement for trustees certifying / recertifying a Type A contingent asset which is likely to provide a levy reduction of £100,000 to obtain a guarantor strength report, prepared by a professional adviser, prior to certification.
- The PPF expects to publish revised standard contingent asset forms, alongside final contingent asset guidance, in mid-January 2018. Assets agreed on / after publication must be on these new terms.

Type A contingent assets – guarantor strength

Background

For a Type A contingent asset (parent or group company guarantee) to be recognised by the PPF, the contingent asset must:

- appear, to the PPF, to reduce the risk of compensation being payable in the event of an insolvency event occurring in respect of any employer in relation to the scheme, and
- broadly, provide a reduction to the risk of compensation being payable which is commensurate to the levy reduction secured

(together, "the Risk Reduction Test").

In addition, the trustees are required to certify, on Exchange, a fixed cash sum that they are satisfied the guarantor(s) could meet, in an insolvency situation, if called upon to do so (the "Realisable Recovery").

Multiple guarantors

The PPF will no longer require multiple guarantors to each be able to meet the Realisable Recovery in full. For the levy years 2018/19 onwards, each certified guarantor will be able to certify an individual Realisable Recovery by submitting a separate contingent asset certificate.

The PPF has made this change "in recognition that the previous requirement may have obliged schemes to certify by reference to what the weakest guarantor could provide". The PPF states that "it is designed...to give schemes the flexibility to tailor their contingent asset arrangements by reference to the support each guarantor can genuinely provide, without needing to enter into multiple agreements to do so".

Guarantor strength report

The PPF has explained that, as "it continues to see a relatively high failure rate amongst Type A contingent asset submissions on the basis that insufficient evidence to demonstrate the guarantor could meet the Realisable Recovery has been provided", it has decided to strengthen its requirements by introducing new rules in respect of the Risk Reduction Test and guarantor strength. These new rules provide that:

- where a guarantor strength report that, in the PPF's opinion, is consistent with the contingent asset guidance (currently only part of which is available in draft), is obtained by the trustees before the Measurement Time (29 March 2018), the Risk Reduction Test will be deemed to be met
- where no such report is obtained, and the levy reduction that would otherwise result from recognition of the asset would be £100,000 or more, the PPF has a discretion to permit the trustees to provide further information. (In considering whether to exercise its discretion to accept further information, the PPF will take into account the trustees' failure to obtain a report.)

The PPF acknowledges that the new rules amount, in effect, to a requirement for schemes over the £100,000 threshold to obtain a report. Its intention is to give all schemes the opportunity to gain certainty as to the acceptance of their Type A asset by obtaining a report.

The report should be prepared by a covenant adviser (or other appropriate professional), with appropriate input from other advisers (eg the trustees' legal advisers). Its objective is to demonstrate that, in the event of the employer's insolvency, the guarantor could meet the Realisable Recovery in full. The PPF's contingent asset guidance sets out a (non-exhaustive) list of factors it would expect to see covered, as well as requirements for the adviser to provide a duty of care to the PPF and to confirm they have appropriate professional indemnity cover in place.

PPF assessment

The PPF will assess guarantor strength reports on a pass / fail basis. In respect of schemes that do not provide reports, the PPF expects to select a proportion of contingent assets for review.

Contingent assets: standard form agreements

Following a consultation in Autumn 2017, the PPF is due to publish revised standard forms for contingent assets in mid-January 2018. Agreements entered into on / after the date of publication must be on the new forms.

The PPF has confirmed that existing contingent assets will not need to be re-executed on the new forms to be recognised for the levy year 2018/19. Further, due to the nature of the changes the PPF expects to make, it is likely that only agreements for Type A and B contingent assets which involve a fixed cap will need re-execution. The PPF currently anticipates requiring re-execution in 2019/20 and plans to provide additional early guidance to schemes well in advance of the usual 2019/20 deadlines.

Next steps

Trustees and employers who intend to put in place or retain contingent assets should start the process as soon as possible.

The deadline for certification / re-certification on Exchange will be **midnight on Saturday 31 March 2018**. However, please note that hard copy documentation (including, a copy of any Report) must be submitted to the PPF, as necessary, by **5pm on Thursday 29 March 2018**. (Please click here for a list of all the key PPF dates for the levy year 2018/19.)

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