



Bonus for Bonas

It is almost a year since the Pensions Regulator first attempted to issue a contribution notice against Michel Van de Wiele ("VdW") in relation to the Bonas Group Pension Scheme (the "Scheme"). The contribution notice process has now reached its finale, resulting in a much lower payment than the Pensions Regulator first sought.

Background

VdW was the Belgian parent company of Bonas, the UK sponsor of the Scheme. On 29th June 2010 the Pensions Regulator published a determination to issue a £5.1 million contribution notice ("CN") in relation to two specific acts:

1. The placement of Bonas UK into a pre-pack insolvency in 2006
2. The lack of open engagement with the Trustees of the Scheme in the run up to the pre-pack

The Pensions Regulator argued that the main purpose of these acts was to prevent the full or partial recovery of the pension debt (section 75 debt) due to the Scheme and as such a CN could be issued. The £5.1 million payment required by the CN was the estimated deficit to be inherited by the Pension Protection Fund as a result of Bonas' insolvency.

More details on the background to this case can be found in our [July 2010 news alert](#).

The Upper Tribunal

The decision by the Determinations Panel was appealed by VdW to the Upper Tribunal. VdW made an application to strike out the case being made by the Pensions Regulator; the Pensions Regulator countered with an application to widen the scope of the CN and increase the amount to £20 million.

Both of these applications were rejected by the Upper Tribunal at its initial summary hearing. In doing so, Mr Justice Warren made some interesting comments, in particular around the magnitude of the CN.

He noted it would be difficult to see how the CN could

be greater than the maximum value of Bonas at the time of the pre-pack (£100,000) less the price actually paid for Bonas by VdW (£40,000).

He deferred issues relating to "reasonableness" for consideration at the full hearing, and also provided some useful clarification of the remit and range of other issues that should be considered at that stage.

Latest developments

As it transpired, the case did not get a full hearing. Instead, a settlement was reached and announced this month. VdW will now only pay £60,000, we believe as a direct result of the reservations expressed by Mr Justice Warren.

The Pensions Regulator is keen to stress that the comments made in respect of this case are very specific and should not be relied upon as precedents for other cases.

Conclusions

The Pensions Regulator has managed to extract from VdW only a fraction of the funds originally sought. This is a significant defeat for the Pensions Regulator and has yielded some useful comments, but it does depend in some respects upon the specifics of the case, including the fact that it relates to the pre-2008 legal position.

The Upper Tribunal has indicated that contribution notices should provide mitigation proportionate to the detriment caused, rather than to impose penalty. This case does not affect Financial Support Directions, and the Pensions Regulator's report on the matter indicates that it will not change its approach to future cases or to regulation in general.

Where can I get further information?

For specific advice on issues raised in this note or if you would like further information, please contact:

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