**The YMCA Pension and Assurance Plan (the "Pension Plan")**

**Participating Employer factsheet on notifiable events, "clearance" from the Pensions Regulator, and reporting requirements**

**Introduction**

This factsheet has been produced by the Pension Trustee as an outline of the legal and regulatory framework for notifying events to and seeking "clearance" from the Pensions Regulator. It is a general guide only. **If you are unclear about whether this affects your YMCA's position, we encourage you to seek advice. The Pension Trustee is also happy to answer queries wherever possible.**

* ***Why have these requirements about notifying and clearance?***

Ultimately the Pension Plan (like other pension schemes) relies upon the contributions from YMCAs participating in the Pension Plan to fund the Pension Plan benefits.

For this reason, UK pensions law (and the Pensions Regulator) has a framework for reporting certain events in case these might affect a YMCA's ability to go on funding the Pension Plan. This applies to charities in the same way as other UK pension schemes and employers: there are no special rules. The legal and regulatory requirements act as a planning and early warning tool so that we can agree further action if necessary.

Examples of relevant types of activity include:

* Reorganising the legal structure of a YMCA, including transferring assets out of the YMCA to another entity.
* Granting security over the YMCA's assets (e.g. taking out a mortgage over your YMCA's property).
* Taking on substantial new borrowings or payment obligations (such as guaranteeing another entity's debt).
* Taking action that is intended to "compromise" or avoid the YMCA's obligation to the Plan.
* Changing the normal activities of the YMCA in a way that will significantly affect its cash flows or financial position.

The examples above are not an exhaustive list and other situations may be relevant. A good source of information is the Pensions Regulator, which publishes guidance for employers, including charities. It is essential to be in touch with the Pension Trustee so that we can understand what is proposed, discuss any impact on the Plan's position and, if necessary, agree the best way forward.

**In more depth**

* ***Part One: "clearance" for proposed action from the Pensions Regulator***

If activity is being planned that creates a risk of the Pensions Regulator taking "anti-avoidance" enforcement action, it is possible to apply to the Regulator for clearance of the proposed activity. Clearance is an assurance that the Pensions Regulator will not use its anti-avoidance powers. It is a voluntary process.

*What's the rationale?*

The Pensions Regulator has wide "anti-avoidance" powers to order employers and those connected or associated with employers to pay money into a pension scheme. These are called Contribution Notices (CNs) and Financial Support Directions (FSDs).

These are generally aimed at serious situations where there is activity that damages the position of the Pension Plan or its ability to provide benefits (for example by deliberately transferring assets or economic value out of a YMCA to somewhere the Pension Plan cannot rely upon it).

*What is the clearance framework?*

CNs and FSDs can require very substantial sums to be paid. Consequently, it is possible to apply to the Pensions Regulator for "clearance", which is an assurance that the Regulator will not issue a CN or an FSD in respect of a proposed course of action. This gives the YMCA and its associates comfort that going ahead won't lead to costly intervention by the Pensions Regulator later.

There is no definitive list of the activities that could be affected by the Regulator's anti-avoidance powers but examples include:

* transferring substantial assets out of the YMCA to a third party which has no legal connection to the Pension Plan;
* group reorganisations and restructurings;
* granting a security over the assets of the YMCA or its wider group (e.g. taking out a new mortgage on the YMCA's property);
* taking on substantial debts or guaranteeing another entity's debt.

Key questions are whether the proposal will be materially detrimental to the Plan's ability to pay out members' benefits, and, in some cases, whether the Plan has a deficit at the time of the proposed course of action. Detriment is normally considered by looking at whether the payout to the Pension Plan on a YMCA's wind-up is materially lower. Further details are available from the Trustee and also from the Pensions Regulator's "Clearance" guidance (link below).

In order to give clearance, the Pensions Regulator normally expects the YMCA and the Pension Trustee to have agreed some "mitigation" to counteract the effect of the activity on the Pension Plan (e.g. further financial support to the Plan, such as a guarantee).

*Practicalities*

Clearance is entirely voluntary. The Participating Employer has to decide whether or not it wants to apply for clearance. The Pension Trustee cannot apply for clearance on your behalf. However, it is important to talk to the Pension Trustee before making an application: the Pensions Regulator will expect this to happen, and will want to know about any mitigation that has been agreed. The Pension Trustee welcomes dialogue about this. The Regulator has also suggested that it is open to informal contact (possibly even on a 'no-names' basis) to discuss any planned course of action.

* ***Part Two: "Notifiable Events"***

By law, Participating Employers must notify the Pensions Regulator of certain events. These are called "notifiable events".

*What’s the rationale?*

This is designed to give the Pensions Regulator early warning about circumstances which may jeopardise the Pension Plan or lead to compensation becoming payable from the Pension Protection Fund (or PPF), the government's "pensions lifeboat". As a result, most notifiable events will arise in serious or unusual situations.

*What are the "notifiable events"?*

The key "notifiable events" for YMCAs are as follows.

* A decision to take action which will, or is intended to, result in any debt due to the Pension Plan not being paid in full. (For example applying to dissolve the YMCA entity without settling its obligations to the Pension Plan).
* Breach of a covenant in the YMCA banking or finance documents, except if the bank agrees not to enforce the covenant.
* If a YMCA is owned by another entity, a change in the entity that owns or controls the YMCA.
* Receiving advice that the YMCA is trading wrongfully, or if it becomes clear that it will have no choice but to go into liquidation.
* The conviction of a director of an offence involving dishonesty.
* A decision to stop conducting business or charitable activities in the UK.

The full list of notifiable events is set out in legislation – the Pensions Regulator (Notifiable Events) Regulations 2005.

Some of these events are only notifiable if the scheme is underfunded on a PPF valuation basis, or if the trustees have had to report a material failure by the employer to meet the scheme's contribution schedule in the previous 12 months. You can contact the Pension Trustee to confirm the position. As at May 2014 the Pension Plan is underfunded on the PPF valuation basis.

*Practicalities*

Notifiable events should be reported to the Pensions Regulator as soon as reasonably practicable. The Pensions Regulator says this means urgently, and ideally on the next day. Notifiable events can be reported through the Pensions Regulator's online tool, Exchange, which you can access through its website at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk). The Pensions Regulator can issue fines for failing to report a notifiable event.

* ***Part Three: duty to report breaches of law***

In some circumstances YMCAs have a duty to report breaches of law relating to the administration of the Pension Plan. Reports are only needed if the breach of law is so serious that it is likely to be of "material significance" to the Pensions Regulator. For more information on this, see the Pensions Regulator's code of practice and associated guidance: this gives some examples.

If you have a concern which you think might need to be reported, or you are unsure, you should feel free to raise this with the Pension Trustee or your adviser.

* ***Part Four: further sources of information***

If you are unsure, we encourage you to seek independent professional advice. The Pension Trustee is happy to answer queries where possible. You might also find the following free resources helpful.

*The Pensions Regulator's* ***clearance*** *guidance*

<http://www.thepensionsregulator.gov.uk/guidance/guidance-clearance.aspx>

*The Pensions Regulator's code of practice on* ***notifiable events***

<http://www.thepensionsregulator.gov.uk/codes/code-notifiable-events.aspx>

*The Pensions Regulator's code of practice on* ***reporting breaches of the law***

<http://www.thepensionsregulator.gov.uk/codes/code-reporting-breaches.aspx>

*and associated guidance, with reasoned examples*

<http://www.thepensionsregulator.gov.uk/codes/code-related-report-breaches.aspx>