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BHS collapse raises questions for the regulator

By Tom Dines | April 28, 2016

The Pensions Regulator is investigating the BHS Pension Scheme as the sponsoring employer enters insolvency, but some experts queried why the regulator did not act sooner to secure the ailing scheme.

BHS is not the first high-profile company this year to leave a large pension scheme underfunded and benefits potentially impaired; a solution for the British Steel Pension Scheme is still being sought following Indian conglomerate Tata's decision to pull out of the UK steel market, as buyers are keen to take company assets but not pension liabilities.

Administrators were called in to high street retailer BHS on Monday this week, prompting an investigation into the scheme and its £571m deficit.

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Jennie Kreser, Silverman Sherliker

A spokesperson for the regulator said: “We can confirm that we are undertaking an investigation into the BHS pension scheme to determine whether it would be appropriate to use our anti-avoidance powers.”

The spokesperson added: “Such cases are complex, there is a clear process that must be followed, and this can sometimes take a considerable amount of time. We are unable to provide a running commentary on case investigations, or confirm the targets of our investigation.”

Recovery plan

Much of the media coverage of the collapse of BHS has centred on previous owner Sir Philip Green, who sold the group for £1 last year. However, Jennie Kreser, partner at law firm Silverman Sherliker, said not enough questions were being asked of the regulator or trustee board and their actions to protect the scheme.

She said: “At the last valuation a 23-year recovery plan was agreed. What did the trustees do in agreeing such a long recovery plan? Did they push the employer hard enough at that point?”

Recovery plans agreed between the employer and trustees must also be signed off by the regulator, she said.

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The scheme’s 2012 actuarial valuation revealed a funding shortfall of £210.5m, for which a recovery plan was agreed involving monthly contributions of £792,333 from September 1 2013 until April 30 2036.

The regulator’s spokesperson said: “We do not approve recovery plans. All schemes that have a deficit are required to put in place a recovery plan and submit this to us. On receipt, we assess each recovery plan against a number of criteria and identify and prioritise our interventions. If we do not have any issues with a recovery plan, based on the information available to us, we notify the scheme that we do not intend to take further action. This does not constitute approval.”

The spokesperson added the regulator “expects trustees and employers to agree a valuation and recovery plan that reflects an understanding of financial risks and the employer’s ability to underwrite those risks”.

The spokesperson said the regulator would open an investigation where the trustee and employer are unable to agree a funding plan, further information is needed on the funding plan, or if there are concerns to be raised with the trustee and employer.

Alastair Meeks, partner at law firm Pinsent Masons, said the events around BHS are testing the regulator.

“It’s as much a test for the regulator as for those who might be under scrutiny. We don’t know what part the scheme deficit has played in the discussions so far.”

Committee intervention

The Work and Pensions Committee this week announced that it too would be investigating BHS, although it will be looking to gauge the effect it could have on the Pension Protection Fund.

Frank Field MP, chair of the committee, said in a statement: “We need as a committee to look at the PPF and how the receipt of pension liabilities of BHS will impact on the increases in the levy that will now be placed on all other eligible employers to finance the scheme. We will then need to judge whether the law is strong enough to protect future pensioners’ contracts in occupational schemes.”

The Financial Times reported that to help plug the deficit and in exchange hand over responsibility for the scheme, BHS made two offers to the Pension Protection Fund, both of which were rejected.

Malcolm Weir, the PPF's head of restructuring and insolvency, said: "Prior to BHS entering into administration there were a number of discussions around the pensions deficit. No offer that met the PPF's published principles was made by the company to deal with the pension scheme."