Pension
Protection
Fund

The 2010/11 Pension Protection Levy Consultation

September 2009

Foreword

This document is the second in a busy period of levy consultation in which we're looking at the levy years following 2009/10. You'll perhaps be pleased to know, then, that in 2010/11 we're proposing minimal changes to the levy.

That there is one area of no change at all is perhaps the most significant story. I stated in June our intention not to raise the levy estimate above the indexed £675 million of 2008/09 and 2009/10. The risk to the PPF has increased significantly over those years, and remains high, but the Board acknowledges the importance of maintaining stability in challenging times. Affordability during this time is also paramount, which is why we are proposing to reduce the risk-based levy cap to the benefit of more schemes than in previous years.

Looking at changes for this year, this document contains a proposal we've worked on with Dun & Bradstreet, which will bring failure scores for overseas companies into alignment with the UK system. This will be followed by proposals to refine the UK system for 2011/12, to be published in November.

An improvement that benefits all schemes is the new style draft levy determination for the 2010/11 year — the set of rules that govern how we calculate invoices. We've rewritten the document to improve its structure, make it more accessible and simplify one or two particularly complex provisions. We're also publishing practice guidance to help levy-payers understand more clearly how we would normally propose to exercise the limited discretions we retain within the determination and why. Both of those documents form part of this consultation.

I'm sure you are aware that our work on the way the levy is calculated is focused on the longer term. Shortly after publication of this consultation we'll be working with industry representatives on new proposals to take account of the different kinds of risk we face. These will be put out to consultation in early 2010.

So, we'll be asking for your views frequently over the coming months, but we value highly the close working relationship we have with our stakeholders and the input we receive from you. I look forward to your responses.

Alan Rubenstein
Chief Executive

Contents

1. Introduction and Executive Summary

1.1 The 2010/11 Pension Protection Levy Consultation Document

Purpose

1.1.1 This document sets out the basis on which the Board intends to charge the Pension Protection Levy for the 2010/11 levy year. It therefore contains the levy estimate (the overall amount the Board aims to collect), the levy scaling factor, the scheme-based levy multiplier and associated rules.

1.1.2 Attached to the document is a draft of the determination, which expresses the Board's intended rules in legal form.

1.1.3 We have outlined minor changes to the levy caps, insolvency risk for foreign employers and the contingent assets regime. The impact on most schemes will be limited, though for a minority of schemes it may be more substantial.

The Board's Determination under section 175(5) of the Pensions Act 2004

1.1.4 This consultation document is accompanied by a draft of the Board's determination under section 175(5) of the Pensions Act 2004, attached as Annex C. The draft determination is also covered by this consultation exercise and we would be happy to receive comments on it.

1.1.5 The determination is the legal document that governs how the levy is calculated each year. All levies must be calculated in accordance with the final determination. It therefore takes precedence over any other communications made by the PPF.

1.1.6 This year, the determination has been redrafted, rather than updated as in previous years. This is intended both to make the structure more navigable and — to the extent possible in a set of technical rules — to introduce more user-friendly language.

1.1.7 Another change is that in some areas, especially those which would affect few schemes or where prescriptive rules need to be extremely complex, detailed rules are replaced by a more generic rule of principle, with the accompanying practice guidance setting out further information as to how the Board envisages applying the rule of principle in specific cases.

1.1.8 To assist stakeholders in becoming familiar with the new style, we have included a summary of the major changes in Chapter 5.

Consultation timetable

1.1.9 The Board would welcome comments on the proposals, by 11 November 2009. A summary of responses and any changes to the proposals will be published afterwards, along with the final determination. While this is a relatively short timescale for comments, it will allow the Board to publish the final determination in 2009, providing schemes with certainty well in advance of the start of the levy year.

1.1.10 We expect to publish a consultation on proposals for the 2011/12 levy, in particular refinements to the D&B scoring methodology, in November 2009.

Interest on late levy payments

1.1.11 The Pensions Act 2008 introduced powers allowing the PPF to charge interest on late payments of the pension protection levy. If the associated secondary legislation is in place in sufficient time, we intend to charge interest on late levy payments for the 2010/11 levy year.

1.2 Summary of the 2010/11 levy proposals

1.2.1 The following is a summary of our proposed approach to calculating the 2010/11 pension protection levy. This information is explained in greater detail later in this consultation document.

Data deadlines and measurement dates

1.2.2 The measurement date for underfunding (the date to which we transform section 179 valuations) and for insolvency risk is 31 March 2009. The following deadlines are applicable for submission of relevant information:

2009

- 5pm on 31 March 2009 for updating Exchange with levy-related information (except where set out below);
- 5pm on 30 March 2009 for providing information to D&B to be taken into account in sponsoring employers' failure scores;
- 5pm on 30 June 2009 for certification of partial block transfers that have taken place up to and including 31 March 2009;[1]

[1] See paragraph 1.2.11 below.

2010

- 5pm on 31 March 2010 for certification/re-certification of contingent assets;
- 5pm on 7 April 2010 for certification of deficit reduction contributions; and
- 5pm on 30 June 2010 for certification of full block transfers that have taken place up to and including 31 March 2010 (note: this is a single deadline for full certification, which differs from the approach in 2009/10).

Please note it is our general policy to enforce deadlines strictly, even where the Board has reserved any discretion in the matter, and missing them may have adverse consequences for schemes.

1.2.3 We would particularly like to remind schemes that there is still time to submit information about contingent assets and deficit reduction contributions, which may reduce your levy bill, for the 2010/11 levy year.

1.2.4 The Pensions Regulator's Exchange system will continue to be the sole point of electronic data submission. It will not be possible to submit voluntary certificates to the PPF.

Levy estimate

1.2.5 In 2007 we announced that the levy estimate for 2009/10 and 2010/11 would be set at £675 million indexed to earnings. This approach was confirmed for the 2010/11 levy on 23 June 2009. Indexation is based on published figures from the Office of National Statistics (ONS) and produces a 2010/11 levy estimate of £720 million.[2]

Levy Scaling Factor and Scheme-based Levy Multiplier

1.2.6 The levy scaling factor has been calculated as 1.64, with a scheme-based levy multiplier of 0.000145. The levy scaling factor was calculated using the same levy taper boundaries (the scale of funding levels that determines the calculation of a scheme's underfunding risk) as 2008/09.

1.2.7 The Board considered whether the levy taper boundaries should be altered to reflect changes in funding over the last year. Analysis in Chapter 2 below shows that reverting to the 2007/08 levy taper boundaries would result in the levy being unfairly distributed towards schemes below its start-point; in other words, those with lower funding levels. Reducing the levy cap by half a per cent, on the other hand, would protect the schemes struggling most in the recession, without having a significant effect on the levy scaling factor.

1.2.8 We therefore propose that the boundaries remain the same for 2010/11, but that the levy cap reduces to half a per cent of liabilities.

[2] Indexation is by reference to the increase in the year to May 2009, so the 2010/11 levy estimate is based on the increase in earnings since the 2009/10 levy estimate of £700 million.

Risk measurement

Block transfers

1.2.9 In accordance with proposals made in the 2009/10 consultation, notification and certification of block transfers is now expected for:

- **"full"** or "**whole-of-scheme" block transfers**, which are block transfers that result in the transferring scheme becoming ineligible and therefore exempt from the levy;

- **material block transfers**, which are block transfers of more than or equal to each of:

    - 20 per cent of the transferring scheme's assets (before the transfer);
    - 20 per cent of the sum of the receiving scheme's assets (before the transfer) and the transferred assets;
    - £20 million.

Notification and certification remains optional for:

- **qualifying block transfers**, which are block transfers exceeding the lesser of £1.5million **or** 5 per cent of the assets of at least one scheme (but less than a material block transfer).

1.2.10 Where schemes failed to notify or submit the expected certificates by the relevant deadlines, but the Board becomes aware of a "full" or "material" transfer, the levy for the receiving scheme will be calculated using the data (so far as relevant) of both schemes involved, but the underfunding risk of the receiving scheme will be increased. Further details on the way we will do this are set out at section 3.3.

1.2.11 For full transfers to be taken into account in 2010/11 there is a single deadline of 30 June 2010 for full certification. The 7 April deadline is no longer applicable.

Insolvency Risk

1.2.12 Following discussions with stakeholders and with D&B, we propose to change the way probabilities of insolvency are assigned to overseas failure scores. A table has been calculated by D&B which allows any 1-100 overseas failure score to be converted into a UK equivalent. The insolvency probability then used is that associated with the UK equivalent failure score.

Contingent assets

1.2.13 The Board recently asked its external legal advisors to review its requirements for contingent assets, with a view to possibly broadening their scope to include more types of asset and/or allowing more flexibility in relation to some of the specific legal requirements. Though it was concluded that the current arrangements are largely adequate, we propose to make some relatively minor improvements as a result, some of which can be implemented for 2010/11.

2. Levy Estimate, Parameters and Scaling Factor

2.1 Introduction

2.1.1 The Board is required to estimate the amount of levy it expects to collect in advance of each levy year. In our August 2007 consultation document, we expressed an intention to retain a stable levy estimate of £675 million, indexed to earnings and subject to any significant change in long-term risk, for the following three levy years (2008/09, 2009/10 and 2010/11). For 2009/10 this produced a levy estimate of £700 million.

2.1.2 The levy scaling factor is used to scale up an individual scheme's risk-based levy, based on short-term risk, to ensure that the total risk-based levy calculated is 80 per cent of the total levy estimate.

2.1.3 The scheme-based levy multiplier is used to calculate the scheme-based levy. It is multiplied by each levy-paying scheme's liabilities on a section 179 basis and rolled forward to the measurement date, to ensure that the scheme-based levy is the current proportion (20 per cent) of the total levy estimate.

2.1.4 The levy funding parameters determine the way a scheme's underfunding risk is calculated. Above a certain funding level, underfunding is calculated as a fixed percentage of s179 liabilities. This percentage decreases in steps as the funding level increases, until a point at which no risk-based levy is payable. This is referred to as the 'levy taper'.

2.2 Levy Estimate

2.2.1 In June 2009, the Board announced its intention to retain a levy estimate in 2010/11 of £700 million indexed to earnings. This continues an approach to the levy estimate set in the 2008/09 and 2009/10 levy years.

2.2.2 The 2009/10 pension protection levy consultation document noted that, as a result of the economic downturn, both long-term and short-term risk had increased in the year up to September 2008. At that time the PPF7800 Index estimated the aggregate funding position (total assets minus total protected liabilities) of defined benefit schemes to have been a deficit of £36.7 billion. At the end of August 2009 this had worsened still to a deficit of £173.2 billion (though this was a considerable improvement on a deficit of £200.1 billion at the end of June).

2.2.3 The Board recognised the pressure on employers' and schemes' balance sheets when announcing the levy estimate for 2009/10, choosing to uphold the plans it made in autumn 2007 with a levy estimate of £700 million. With further decline in scheme funding, the Board has again balanced its risks with the financial difficulty that some levy payers face.

2.2.4 After careful consideration of the balance between a further increase in risk, the possibilities of recovery and the importance of stability to levy payers, the Board proposes to again index the previous year's levy estimate (£700 million).

2.2.5 The earlier approval of the levy estimate and levy scaling factor by the Board prevented us from using last year's approach to indexation (based on the same measure the Secretary of State used in setting the annual levy ceiling shortly before the start of the levy year).[3] Instead, we have used the most up-to-date figures not subject to revision and have chosen also to use an Office of National Statistics (ONS) index that excludes bonuses (as they are not usually part of pensionable pay and are potentially volatile) and which is more widely published.[4] This rate of indexation produces a proposed levy estimate of £720 million (i.e. the 2009/10 estimate of £700 million plus the increase in earnings over the last year).

2.3 Levy funding parameters

2.3.1 Schemes pose a risk of a claim on the PPF even if they are fully-funded according to their latest valuation before the measurement date, due to the volatility of funding positions over time. The number of schemes over 100 per cent funded on a section 179 basis has fallen from 33 per cent in March 2008 to 13 per cent in March 2009.

2.3.2 Therefore when assessing the underfunding risk of a scheme for the risk-based levy the protected liabilities of the scheme are increased before the assets are compared with them. For 2009/10, protected liabilities were increased by 21 per cent and the levy taper — between the starting point at which the levy becomes a fixed percentage of protected liabilities and the end point above which no risk-based levy is payable — ran from 120 per cent to 140 per cent.

2.3.3 The Board did consider whether there was a case for adjusting the start and finish points of the levy taper, given the changes in scheme funding seen in the year to March 2009, and the impact this will have on levy bills. The Board decided not to make any changes for a number of reasons.

2.3.4 Other things being equal, there is a benefit in stability in the taper start: pension schemes plan for the long-term and so short-term changes can be an unwelcome complicating factor (for example, schemes put in place contingent assets linked to particular funding percentages). Changing the taper for 2010/11 might also mean that we would need to reverse the change again

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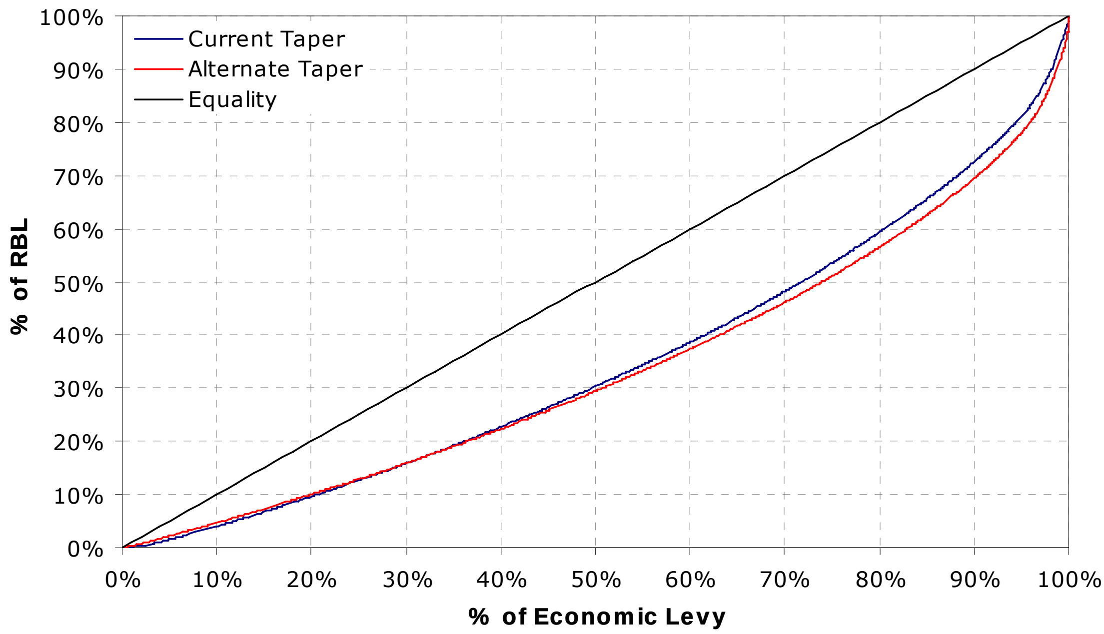
[3] *The Consultation on the 2009/10 Pension Protection Levy* (September 2008) p.10

[4] This index (the whole economy earnings index excluding bonuses, seasonally adjusted) is published in table 16 of the monthly ONS labour market statistics bulletin. Indexation was carried out using the May figure, which was published as provisional in July and confirmed in August.

next year, should scheme funding improve by March 2010 and in subsequent years. The Board does not believe schemes would welcome such instability.

2.3.5 The chart below demonstrates the difference in fairness between the current taper and one beginning at 105 per cent. Each Lorenz curve compares the proportion of the quantum paid under the present levy formula for each taper with the proportion of the total risk the scheme represents as measured by the economic levy.[5] The closer the curve is to the diagonal line, the fairer the distribution of the levy. Moving to the alternative taper would reduce the fairness of levy distribution.

Chart 1: Lorenz curves of existing and alternate taper



2.3.6 We use a Gini coefficient to measure the area between the curve and the diagonal line. The lower the coefficient, the fairer the levy. The distribution for the current taper has a Gini coefficient of 30.5 per cent compared with 32.8 per cent for the alternative taper. Hence, the alternate taper is less fair.

2.3.7 In summary, there are compelling reasons for retaining the current levy funding parameters:

- the benefits of stability in approach;
- evidence that a change would lead to a less fair levy; and
- the limited impact even of the biggest shift to the start of the taper we could reasonably contemplate.

[5] The economic levy is a measure combining the risk the PPF expects over the year ahead with the potential risk in adverse economic scenarios over the five years ahead.

2.3.8 The Board therefore proposes to retain the current taper boundaries and the funding level at which no risk-based levy is payable.

2.3.9 Reducing the start point of the taper by up to 15 per cent, when combined with the increase to the levy scaling factor that would be required to compensate, would have the effect of reducing the number of schemes experiencing large levy changes (an increase or decrease of more than 50 per cent) only very slightly (by no more than 2 per cent).

2.4 Levy cap

2.4.1 As part of its analysis of the levy funding parameters, the Board has looked at the potential effect on the 2010/11 levy of retaining the 2009/10 risk-based levy cap of 1 per cent of liabilities. The cap has in the past been designed to maintain affordability of the levy for the weakest five per cent of schemes, though because these schemes are generally relatively small they represent only 0.8 per cent of total section 179 liabilities.

2.4.2 For an average scheme, protected liabilities at 31 March 2009 are 20 per cent higher than they were a year earlier. The increase in these liabilities will have an impact on bills for currently capped schemes: were the cap left at one per cent then, in absolute terms, schemes capped in 2009/10 could see significantly higher bills for 2010/11. At the same time the changes to funding and the levy scaling factor will mean the current cap would protect fewer than five per cent of schemes.

2.4.3 Continuing to protect around five per cent of schemes would mean a change from a cap of 1.0 per cent of protected liabilities to a cap of 0.8 per cent of protected liabilities.

2.4.4 However, the Board has recognised pressure on balance sheets in the current environment in proposing its levy estimate for 2010/11, as noted above. It has therefore considered the possibility of reducing the cap further, to protect more than five per cent of schemes.

2.4.5 Reducing the cap to 0.5 per cent of protected liabilities (the cap used in 2006/07) would help more of the most hard-pressed schemes. This would increase the proportion of schemes protected to ten per cent (but still represent only around 1.5 per cent of total section 179 liabilities), at relatively limited cost to uncapped schemes — the Board calculates that the levy scaling factor would have been 1.54 had the cap been set at 0.8 per cent.

2.4.6 The Board considers that, in the current climate, it is in the interests of levy payers as a whole to protect the weakest ten per cent of schemes. We therefore propose to reduce the levy cap to 0.5 per cent of protected liabilities for 2010/11.

2.4.7 The Board also intends to adjust the maximum insolvency risk that is used in the calculation of risk-based levies, from 15 per cent to 3 per cent. This reduction will impact a small number of schemes, most of which are currently subject to the 1 per cent cap on the risk-based levy in any case. However, for those schemes, and particularly for the 50 or so schemes that would see a change in levy, it offers the prospect that reducing their underfunding risk could reduce their levy. This change has a very limited financial impact on the levy estimate, so has not required any change in the levy scaling factor.

2.5 Scaling Factor

2.5.1 As explained in previous levy consultations, having a measurement date 12 months before the start of the levy year allows the Board to publish the levy scaling factor well in advance, aiding schemes' and employers' financial planning.

2.5.2 It does, though, require a number of assumptions[6] to be built into the scaling factor calculation, which attempt to allow for changes in the risk profile of schemes and the PPF after the measurement date. This is primarily because deficit reduction contributions and contingent assets may be certified until the beginning of the levy year and the number of levy payers may reduce as schemes wind up or enter assessment after the measurement date.

Assumptions for 2010/11

2.5.3 In considering the assumptions to be adopted for 2010/11, the Board recognises that a balance must be struck between providing certainty in financial planning for schemes and ensuring an amount as close as possible to the levy estimate is collected. Should actual experience deviate significantly from the assumptions, the Board is exposed to possible under-collection or over-collection against the levy estimate.

2.5.4 The Board has calculated assumptions for each of the categories used in 2009/10, based on the analysis in Annex B. The key assumptions are:

- a reduction in the eligible universe of levy-paying schemes by 200 schemes;
- a total of £23 billion of certified deficit-reduction contributions;
- certification of contingent assets by an additional 150 schemes;
- approximately 400 schemes successfully appealing 31 March 2009 D&B scores.

[6] Since the intention is to collect a figure as close to the levy estimate as possible these are best estimates, not prudent estimates.

Calculation of the levy scaling factor

2.5.5 When the formula in Annex A is applied to the insolvency and underfunding information for the known universe of eligible schemes and sponsoring employers as at 31 March 2008, a risk-based levy scaling factor of **1.64** is produced. Although the calculation of the levy scaling factor is included in the scope of this consultation, we do not expect there to be any change in this figure, given that it is designed to produce collections as close as possible (within the limitations of the data available to us) to the levy estimate which itself is in line with the Board’s previously stated intentions.

2.6 Scheme-based levy multiplier

2.6.1 For the 2010/11 levy year, the target percentage of levy estimate that will be made up by the scheme-based element remains unchanged at 20 per cent, £144 million. The Board has made this decision based on the analysis of the levy distribution contained in the August 2007 consultation and November 2007 response, which demonstrated that schemes with low short-term risk tend to underpay the levy against their contribution to long-term risk. As these schemes are often larger, their scheme-based levies will also be larger, which goes some way to addressing this imbalance.

2.6.2 In accordance with the formula in Annex A, the scheme-based levy multiplier has been calculated as 0.000145. The multiplier will be confirmed in the final determination and is unlikely to differ from this figure.

3. Risk measurement

3.1 Introduction

3.1.1 This year, the Board proposes to change the way probabilities of insolvency are assigned to overseas failure scores, to make the probabilities of insolvency of foreign employers consistent with those in the UK.

3.1.2 The requirements for certification of block transfers in 2010/11 were consulted on as part of the 2009/10 pension protection levy consultation in September 2008, owing to the 2010/11 data deadline of 31 March 2009. This chapter proposes some refinements to the approach.

3.1.3 The Board has also taken the opportunity to review whether the scope of, and the requirements relating to, contingent assets should be broadened or amended. As a result, we propose to:

- simplify the requirements for substitution of type B(ii) (property) contingent assets;
- tighten the valuation requirements for type B (ii) contingent assets; and
- introduce a new requirement in relation to corporate benefit for new contingent assets from 2010/11.

3.2 Insolvency risk

3.2.1 The Board appointed Dun & Bradstreet (D&B) as its insolvency risk provider for the 2006/07 and 2007/08 levy years in August 2005. The contract was extended for two further levy years in September 2007. D&B has also been appointed as the insolvency risk provider for the 2010/11 and 2011/12 levy years.

3.2.2 Subject to the provisions regarding contingent assets, we will use the D&B Failure Score and the associated probability of insolvency of each sponsoring employer as at 31 March 2009 to calculate the risk-based levy payable by a particular scheme for the 2010/11 levy year.

Insolvency probabilities attached to failure score for foreign employers

3.2.3 A number of schemes have overseas-based sponsoring employers or contingent asset guarantors. Failure scores and associated probabilities of insolvency for these employers are calculated by the relevant local D&B

offices. Although these local offices operate within a framework used internationally, they are responsible for their own insolvency risk calculations.

3.2.4 There are differences in the insolvency probabilities associated with particular failure scores for employers and guarantors based overseas compared to those in the UK. There are a number of reasons for this, some of which represent genuine differences in risk, such as differences in insolvency rates in overseas countries and natural differences between local economies (e.g. the reasons why companies fail) and business universes (e.g. the types of company found in a particular percentile).

3.2.5 Some of these differences are significant: as an extreme example, a business scoring 100 in one country could, under the methodology used in 2009/10, be assigned a probability equivalent to a UK business scoring 62.

3.2.6 The Board accepts the stakeholder perception that these differences are sometimes unfair for employers based in certain countries. The PPF has been in discussion with D&B on this issue which has resulted in a proposed new approach for the 2010/11 levy.

The proposed approach

3.2.7 The division of companies into percentile failure scores is based on an underlying statistical *raw score*, ranging from 1001 to 2000. While the probabilities of insolvency attached to failure scores may vary for the reasons set out in 3.2.4, raw scores are calculated by the vast majority of regional scoring models and scaled to indicate the same level of risk; they therefore offer a significantly more consistent measure of risk across D&B's international network.

3.2.8 The proposals for considering foreign insolvency probabilities for the 2010/11 levy are based on using the underlying raw score to equate overseas failure scores to the most appropriate equivalent UK failure score. So, where a failure score in a foreign country reflects a raw score range of 1400-1450, then it would be mapped to the UK failure score that has the most similar range of raw scores. The Board's determination will include, in the API Appendix, a table on which schemes will be able to find their local percentile failure score in the first instance and then read their equivalent UK failure score.

3.2.9 A version of the proposed table covering a sample range of countries and failure scores follows.

Table 1: Overseas failure score conversion

Step 2 – Read off equivalent UK Failure Score

Step 1 – Find local percentile Failure Score

Local Failure Score (or equivalent)	**Equivalent UK Failure Score**				
	Belgium	France	Germany	Switzerland	USA
100	100	98	99	100	100
99	99	94	97	99	100
98	98	91	92	98	99
97	97	90	89	98	98
96	96	87	85	97	98
95	94	85	81	96	98
94	92	83	78	95	98
93	91	81	76	94	97
92	90	78	73	92	97
91	88	76	70	91	97

3.2.10 The table might be used as in the following example:

- For its 2010/11 levy, Electric Tools Ltd Pension Scheme is putting in place a Type A contingent asset guaranteed by the German parent company, Elektronischer Werkzeuge GmbH.;
- D&B's German office has given Elektronischer Werkzeuge GmbH. a local failure score of 92;
- In 2009/10, this score had an associated probability of insolvency of 0.0042, equivalent to a UK failure score of 71/72;
- For 2010/11 Electric Tools Ltd can find the local score of 92 for Elektronischer Werkzeuge GmbH in the left hand column of the table below, and see that since this is a German company, dealt with in column 4 below, it has now been matched to a UK failure score of 73;
- The UK score of 73 has a probability of insolvency of 0.004, which will be used in the levy for Electric Tools Ltd Pension Scheme if the contingent asset is certified correctly.

How that could be read from the new foreign failure score table is illustrated in Figure A.

Figure A: use of new foreign failure score table

Local Failure Score (or equivalent)	Equivalent UK Failure Score				
	Belgium	France	Germany	Switzerland	USA
100	100	98	99	100	100
99	99	94	97	99	100
98	98	91	92	98	99
97	97	90	89	98	98
96	96	87	85	97	98
95	94	85	81	96	98
94	92	83	78	95	98
93	91	81	76	94	97
92			73	92	97
91	88	76	70	91	97

1 Elektronischer Werkzeuge's German failure score is 92...

2 ...which corresponds to a UK score of 73...

3 ...and an associated probability of insolvency of 0.0040

D&B Failure Score	Probability of Insolvency
75	0.0037
74	0.0039
73	0.0040
72	0.0041

100+ Category

3.2.11 There are some countries for which obtaining a local failure score of 100 does not make it possible to obtain an equivalent UK Failure Score of 100 in the table above (for example, France and Germany). This happens because, although are some businesses that are as low risk as the top one per cent of UK businesses in these jurisdictions, there aren't enough such businesses to form a percentile. The result is that the top percentile in those jurisdictions maps to a lower failure score in the UK, even though the stronger companies in that group are as strong as UK businesses with a 100 score.

3.2.12 We propose to recognise a 100+ category — in an additional row on the table — to make it possible for a very low risk business in those countries to obtain an equivalent UK Failure Score of 100.

3.2.13 To be in the 100+ group, a business would require a raw score equivalent to the lower limit of the 100 percentile band in the UK. An example of how the additional row will be reflected in the full table is illustrated in Table 2.

Table 2: Conversion table including 100+ category

Local Failure Score (or equivalent)	**Equivalent UK Failure Score**				
	Belgium	France	Germany	Switzerland	USA
100+	-	100	100	-	-
100	100	98	99	100	100
99	99	94	97	99	100
98	98	91	92	98	99
97	97	90	89	98	98
96	96	87	85	97	98
95	94	85	81	96	98

3.2.14 As noted above, the full draft foreign insolvency probability table including the 100+ row is available on www.pensionprotectionfund.org.uk.

3.3 Block transfers

3.3.1 The Board defines three categories of block transfers:

- **"full"** or **"whole-of-scheme" block transfers** are block transfers which result in the transferring scheme becoming ineligible and therefore exempt from the levy;

- **material block transfers** are block transfers of more than or equal to each of:

  - 20 per cent of the transferring scheme's assets (before the transfer);
  - 20 per cent of the sum of the receiving scheme's assets (before the transfer) and the transferred assets;
  - £20 million.

- **qualifying block transfers** are block transfers exceeding the lesser of £1.5million **or** 5 per cent of the assets of at least one scheme (but less than a material block transfer).

3.3.2 For the purposes of establishing which category your block transfer fits into:

- To determine whether the materiality threshold has been reached, the Board will use the last MFR, s179 valuation or post-transfer valuation (whichever is the latest) before the first transfer date, as held on Exchange as at 31 March 2009 to establish the assets of each relevant scheme.

- Where there have been multiple transfers, schemes should not aggregate payments for comparison against the thresholds.

- However, where there have been two or more material transfers within a levy year into a single receiving scheme, it may be treated as a single transaction so that only one notification and certification (and only one post-transfer valuation for the receiving scheme representing the position after all transfers) is required.

- Equally, where there have been two or more transfers from a single transferring scheme within a levy year which, in aggregate, led to the transferring scheme becoming ineligible, this should be reported as if it were a single full transfer.

3.3.3 In November 2009, the Board indicated that certification of full and material block transfers would now be expected.[7] This was to avoid the situation where levy income is potentially lost where a scheme has entirely transferred its assets and liabilities to another and the transfer is not reported, and to remove the incentive to report other large transfers <u>only</u> when a net reduction in levy would result.

3.3.4 Notification of full and material block transfers that took place up to and including 31 March 2009 was expected by 7 April 2009 (with final certification expected by 30 June 2009). Information in respect of full transfers has been fed into levies for 2009/10, and for partial block transfers will feed into the 2010/11 levy. The early deadlines for material block transfers (being almost a year in advance) are to preserve the integrity of the 31 March 2009 data, reducing the risk of under or over-collection against the levy estimate. Consistency with the deadline for submitting section 179 valuations also prevents schemes with block transfers to certify gaining an advantage over other schemes.

3.3.5 In 2010/11, there will be only one deadline for certification of full block transfers that have taken place between 1 April 2009 and 31 March 2010: 30 June 2010. Certification after the risk-measurement (transformation) date is permitted for full transfers to avoid losing levy income entirely where the

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[7] *Conclusions on the 2009/10 Pension Protection Levy Consultation* (November 2008) pp.9-10

transferring scheme becomes ineligible. For the avoidance of doubt, there is no 7 April deadline applicable for full transfers certified for 2010/11.

3.3.6 Notification and certification of qualifying block transfers remains optional, but they will only be taken into account if the same information is provided by the same deadlines as for material block transfers.

3.3.7 The draft determination for 2010/11 confirms the Board's intention to implement the policy announced last year but with some simplifications to the exact calculation method. These simplifications have been made following the Board's review of the relevant data that has been provided in practice.

3.3.8 Where full and material transfers[8] are not notified or certified, in most cases, we will follow the following approach:

- calculate the levy for the transferring and receiving schemes based on their funding positions pre-transfer (transformed to 31 March 2009); but
- adjust the calculation of U for the receiving scheme by adding one third of the transferred asset value.
- We will also add the value of the transferred assets to L for the purposes of the scheme-based levy.

3.3.9 We may use all the data we have available to us for the purposes of this policy.[9] If necessary, we may use our statutory information gathering powers[10] and/or make prudent assumptions to establish any necessary data and, where necessary, we will apply approximations to achieve the policy intention.[11]

3.3.10 The Board recognises that block transfer arrangements can be complex and that sometimes it is difficult to fully account for them via Exchange. If the Board is satisfied that the scheme(s) involved in complex transfers made every effort to provide the relevant information to the PPF, but were unable to do so, then we will consider whether it is appropriate to apply the adjustment to the levy formula referred to above. However, it is intended that this will be the exception rather than the rule.

3.3.11 The Board considered whether it should apply this policy in a way that applied the reduction to the scheme which had been responsible for the failure to notify, rather than to the receiving scheme in all cases. However, we decided to proceed with applying the adjustment to the receiving scheme, given that parties to the transfers ought reasonably to have been able to have structured

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[8] i.e. full transfers up to 31 March 2010 or partial transfers up to 31 March 2009

[9] For example, we may use the fact that a transfer has been initiated by one party but not completed by the other to trigger an investigation and, where we have a post-transfer valuation supplied after the deadline, we may use it..

[10] For example, to establish the amount of the transferred assets.

[11] For example, where we have a post transfer valuation and the assets transferred, we may, where appropriate, assume that liabilities transferred in the same proportions as the assets did.

their affairs (and any necessary indemnities in the transfer documentation) in a way that took account of the policy intention as announced.

3.4 Contingent Assets

3.4.1 In reviewing the scope of and the requirements relating to contingent assets, the Board sought external legal advice. As a result of this review, we are proposing to make only limited changes[12] to the regime for 2010/11.

Substitution of Property Assets

3.4.2 We are proposing to simplify the mechanism through which real estate that is the subject of a type B(ii) contingent asset can be substituted for the 2010/11 levy year. Such substitution could currently occur using the amendment and release criteria in the standard form agreements. However, a more flexible mechanism might facilitate the wider use of this form of contingent asset, particularly where the sponsoring employer or group has a substantial portfolio of real estate.

3.4.3 In brief, we propose that the standard form is amended so that a property may be released from the security, provided that a substitute property of at least equal value is charged. Appropriate conditions relating to certification of title and valuation of the new property would need to be met to the trustees' satisfaction.

3.4.4 In these circumstances, a short form supplemental charging document could be used to charge the new property. When the contingent asset was recertified, the trustees would need to provide to the Board the relevant documentation which effected substitution, together with the supporting valuations and certificates of title. We would bring in this change for the 2010/11 and subsequent levy years.

Corporate benefit

3.4.5 For new contingent assets from 2010/11 onwards, we will be requiring express confirmation (either specific confirmation from the relevant directors, through board minutes or similar, or confirmation through the legal opinion) that the relevant directors have considered whether putting the contingent asset in place is beneficial to the guarantor/chargor.

Frequency of Valuation

[12] In the main, the advice we received concluded that the contingent assets regime was fit for purpose.

3.4.6 We will also be slightly tightening the requirements in relation to real estate valuations. To date, where a type B(ii) contingent asset was being recertified, we have accepted valuations which were up to three years old. In the current climate, we think it is appropriate to require valuations to be no more than 15 months old. Where there is an existing full valuation, we have always accepted an update to it by way of a "desk top" valuation for the purposes of these timescales and we will continue to do so.

3.4.7 By allowing valuations that are up to 15 rather than 12 months old, schemes will potentially be able to use the same valuation for two levy years, rather than one. Given that the same valuation may be used for two levy years, and a "desk top" valuation will be accepted, we think that this approach would strike an appropriate balance between requirements on schemes, and PPF protection.

New categories of contingent asset

3.4.8 The Board gave fresh consideration to recognising new categories of contingent assets, notably credit default swaps and security over receivables. However, we still believe that CDS operates in an insufficiently regulated market for our purposes and that taking security over receivables does not offer the long-term commitment that is key to our approach on the use of contingent assets in pension scheme security. This does not, of course, preclude such assets providing valuable security to trustees in appropriate cases; rather it means that at this stage the Board does not consider it would be fair or consistent with its overall approach to recognise such assets in the levy.

Updating the standard form agreements

3.4.9 We have also taken the opportunity to update and amend the standard form agreements more generally, based on advice from our external lawyers as well as issues raised by stakeholders. The draft updated agreements are available on http://www.pensionprotectionfund.org.uk/levy/1011_determination/Pages/10-11Determination.aspx, showing the differences from the existing September 2006 versions. They will be republished in final form alongside the final determination in December 2009.

3.4.10 We would welcome any further comments on the drafting of the standard form agreements as part of this consultation. In particular, in relation to all contingent asset types except C(ii), we have left open the threshold funding levels (104 per cent / 105 per cent) that appear in the "amendment and replacement" appendices to these agreements. We would welcome views as to whether the time is now right to amend these thresholds, in particular whether they should be increased to provide extra security to the trustees once the agreement is in place, and if so to what level.

3.4.11 As the determination requires schemes to certify that the agreement was in the most recent standard form as at the date of execution, parties who wish to put in place a new agreement between now and December should use the existing (September 2006) versions. However, if the parties would like to take advantage of any of the changes proposed we would suggest they either (a) wait until the final versions are published before executing agreements, or (b) use the September 2006 version but incorporate any changes which the trustees' legal advisers are prepared to opine are not materially detrimental to the rights of the trustees, in the normal way.

4. Determination

4.1 The determination

4.1.1 The Board's draft determination for the 2010/11 year is attached as Annex C. The Board engaged external legal advisers to assist in revamping the determination. We hope that stakeholders will find the resulting document easier to navigate and more user-friendly in terms of drafting style. In particular, we have sought to adopt the sort of style that trustees should be familiar with, through working with their own scheme's Trust Deeds and Rules.

4.1.2 Inevitably, as a legal document, there has to be a certain amount of formality. However, we have tried to limit this, so far as possible. Equally, we have tried to avoid changing, without good reason, language which may have become familiar to our stakeholders.

4.1.3 Other improvements are the consolidation of certain annexes which deal with the same topics (e.g. those dealing with contingent assets) and the use of more definitions, to aid interpretation.

4.2 Levy Practice Guide

4.2.1 We have also introduced a new document to sit alongside the determination. This document (which is called the PPF Levy Practice Guide) is designed to give stakeholders some guidance, in relation to the areas where the Board retains some discretion, as to how we would generally propose to exercise that discretion and what factors we would generally take into account in making our decisions.

4.2.2 This document covers some areas which will be familiar to stakeholders (e.g. data errors) and some where we have simplified previously complex rules in the determination (e.g. amendment and replacement of contingent assets — previously provided for in paragraphs 24-29 of Appendix 4 and Annex G to the 2009/10 determination). The intention in such cases is not necessarily to change the underlying principles or make rules more or less onerous. Rather we want to ensure we have the flexibility to deal appropriately with the wide range of factual scenarios that can arise in the small number of cases where these rules are relevant.

4.2.3 We hope that stakeholders will find this document useful in explaining how we go about exercising discretion and the reasons why, in a number of areas, it should only rarely be necessary. As noted in the document itself, it is only intended to provide an indication of the Board's broad approach; it does not commit the Board to exercising its discretion in any particular way in specific cases as this would defeat the purpose of retaining the discretion.

4.2.4 We are publishing the document in draft for consultation and would welcome stakeholders' views alongside their feedback on the determination itself. Accordingly, the content of the Levy Practice Guide may change when we publish it formally for the first time in December.

5. Responding to this consultation

5.1.1 Having made only minor changes for the 2010/11 levy, we consider many of the proposals in this document to be fairly firm and we do not anticipate any radical departure from them.

5.1.2 We do, however, welcome your comments on this consultation document and the appended draft determination and PPF Practice Guide.

5.1.3 The deadline for written responses is 5pm on 11 November 2009.

How to respond

5.1.4 If you would like further copies of this document, it can be found on our website at www.pensionprotectionfund.org.uk. Please send all consultation responses to:

Chris Collins
Head of Policy
Pension Protection Fund
Knollys House
17 Addiscombe Road
Croydon
CR0 6SR

Email: consultation@ppf.gsi.gov.uk

5.1.5 When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation please make it clear who the organisation represents and, where applicable, how the views of members were assembled. If you are responding on behalf of a pension scheme, please include your Pension Schemes Registry (PSR) number.

Confidentiality and Code of Practice

5.1.6 The requirements of the Freedom of Information Act (2000) state all information contained in the response, including personal information, may be subject to publication or disclosure. It is the Board's intention that all responses will be published on the Pension Protection Fund's website alongside the summary of responses.

5.1.7 By providing personal information for the purposes of the public consultation exercise, it is understood that a respondent consents to its disclosure and publication. If this is not the case, the respondent should limit any personal information which is provided or remove it completely. If a respondent requests that the information given in response to the consultation be kept confidential, this will only be possible if it is consistent with the Freedom of Information Act 2000 and otherwise permitted by law.

5.1.8 Queries should be sent to Paul Reynolds at the address below. Further information about the Freedom of Information Act 2000 can be found on the website of the Ministry of Justice at:
http://www.dca.gov.uk/rights/dca/foidcaintro.htm

5.1.9 This consultation is being conducted in line with the Code of Practice on Consultation. The code can be accessed via the website of the Department for Business, Innovation and Skills at:
http://www.berr.gov.uk/files/file47158.pdf

5.1.10 If you have any comments on the effectiveness of this consultation, please contact:

Paul Reynolds
Director of Corporate Affairs
Pension Protection Fund
Knollys House
17 Addiscombe Road
Croydon
CR0 6SR

E-mail: paul.reynolds@ppf.gsi.gov.uk

Annex A: Formulae for the scheme-based levy multiplier and the risk-based levy scaling factor for 2010/11

A.1 Scheme-based levy multiplier

A.1.1 For the 2010/11 levy year the percentage of the pension protection levy that will be made up by the scheme-based element (1- R) remains unchanged at 20 per cent.

A.1.2 The scheme-based levy estimate is the Board's estimate of the total amount of scheme-based levy that should be collected for the 2010/11 levy year. This has been calculated as £144 million.

A.1.3 The total liabilities are the same as those used to determine total underfunding risk for the risk-based levy scaling factor calculation. When the above formula is applied to estimated section 179 liability information available for the known universe of eligible schemes and sponsoring employers as at 31 March 2009, the scheme-based levy multiplier is 0.000145. The multiplier will be confirmed in the final determination and is unlikely to differ from this figure.

A.1.4 The 2010/11 scheme-based multiplier is calculated using the formula:

$$h\sum_{i=1}^{T} L_i = (1-R)\times Q$$

$$h = \frac{(1-R)\times Q}{\sum_{i=1}^{T} L_i}$$

Where,

- T = the number of Pension Protection Fund eligible schemes/sections excluding schemes/sections in assessment;
- $\sum_{i=1}^{T} L_i$ = the sum of s179 liabilities over all eligible schemes;
- $Q =$ the pension protection levy estimate;
- $R =$ the percentage of the pension protection levy that is risk-based; hence (1-R) is the percentage that is scheme-based.

A.1.5 The scheme-based multiplier is the solution, h, to the linear equation shown above.[13]

A.1.6 In accordance with this formula, the scheme-based levy multiplier has been calculated as 0.000145. The multiplier will be confirmed in the final determination and is unlikely to differ from this figure.

A.2 Levy scaling factor

A.2.1 The 2010/11 risk-based levy scaling factor will be calculated using the formula:

$$\sum_{i=1}^{T} \min(U_i \times P_i \times R \times c, K \times L_i) = Q \times R$$

Where,

- T = the number of Pension Protection Fund eligible schemes/sections excluding schemes/sections that are in assessment;
- U_i = the underfunding risk factor (including contingent assets) of the ith eligible scheme/section;
- P_i = the insolvency risk factor for the ith eligible scheme/section;
- L_i = the estimated s179 liabilities of ith eligible scheme/section;
- Q = the pension protection levy estimate;
- R = the percentage of the pension protection levy that is risk-based;
- K = the levy cap expressed as a decimal.

A.2.3 The levy scaling factor is the solution, c, to the non-linear equation shown above.[14]

A.2.4 For the 2010/11 levy year the percentage of the pension protection levy that will be made up by the risk-based element (R) remains unchanged at 80 per cent and the levy cap (K) has been reduced from one per cent to half a per cent.

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[12] Note that this formula is slightly simplified and does not take account of, among other things, the need to scale up for schemes in respect of which the PPF does not have adequate data when it is calculating the scaling factor and multiplier.

[14] Note that the formula is slightly simplified and does not take account of, among other things, the need to scale up for schemes in respect of which the PPF does not have adequate data when it is calculating the scaling factor and multiplier and the technical criteria for the exclusion of a scheme in assessment from the levy.

A.2.5 The risk-based levy quantum (R x Q) is the Board's estimate of the amount of risk-based levy that should be collected for the 2010/11 levy year. This has been calculated as £576 million.

A.2.6 The total risk exposure will be the sum of the product of underfunding risk and insolvency risk as at 31 March 2009 and percentage of the levy that is risk-based, subject to the levy cap, for all schemes.

A.2.7 Scheme assets and liabilities for the purpose of the underfunding risk calculation will be determined using market information available on 31 March 2009. Insolvency risk will be calculated using insolvency probabilities derived from 31 March 2009 Failure Scores for the known universe of sponsoring employers.

A.2.8 When this formula is applied to the insolvency and underfunding information available for the known universe of eligible schemes and sponsoring employers as at 31 March 2009, the risk-based levy scaling factor is 1.64. Although the calculation of the levy scaling factor is included in the scope of this consultation, we do not expect the final figure to differ.

Annex B: Assumptions for the Levy Scaling Factor 2010/11

B.1 Introduction

B.1.1 This annex details the process that has been undertaken to calculate the levy scaling factor for 2010/11. In particular, it covers how the required assumptions have been determined and summarises the results of the analysis carried out.

B.1.2 Very broadly, a scheme's levy is calculated as: L x h + U x P x R x c.

Where:

- L is the estimated amount of the scheme's section 179 liabilities at 31 March 2009
- h is the scheme-based levy multiplier
- U is the underfunding risk of the scheme as at 31 March 2009
- P is the insolvency probability associated with the employer(s) in relation to the scheme as at 31 March 2009
- R is the proportion that is risk-based, and
- c is the levy scaling factor (LSF).

B.1.3 The 2010/11 levy will primarily be based on data supplied by 31 March 2009. However, we propose to take into account correctly certified risk-reduction measures for the period up to April 2010. There will also be movements in the levy-paying population over the same period. The PPF therefore has to estimate the various scheme behaviours and changes in data that are expected to have an effect on the levy. The main items that need to be estimated for the levy scaling factor calculation are:

- the number of levy-paying schemes at 1 April 2010 allowing for removals and additions (if any);
- new voluntary certificates (contingent assets and deficit reduction contributions) to be submitted by the 31 March/7 April 2010 deadline and which can result in adjustments to underfunding or to insolvency risk and therefore affect the levy calculation; and
- D&B insolvency probabilities as at 31 March 2009 allowing for any successful appeals which may be raised.

B.1.4 The analysis below is based on the proposition that the taper is unchanged from its 2009/10 level, and that the levy cap is reduced from one per cent of liabilities to 0.5 per cent. As described in the main body of this consultation document, the levy quantum for 2010/11 is £720 million.

B.2 Assumptions for the calculation

B.2.1 The following assumptions about the number of levy-paying schemes, contingent assets, deficit reduction contributions and changes in D&B insolvency scores have been used to calculate the LSF for the 2010/11 levy year.

Eligible universe of levy-paying schemes

B.2.2 In summary, our estimate for the change in the number of levy-paying schemes between 1 April 2009 and 31 March 2010 is as follows:

Table B1: Estimated changes in the number of levy-paying schemes:

	Number of schemes
Levy-paying universe at 1 April 2009	7,053
Plus new schemes	0
Less schemes buying out all their liabilities	(50)
Less movements into/out of a PPF assessment period	(150)
Estimated levy-paying universe at 1 April 2010	6,853

B.2.3 We propose that no allowance will be made for new levy-paying schemes in 2010/11. Any new eligible defined benefit schemes are unlikely to have acquired significant assets and liabilities by 1 April 2009; new schemes formed by mergers and transfers hold assets and liabilities that are already included in the PPF's database.

B.2.4 Our data suggests that at 1 April 2009 around 200 schemes were in the process of winding up. On the basis that winding up is a process that takes about four years, it is assumed that 50 of these schemes will have wound up by 1 April 2010.

B.2.5 Under our draft determination for 2010/11, block transfers that took place after 1 April 2009 are disregarded, other than where the transferring scheme has become ineligible as a result of the transfer. Partial buyouts will therefore have no effect on the levy invoice calculation for 2010/11 and so do not need to be taken into account for the levy scaling factor calculation. Similarly, buy-ins (i.e. where the trustees purchase annuity contracts in their name as an investment decision) do not affect levy calculations.

B.2.6 We estimate that the effect of schemes entering (or leaving) a PPF assessment period will result in 150 fewer schemes paying the levy in 2010/11 than in 2009/10.

New voluntary certificates – contingent assets

B.2.7 The impact of contingent assets will depend on their value and which schemes put them in place. Using contingent asset data for the last three levy years, we have projected the number of schemes that might put contingent assets in place for 2010/11 and the difference they will make to levy bills.

B.2.8 Contingent assets have reduced the levy collected by a greater amount each year. There were 231 schemes with contingent assets in place for 2007/08, 405 for 2008/09 and 556 for 2009/10. We estimate an extra 150 for 2010/11, giving a total of 706. Note that these figures are for schemes with contingent assets and not the total number of contingent assets, which will be higher where schemes apply multiple contingent assets

B.2.9 We have used the valid certificates we had as at 31 March 2009 and calculated their effect on the 2010/11 levy collection. We have assumed that the new contingent assets will have the same average effect on levies as the existing ones, spreading the effect of the 706 assumed contingent assets over all schemes. In performing this calculation we grouped the existing contingent assets into five classes depending on size, to capture the fact that smaller schemes are less likely to put a contingent asset in place.

New voluntary certificates – deficit reduction contributions

B.2.10 Allowances are needed for deficit reduction contributions certified by 7 April 2009 and for new certificates received by the PPF before 5pm on 7 April 2010.

B.2.11 The level of deficit-reduction contributions certified for the 2009/10 levy was £23bn. There are arguments why a higher level may be expected in 2010/11, and there are arguments why a lower level may be expected. In the absence of a clear argument either way, it has been assumed that, again, £23 bn of deficit-reduction contributions will be certified in 2010/11.

Change in D&B insolvency probabilities

B.2.12 The probability of insolvency used in a scheme’s levy invoice calculation may, as a result of a successful appeal, be different from that originally supplied by D&B as at 31 March 2009. Appeals to D&B take two forms: employers appeal either their failure score, based on data available publicly at the relevant deadline not being used, or the validity of their DUNS number (i.e. where D&B has assessed the wrong company, either as a result of scheme return data being inadequate or the possibility of multiple matches). A successful appeal of either type can result in a revised failure score.

B.2.13 For 2010/11 we have assumed that there will be 400 schemes that benefit from a successful D&B appeal. This has been set based on an analysis of the trend in appeals from 2006/07 to 2007/08 and is lower than the level of appeals experienced in 2008/09 to reflect our belief that schemes are getting better at providing D&B with correct information.

B.2.14 In terms of the effect of a successful appeal upon a scheme's levy, there is a trend for larger schemes to have a smaller reduction. This appears to be because larger schemes generally have more employers so the effect of a single successful employer's appeal is diluted across the whole scheme. Also schemes with a worse score before appeal tend to have a greater reduction. We have therefore used the following reduction factors in calculating the levy scaling factor. The figures in the table are the assumed reduction to a scheme's levy if that scheme benefits from a successful appeal or appeals.

Table B2: assumed reduction to P following appeal

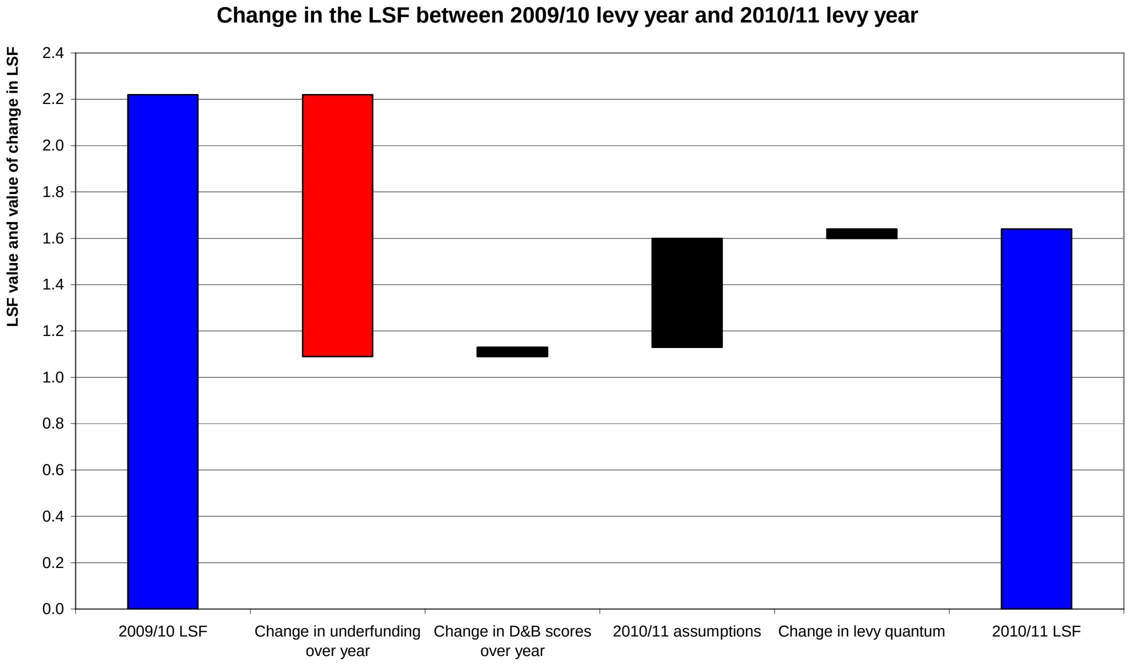
Scheme size / Starting Probability of insolvency ("P")	<100 members	100-1,000 members	1000-5000 members	5,000-10,000 members	>10,000 members
P less than 1%	40%	40%	40%	30%	20%
P above 1%	50%	50%	50%	40%	30%

B.2.15 As we do not know which schemes will experience successful appeals in future, we have spread the impact of appeals evenly across each of the ten groups set out in the above table. In doing so we have assumed that all schemes are equally likely to experience a D&B appeal (although employers with a failure score of 100 will of course not appeal). These average reductions in insolvency probabilities are then used in the LSF calculation.

B.3 Reconciliation of the 2009/10 and 2010/11 levy scaling factors

B.3.1 The following chart attributes the change in levy scaling factor between levy years 2009/10 and 2010/11 to the various factors and assumptions made:

Chart B1: Change in the LSF between 2009/10 levy year and 2010/11 levy year



B.3.2 The most significant factor in the reduction of the scaling factor is the decline in scheme funding between March 2008 and March 2009. The other reasons are given in this table:

Table B3: reconciliation of the 2009/10 and 2010/11 levy scaling factors

	Change	LSF
Levy scaling factor (LSF) for 2009/10		**2.22**
Move funding levels to 31 March 2009 **Underfunding is measured at 31 March 2008 for 2009/10 and 31 March 2009 for 2010/11**	- 1.13	1.09
Change in D&B scores over the year **Probability of insolvency is measured at 31 March 2008 for 2009/10 and 31 March 2009 for 2010/11**	+ 0.04	1.13
Difference between assumptions in 2009/10 and actual experience (including effect of data corrections) **Did the assumptions made in the 2009/10 LSF come to pass?**	0.00	1.13
2010/11 LSF assumptions **The assumptions required for the 2010/11 LSF**	+ 0.47	1.60
Change in levy quantum from £700m for 2009/10 to £720m for 2010/11	+ 0.04	1.64
Levy scaling factor for 2010/11		**1.64**

Annex C: The Board's draft Determination under section 175(5) of the Pensions Act 2004 in respect of the financial year 1 April 2009 – 31 March 2010

The Board of the Pension Protection Fund

Determination under
Section 175(5) of the Pensions Act 2004
in respect of the financial year
1 April 2010 – 31 March 2011

30 September 2009

Determination by the Board of the Pension Protection Fund under section 175(5) of the Pensions Act 2004

The Board of the Pension Protection Fund hereby makes the following determination in respect of the financial year 1 April 2010 to 31 March 2011 that in respect of that year, the factors and times by reference to which the pension protection levies are to be assessed, and the rate of the levies, and the dates at which the levies are to become payable are to be as set out in the rules appended to this Determination (the "Rules").

THE RULES

Part A – General

A1. How to interpret these Rules

A1.1. Definitions used in these Rules

In these Rules, the following expressions have the meanings shown next to them or, as the case may be, provided by the provision referred to:

"1995 Act" – the Pensions Act 1995.

"Act" – the Pensions Act 2004.

"Actuarial Transfer Information" – is defined in Rule F2.3.

"Agreed Form" – a document which meets the requirements of the relevant part of the Contingent Asset Appendix or any later form prescribed by the Board and which is, if required by the Board, certified as meeting such requirements.

"Allocated Member" – is defined in Rule E4.1.

"API" – stands for "assumed probability of insolvency" and means the Board's assumed probability of insolvency in respect of an undertaking.

"Basic Transfer Information" – is defined in Rule F2.2.

"Board" – the Board of the Pension Protection Fund established under section 107 of the Act.

"Centralised Scheme" – is defined in Rule E4.2(4).

"Contingent Asset" – is defined in Rule D2.

"Contingent Asset Certificate" – a certificate which complies with Rule D2.4.

"DBUK" – Dun & Bradstreet Limited of Marlow International, Parkway, Marlow, Bucks SL7 1AJ ,(Company No. 00160043).

"Deficit-Reduction Contribution" – is defined in Rule D1.

"Employer" – is as defined in section 318 of the Act, provided that the identity of the Employer in relation to a Member shall be assessed by the Board by reference to data which has been Submitted in accordance with Rule A2.1.

"Exchange" – the scheme maintenance system maintained by the Pensions Regulator for the online submission of Scheme Returns and other information by or on behalf of pension schemes.

"Failed Scheme" – a Scheme which meets the criteria in Rule C5.

"Failure Score" – is a UK Failure Score or a Non-UK Failure Score, as applicable.

"First Transfer Date" – is the date that the first transfer of assets is made from the Transferring Scheme to the Receiving Scheme in relation to a Relevant Transfer or a Qualifying Transfer.

"Last Man Standing Scheme" – is defined in Rule E4.2(2).

"Levies" – the RBL and the SBL. For the avoidance of doubt, where the term "levy" is used in these Rules, this includes the RBL and the SBL.

"Levy Year" – is, as the context requires, any period of 1 April to 31 March in respect of which the Board has made a determination under section 175(5) of the Act.

"Measurement Time" – is construed in accordance with Rule A2.3

"Median" – is calculated as set out in Rule E2.8.

"Member" – means an active, deferred, pensioner or pension credit member of a Scheme, but excludes any such members with purely money purchase benefits as defined in section 181 of the Pension Schemes Act 1993.

"MFR Valuation" – the Result of a valuation carried out by the Scheme Actuary in a manner which is in accordance with sections 56-60 of the 1995 Act, and Submitted by or on behalf of the trustees, whether as a matter of legal obligation or otherwise.

"Multi-Employer Regulations" – the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005.

"Multi-Employer Scheme" – as defined in section 307 of the Act.

"New Scheme" – a Scheme which becomes an eligible scheme as defined in section 126 of the Act for the 2010/11 Levy Year on or after 1 April 2010.

"Non-UK Failure Score" - is as set out in Rule E2.2(3).

"No Return Scheme" - is defined in Rule A2.4.

"Partially Guaranteed Scheme" - as defined in The Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005.

"Partial Segregation Scheme" – is defined in Rule E4.2(3).

"Pension Credit Members" - individuals who have rights under the relevant Scheme attributable to a pension credit. Such pension credit members shall be deemed to have been employed by the same Employer as the Member from whom their rights under the Scheme are derived.

"Post-Transfer Valuation" - the valuation submitted by a Receiving Scheme or a Transferring Scheme as part of the Actuarial Transfer Information, for the purposes of Rule F2.3.

"PPF" – the Pension Protection Fund.

"Previous Determination" – any determination of the Board under section 175(5) of the Act for the purposes of a Levy Year before the 2010/11 Levy Year.

"Protected Liabilities" – as defined in section 131 of the Act.

"Qualifying Transfer" – is defined in Rule F3.1.

"RBL" – the risk-based pension protection levy as defined in section 175 of the Act.

"Recent Scheme" – is a Scheme the trustees of which have

(i) for the first time been sent a Scheme Return notice requiring them to submit a Scheme Return and the return date for that Scheme Return falls between 1 April 2009 and 31 March 2010 (inclusive); and
(ii) no later than 5.00pm on 31 March 2010 Submitted a Scheme Return.

"Relevant Transfer" – is defined in Rule F1.2.

"Results" – those data items required to be completed on Exchange.

"Risk Indicator" – is defined in Rule E2.4(2).

"Rules" – these Rules issued by the Board for the 2010/11 Levy Year.

"SBL" - the scheme-based pension protection levy as defined in section 175 of the Act.

"Scheme" – an "eligible scheme" as defined in section 126 of the Act.

"Scheme Actuary" - the actuary in respect of the Scheme within the meaning of section 179(2) of the Act.

"Scheme Return" – a completed return Submitted in respect of the Scheme via Exchange in accordance with sections 63 to 65 inclusive of the Act. For the avoidance of doubt, a Scheme Return does not include information relating to Contingent Assets, Deficit-Reduction Contributions or Relevant Transfers.

"Section 179" – Section 179 of the Act and regulations and relevant guidance made and issued under that section.

“Section 179 Valuation” - the Results of an actuarial valuation of the Scheme which has been Submitted on Exchange and has been carried out in a manner which is in accordance with Section 179, whether as a matter of legal obligation or otherwise.

“Segregated Part” – in respect of an eligible scheme is as defined in Part 4, 5, 7 or 8 of the Multi-Employer Regulations.

“Segregated Scheme” – as defined in the Multi-Employer Regulations.

“SIC Code” – the Standard Industry Classification Code, 1972.

“Submitted” – and associated terms are to be construed in accordance with Rule A2.2.

“tPR” – the Pensions Regulator, established under section 1 of the Act and, where the context so requires, its predecessor, the Occupational Pensions Regulatory Authority.

“UK Failure Score” – is as set out in Rule E2.1(3).

“Unsecured Part” – in respect of a Partially Guaranteed Scheme the “unsecured part” as defined in The Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005.

“Value” - in the case of the assets or the Protected Liabilities of the Scheme shall be interpreted in accordance with Rule A6.1.

A1.2 General Interpretation

(1) All references to dates and times in these Rules relate to Greenwich Mean Time or, at the times when it is in force, British Summer Time.

(2) References to midnight on a day are to midnight at the end of that day.

(3) Unless the context otherwise requires, terms used in these Rules bear the same meaning as in the Act.

(4) References to Scheme “trustees” include managers of a Scheme if that Scheme does not have trustees.

(5) Headings are not part of this determination and are only for ease of reference and shall not be used in its construction and interpretation.

(6) References to any gender include the other gender.

(7) References to the singular include the plural and vice versa.

(8) References to specific Rules and Appendices are to the relevant provisions in these Rules and the Appendices to them and, except for paragraph (11) below, “Rules” includes the Appendices.

(9) A reference to any statutory provision includes a reference to any amendment, consolidation or re-enactment of the provision from time to time in force and all secondary legislation made under it;

(10) Except for the purposes of Rule A6.1(4), in the case of a Segregated Scheme, each segregated section shall (except where these Rules expressly or by implication require otherwise) be treated as if it were a separate Scheme for the purposes of these Rules. Similarly where a Segregated Part of a Scheme has been created on or before 31 March 2010, each of the Segregated Part(s) and the remainder of the scheme shall (except where these Rules expressly or by implication require otherwise) be treated as if it were a separate Scheme for the purposes of these Rules. References to Schemes shall be construed accordingly.

(11) In the event of any inconsistency between these Rules and the Appendices to this determination, the Rules shall prevail.

(12) The term "calculate" and associated terms shall in any relevant case include "re-calculate" and its associated terms.

(13) In determining whether it is satisfied as to any matter set out in these Rules, the Board shall take account of any guidance which it has published or which appears in the help files within Exchange (including guidance in the form of "Frequently Asked Questions"). However, the Rules shall prevail in the case of inconsistency.

A2. Validated data on Exchange: the general rule for calculations

A2.1 What is the general rule for calculating the Levies?

(1) For calculating the Levies, the Board shall use data which has been Submitted at the relevant Measurement Time except where expressly provided otherwise in these Rules.

(2) It is the responsibility of the Scheme trustees to ensure that :

(i) data is Submitted when there is an obligation to provide it

(ii) data is validated when a confirmation that the data is correct is sought;

(iii) data is correct at each time it is Submitted or validated; and

(iv) data is Submitted at or before the relevant deadline.

A2.2 Methods of Submitting information

Where these Rules refer to certain information being or having been Submitted (and any associated terms), the requirement shall be satisfied and the information treated as having been Submitted only if the Board is satisfied that:

(1) except where (2), (3) or (4) of this Rule A2.2 apply, the information:

- (i) has been validly entered and submitted on Exchange, (via the "Submit Scheme Return" button in the case of a Scheme Return or via the "Update" and "Save" buttons in any other case) on behalf of such Schemes as it relates to; or
- (ii) has been pre-populated on Exchange,

and, in each case, is held on Exchange at the relevant Measurement Time.

(2) in the case of hard copy supporting documentation required for submission of Contingent Assets (for the avoidance of doubt not including Contingent Asset Certificates), the documentation has been received by post or hand delivery to:

The Board of the Pension Protection Fund
Knollys House
17 Addiscombe Road
Croydon
Surrey
CR0 6SR

Marked for the attention of "Director of Legal Re: Contingent Assets". For the avoidance of doubt, delivery by fax is not permissible.

(3) in the case of a Scheme the trustees of which have been expressly permitted by tPR to complete their Scheme Return on paper rather than on Exchange, the information which is equivalent to what would be the contents of a Scheme Return is provided to the tPR in such manner as tPR has stipulated (or, in the absence of such a stipulation, by post).

(4) the information has been received in accordance with a permitted alternative method. A "permitted alternative method" is any different method of provision of information to those methods set out at paragraphs (1), (2) or (3) for the purposes of the 2010/11 Levy Year which, after the date of final publication of this determination the Board has expressly stipulated on its website (whether as an alternative or a replacement to those methods).

A2.3 The Measurement Time and deadlines

The Measurement Time for each item of information is the deadline for Submission of that information. The Measurement Time shall be 5.00pm on 31 March 2009 except as set out below:

- (1) In relation to Contingent Assets, 5.00pm on 31 March 2010.
- (2) In relation to Deficit-Reduction Contributions, 5.00pm on 7 April 2010.
- (3) In relation to Recent Schemes, midnight on 31 March 2010.
- (4) In relation to New Schemes and No Return Schemes, it shall be construed in accordance with Rule A2.4.
- (5) In relation to Material Transfers and Qualifying Transfers, 5.00pm on 7 April 2009 for Submission of Basic Transfer Information and

5.00pm on 30 June 2009 for Submission of Actuarial Transfer Information.

(6) In relation to Full Transfers, 5.00pm on 30 June 2010 for Submission of both Basic Transfer Information and Actuarial Transfer Information.

(7) Where otherwise expressly stated in the Rules.

A2.4 New Schemes and Schemes not yet required to file a Scheme Return

(1) In the case of a New Scheme, where reference is made to information or documents being Submitted by a particular date, references to the Measurement Time or a deadline shall be treated as requiring the information or documents to be Submitted not later than 28 days after the scheme becomes a Scheme, or by such later date as the Board shall require if it calls for information or documents to be Submitted.

(2) In the case of a Scheme which has not, by midnight on 31 March 2010, been required to complete a Scheme Return (a "No Return Scheme"), where reference is made to information or documents being Submitted by a particular date, references to the Measurement Time shall be treated as requiring the information or documents to be Submitted by the date on which the Scheme is required to complete and Submit a Scheme Return or by such earlier date as the Board shall require if it calls for information or documents to be Submitted.

A3. How the Board shall calculate the Levies

A3.1 The SBL and the RBL

The Board shall calculate the SBL and the RBL in respect of each Scheme using Part C of these Rules.

A3.2 Acts and decisions of the Board

Any act or decision of the Board under these Rules may be taken on behalf of the Board of the PPF either by the Chief Executive of the Board or by such member of the Board's staff as he may appoint for the purpose.

A3.3 Information Submitted on Exchange by 5.00pm 31 March 2009

The matters referred to in these Rules shall be assessed, measured, quantified or estimated at such dates and in such manner as is provided for in these Rules. In the absence of such provision, these Rules shall be applied in accordance with the position as it existed at 5.00pm on 31 March 2009.

A4. When are the Levies payable?

The levies in respect of a Scheme are to become payable on the earliest of the following dates:

(1) the date upon which the person liable to pay the levies in respect of the Scheme is sent notification of the amount of the Levies in respect of the

Scheme (or, in the cases in which these Rules provide for a revised notification to be issued, the date upon which that person is sent a revised notification);

(2) the date on which any Scheme ceases to be a Scheme; or

(3) 31 March 2011.

A5. Calculation principles

In performing the calculations required by this determination:

(1) The Board shall round all monetary figures to the nearest penny at each stage of the calculation, save for the final amounts of the SBL and the RBL which shall each be rounded to the nearest pound; and

(2) The Board shall round all figures representing an API to six decimal places (that is, to four decimal places when expressed as a percentage) at each stage of the calculation. Without limitation, this shall apply to (i) all figures derived by taking the average of APIs and to (ii) the product of the weighted APIs and a scaling factor based on Scheme structure in accordance with Section E2 of the Rules.

(3) Where a value which falls to be rounded in accordance with (1) or (2) above falls exactly halfway between two potential rounded figures it shall be rounded upwards.

A6. Actuarial valuations

A6.1 What is meant by "Value" of Scheme assets or Protected Liabilities?

(1) Where a Section 179 Valuation has been Submitted, subject to Rule A6.1(4) and Part F, any reference in these Rules to the Value of the assets or Protected Liabilities is to that value or amount as shown in the Section 179 Valuation which is Submitted as at the Measurement Time but then adjusted in accordance with the Transformation Appendix. This adjustment will be in a manner which in the view of the Board gives effect to the approach set out in the Transformation Appendix to these Rules and results in the Scheme's assets and its liabilities being consistently treated for these purposes.

(2) Where a Section 179 Valuation has not been Submitted but an MFR Valuation has been Submitted, subject to Rule A6.1(4), and Part F of these Rules, any reference to the Value of the assets or Protected Liabilities of the Scheme is to that value or amount as shown in the MFR Valuation which is Submitted as at the Measurement Time but then adjusted in accordance with the MFR Conversion Appendix. This adjustment will be in a manner which in the view of the Board gives effect to the approach set out in the MFR Conversion Appendix to these Rules and results in the Scheme's assets and its liabilities being consistently treated for these purposes.

(3) Where:

(i) neither a Section 179 Valuation nor an MFR Valuation has been Submitted at the Measurement Time;

(ii) Rule A6.2 does not apply; and

(iii) the Board has, after the Measurement Time, but before calculation of the Levies, obtained a Section 179 Valuation in respect of the Scheme,

any reference to the Value of the assets or Protected Liabilities of the Scheme is to that value or amount as shown in the Section 179 Valuation that the Board has then obtained, adjusted first in accordance with the Transformation Appendix and second by reducing the value of the assets by 5%.

(4) Where a Segregated Part has been created by the operation of an option or requirement to segregate on or before 31 March 2010 (whether or not any such Segregated Part has transferred to the PPF) and there is no Section 179 Valuation calculated by reference only to the Segregated Part and/or the remainder of the Scheme:

(i) the Board shall estimate such data in relation to any Segregated Part as it considers appropriate for the purpose of assessing the Value of the assets or Protected Liabilities of the Segregated Part by multiplying the equivalent data for the entire Scheme by A/B. A shall be the number of Allocated Members of the Employer for that Segregated Part; B shall be the total number of Members in the entire Scheme;

(ii) the Board shall estimate such data in relation to the remainder of the Scheme as it considers appropriate for the purpose of assessing the Value of the assets or Protected Liabilities of the Segregated Part by multiplying the equivalent data for the entire Scheme by C/D. C shall be the total number of Members who are not Allocated Members of the Employer for that Segregated Part (including for the avoidance of doubt any Member not formally attributed to any current Employer). D shall be the total number of Members in the entire Scheme. Rule E4.1 shall apply when determining the number of Allocated Members of each Employer in relation to a Scheme; and

(iii) where there is no Section 179 Valuation for the entire Scheme, the approach set out in this Rule A6.1(4) shall be applied in conjunction with Rule A6.1(2) (use of Minimum Funding Requirement data adjusted in accordance with the MFR Conversion Appendix) in order to estimate the assets and Protected Liabilities of the Segregated Part and the remainder of the Scheme.

A6.2 Schemes which are not yet obliged to complete a Section 179 Valuation

Where no Section 179 Valuation has been Submitted in relation to a Scheme but where the trustees are not obliged to complete a Section 179 Valuation at or before the Measurement Time, the Board may obtain from the trustees of that Scheme such information as will allow the Board to make a determination of the

Value of the assets or Protected Liabilities of the Scheme equivalent to that in Rule A6.1.

Part B – The Board's discretionary powers

B1. Where the Levies cannot be calculated under these Rules

B1.1 When does this Rule B1 apply?

(1) It is intended that the provisions contained in these Rules should in all cases permit the calculation of the amount of the Levies in respect of a Scheme.

(2) In any exceptional situation for which these Rules fail to make the provision required for a calculation of the Levies to be performed, this Rule B1 applies.

(3) This Rule B1 also applies in any case where the Board is unable to obtain any item of information which would normally be required for the application of these Rules.

B1.2 How will the Board calculate the Levies?

Where this Rule B1 applies, the Board hereby determines that the calculation of the Levies shall be performed in such manner as, in the opinion of the Board, is:

(1) reasonably practicable for the Board; and

(2) best gives effect in that situation to the general approach laid down by these Rules.

B2. Correction by the Board

B2.1 When could data be corrected?

This Rule B2.1 applies if it appears to the Board that either:

(1) the information supplied for or used in the calculation of the Levies is incorrect in a material respect;

(2) a notification required by or under a certificate in relation to Contingent Assets has not been duly given; or

(3) a certificate or declaration given for the purposes of these Rules was improperly given or contained information which was incorrect in a material respect.

B2.2 Correction of the data

(1) Where Rule B2.1 applies, the Board may calculate the Levies on the basis of alternative information which it then treats as correct for the purposes of these Rules. The Board may review and revise the amount of the Levies calculated in respect of a Scheme but it shall not be under an obligation so to act.

(2) The Board is under no obligation to take into account corrected information merely because the Scheme has been disadvantaged by the failure of those acting on its behalf to supply correct information at the proper time.

(3) For the purposes of Rule B2.1(1), information is not incorrect where it is correct and legitimate in itself, but it would have been open to the person supplying it to supply some different or additional information which might have caused these Rules to be applied differently.

B2.3 What if a certificate or declaration is incorrect?

(1) Where Rule B2.1(3) applies, in calculating the Levies in respect of the relevant Scheme the Board may disregard the relevant certificate or declaration if it believes that it has been improperly given.

(2) Where Rule B2.1(3) applies, in calculating the Levies in respect of the relevant Scheme the Board may disregard any information in the certificate or declaration, which is believed to be incorrect.

B3 Reliance on information

B3.1 The Board may obtain further information

The Board may, at any time prior to the calculation or any recalculation of the Levies in respect of a Scheme, take such steps as it thinks fit to obtain further or amended information for the purposes of that calculation or recalculation.

B3.2 The Board may fill in gaps in its information

If, at the time of any Calculation of the levy in respect of a Scheme, any information necessary for such Calculation has not been Submitted in the manner or format or at the time anticipated by these Rules, then the Board may instead use equivalent information Submitted or provided in a different manner or format or at a different time.

B3.3 The Board's powers in this Rule B3 are discretionary

The Board is under no obligation to use the powers in B3.1 and/or B3.2 where the relevant information has not been Submitted on or before the relevant Measurement Time and will not do so merely because a Scheme has been disadvantaged by the failure of those acting on its behalf to Submit information by the relevant deadline.

B4 Disruption in the delivery of information

B4.1 Without prejudice to Rule B3, the Board may at its discretion take account of information Submitted after any applicable deadline but only in circumstances where it appears to the Board that:

(1) The information was despatched at an appropriate time, but was delayed or lost in transit; or

(2) Both

(a) the provider of the information was prevented from meeting the deadline by the temporary inaccessibility of the PPF website or Exchange, or the interruption of electronic communications, or other like cause; and

(b) the information was Submitted as soon as reasonably practicable thereafter.

B5 Partially Guaranteed Schemes

B5.1 When does this apply?

This Rule B5 applies where the Board considers it is necessary for it to obtain from the trustees of a Partially Guaranteed Scheme such information as will allow the Board to make what is in its view an appropriate determination of the assets and protected liabilities of the Unsecured Part.

B5.2 What will the Board do?

(1) The information referred to in rule B5.1 shall be used by the Board in substitution for the Section 179 Valuation falling within Rule A6.1 or the Value as defined in Rule A6.1.

(2) In calculating the Levies for a Partially Guaranteed Scheme, the Board may apply these Rules with such modifications as appear to it appropriate for the purpose of ensuring that the Levies payable in respect of the Scheme correspond so far as reasonably practicable to the amounts which would have been payable if the Unsecured Part had been a separate Scheme.

B6 Multi-Employer Schemes

B6.1 Zero Levies will not automatically be Scheme-wide

In the case of a Multi-Employer Scheme, the Board may apply Rule C3.3 with such modifications as appear to it appropriate for the purpose of ensuring that:

(1) zero Levies are only applied to the Segregated Parts (if any) to which that Rule C3 applies; and

(2) appropriate Levies are charged to the remainder (if any) of the Scheme.

B7 Further guidance

Further guidance may be published by the Board as to how it may use its discretionary powers in these Rules, but such guidance will only provide examples and does not bind the Board in how it approaches any individual case.

Part C – How much will the Levies be?

C1. SBL formula

C1.1 Subject to Rule C3.3, the SBL in respect of a Scheme shall be:

L x 0.000145

C1.2 L shall be the Amount of the Scheme's Protected Liabilities.

C2. RBL formula

C2.1 Subject to Rules C3, D2 and D3, the RBL in respect of a Scheme shall be:

U x P x R x C

C2.2 U shall be the underfunding of the Scheme and is calculated using Rule C4. P shall be the insolvency probability associated with the Scheme Employer(s) and is calculated using Rule C6. R shall be 0.8 because that is the proportion of the Levies intended to be risk-based for the 2010/11 levy year. C shall be 1.64 because that is the "risk-based levy scaling factor" for the 2010/11 Levy Year.

C3. Variations to the SBL and RBL formulae

C3.1 The maximum RBL in respect of the Scheme is 0.005 x the Value of the Scheme's Protected Liabilities, because that is the "RBL cap" for the 2010/11 Levy Year.

C3.2 If the Scheme is authorised by the Board under section 153 of the Act to continue as a closed Scheme, the RBL shall be zero.

C3.3 If the Scheme is a Failed Scheme the SBL shall be zero and the RBL shall be zero.

C3.4 For a New Scheme, subject to Rules C3.5 to C3.7 inclusive, the SBL and RBL shall be the product of multiplying, respectively, the amounts shown in Rule C1.1 and C2.1 by N/365 where N is the number of days during the 2010/11Levy Year for which the New Scheme is a Scheme.

C3.5 Unless they refer to provision of information or documents, in relation to a New Scheme, references in these Rules to the Measurement Time, shall be read as references to the first date on which the New Scheme was a Scheme.

C3.6 This Rule C3.6 applies if the Board is satisfied that:

(1) the New Scheme is the successor to the rights and liabilities of a Scheme which existed on 1 April 2010 ("the Predecessor Scheme") or to some substantial part of the rights and liabilities of such a Scheme;

(2) the Levies which are or will be payable in respect of the Predecessor Scheme sufficiently take account of the assets and liabilities of the New Scheme; and

(3) that the Levies in respect of the Predecessor Scheme either have been paid or will be promptly paid.

Where this Rule C3.6 applies the Board may determine that the Levies in respect of the New Scheme shall be nil.

C3.7 New Scheme is not materially underfunded

Where the Board considers that both:

(1) no Section 179 Valuation information is conveniently available in respect of a New Scheme; and

(2) it is unlikely that the New Scheme is materially underfunded at the relevant time

the Board may determine that the SBL and/or the RBL shall be nil.

C4 How is U calculated?

U is calculated by determining the Value of a Scheme's assets (**A**) expressed as a percentage (**%**) of the Value of the Scheme's Protected Liabilities (**PL**), and applying the table below.

Value of the Scheme's assets	***U=***
A < (120% of PL)	(PL x 1.21) - A
(120% of PL) ≤ A < (125% of PL)	1% of PL
(125% of PL) ≤ A < (130% of PL)	0.75% of PL
(130% of PL) ≤ A < (135% of PL)	0.50% of PL
(135% of PL) ≤ A < (140% of PL)	0.25% of PL
A ≥ (140% of PL)	0

In this Rule C4, **A** shall include the Deficit-Reduction Contributions figure which is stated in the most recently Submitted compliant certificate (if any) under Rule D1.

C5 What is a Failed Scheme?

A Scheme is a Failed Scheme if it meets all of the criteria in this Rule C5.

C5.1 Failure notice received

A Scheme meets the criteria in this Rule C5.1 if, no later than midnight on 31 March 2010, the Board has either:

(i) received a Scheme failure notice, issued under Section 122(2)(a) of the Act; or

(ii) issued such a notice pursuant to Section 124 of the Act; or

(iii) issued a Scheme failure notice under Section 130(2) of the Act.

C5.2 No withdrawal notice

A Scheme meets the criteria in this Rule C5.2 if, before the calculation or recalculation of the levies for the Scheme concerned, the Board has neither:

(i) received a withdrawal notice issued under Section 122(2)(b) of the Act; nor

(ii) issued a withdrawal notice under Section 130(3) of the Act.

C5.3 Failure notice must be binding

A Scheme meets the criteria in this Rule C5.3 if, before the calculation or recalculation of the levies for the Scheme concerned, the Scheme failure notice (as referred to in C5.1) has become binding either:

(1) in accordance with Section 125; or

(2) in accordance with Section 130(6), as the case may be.

C6 Assumed insolvency probability

C6.1 What is P?

P is the insolvency probability associated with the Employer(s) in relation to the Scheme. It shall be calculated as in Part E of these Rules subject to a maximum value of 0.03.

C7 Re-issued invoices

C7.1 What if a payment has been made?

Where the Board issues a revised notification of the amount of the Levies in respect of the Scheme, any amount already paid in respect of that Scheme pursuant to any previous notification shall be deemed deducted from the amount due pursuant to the revised notification.

D Reducing the levy by reducing risk

D1 Deficit-Reduction Contributions

D1.1 When does this Rule apply?

This Rule D1 applies where:

(i) a certificate in respect of a Deficit-Reduction Contribution that complies with Rule D1.2 has been Submitted by the Measurement Time; or

(ii) there has been provided or Submitted a certificate in respect of a Deficit-Reduction Contribution which complied with the requirements and deadlines set out in a Previous Determination and any relevant guidance issued by the Board at the time of such certificate.

D1.2 What must the certificate of Deficit-Reduction Contributions contain?

The certificate must:

(1) contain the information specified in Deficit-Reduction Contributions Appendix, which must be calculated in accordance with the rules set out in that Appendix;

(2) refer to, and be calculated by reference to, the same Section 179 Valuation or MFR Valuation of the Scheme as is used under Rule A6.1, or in a case to which Part F of these Rules applies, to the relevant Post-Transfer Valuation.

D1.3 Effect of Deficit-Reduction Contributions on the Levies

Where this Rule D1 applies, for the purposes of these Rules the value of the assets of the Scheme shall be increased by the Deficit-Reduction Contributions figure which is stated in the most recently Submitted compliant certificate.

D2 Current Contingent Assets

D2.1 When does this Rule D2 apply?

This Rule D2 applies where the Board is satisfied that there has been Submitted by or on behalf of the Scheme trustees, before the relevant Measurement Time:

(1) a Contingent Asset Certificate; and

(2) satisfactory hard copy supporting documents, as required by the Contingent Asset Appendix.

D2.2 What is a Contingent Asset?

A "Contingent Asset" must be one of either:

(1) a Type A Contingent Asset, which is a guarantee from a parent company or any relevant associated undertaking in the Agreed Form and which complies with paragraphs 6 and 7 of the Contingent Asset Appendix;

(2) a Type B Contingent Asset, which is a security in the Agreed Form and which complies with the paragraphs 8 to 11 inclusive of the Contingent Asset Appendix;

(3) a Type C Contingent Asset, which is a letter of credit or bank guarantee in favour of the Scheme trustees in the Agreed Form and which complies with the paragraphs 12 to 16 inclusive of the Contingent Asset Appendix,

and in all cases it must comply with Rule D2.3.

D2.3 Further provisions about Contingent Assets

(1) The Contingent Asset must comprise or result from an arrangement which becomes or became effective no later than 1 April 2010 except in the case of a New Scheme where it may take effect on the date on which the New Scheme becomes a Scheme if that is later.

(2) The Contingent Asset must appear to the Board to reduce the risk of compensation being payable from the Board in the event of an insolvency event occurring in respect of an Employer in relation to the Scheme.

D2.4 The Contingent Asset Certificate

In order to be a Contingent Asset Certificate, a certificate must:

(1) (subject to Rule D2.4(4)) contain the information set out in paragraphs 30 to 48 inclusive of the Contingent Asset Appendix which is relevant to the type of Contingent Asset;

(2) certify that the Scheme benefits from one or more Contingent Assets as specified in Rule D2.2;

(3) (subject to Rule D2.4(4)) provide all the information and certifications required by Exchange in relation to the relevant Contingent Asset and

(4) if the certificate required on Exchange requests less or different information or certifications than those set out in the Contingent Asset Appendix, the Board reserves the right to request the further or different information required in accordance with the Contingent Asset Appendix and to reject the certificate if such information is not supplied.

D2.5 Are Contingent Assets from previous years accepted?

(1) Where one or more contingent assets was recognised by the Board for the purposes of calculating a Scheme's RBL for a levy year ending on or before 31 March 2010 this Rule D2.5 applies.

(2) The Board shall not give that Scheme credit for Contingent Assets for the 2010/11 Levy Year unless:

(i) it gave credit for it in the 2009/10 Levy Year;

(ii) the relevant requirements of Rule D3.are satisfied; and.

(iii) the Contingent Asset is re-certified by a Contingent Asset Certificate being submitted by or on behalf of the trustees on or before the Measurement Time and

(iv) the requirements of the Contingent Asset Appendix which are relevant to Contingent Assets which have been recognised in a previous Levy Year are satisfied.

D2.6 What is the effect of the Board recognising a Contingent Asset for the 2010/11 Levy Year?

The Board shall take into account a Contingent Asset for the purposes of calculating the Scheme's Levies for the 2010/11 Levy Year and calculate the Scheme's RBL in accordance with the Contingent Asset Appendix but only so far as it appears to the Board that the asset meets all the relevant provisions of this Rule D2 and the Contingent Asset Appendix.

D3 Cancellation, amendment and replacement of contingent assets

D3.1 No recognition of any contingent asset unless previous year's contingent assets still in place and not weakened

(1) This Rule D3.1 shall apply if, in respect of a Scheme, the Board gave credit for one or more contingent assets (each referred to below as the "Original Contingent Asset") for the purposes of calculating the RBL for the 2009/10 Levy Year.

(2) Where this Rule D3.1 applies then, notwithstanding any other provision of the Rules, the Board shall not take into account any contingent asset for the purposes of that Scheme's Levies for the 2010/11 Levy Year unless:

(i) that Scheme certifies to the Board that each Original Contingent Asset satisfies the requirements for recognition for the 2010/11 Levy Year; and,

(ii) the condition specified in Rule D3.1(3) below is satisfied in relation to each Original Contingent Asset.

(3) The condition referred to in Rule D3.1(2) is that no amendments have been made to the terms of the Original Contingent Asset since it was last certified to the Board or, if any such amendments have been made, the Board is satisfied that they do not reduce the value of that Original Contingent Asset.

(4) This Rule D3.1 is subject to Rule D3.3.

D3.2 Withdrawal of recognition where contingent asset cancelled or amended during 2010/11 Levy Year

(1) This Rule D3.2 shall apply if the trustees of a Scheme notify the Board, or if the Board otherwise becomes aware, that at some time during the 2010/11 Levy Year the information contained in a Contingent Asset Certificate has ceased or will cease to be true and correct.

(2) Where this Rule D3.2 applies, if:

(i) the instrument representing the contingent asset has been or is to be terminated;

(ii) its terms have been or are to be varied in such a way as will in the opinion of the Board reduce the value of the asset; or

(iii) any other step has been or is to be taken which has had or will have substantially the same effect,

the Board will calculate the RBL in respect of the Scheme as if that contingent asset had not existed at the Measurement Time (that is to say, the contingent asset shall be wholly disregarded for the purposes of calculating the RBL for the 2010/11 Levy Year).

(3) This Rule D3.2 is subject to Rule D3.3.

D3.3 Is there material detriment to the Scheme?

(1) If, in relation to a Scheme, the Board would be required to recognise one or more contingent assets for the purposes of the 2010/11 Levy Year, and is prevented from doing so only by the operation of Rule D3.1 or, as the case may be, Rule D3.2, then the Board may nonetheless recognise any or all of those contingent assets for the purposes of the 2010/11 Levy Year, in full or in part, if Rule D3.3(2) applies.

(2) This Rule D3.2(2) applies if in the opinion of the Board the condition specified in Rule D3.3(3) is met either:

(i) in the case of Rule D3.1, comparing the position at 1 April 2010 with the position at 1 April 2009; or

(ii) in the case of Rule D3.2, comparing the position following each relevant change to any contingent asset with the position at 1 April 2010.

(3) The condition referred to in Rules D3.3(1) and (2) above is that any action or inaction of the trustees in relation to the contingent asset was reasonable and did not have a materially detrimental effect on the position of the Scheme in all the circumstances. For this Rule D3.3(3), "action or inaction" includes without limitation in consenting to amendment or termination of the instrument

constituting a contingent asset or in failing to enforce rights available to them pursuant to any such instrument. For this Rule D3.3(3), the "position of the Scheme in all the circumstances" includes without limitation:

(i) any changes in the funding level of the Scheme (ignoring contingent assets) over the period in question;

(ii) the absolute funding level of the Scheme;

(iii) the implementation of new contingent assets in substitution for or in addition to those that were already in place; and

(iv) the effect of the trustees' action or inaction when considered together with the effect of any earlier changes in relation to relevant contingent assets.

D3.4 Position where equivalent rules have previously been applied

It is the Board's intention that where recognition of an otherwise acceptable contingent asset is prevented or restricted by virtue of rules D3.1 or D3.2, or the equivalent of either of them in any Previous Determination, then the Scheme should not receive any recognition for contingent assets in any subsequent Levy Year unless and until in the opinion of the Board the position of the Scheme (including any continuing contingent assets for which recognition is sought) is no worse than it was prior to the event which caused Rule D3.1 or D3.2 to apply. Recognition of contingent assets for the 2010/11 Levy Year shall be restricted accordingly.

D3.5 General provisions regarding this Rule D3

For the purposes of this Rule D3:

(1) A change in the value of real estate or securities comprising a Type B asset, after the date of the valuation given in the Contingent Asset Certificate, is not a matter which falls to be notified to the Board, and will not lead to any recalculation of the RBL.

(2) A reduction in the face value of a Type C(ii) contingent asset in accordance with its terms upon the making of a Planned Contribution (as defined in the Type C(ii) contingent asset Agreed Form) shall not be regarded as a variation in the terms of that Type C(ii) contingent asset, is not a matter which falls to be notified to the Board during the Levy Year, and will not lead to any recalculation of the RBL.

(3) The RBL will not be recalculated if steps are taken to increase the value of a contingent asset.

(4) The replacement of a Type C(i) contingent asset which has expired, by another Type C(i) contingent asset of the same or greater value, whether issued by the same or a different counterparty, shall be deemed to the continuation of the expired asset for the purposes of applying Rules D3.1 and D3.2.

(5) The “value” of a contingent asset shall, in the case of a Type A contingent asset, take into account the covenant strength of the guarantor(s) as well as the amount guaranteed.

Part E – Measuring Employer Insolvency Risk

E1 How to calculate P

This Rule E1 sets out how to calculate P for the purposes of Rule C2.1 and is subject to Rule E3 (API Appeals).

E1.1 Single Employer Schemes

In the case of a Scheme with a single Employer, P is the API of that Employer, which is calculated in accordance with the following Rules, as applicable. Such Rules shall be operated, if applicable, in the following order until an API has been calculated:

(1) Rule E2.1 (UK Failure Scores);

(2) Rule E2.2 (Non-UK Failure Scores);

(3) Rule E2.4 (Risk Indicators);

(4) Rule E2.5 (Scheme averages);

(5) Rule E2.6 (Industry averages); and

(6) Rule E2.7 (Blended averages).

E1.2 Multi-Employer Schemes

In the case of a Scheme with more than one Employer, the API of each Employer is calculated as set out in Rule E1.1 and P is calculated as set out in Rule E4.3.

E1.3 New, Recent and No Return Schemes

In the case of a New Scheme, a Recent Scheme, or a No Return Scheme, the API of each Employer which has been Submitted and which existed at the Measurement Time shall be calculated as set out in Rule E1.1 and the API of each Employer which did not exist at the Measurement Time shall be calculated as set out in Rule E1.1(4) onwards.

E2 How to calculate APIs

E2.1 UK Failure Scores

(1) This Rule E2.1 applies where DBUK is able to assign a UK Failure Score to an Employer.

(2) Where this Rule E2.1 applies, the API of that Employer shall be the API associated with the UK Failure Score which applies to that Employer as shown in table 1 of the API Appendix.

(3) The UK Failure Score which applies to an Employer shall be the value which DBUK informs the Board that it has assigned to that Employer as its UK failure score. For the avoidance of doubt, UK Failure Scores to be provided to the Board are, subject to Rule E2.3 (Severe risk parents), to be the normal UK failure score which was assigned to that Employer by DBUK in the ordinary course of its business as at the Measurement Time, (or, if different, the score which would have been assigned based on data provided to DBUK at least 24 hours before the Measurement Time).

E2.2 Non-UK Failure Scores

(1) This Rule E2.2 applies where DBUK is unable to assign a UK Failure Score to an Employer, but DBUK or one of its associated undertakings is able to assign a Non-UK Failure Score.

(2) Where this Rule E2.2 applies, the API of that Employer shall be the API associated with the UK Failure Score which maps from the Non-UK Failure Score which applies to that Employer, as shown in tables 1 and 2 of the API Appendix.

(3) The Non-UK Failure Score which applies to an Employer shall be the value which DBUK or, where applicable, the relevant associated undertaking informs the Board that it has assigned to that Employer as its non-UK failure score. For the avoidance of doubt, Non-UK Failure Scores to be provided to the Board are, subject to Rule E2.3 (Severe Risk Parents), to be the normal non-UK failure score which was assigned to that Employer by DBUK (or the relevant associated undertaking, as the case may be) in the ordinary course of its businesses as at the Measurement Time, (or, if different, the score which would have been assigned based on data provided to DBUK or the relevant associated undertaking, as the case may be, at least 24 hours before the Measurement Time).

E2.3 Severe risk parents

The Board has instructed DBUK that Failure Scores should be those which would be assigned to the Employer if there were to be disregarded any rule or practice whereby DBUK normally limits the maximum failure score obtainable by a company where it is a subsidiary of another company and that parent company is regarded as being at severe risk of insolvency.

E2.4 Risk Indicators

(1) This Rule E2.4 applies where there is an Employer to which DBUK would not in the ordinary course of business assign a Failure Score, but to which an associated undertaking of DBUK would expect to assign a Risk Indicator.

(2) Where this Rule E2.4 applies, DBUK will provide the Board with the "Risk Indicator". The "Risk Indicator" is assigned to the Employer in question by the relevant associated undertaking of DBUK in the absence of a local failure score or local equivalent, based on data provided to the relevant associated undertaking at least 24 hours before the Measurement Time.

(3) In such cases the API associated with the Risk Indicator will be such as the Board has been advised by DBUK is appropriate for the purposes of achieving equivalence with the API Appendix to these Rules.

E2.5 Scheme averages

(1) This Rule E2.5 applies where there are at least 10 Employers participating in the Scheme, and where application of Rules E2.1 to 2.4 inclusive has failed to produce a Failure Score or Risk Indicator for all Employers but has produced a Failure Score or Risk Indicator for at least 90% of those Employers (or at least 50% if there are more than 100 Employers in relation to the Scheme).

(2) Where this Rule E2.5 applies, the API for each Employer for whom no Failure Score or Risk Indicator has been produced shall be the mean API of the other Employers in relation to that Scheme in respect of whom Failure Scores or Risk Indicators have been produced.

E2.6 Industry averages

(1) This Rule E2.6 applies where Rules E2.1 to E2.5 inclusive do not produce a Failure Score or Risk Indicator for a particular Employer.

(2) Where Rule E2.6 applies, the API for that Employer will be based upon the procedure in this Rule E2.6.

(3) The Employer will be assigned by the Board to whatever industry group appears most appropriate. For this purpose, if the Board is provided with a four digit 1972 SIC Code by DBUK, the first two digits of that code will be used and if the Board is provided with a three digit 1972 SIC Code by DBUK, the first digit of that code, preceded by a zero, shall be used.

(4) The API for an Employer shall be the probability which DBUK notifies to the Board as being the Median API for all UK-domiciled Employers within that industry group in respect of whom it has provided the Board with UK Failure Scores for the purposes of the 2010/11 Levy Year.

E2.7 Blended averages

(1) This Rule E2.7 applies where the Board either:

(i) is unable to determine the most appropriate SIC Code for an Employer; or

(ii) has not been provided with a Failure Score for any Employers within the industry group to which that Employer would be assigned,

(2) Where this Rule E2.7 applies, the API for the Employer shall be the probability which DBUK notifies to the Board as being the Median API for all UK-domiciled Employers (irrespective of industry group) in respect of whom it has provided the Board with Failure Scores for the purposes of the 2010/11 Levy Year.

E2.8 Medians

For the purposes of Rule E2.6 and E2.7, Medians shall be based on the same set of probability data as used by the Board for the purposes of calculating the scaling factor in the 2009/10 Levy Year . The Board may instruct DBUK to exclude specified classes of Failure Score which it regards as unrepresentative when calculating the relevant Medians. For the avoidance of doubt, in determining such Medians DBUK shall not include any Employer to which a Scheme Average API has been applied in accordance with Rule E2.5.

E3. DBUK appeals

E3.1 When does this Rule E3 apply?

This Rule E3 can only apply in relation to a decision of DBUK, where DBUK informs the Board that:

(1) it has made a decision under either of Rules E3.3 or E3.4;

(2) that decision was made for a reason in Rule E3.5; and

(3) that decision was made after receiving representations made to it by or on behalf of the Scheme trustees or Employer which comply with Rule E3.2(1), or following a request by the Board which complies with Rule E3.2(2).

For the avoidance of doubt the assignment of an Employer to an industry group by the Board under Rule E2.6(3) is not a decision of DBUK for the purposes of this Rule E3.

E3.2 Representations and requests for an appeal

(1) Where representations are made by the Scheme trustee or Employer:

(i) any representations must first be made to DBUK (or, where applicable, an associated undertaking) by or on behalf of the Scheme trustees or Employer not later than 28 days after the date shown on the notification of the Levies in respect of the 2010/11 Levy year; and

(ii) the relevant applicant must also comply with any other relevant deadlines throughout DBUK's appeal process as may be stipulated by DBUK.

(2) A request by the Board must be made no later than 31 March 2011.

E3.3 DBUK may act if the score is incorrect

DBUK may decide for a reason in Rule E3.5 that the Failure Score or other measure applied in accordance with Rules E2.1 to E2.7 inclusive assigned to an Employer as at the Measurement Time, was incorrect.

E3.4 DBUK may review cases using averages across Employers

DBUK may decide, for a reason in Rule E3.5, that either:

(1) the procedures set out in Rules E2.5 to E2.7 inclusive have produced a result which was incorrect as compared with the result intended by those procedures; or

(2) these Rules prescribed that a different procedure should have been applied.

E3.5 The reasons applicable for Rule E3.3 and E3.4

DBUK may only act if it decides that its original decision was based upon information which, as at the Measurement Time, was incorrect or incomplete by comparison with the information which should normally have been taken into account by DBUK in assigning a Failure Score or other measure at that date:

(1) because information which would normally have been available to, and would normally have been taken into account by, DBUK at that date was not available to DBUK; or

(2) because such information was available to DBUK but was nonetheless not taken into account in assigning the Failure Score or other measure.

E3.6 What happens if there is a new Failure Score (or other measure)?

(1) Where this Rule E3 applies, the Failure Score (or other measure) shall be the higher or lower Failure Score (or other measure) which DBUK informs the Board ought to have been assigned to the Employer as at the Measurement Time.

(2) Where this Rule E3 applies the Board will, where necessary, issue a revised notification of the amount of the Levies in respect of the Scheme.

E4. Insolvency Risk for Multi-Employer Schemes

E4.1 Membership numbers

(1) The number of Allocated Members of a Scheme for each Employer is to be determined by reference to the information Submitted as at the Measurement Time.

(2) Such Submitted information will be deemed to be correct if it is compiled in accordance with the relevant help files in Exchange as at the Measurement Time.

(3) "Allocated Member" includes Pension Credit Members allocated to an Employer using the definition of "Pension Credit Member" in these Rules.

E4.2 Categorisation of Multi-Employer Schemes

(1) Each Multi-Employer Scheme is to be determined as either a "Last Man Standing Scheme", a "Partial Segregation Scheme" or a "Centralised Scheme" in accordance with the information Submitted for the Scheme as at the Measurement Time.

(2) A "Last Man Standing Scheme" is a Scheme:

(i) which is not a Centralised Scheme; and

(ii) the rules of which do not include a requirement or discretion for the trustees to segregate assets on cessation of participation of an Employer.

(3) A "Partial Segregation Scheme" is a Scheme the rules of which include a requirement or discretion for the trustees to segregate assets on cessation of participation of an Employer.

(4) A "Centralised Scheme" is a Scheme:

(i) which is established as a centralised scheme for non-associated Employers, and its rules do not include a requirement or discretion for the trustees to segregate assets on cessation of participation of an Employer;

(ii) which is stated in the data Submitted as at the Measurement Time as being such a Scheme; and

(iii) in relation to which the Board has, if requested by the Board, received satisfactory evidence in support of the statements in (i) before the calculation of the Levies for that Scheme.

E4.3 How is P calculated for such Schemes?

(1) In the case of a Last Man Standing Scheme, P shall be 0.9 multiplied by the weighted average of API for each Employer in relation to the Scheme.

(2) In the case of a Partial Segregation Scheme, P shall be the weighted average of API for each Employer.

(3) In the case of a Centralised Scheme, P shall be the weighted average of API for each Employer multiplied by A/B where A is the largest number of Members of the Scheme in relation to whom any one Employer is the Employer, and B is the total number of Members of the Scheme.

(4) In each case, the weighted average shall be calculated by:

(i) separately determining the API for each Employer in accordance with Rules E1, E2 and E3, and then

(ii) calculating the weighted average API for all Employers, where the weightings are equal to the number of Allocated Members for each Employer, divided by the total number of Members.

Part F – Special Rules for Scheme transfers

F1 When do these special rules apply?

F1.1 Which transfers are covered by these Rules?

(1) This Part F of the Rules sets out special rules which apply where there has been a Relevant Transfer or a Qualifying Transfer. A "Relevant Transfer" is either a Full Transfer or a Material Transfer.

(2) The Board shall not be obliged to take into account any transfers of assets or liabilities between Schemes which are not Relevant Transfers or Qualifying Transfers, save where it was required to do so under the terms of a Previous Determination.

F1.2 What are Relevant Transfers?

(1) A "Full Transfer" is where, on any date or dates prior to 1 April 2010:

(i) there are fewer than two Members remaining in a Scheme (the "Transferring Scheme") because it has transferred (in groups of two or more Members) all of its other Members to one or more other Schemes (each, the "Receiving Scheme"); and

(ii) if the circumstances in (i) have arisen as a result of more than one such transfer, all such transfers took place within the same Levy Year

and there remain fewer than two Members in the Transferring Scheme on 1 April 2010.

(2) A "Material Transfer" is where:

(i) Rule F1.2 (i) does not apply;

(ii) on any date or dates prior to 1 April 2009 a Scheme (the "Transferring Scheme") has transferred liabilities for two or more Members to another Scheme (the "Receiving Scheme"); and

(iii) the value of the assets transferred is greater than or equal to each of:

(a) 20% of the assets of the Transferring Scheme as stated in the last MFR, Section 179 or Post-Transfer Valuation (whichever is the latest) before the First Transfer Date;

(b) 20% of the sum of:

(I) the assets of the Receiving Scheme as stated in the last MFR, Section 179 or Post-Transfer Valuation (whichever is the latest) before the First Transfer Date; and

(II) the transferred assets;

(c) £20 million.

F1.3 What is the effect of a Relevant Transfer?

Where there has been a Relevant Transfer this Part F of the Rules applies to the Transferring Scheme and the Receiving Scheme.

F2 The Board's expectation for additional information

F2.1 Duties on Scheme trustees

(1) If there is no Section 179 Valuation for the Transferring Scheme and/or the Receiving Scheme which reflects the Relevant Transfer and is Submitted at the Measurement Date, the trustees of the Transferring Scheme and/or the Receiving Scheme (as applicable) shall be expected to agree and Submit the information in Rules F2.2 and F2.3 by the relevant deadlines set out in those Rules.

(2) Without prejudice to Rule F2.1(1), the Board may generally or in the case of any Scheme require that any such information is:

(i) only accepted if confirmed as accurate by the trustees of both the Transferring Scheme and Receiving Scheme; and

(ii) supplied or verified in such other form and at such other time or times as it may from time to time prescribe.

F2.2 Basic Transfer Information

The Basic Transfer Information is specified in Part A of the Transfers Appendix attached to these Rules and must be agreed and Submitted by or on behalf of the Schemes' trustees by the following deadlines:

(1) In the case of a Full Transfer, by 5.00pm on 30 June 2010; and

(2) In the case of a Material Transfer, by 5.00pm on 7 April 2009,

F2.3 Actuarial Transfer Information

The Actuarial Transfer Information is specified in and calculated in accordance with the provisions set out in Part B of the Transfers Appendix attached to these Rules. The Actuarial Transfer Information must be agreed and Submitted by or on behalf of the Schemes' trustees by the following deadlines:

(1) In the case of a Full Transfer, by 5.00pm on 30 June 2010; and

(2) In the case of a Material Transfer, by 5.00pm on 30 June 2009.

F2.4 The Board's objective

(1) This Rule F2.4 applies where all of the information in Rules F2.2 and F2.3 is Submitted by the relevant deadline.

(2) Where this Rule F2.4 applies, the Board will make what is in its view an appropriate determination of the Value of the assets and/or Protected Liabilities of the Transferring Scheme and the Receiving Scheme as at 31 March 2009.

(3) The determination referred to in Rule F2.4(2) will be made taking the Relevant Transfer into account and giving best effect to the general approach set out in the Transformation Appendix.

(4) Any determination made under Rule F2.4(2) shall be used in substitution for the valuation the Board would otherwise use in accordance with Rule A6.

F2.5 Absence of information

(1) Where any of the information in Rule F2.2 and/or F2.3 has not been Submitted by the relevant deadline (or such later date as the Board may in its discretion allow in any particular case), this Rule F2.5 applies.

(2) Where this Rule F2.5 applies, the Board may make a determination of the Levies in accordance with the "Poor Data Methodology". The "Poor Data Methodology" is the methodology set out in Part C of the Transfers Appendix to these Rules.

F3 Qualifying Transfers

F3.1 What are Qualifying Transfers?

A "Qualifying Transfer" is where:

(1) on any date or dates prior to 1 April 2009, a Scheme (the "Transferring Scheme") has transferred some of its liabilities for two or more Members to another Scheme (the "Receiving Scheme") or to another pension scheme or insurance company;

(2) that transfer is not a Relevant Transfer; and

(3) the value of the assets transferred exceeds one or more of:

(i) 5% of the asset value of the Transferring Scheme as stated in the last MFR or Section 179 Valuation before the First Transfer Date which is Submitted as at the Measurement Time;

(ii) 5% of the asset value of the relevant Receiving Scheme as stated in the last MFR or Section 179 Valuation before the First Transfer Date which is Submitted as at the Measurement Time; or

(iii) £1.5 million.

F3.2 Can a Qualifying Transfer be considered?

(1) This Rule F3.2 applies where:

(i) there is a Qualifying Transfer;

(ii) there is no Section 179 Valuation for the Transferring Scheme and/or the Receiving Scheme which reflects the relevant transfer and is Submitted at the Measurement Date; and

(iii) the trustees of the Transferring Scheme and the Receiving Scheme agree and Submit all of the information in Rules F2.2 and F2.3 by the deadlines set out in those Rules which apply to Material Transfers.

(2) Where this Rule F3.2 applies, the Board will make what is in its view an appropriate determination of the Value of the assets and/or Protected Liabilities of the Transferring Scheme and the Receiving Scheme as at 31 March 2009.

(3) The determination referred to in Rule F2.3(2) will be made taking the Qualifying Transfer into account and giving best effect to the general approach set out in the Transformation Appendix.

(4) Any determination made under Rule F3.2(2) shall be used in substitution for the valuation the Board would otherwise use in accordance with Rule A6.

F4 The effect of a Relevant Transfer or a Qualifying Transfer

Where the Board makes a determination under Rule F2.4, F2.5 or F3.2, in respect of each Transferring Scheme and Receiving Scheme to which it applies, the Board shall calculate the SBL and RBL and shall invoice, or re-invoice, as the case may be, based on that determination.

F5 What if there is a subsequent review?

In any case in which the Board is re-considering the calculation of Scheme's Levies under Part B1 or B2 of these Rules, this Rule F6.1 applies. The Board shall also review the Levies of any other Scheme which has been party to the same Relevant Transfer as the Scheme in respect of which the Levies are under review.

The appendices to the Rules are available from the Board's website at http://www.pensionprotectionfund.org.uk/levy/1011_determination/Pages/10-11Determination.aspx.

Annex D: PPF Levy Practice Guide

The Board of the Pension Protection Fund (the "PPF")

PPF Levy Practice Guidance in respect of the financial year 1 April 2010 – 31 March 2011

Guidance on the use of discretionary powers

The determination of the PPF issued under section 175(5) of the Pensions Act 2004 contains a number of discretionary powers for the PPF. This guidance note sets out principles and case studies showing how the PPF expects to exercise those discretionary powers.

This document is not part of the determination and it is not a binding restriction on the way in which the PPF will exercise its powers. The PPF will update this document from time to time in the light of its experience, either for the current levy year or for future years. The PPF will have regard to this document but may decide to depart from it when the circumstances of an individual case make it appropriate to do so or when the PPF is persuaded that the approach indicated in this document is no longer appropriate.

This document is not a binding interpretation of the law, which can only be supplied by the courts.

The first part of this document focuses on the limited circumstances in which the PPF may calculate the levies using something other than data submitted on the Pensions Regulator's Exchange system at the relevant deadline. The second part covers contingent assets, specifically the rules that apply when contingent asset cover is removed, amended or replaced. Finally we include a reminder of how scheme trustees can appeal their invoices, including the exercise of any relevant discretions.

I. DISCRETIONS RELATING TO SCHEME DATA

A. Introduction

As is made clear by the determination, in the vast majority of cases (and except where expressly stated, such as in the case of contingent assets, where hard copy documentation will be equally relevant) the fundamental basis of the calculation of the Levies will be the data submitted on Exchange at the relevant measurement time, together with the data provided to Dun & Bradstreet in respect of that time. Cases for the use of PPF discretion will be exceptional. Most cases will be determined by a straightforward application of the basic rules in the determination.

B. Exercising the discretionary powers

There are a number of different categories of case in which exercise of discretion may be relevant:

1. Cases where it is not possible to produce an invoice which complies with the determination – usually, this will be because the data supplied to the PPF is insufficient.

2. Data errors including (a) cases where the PPF's own plausibility tests indicate that there is an error; and (b) other data errors, that do not fit into category (a).

3. Mistaken analysis/presentation of the scheme's partial winding up provisions or the persons who were the employers in relation to the scheme.

4. Post-deadline changes to information on Exchange and accepting late data.

1. Inability to produce an invoice

This (rare) situation will most commonly arise where the data supplied by the scheme via Exchange is insufficient to allow the calculation of an invoice which complies with the determination. This will usually be dealt with through the application of prudent assumptions e.g. it will be assumed that the scheme is amongst the least well funded schemes.

2. Data errors

The PPF does not generally allow data corrections. Some of the reasons for this are as follows:

- Requests for corrections cause an administrative and cost burden in making changes to our databases and generating new invoices.

- The need to issue new invoices extends the invoicing period and delays the receipt by the PPF of the levies and thereby delays the investment of levy revenue. We are trying to increase stability in the levy estimate, reduce the invoicing period and create conditions in which schemes can know and budget for their invoices in advance. The provision of correct information by the deadlines is essential to achieving this. The sooner the PPF has accurate data on all schemes, the sooner we can validate it and begin invoicing, the shorter the invoicing period, and the closer the amount we collect will be to the levy estimate.

- We also think that it is reasonable to expect schemes to supply us with correct data and to incentivise appropriate behaviour. Schemes and their advisers have had a number of years now to get used to the system and, as a matter of law, are under an obligation to provide correct data.

Notwithstanding this, some sensible exceptions need to be made, so we still reserve the discretion to allow schemes to correct incorrect data or indeed to correct it ourselves. However, in order to achieve the policy aims, these exceptions must be extremely limited. Additionally, the discretion only applies where the information originally supplied was, in fact, incorrect (as opposed to where the scheme could have submitted later information or presented the information more advantageously but chose not to).

(a) Plausibility tests

Over its short history, the PPF has developed a data testing regime designed to flag data which we believe, based on our experience, is likely to be incorrect. Clearly, these tests cannot be designed to cover all data (for example, we cannot test whether a scheme has established who its employers are correctly), but we have tried to develop a significant body of tests. In doing so, we aim to ensure that we are protected to a certain extent from gaming of the levy system. Where possible, we also carry out these tests very shortly after the measurement date, so that we can capture any changes in the scaling factor.

The fact that a test has been triggered does not necessarily mean that the data is incorrect. The tests are designed to flag data which we think is inconsistent or unusual, in some cases, as compared with other data. Nor will tests detect all erroneous data – so schemes should not rely upon them to pick up their errors.

Where a test is triggered, we conduct data cleansing activities on the particular piece of data that is flagged as inconsistent or unusual. In these circumstances, we will contact the trustees or their advisers to confirm whether the data is correct and seek an explanation if it is and the correct data if it is not.

In most cases, where the information referred to in our correspondence is confirmed to be incorrect, we will correct it.

However, equally, in most cases, we will not permit other data (in respect of which no tests have been triggered) to be amended at the same time. If we allowed other corrections once a plausibility test had been triggered, this would render the data deadlines meaningless for any scheme where any plausibility test was triggered. This would not be fair for those for whom no plausibility test was triggered.

(b) Other data errors

In considering whether or not to exercise its discretionary powers, the PPF will consider the following circumstances:

a. The effect of the error on the calculation of the Levies.

b. The reason that erroneous data was validated[15].

c. Responsibility for the erroneous data, including whether any professional indemnity insurance may compensate the scheme.

d. The speed with which the error was identified.

e. The reason for the error.

Where an error has resulted in under-calculation of the levies, the PPF is more likely to exercise its discretionary power to make a data correction, as the underpayment is to the detriment of all other levy payers who have submitted correct data[16]. Where the scheme pays higher levies, as a result of a mistake by someone with responsibility for the scheme, it is not usually unfair to collect and retain the higher levies as the scheme has breached its statutory duty to provide correct information. In a case where the extra cost is caused by the carelessness of professional advisers, the trustees may be able to take action against those advisers for any loss suffered as a result.

[15] In particular, where the scheme can establish that it has had difficulty with Exchange (e.g. the system does not allow correct data to be input or is misleading) and has made an error as a result, the PPF might be more minded to allow the correction.

[16] If it is clear that the scheme has deliberately entered incorrect data in an attempt to reduce their invoice, it might be appropriate to correct the relevant data without anything further needing to be shown.

4. Winding up provisions and employer relationship

The PPF accepts that some of the matters reported through Exchange – such as the nature of winding up provisions and the identity of the employers – are subject to uncertainty and complex analysis. In considering whether or not to exercise its discretionary powers, the PPF will take account of the circumstances set out in 3 above, including taking account of questions as to whether there is a good explanation as to why the incorrect analysis was used.

5. Late data

Exchange allows for an update of information right up to the relevant deadline. Therefore, requests for exercise of discretion based on changes in information which are not updated will not normally be accepted. Notwithstanding this, the Board does retain the right to obtain data from schemes after the relevant deadlines and may exercise this discretion where it considers it expedient to do so.

Additionally, where a communication failure has occurred Rule B4 of the determination may apply. This generally requires evidence that the information was despatched at an appropriate time, but was delayed by the post or by breakdown in electronic communications. For example, where contingent assets hard copy documentation has been sent to us by courier, we would generally expect you to be able to provide us with:

- a copy of the collection receipt from the courier indicating the time of collection by the courier; and

- evidence of the service level requested from the courier.

From these, we could then establish whether the documents were indeed despatched at an appropriate time and were delayed.

C. Examples of corrections

Example 1 – correction request accepted

The ABC Pension Scheme was established in 1998, but had received a transfer from the XYZ Pension Scheme, which was established in 1985. Andrew, the chairman of trustees of the ABC Pension Scheme, was completing the scheme return online, but found that Exchange would not allow him to enter a figure in the "pre 1997" liabilities box. He emailed the PPF's stakeholder support team to let them know that there was a problem and the figure that should be in the box.

When Andrew receives his invoice, it seems quite high and he writes to the PPF's stakeholder support team, the next day, to check what figure had been used for the pre-1997 liabilities, explaining the problem with Exchange and referring to his previous email.

Andrew's correction is granted and his invoice adjusted. The problem here was with Exchange and Andrew could not have been expected to provide accurate data through Exchange.

Example 2 – correction request denied

The DEF Pension Scheme has asked its actuary, John, to fill in the scheme return for it. John asks his temporary secretary to extract the data for the latest s179 valuation from his firm's system. Unfortunately, he gives the secretary the wrong PSR number and he fails to check her work. As a result, John submits the wrong valuation results. To make matters worse, the PSR he does use is for a bigger scheme which has a greater deficit.

When the DEF Pension Scheme gets its invoice, Peter, the chairman of trustees, calls John and expresses his concern at the size of the invoice. John reviews the invoice, realises his mistake, and gives Peter the correct figures. Peter writes to the PPF the next day, requesting that his invoice is adjusted by using the correct figures for the DEF Pension Scheme's s179 valuation results.

Peter's request is denied. He has given no explanation as to why the mistake could not reasonably have been avoided. There may be a claim against the professional indemnity insurance carried by John's firm.

Example 3 – correction request granted

Martin, a trustee of the UVW Pension Scheme, is filling in the scheme return. He is completing the scheme structure question and gets out the trust deed to check what the scheme provides in terms of partial winding up. He reads clause 32 of the deed, which states as follows:

> *"Upon a Participating Company ceasing to participate in the Scheme the Principal Employer may, subject to Rule 33, segregate a part of the assets of the Scheme in relation to-*
>
> *(i) those Active Members who are then in the Service of the Participating Company; and (if the Principal Employer so decides)*
>
> *(ii) Members in the Service of the Participating Company who are not Active Members, and other Members who were formerly in its Service and persons whose benefits arise in respect of such Members,*

the choice of (i) or (ii)(or neither) being determined by the Principal Employer at its absolute discretion."

Martin fills in the Scheme return ticking the box which says that the scheme has a discretion to segregate. He is later discussing the issues around partial winding up rules with his legal adviser, David. David tells him that, whilst on its face, it might appear that Martin had ticked the right box, in fact, the correct analysis is that the scheme does not have a provision for partial winding up. He explains that this is because of the precise wording of the legislation, which only treats the scheme as having an option to segregate if that option is given to the trustees, not the Principal Employer as the deed provides.

Martin contacts the PPF and asks if he can amend this. He explains that he filled in the scheme return on the basis of what he thought was appropriate and had seen no reason to seek legal advice on this issue.

The invoice for the UVW Scheme is adjusted on the basis that the scheme is a scheme without a provision for partial winding up. Martin has made a mistake on a highly technical legal matter, but one which (as a lay trustee) he reasonably thought was straightforward.

Example 4

The GHI Pension Scheme transferred all its assets and liabilities to the RST Pension Scheme on 1 January 2010. As part of the transfer agreement, the Trustees of the GHI Pension Scheme undertook to "take all such actions as are required to ensure that appropriate notification is made in relation to the transfer to ensure that no fines or other loss is suffered by the RST Pension Scheme". However, Paul, the scheme administrator of the GHI pension scheme who is charged with doing this task takes a 6 month sabbatical starting in February and forgets to pass on this task to his colleagues. Because it was Paul's task, nobody at the RST Pension Scheme takes a note and consequently nobody chases Paul.

When the chairman of trustees of the GHI Pension Scheme, receives a levy invoice for the 2010/11 levy year, she informs the PPF's eligibility team that the GHI scheme has fewer than two members. The eligibility team ask her to explain in a bit more detail and she tells them about the transfer.

As a result, the RST Pension Scheme (who has not yet been invoiced) receives an invoice based on an underfunding figure which Ayesha, a trustee of the RST Pension Scheme, finds surprisingly high. Ayesha queries this and is referred to the requirements in respect of block transfers. She asks if she can resolve the situation by making sure all the required information is submitted in the next week. Her request is rejected. She has provided no reason as to why the transfer was not properly notified and she may be able to recover the loss through the transfer agreement provisions. Even if she were not so able, she had the opportunity to insist on something more specific in the transfer agreement which would have allowed her to make a claim.

Example 5

The JKL Pension Scheme transferred all its assets and liabilities to the OPQ Pension Scheme on 1 January 2010. As part of the transfer agreement, the Trustees of the JKL Pension Scheme undertook to "take all such actions as are required to ensure that appropriate notification is made in relation to the transfer to ensure that no fines or other loss is suffered by the OPQ Pension Scheme".

Jin, the scheme administrator of the JKL Pension Scheme who is charged with doing this task immediately starts the notification process and Jane, the administrator of the OPQ Scheme confirms the basic details in February 2009. Jane then asks Tim, the Scheme Actuary to supply her with a valuation of the OPQ Scheme after the transfer, which she posts on Exchange on 15th May.

However, Jin takes a 3 month sabbatical starting at the beginning of May and forgets to pass on the task of supplying the post-transfer valuation for the JKL Pension Scheme to his colleagues. He does not put an out of office note on his emails. Jane, the administrator of the OPQ Pension Scheme, emails Jin with increasing urgency as the 30 June deadline approaches and also emails the trustees direct, to remind them of their obligations. She points out that their valuation should be extremely simple (as they will have no assets or liabilities) and highlights the effect that their failure could have on the OPQ Scheme. Lastly, on 27th June, she emails the PPF stakeholder support team to explain her difficulty.

When Jessica, the chairman of trustees of the JKL Pension Scheme, receives a levy invoice for the 2009/10 levy year, she informs the PPF's eligibility team that the JKL scheme has fewer than two members. The eligibility team ask her to explain in a bit more detail and she tells them about the transfer.

As a result, the OPQ Pension Scheme (who has not yet been invoiced) receives an invoice based on an underfunding figure which Tim finds surprisingly high. Fiona, the chairman of the trustees, queries this and is referred to the requirements in respect of block transfers. She explains that Jane had done everything she could to comply with the provisions and had tried to ensure that the JKL Pension Scheme did too. She refers the stakeholder support team to the data she submitted on Exchange and sends in copies of Jane's increasingly urgent emails to the JKL Pension Scheme.

Her request to adjust the invoice for the OPQ Pension Scheme (to use the post-transfer valuation she has supplied) is accepted. Jane has indeed done everything she could to properly notify the transfer and, although she may be able to recover the loss through the transfer agreement provisions, given her exemplary efforts, it is unduly harsh to require the scheme to pursue that route.

Example 6 – correction imposed

MNO Pension Scheme entered its Section 179 Valuation data on Exchange on 27 March 2009. In the liabilities section, the sum of the liabilities excluding expenses for active members, deferred members, pensioner members, estimated costs of winding up, estimated expenses of benefit installation/payment and external liabilities came to £100,000 less than the figure entered in the total protected liabilities box. The mismatch in the figures triggered a PPF plausibility test and on 6 April 2009 the PPF data cleansing team contacted MNO Pension Scheme to seek an explanation. Rachel, the scheme actuary, realised that she had mistakenly entered the liabilities in respect of the deferred members to be £100,000 less than the actual liabilities in respect of deferred members. The PPF imposes the data correction.

II. AMENDMENT AND REPLACEMENT OF CONTINGENT ASSETS

A. Background

1. Since the PPF contingent asset regime was introduced as part of the first risk based levy in 2006/07, it has always been a key policy of the PPF only to recognise contingent assets that are "long term" in nature. Generally this means that only agreements of indefinite duration are recognised; however there are the following main exceptions:

   (a) all the PPF standard form agreements contain provisions whereby "excess" contingent asset cover may be reduced once certain funding levels are achieved;

   (b) Type C(i) letters of credit/bank guarantees need only be for a minimum one year duration; however they must include an "evergreen" provision whereby the trustees may call on the asset if it is not renewed before expiry; and

(c) Type C(ii) letters of credit/bank guarantees need only last for as long as the schedule of deficit reduction contributions which they guarantee.

In each case, it will be seen that the overall long term funding enhancement associated with the arrangement will be (very broadly) constant, whether because the contingent asset remains in place itself or it has been replaced by another contingent asset or cash in the scheme.

2. Policy justifications behind this approach include:

(a) although the levy for individual schemes is currently calculated based on measures of short term underfunding and insolvency risk, that measure is scaled so that each scheme makes a contribution in respect of future years' risk as well. The PPF therefore considers it is fair within the current system only to include, in the calculation of assets at the measurement date, contingent assets that are expected to be in place for the long term (as, of course, are the assets in the scheme already). To take a simple example, consider a scheme which has a weak employer, but benefits from a fixed term guarantee from a strong parent. If, shortly after the expiry of the guarantee, the employer becomes insolvent, is abandoned by the parent and the PPF takes over the scheme, then the scheme will have substantially underpaid for the risk it posed to the PPF over the preceding years.

(b) the PPF seeks more generally to encourage behaviours which remove long-term risk from the system, to the benefit of the wider community of eligible schemes.

However, contingent asset agreements are private agreements between the providers and the trustees of the scheme. The PPF is not a party to the agreements, and the contingent asset providers and trustees are able (as a matter of contract) to cancel or amend the agreements at any time. The trustees' scope to do this will of course be significantly circumscribed by their duties as trustees; however, ultimately, that decision is a matter for the trustees, not the Board and the PPF cannot directly guarantee that a PPF-compliant contingent asset entered into in year 1 will in fact still be in place in year 2. What the PPF can and should do, however, is reflect the subsequent history of the contingent asset in calculating the levy.

3. The PPF recognises that removal, reduction or replacement of contingent assets may in some cases be entirely appropriate and not lead to any, or any significant, increase in risk. A broad outline of such "acceptable

changes" is set out at B below. However, other changes by voluntary actions of the parties are regarded as "unacceptable changes".

Arguably, where a contingent asset that was expected to be in place for the long term is subject to an unacceptable change, the PPF should "claw back" at least part of the levy reductions related to that contingent asset for every year since the asset was put in place. However this would be a rather extreme approach, as well as being administratively difficult to achieve. Instead, the approach of the PPF in the determinations up to and including that for 2009/10 has been (very broadly) as follows:

(a) where an unacceptable change occurs in the middle of a levy year, the levy for that year will be recalculated as if the contingent asset in question had never been in place during that year

(b) where an unacceptable change occurs between levy years, no credit at all will be given for any contingent assets in the latter year (even if there remain some contingent assets with value which would otherwise satisfy the recognition requirements)

(c) where an unacceptable change takes place, the scheme may not be given credit for any contingent assets in future years until the position has at least been restored to that which prevailed before the unacceptable change occurred.

In practice, it is very difficult to specify in advance all of the possible circumstances in which parties might legitimately want to make changes to their contingent asset arrangements, and the impact which such changes ought to have on the levy. The PPF has become aware of isolated examples in which the prescriptive rules in past years' determinations have hindered or prevented entirely appropriate actions. The draft determination for 2010/11 therefore contains, at Rule D3, a slightly broader discretion whereby the PPF can decide not to adjust the levy where contingent assets are subject to acceptable changes, whilst the basic non-recognition rule will continue to apply for unacceptable changes.

4. The broad principles on which the PPF intends to exercise this discretion are as follows:

(a) Any change that is made strictly in accordance with rules set out in the standard form agreements is very likely to be an acceptable change. So, in circumstances where the guarantor in respect of a Type A contingent asset puts forward a "Proposal" as defined in the standard form guarantee, and under the terms of the agreement the Trustees may not unreasonably withhold their consent to the Proposal, then the Proposal is very likely to be an acceptable change. The fact that the trustees may have been content to do this on shorter notice than the standard form anticipates would not generally affect this analysis.

(b) Changes in value resulting from actions entirely outside the control of the parties to the contingent asset agreement are very likely to be acceptable changes. Rule D3 explicitly confirms that for example, a fall in the market value of a piece of land charged in a Type B(ii) asset, taken alone, will not attract specific action under Rule D3 (though of course it may result in a direct reduction in the levy credit each time the contingent asset value is used in the levy).

(c) However, the PPF regards the following as being within the control of the parties and therefore potentially unacceptable changes:

(i) a decision by a contingent asset provider not to continue to provide the asset on grounds of cost – e.g. where a Type C(i) asset is not renewed on expiry, or a charge is released in order to improve the balance sheet of the chargor; or

(ii) a decision by trustees not to enforce rights available to them – e.g. where a Type C(i) asset is not renewed and the trustees elect not to claim under the "evergreen" provisions.

(d) Where there are multiple contingent assets, the PPF will look at all the assets together, comparing the overall position after the change with that before.

(e) If a guarantor in respect of a Type A guarantee is replaced, this will usually be an acceptable change if the new guarantor is at least as strong as the old one. Strength will usually be assessed based on failure scores or risk indicators provided by D&B, as at a date within five days on either side of the date of replacement. Otherwise such a change is likely to be unacceptable.

(f) If a liability cap is amended upwards within the same cap type (e.g. a guarantee of a 100% funding level on a s179 basis is changed to a guarantee of 105%) this will usually be acceptable.

(g) If a liability cap type is changed (e.g. a £10m cap is converted to a cap guaranteeing 100% funding on a s179 basis), the actual monetary value of the cap as at the point of the change will be calculated and if the monetary value remains the same or increases the change will usually be acceptable.

(h) Replacement of a Type A guarantee with a Type B or C contingent asset of equal monetary value will usually be an acceptable change; changes in the opposite direction will usually not be.

(i) Where the actual funding level of the scheme is so high that the contingent assets may reasonably be considered to be superfluous (in that the likelihood of their being called on at some point in the future to plug a deficit in the scheme is very low), it will usually be acceptable to release the superfluous element.

(j) Where the aggregate funding level is not so high as to satisfy the test in (i) above, it will usually only be acceptable to reduce Type B and C cover if and to the extent there has been an at least equal improvement in the actual funding level of the scheme since the contingent asset was put in place.

(k) The value associated with any liability cap as at a particular date will be estimated by the PPF based on whatever funding data appears to it most appropriate – typically the type of asset and liability data used for the levy..

(l) Extending the list of companies whose pensions obligations are secured by the contingent asset to include new employers will usually be acceptable (and will be necessary to enable the trustees to give the required certification each year). Removal of a company from coverage is likely only to be acceptable if it has ceased to be an employer within the statutory definition set out in section 318 of the Pensions Act 2004.

B. Examples of changes to contingent assets which are likely to be acceptable

(i) A guarantee of the full s75 debt given by Supermarket Ltd is released and replaced by a guarantee in the same terms given by Supermarché S.A. On the date of the change, Supermarket Ltd has a UK failure score for which the associated PPF probability of insolvency is 0.5%, whilst Supermarché S.A. has a French failure score for which the associated PPF probability of insolvency is 0.3%.

(ii) A Type C(i) letter of credit for £10m issued by Bank A expires and is replaced by a Type C(i) bank guarantee for £20m issued by Bank B (Banks A and B must of course both satisfy the recognition requirements as to credit rating, domicile, regulation etc).

(iii) Based on the most recent s179 valuation (dated 31 January 2009 and as at 31 July 2008) and applying the PPF roll-forward methodology, the scheme is 150% funded (without taking into account any contingent assets) as at 31 March 2009. All existing Type B and C contingent assets are released with effect from 31 March 2009.

(iv) As at 31 March 2009, the scheme has liabilities of £100m and assets of £80m on a s179 basis. A Type C(i) contingent asset valued at £10m is put in place. As at 31 March 2010 the scheme's assets have increased to £95m and the liabilities to £105m, meaning the scheme is now over 90% funded. The Type C(i) contingent asset is released.

C. Examples of changes unlikely to be acceptable

(v) As example B(i) above, but Supermarché S.A.'s associated PPF probability of insolvency is 0.6%.

(vi) As B(ii), but the sponsor can only afford a bank guarantee for £5m from Bank B (unless the funding level has improved sufficiently in the meantime).

(vii) As B(iii), but the scheme is only 100% funded as at 31 March 2009 and the Type B and C contingent assets are released and replaced with parent company guarantees.

(viii) Supermarché S.A. guarantees the obligations of three UK subsidiaries, all of which participate in the scheme. One of the subsidiaries is in financial difficulties and Supermarché S.A. persuades the trustees to release the guarantee in relation to that subsidiary while continuing to cover the other two.

III. APPEALING A LEVY INVOICE

The calculation of a levy invoice is a 'reviewable matter' under section 207 of the Pensions Act 2004. The formal review process considers whether the PPF has followed the rules of the determination when calculating the levy. Accordingly, if the trustees of a scheme are unhappy about the way in which the PPF has exercised any of the limited discretions reserved in the determination, and described above, they should apply for a review in the normal way.

It is important to note that the PPF cannot change or depart from the levy determination itself, including the levy formula, or any of the policies or rules contained in it, when calculating individual invoices. So, for example, in a case where D&B have properly provided a failure score for the employer in relation to the scheme, an application which argues that the PPF should depart from the determination and use something other than that D&B score will not be successful, as there is no discretion in this regard.

We consult annually on the levy rules and anyone with an interest in the PPF can respond.

Details of how to apply for a review of a levy invoice, and of levy consultations and how to respond, can be found on the PPF website:

www.pensionprotectionfund.org.uk

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