Non-Occupational Pension Claims – Sale / Transfer guidance – 05/07/2024

We have now received legal advice on the issue of Group Personal Pensions and how the RPS should approach the issue when we've got a company which has gone into administration and a transfer of an undertakings has taken place under Reg 8(6).

The advice which we've had recommends that the two pieces of legislation (TUPE and Pension Schemes Act 93) can operate in tandem, which is something we didn't consider before. It's therefore going to be a question of timing on whether or not the transfer or the insolvency event happened first.

If a TUPE transfer occurs first, there would be the automatic transfer of the GPP and its liabilities to the transferee. Upon insolvency later, there would not be any outstanding GPP liabilities upon the SoS as they would have transferred, so the RPS wouldn't pay in this scenario.

However if the insolvency event occurs first, s.124 of the Pension Schemes Act 1993 would be triggered, making any outstanding amounts on the GPP on the date of insolvency the liability of the SoS, subject to the stat limits. Any amounts that exceed stat limits will pass to the transferee under TUPE. Once the transfer is realised, any further contributions would then be the responsibility of the transferee. So the RPS would pay on this up to a point.

What we've advised the RPS to do in these scenarios is to ask the IP (and possibly the transferee if applicable) what happened first – was it the insolvency event or the transfer? If they both took place on the same day it would be advisable to ask for evidence in the form of meetings minutes or documents or anything which may assist the claim either way.

Please note this doesn't affect occupational pension schemes – the RPS will continue to pay unpaid contributions on those as normal when transfers have taken place as those have been carved out of the TUPE regs.

You may wish to take your own legal advice on the matter but RPS policy will be guided by what has been advised by Government Legal.