PENSIONS AND LIFETIME SAVINGS ASSOCIATION

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Mr Paul Scully MP
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy
1 Victoria Street
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Dear Minister

I am writing to you from the Pensions and Lifetime Savings Association (PLSA) regarding the Corporate Insolvency and Governance Bill. Our members have expressed concerns about elements of the Bill that could have unintended negative consequences for underfunded pension schemes where the employer becomes insolvent.

The PLSA represents more than 1,300 workplace pension schemes serving 20 million savers and pensioners. Our members include asset managers, defined benefit and defined contribution schemes, master trusts and local government pension funds, together controlling £1 trillion of investments in the UK and global economy. Our mission is to ensure that everyone has a better income in retirement.

We and our members fully appreciate the need for emergency protective measures to help companies survive the unprecedented business disruptions from Covid-19. However, the new proposals will have unintended – but very serious – consequences for underfunded pension schemes where the employer becomes insolvent, as well as for the Pension Protection Fund (PPF). Overall, the proposals will have the effect of reducing the protection and rights of Defined Benefit (DB) schemes and the Pension Protection Fund where companies are in financial distress.

Under current rules, debts owed to a DB pension scheme, as unsecured creditors, are paid out after secured creditors in an insolvency situation, unless the scheme has a form of contingent security. When a scheme sponsor becomes insolvent, the majority of the deficit will often remain unpaid, with the PPF picking up the responsibility for paying out schemes' member compensation.

A key concern for the PLSA and our members is the Bill proposal for a new company moratorium that allows up to 40 business days of protection from legal processes against a company, including those commencing a claim. In this period, a payment holiday is also granted for most pre-moratorium debts. This new moratorium will make recovering unpaid pension contribution even more difficult than the current situation. By the time action can be taken, it may be too late for a DB scheme or the PPF to recover anything. Under current rules, the PPF has been able to recover over £1bn since 2005.

The draft legislation of the new company moratorium also appears to grant priority to some pre-moratorium debt, including unsecured banking and finance arrangements and intra-group loans. This ranks them above pension debts, including those secured by a floating charge. This would apply where a company enters into administration or insolvent liquidation within 12 weeks of a moratorium ending (which in the normal course of events would almost certainly be the outcome if a company cannot be rescued during the moratorium), leaving DB pension schemes and the PPF recovering even less than they would in an insolvency situation under current circumstances pre-Bill.

In the likely event that DB pension schemes and the PPF are unable to recover as much funding as they are currently able to, the PPF would need to look at the impact on its funding strategy. This is likely to include consideration of its annual levy on solvent companies, to cover the widening pension schemes deficit gap. Any levy rise will put additional financial pressures on existing businesses, which is the opposite intention of the Bill's proposals.

The PLSA believes a number of small but significant amendments to the wording of the Bill could rectify these anomalies without compromising the intentions of the Bill. These include:

- **Limit the bank debts that gain super-priority to those that become due and payable on a non-accelerated basis during the moratorium.** The possibility that all bank and finance debt (including intra-group loans and debt owed to private equity firms) could emerge from a moratorium with 'super-priority' status could remove any chance of recovery for pension schemes. It also leaves the Government open to accusations that it has preferred the interests of banks and other lenders over those of pensioners and hard-working employees.

- **Narrow the definition of financial arrangements that gain super-priority so that it only covers the bank debts and does not extend to all financial arrangements and lending (as the definition currently does).** Otherwise, the current legislation will include all intra-group lending, which might allow for "gaming" of the new legislation. As the Bill stands, unpaid debts to third parties (such as suppliers) could also be framed as loans, to benefit from super-priority status as well, which unfairly disadvantages DB pension schemes.

- **The legislation is amended to provide for a PPF assessment period to be triggered where a company enters a moratorium.** We are unclear as to why the new procedures proposed do not trigger an assessment period, like other comparable processes, such as Company Voluntary Arrangements (CVAs), which allows insolvent companies to pay creditors over a fixed period. Assessment periods are an important safeguard, one which would allow the PPF to negotiate directly and to protect the PPF in the long-term. We understand that timeliness is of the essence in trying to assist companies affected by Covid-

19, but there must be a balance between speed and measured understanding of competing priorities in redistributing an insolvent company's assets.

We appreciate this is an important piece of legislation that needs swift implementation However we would welcome the opportunity to discuss with you and your officials practical ways where the Bill might be modified to ensure the protection and rights of Defined Benefit (DB) schemes and their members are not reduced where companies are in financial distress.

If I may, I will ask my office to follow-up shortly to see if we can arrange a suitable time for a video meeting or phone call. In the meantime, should you or your officials require any further information, please do ask your office to contact Lawrence Vousden, our Head of Media and Government Affairs (tel: 0207 601 1741 email: lawrence.vousden@plsa.co.uk).

Yours sincerely

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Director of Policy and Research

CC: Guy Opperman MP, Minister for Pensions and Financial Inclusion