TaylorWessing

Pensions
in Restructuring

Pensions in Restructuring Survey
– the view from 2023

January 2024

Our annual Pensions in Restructuring Survey was once again conducted by polling a group of leading participants and practitioners involved in restructurings where pensions are a factor.

We surveyed trustees, lawyers, insolvency practitioners, actuaries and others involved in these situations. As always, our survey considered a handful of topical issues focussed on the ways in which pension arrangements are impacted when an employer is facing into a restructuring.

In particular, we looked at how the legal and regulatory structures that seek to protect the interests of pension scheme members respond to the stresses that a restructuring applies.

The views expressed in 2023 could be summarised as a clear illustration that there remains a lot of uncertainty as to how macro-economic and legal developments will impact on systems and protections that have been put in place, especially those which have only recently been introduced into the mix. For example the 'restructuring plan' that was first seen during the pandemic but which is yet to be used to attempt to reduce a company's pensions liabilities and so there was still no clear view reached on how this new restructuring process will change things for pension schemes. But there is a palpable sense of concern expressed by respondents as to whether pension schemes are adequately prepared for dealing with a distressed employer. Only 8% of respondents considered that, generally, pension schemes are adequately prepared; by far the majority (77%) considered that it varies from scheme to scheme.

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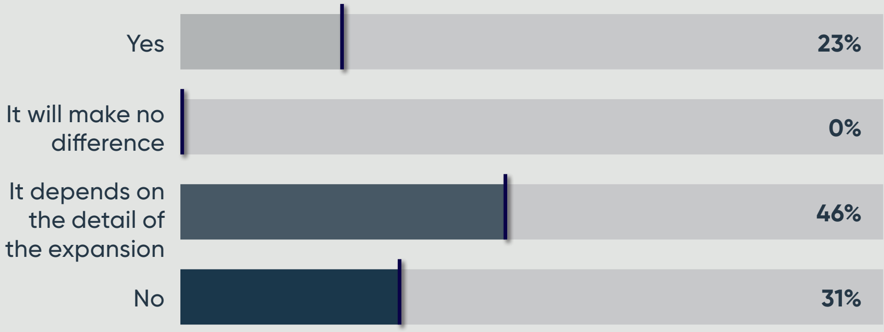
An increase in restructuring activity in the next 12 months is anticipated by as many who think there will be no change.

Question 1

We asked our participants:

"Would an expansion of the PPF's scope be helpful to pensions in restructuring activity in the United Kingdom?"



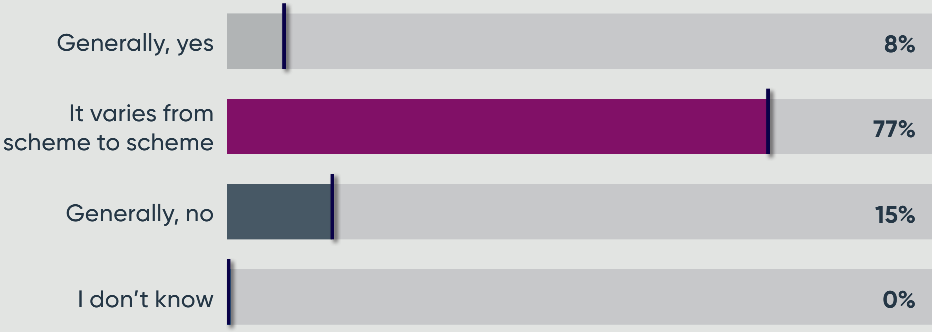
There was a sense from the discussion that, as a successful consolidator of pension schemes – albeit within a limited legislative framework – there was the potential for the PPF to do more, if Parliament was so inclined. Nevertheless, it was considered that any expansion of the PPF's role was likely to involve schemes whose employers were not restructuring, with 31% considering that an expansion of the PPF's role would not be helpful to pensions in restructuring activity in the United Kingdom. 46% recognised, however, that it would depend on the detail of any expansion of the role.

In his Mansion House speech in the autumn, the Chancellor, Jeremy Hunt, confirmed that the government will be pushing ahead with plans to explore how the PPF could act as a DB consolidator. A consultation has been promised on that in "the winter".

Question 2

We asked our participants:

“Are pension schemes adequately prepared for a distressed employer?”

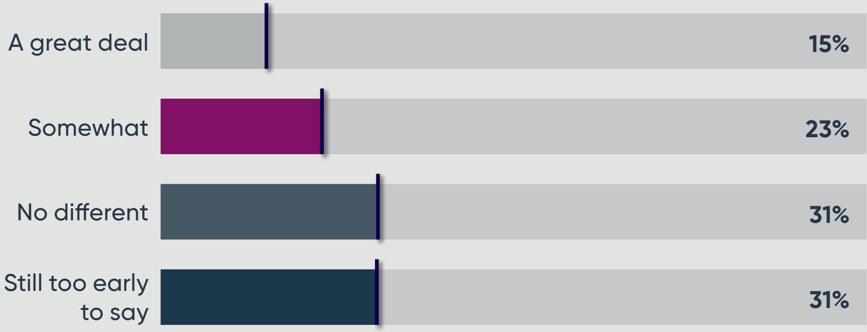


The blunt initial answer arising out of discussions was, in many cases “no”. That was notwithstanding the guidance issued by The Pensions Regulator and the PPF, and the efforts of the industry more generally to prepare schemes. There was a sense that, for many smaller schemes, they did not have the resources to be ready for dealing with a distressed employer, although it was recognised that many medium-sized, and most larger, schemes had arrangements in place to varying degrees. This was reflected in the results, with 15% saying that generally, pension schemes were not adequately prepared, but 77% considered that it varies from scheme to scheme.

Question 3

We asked our participants:

"To what extent will the Restructuring Plan regime change the dynamics for restructurings involving pensions stakeholders?"

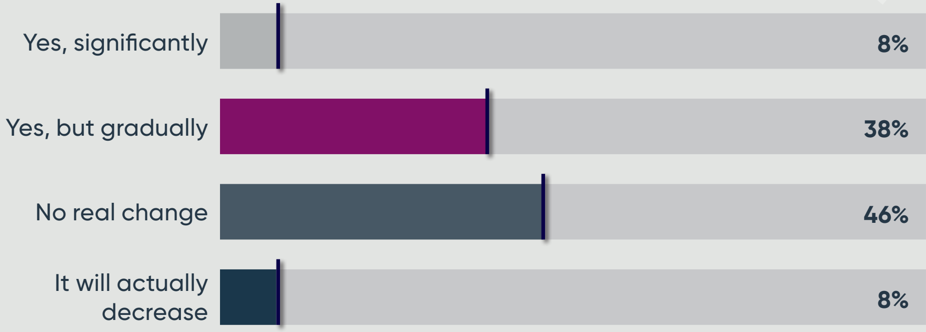


We were not surprised that our participants were quite evenly split across a narrow range of views that suggest the introduction of the Restructuring Plan by the Corporate Insolvency & Governance Act 2020 will have little to no impact on how pensions liabilities are treated in restructurings. The participants noted that there has not yet been an attempt to "cram down" pensions liabilities nor a challenge by a pension trustee to the proposed treatment of a scheme in a restructuring plan so the overall feeling was that views may change if/when a challenge occurs.

Question 4

We asked our participants:

"Was pensions in restructuring activity at expected levels over the past year and will the coming year see an increase?"



The responses were in line with previous years and reflect the view that there is unlikely to be an explosion of restructuring activity in the next 12 months. However, an increase in restructuring activity, as macro-economic pressures worsen (or at least do not improve much), is anticipated by as many (46%) who think there will be no change (46%) whilst a minority (8%) expect a decrease.

Conclusion

Our annual survey has become a key indicator for those involved in the world of pensions and restructuring. The views expressed in 2023 demonstrate that uncertainty is a significant factor in some of the key areas of development.

The Taylor Wessing team is uniquely experienced in advising stakeholders in these situations and are renowned for guiding our clients through complex and sometimes unique circumstances. We are happy to discuss any issues of concern with you and outline our approach on a confidential basis.

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