The INDEPENDENT

Pensions watchdog under fire over £419m Kodak settlement

Jamie Dunkley

Monday, 6 May 2013

Pressure is mounting on the Pensions Regulator to publish a report into its handling of camera firm Kodak UK's retirement fund.

Leading pensions consultant John Ralfe has warned that a deal allowing the pension scheme to withdraw a £1.9bn legal claim against its bankrupt US parent, Eastman Kodak, in exchange for two of its businesses could end up costing thousands of UK pensioners.

In a research note seen by The Independent, Mr Ralfe said the scheme, with 15,000 pensioners, should have been allowed to enter the Pension Protection Fund (PPF) while the regulator pursued the claim through the bankruptcy courts.

The PPF is an industry-funded pensions lifeboat, which takes on schemes of collapsed companies. Instead, the UK scheme last week paid $650m (£419m) to the US company to help it emerge from bankruptcy. In return, the UK scheme will receive Kodak's personalised imaging unit, which includes most consumer products and retail printing kiosks, and document-imaging business that makes scanners for business customers.

Antonio Perez, the chairman of Eastman Kodak, described it as an "extraordinary result" as he tries to revive the company, which collapsed into bankruptcy in January 2012 after failing to adapt to the rise of the internet and smartphones.

Mr Ralfe said: "By approving this deal, the Pensions Regulator seems to have abandoned rule-based pension regulation, and moved to 'regulation-by-expediency'.

"This approval combined with other approvals in recent months — Trinity Mirror, Premier Foods, and UK Coal — prompts the question: 'Has the Pensions Regulator given up on regulating pensions?' "

Reflecting on his preferred course of action, Mr Ralfe added: "Like all unsecured creditors, the pension plan would, eventually, receive a share of company assets, which may include equity in a new company (the Regulator is currently pursuing Nortel and Lehman Brothers through the North American Courts). Rather than this tested and transparent mechanism, a new Kodak UK pension plan will be formed — a zombie with no corporate sponsor standing behind it to make deficit contributions."

He said the Regulator should produce a Section 89 report to explain why buying two Kodak businesses for £491m and giving up the £1.9bn claim was the best deal the regulator could achieve.

A spokesman for the Pensions Regulator told The Independent: "Where the sponsoring employer is at risk of going insolvent and the scheme is underfunded, we work with the trustees to try to get the best protection for scheme members.

"We take a transparent approach and, at the outcome of a number of key cases, we have published reports setting out our decision-making. We do this to help interested parties understand the issues and our approach."

The Regulator, which is chaired by Michael O'Higgins, former managing partner of PA Consulting, and is overseen by the Department for Work & Pensions, promised: "We will consider whether to publish a report on the Kodak case once the acquisition is completed." That is likely to be in the autumn.

Other pensions experts were mixed on the Kodak deal. Kevin LeGrand, of the Society of Pension Consultants, said: "This deal is the latest in a line of cases where the regulator is seeking to walk a fine line between the interests of a number of parties.

He added: "The regulator is prepared to consider deals that offer a reasonable chance of the scheme remaining out of the Pension Protection Fund. Whether or not it has made the right call on a particular case will only be clear at some point in the future."