



## Flexible Apportionment Arrangement

June 2017

### Introduction

When an employer in a multi-employer scheme has a cessation event, under UK law, the employer is liable to pay a Section 75 Employer Debt. It may be possible in certain circumstances to reassign an employer's liability to pay a Section 75 Employer Debt to another participating employer in the Scheme using a Flexible Apportionment Arrangement. This bulletin provides further information.

#### 1. What is a Flexible Apportionment Arrangement (an "FAA")?

Put simply, an FAA is a legal agreement which transfers pension liabilities from one employer to another.

A valid FAA reassigns a Section 75 Employer Debt from employer A to a different employer B. Employer B has to both agree to and have the ability to take on employer A's pension liabilities as well as any of its own pension liabilities.

For further information about FAAs the Pensions Regulator's website has a section dedicated to multi-employer schemes.

#### 2. What are the criteria for an FAA?

There are certain conditions that must be met for an FAA to be set up. These are as follows:

- Employer B must already participate (which means employing active members) in the Scheme, or will participate following the FAA, and both employers consent in writing to the FAA.
- A **cessation** event has or is about to occur. This may be a change in legal entity (e.g. partnership or sole trader incorporating or business sale/transfer) or the employer ceasing to have any active members with no expectation that the employer will have new active members in the next 12 to 36 months.

- The **Funding test** must be met to ensure the employers which take on the pension liabilities are financially able to do so and the scheme is no worse off from a funding perspective.
- The employers requesting a FAA must agree to pay the Trustee's costs (as per the flowchart on the back page).
- The Scheme Trustee must consent.

All FAAs must be notified to the Pensions Regulator.

#### 3. What is the process to set up an FAA?

The FAA process varies depending on the size and circumstances of the employer. Some scenarios are identified in this section. The Trustee has a streamlined FAA process to help small employers wishing to incorporate. *(continued)*



I am a sole trader, ABC Plumbing, and want to incorporate my business as ABC Plumbing Limited. Can I use an FAA to transfer the pension liability from ABC Plumbing to ABC Plumbing Limited?

The Trustee has a simple two stage process which involves the original business receiving an agreement in principle from the Trustee before incorporation. Following incorporation, the Trustee will formally ratify the agreement unless there have been material changes to the Scheme, the employers or legislation.

To implement the two stage FAA request, a request in writing should be submitted to the Trustee. A template request is available from Plumbing Pensions.

For stage A, the Trustee's advisors will provide a financial questionnaire for completion. The questionnaire should be returned to the advisor for review. The advisor reports to the Trustee on whether it would be appropriate to consent to the FAA.

The Trustee will respond to the requestor. The company can then decide whether to proceed to incorporate. Stage B involves a Chartered Accountant making a statement on the financial affairs of the new business. If no Chartered Accountant is willing to make this statement, an updated audited financial assessment to ensure no material changes have occurred will be required from the new entity.

I was in a partnership but we incorporated our business in 2013, I didn't realise I had triggered a Section 75 employer debt in doing so, can I apply retrospectively for an FAA?

An FAA may still be able to proceed as long as the original partners are available to consent to the FAA agreement and all the other criteria are met. The position may, however, need further consideration if the cessation event has already taken place particularly if the event occurred before 5 April 2008.

In this example, the two-stage process does not apply as the incorporation has already occurred. So only the second stage would be needed. The Trustee response will be a formal agreement or otherwise. An FAA can also be used for sole traders becoming a partnership.

For companies wishing to restructure e.g. a parent company wants to merge some of its operating firms, a FAA can be utilised to transfer the pension debt that may be triggered by the transfer of employees. This tends to be more complicated and result in higher costs.

The more advance notice that the Trustee has of a potential cessation event, the more likely it will be able to provide assistance. Please get in touch to discuss your situation and whether a FAA can help.

#### 4. What does it cost?

Small businesses wishing to incorporate should see the flowchart on the back page. It should be noted that the Trustee reserves the right to increase the cost depending on the size, materiality and complexity of the case.

Other scenarios i.e. as a result of corporate mergers will require bespoke costings.

#### 5. How do I proceed?

Contact Plumbing Pensions to receive a template request.

Email [info@plumbingpensions.co.uk](mailto:info@plumbingpensions.co.uk)

Call 0131 556 9090 if you have any questions.

On receipt of first payment (as per the flowchart on the back page) your request will be forwarded to the Trustee advisors who will issue the financial questionnaire. If you have not had any communication within two weeks of submitting your request, please call the number above to check progress.

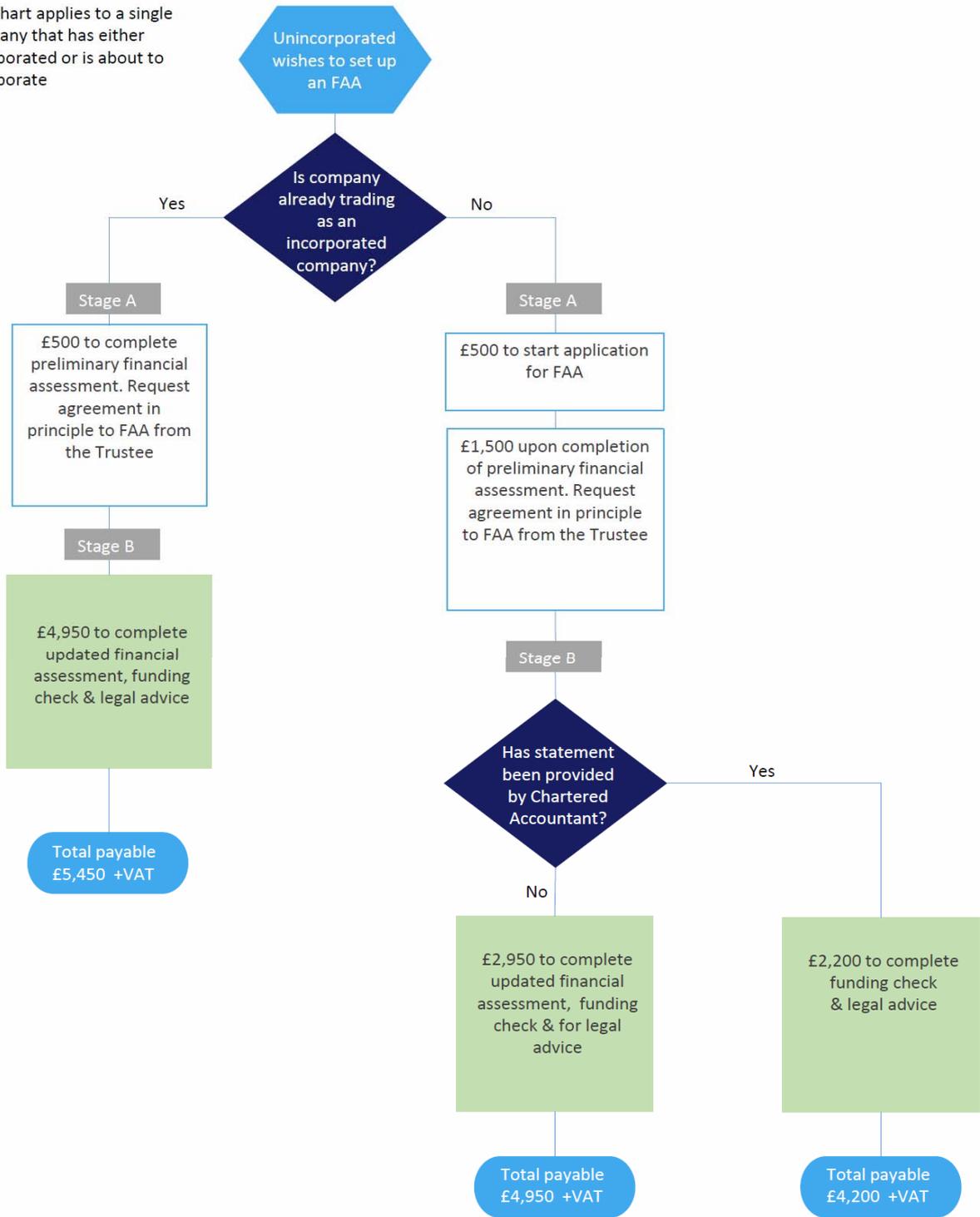
If you require further information please look at the Pensions Regulator webpage:

<http://www.thepensionsregulator.gov.uk/guidance/multi-employer-schemes-and-employer-departures.aspx>

If you are a member of either SNIPEF or APHC they may be able to provide support and guidance on the options that are available.



This chart applies to a single company that has either incorporated or is about to incorporate



The Scheme uses professional advisors to provide covenant funding and legal advice to satisfy the regulatory requirements for consenting to a Flexible Apportionment Arrangement. The Trustee has negotiated the streamlined professional fee structure for small unincorporated employers. The process for large or more complex employers interested in an FAA will be discussed on application.