COVID-19 AND PENSIONS: TRUSTEE ALERT

The Pensions Regulator (**TPR**) has issued a series of guidance notes regarding the impact of the COVID-19 pandemic on UK pension schemes which raise a number of issues for consideration by trustees. In this alert we summarise the key messages from the guidance and raise a few practical issues for trustees to consider regarding the conduct of trustee business during this period of uncertainty.

Trustee meetings, decision making and execution of documents – check your rules

TPR expects trustee boards to be able to operate in the current crisis, even in the absence of physical meetings. Trustees should consider the following practical issues:

- **Trustee meetings** – do the rules / articles allow trustees / trustee directors to carry out meetings via telephone or video conference? Trustees should confirm with their advisers that any proposed changes to the regular meeting protocol will not impact the validity of trustees' decisions.

- **Illness and decision making** – if one or more trustees fall ill, what impact will this have on quorum requirements and the ability to take decisions? Do the rules / articles require unanimity in some circumstances (for example, decisions relating to investment strategy)? The scheme's provisions should be considered in advance and appropriate action taken to avoid deadlock at a time when swift decision-making may be required.

- **Execution of documents** – trustees should consider how documents (for example, trust deeds and contracts) will be executed in circumstances where social distancing requirements make it difficult for documents to be signed in the usual way. In many cases, it will be possible for trustees to execute documents via e-signature; however, trustees should seek advice before using this method for the first time to ensure all legal formalities will be met.

Business continuity - check your service providers

TPR expects trustees to activate their business continuity plan (**BCP**) and to assess its fitness for purpose. If trustees do not have a BCP, they should take steps to evaluate risks in the current climate and to identify mitigating actions, taking professional advice as necessary.

Trustees should contact their scheme administrators to request details of their contingency planning, in particular, how they intend to keep services running during the pandemic in the event of staff shortages and / or increased volumes of work. Where services are impacted by under-resourcing, trustees should instruct their administrators to prioritise certain activities such as the monthly pensioner payroll and the processing of retirement applications.

Employer covenant and deficit repair contributions – check your employer

Trustees should be engaging with the scheme's sponsoring employer to discuss the impact of COVID-19 on the employer's business and, in particular, the employer covenant. TPR has published guidance aimed at those trustees whose sponsoring employers are in corporate distress. The guidance includes examples of the types of questions all trustees should be asking in order to better understand the impact of the virus (and measures to contain it) on matters such as demand for the employer's products, the employer's BCP and cash flow – relevant to the trustees' assessment of the covenant.

TPR anticipates trustees may be asked by employers to agree to a reduction in or suspension of deficit repair contributions (**DRCs**). Before responding to such requests, TPR advises trustees to consider the following general principles:

- **Establish need** – trustees should be satisfied that there is a genuine need to manage cash flow and that assets will not be diverted to pay dividends. Indeed TPR advises that any agreement to reduce / suspend DRCs should be met by a corresponding commitment from the employer to suspend dividend payments.

- **Ensure all parties play their part** – all stakeholders should be involved in discussions (including lenders) and trustees should ensure that they are getting a fair allocation of the employer's assets where new security is put in place.

- **Be flexible** – any period of reduction / suspension of DRCs should have a clear end date and there should be flexibility within the agreement to allow the payment of DRCs to resume in full as soon as business returns to normal.

- **Take legal advice** – trustees should take advice on whether the employer's proposal is appropriate in all the circumstances, how to implement / document the reduction or suspension of DRCs, and the impact of such action on the scheme's provisions (for example, the winding-up trigger) to avoid any unintended consequences.

- **Wait for a clear picture** – trustees should only make short term concessions where the employer's financial position is unclear. If trustees are not able to fully assess the position, any period of reduction / suspension should be limited to a maximum of three months.

Funding and investment – check the latest TPR guidance

TPR has recently issued COVID-19 Guidance for Trustees on DB Scheme Funding and Investment. Trustees should note, in particular, TPR's comments regarding on-going valuations and transfer value requests. Key points from the guidance include:

- **On-going valuations** – TPR does not expect trustees to revisit the valuation assumptions where a valuation is close to completion. However, trustees should consider post valuation experience when agreeing recovery plans and deciding whether the proposed DRCs remain affordable. Trustees may delay the submission of the recovery plan by up to three months if further time is needed to understand the position of the scheme and the sponsoring employer. TPR has said that it will not take any regulatory action in these circumstances.

- **Information** – employers must provide trustees with the information they need in a timely manner and treat the scheme fairly compared to other interested parties. There should be a regular flow of information from the employer to enable the trustees to monitor the covenant and take decisions as necessary.

- **Investments** – TPR stresses the importance of keeping the cash flow requirements of the scheme under review, including understanding how the scheme's obligations will be met in circumstances of lower investment income, reduced DRCs and increased member transactions. Trustees should also review their governance structures and delegations to ensure they can continue to function and make decisions in the event of trustee illness or absence.

- **Transfer Values** – Trustees should continue to be alert to the risk of scams; TPR warns of a heightened risk of members being targeted by scammers during the pandemic. TPR notes that trustees may decide to suspend CETV quotations and payments to give themselves time to review CETV terms and/or assess the administrative impact of any increase in demand for CETV quotes. Again TPR has said that it will not take regulatory action in the next three months against trustees who suspend CETV activity.

Trustee communications – check-in with members

Given the extent to which our daily lives are being impacted by the pandemic, it is reasonable to assume that members will have concerns regarding the security of benefits including, for example, the continued payment of their pension. A well-timed communication from the trustees may help to put members' minds at rest and reduce queries overall. Therefore trustees should consider getting in touch with members and using any communication as an opportunity to warn members about the prevalence of pension scams and to include signposting to appropriate support and guidance.

Please get in touch with your usual adviser if you wish to discuss any of the issues raised in this alert. We will continue to monitor TPR and industry guidance and will issue further updates as the situation develops.

Wrigleys Solicitors LLP	Leigh Holmes	0113 2045732	Leigh.Holmes@wrigleys.co.uk
19 Cookridge Street	Kate Buckham	0113 2041139	Kate.Buckham@wrigleys.co.uk
Leeds	Louise Edwards	0113 2045795	Louise.Edwards@wrigleys.co.uk
LS2 3AG	Victoria Acomb	0113 2045736	Victoria.Acomb@wrigleys.co.uk
	Louise Taylor	0113 2045739	Louise.Taylor@wrigleys.co.uk
	Wills Crump	0113 2041135	Wills.Crump@wrigleys.co.uk