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Covid-19 and Pensions Schemes: Trustee Alert

APRIL 2020

The Pensions Regulator has issued a series of guidance notes regarding the impact of the COVID-19 pandemic on UK pension schemes and raising a number of issues for consideration by trustees during this time of uncertainty. In this update 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 the pandemic.

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

The Pensions Regulator (TPR) expects trustee boards to continue 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 hold meetings? Do the rules / articles require unanimity for certain decisions (such as changes 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 during this period of isolation. 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

According to its guidance on the pandemic, 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 current risks and identify mitigating actions, taking professional advice as necessary, with a view to putting a BCP in place in as soon as possible.

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

Employer covenant and deficit repair contributions (DRCs) – 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 questions trustees should be asking their employers 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.

TPR recognises that during the current crisis trustees may be asked to agree to a reduction in or suspension of the employer's DRCs. In response to such requests, trustees are advised to consider the following general principles:

- Establish need – trustees should be satisfied that there is a genuine need to manage cashflow 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 or suspension of DRCs should have a clear end date and there should be flexibility within any agreement to allow the payment of DRCs to resume in full as soon as business returns to normal.

- Take 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 rules (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. Any agreement to reduce / suspend DRCs should be conditional on the full and ongoing provision of information by the employer so the trustees can monitor the employer covenant.

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 submission of recovery plan by up to three months if further time is needed to understand the position of the scheme and the sponsoring employer. TPR 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 incapacity or absence.

- Transfer Values – Trustees should continue to be alert to the risk of scams; TPR considers there to be 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. TPR will not take regulatory action in the next three months against trustees who suspend CETV activity.

Support for members

Given the extent to which members' personal lives are affected by the pandemic, it is natural for members to have concerns, for example, regarding the continued payment of their pension. A well-timed communication from the trustees may help to put members' minds at rest and reduce queries. Trustees may also wish to include further warnings about the prevalence of pension scams and signpost members 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 publications and intend to updates this alert periodically as the current situation continues to develop.

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