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COVID-19 – New Regulator Guidance

The Pensions Regulator has published guidance on the impact of COVID-19 (Coronavirus) on occupational pension schemes.

There will understandably be some changes to the Regulator's approach in the short term and the Regulator has set out its expectations in relation to trustees, scheme administrators and employers.

The Regulator has also highlighted the need to be vigilant to prevent pension scams at this time, although its biggest immediate concern is ensuring pensioners continue to be paid in full and on time.

The guidance will be updated in the weeks ahead as the UK navigates its way through the COVID-19 crisis.

Background

The COVID-19 pandemic has in a few short weeks turned the world on its head. Trustees and sponsoring employers of occupational pension schemes have stopped worrying about Brexit, pension dashboards and how to equalise their guaranteed minimum pensions, in the face of unprecedented new challenges in an ever-changing environment. Scheme members, employers, trustees, administrators and other scheme advisers all face different pressures and must work together to navigate their way through the crisis.

Against this background the Regulator has issued emergency guidance, which it will keep updated as the crisis unfolds. In the coming weeks, trustees of both defined benefit (DB) and defined contribution (DC) schemes, employers and administrators are instructed to focus their activities on the key risks to pension savers:

- Paying DB pension benefits on time and in full.
- Collecting employer contributions to schemes.
- Taking care to minimise the risk of members being scammed.
- Supporting members in making good decisions in a challenging environment.

In the light of current circumstances, the Regulator accepts some administrative breaches of law may occur and has stated it will take a proportionate approach to any action it will take.

Trustees

Trustees and administrators need to prioritise work involving pensioner payments, retirement processing and bereavement payments, over other work at this time. Even if that means missing standard time limits for other work agreed between administrators and trustees, or even statutory time limits. The Regulator urges trustees to agree priorities with administrators and to work with them during this period. It recognises the pressure administrators will be under both in terms of extra work and staff absence due to COVID-19 and identifies member queries and annual benefit statements as examples of less urgent work which may be delayed.

Trustees should also review their business continuity plan for dealing with issues should they or their key advisers fall ill. Trustees should contact their administrator and service provider to find out what contingency is in place to mitigate the impact of increases in work volumes or unavailable staff.

The current crisis will inevitably place a strain on most employers and their covenants. Additional risk and uncertainty is likely to manifest itself both now in terms of immediate survival and in the long term in respect of the general economic outlook and trading conditions.

Some employers will be more affected than others, for example, those heavily involved in businesses which have been told to close, or which have had to scale back at this time. It is, therefore, more important than ever that trustees and sponsoring employers are engaged in close dialogue in the next few months.

Corporate distress

Where sponsoring employers of DB schemes are at risk, or are asking to reduce or suspend deficit repair contributions, the Regulator has prepared further guidance on corporate distress.

In such circumstances, trustees will need to enquire about their sponsoring employer's liquidity position and availability of financial resources to support it, as well as about the demand for the employer's products and business continuity plan in respect of staff and resources. A table of suggested questions is set out as an appendix to this FYI Alert.

The answers to these questions will enable trustees to make informed decisions in relation to any request to suspend or reduce deficit recovery contributions. This is an area where the trustees must take proper advice before reaching any agreement with the employer.

The answers will also allow trustees to consider the likely significance of the impact on the scheme in line with the Regulator's guidance on Integrated Risk Management. This should include consideration of whether contingent assets may be available to support the scheme, particularly if these are being sought by other creditors or concessions are being sought from the scheme.

In all of this, trustees should also consider the approach taken by other creditors, shareholders and associated companies to ensure that their scheme is being treated fairly.

Pension scams

Recent years have seen a growth in pension scams with criminals finding ever more routes to defraud pension scheme members out of their pension benefits. The Regulator is concerned that pension scheme members may be more susceptible to scammers at this time. Members may be lured by scammers to invest in "safe havens" as COVID-19 gives scammers an opportunity to practice their trade. Trustees and administrators are asked to take extra care at this time and to urge members to visit "Scamsmart" hosted by the Financial Conduct Authority which has specific guidance relating to COVID-19. Action Fraud figures reveal a 400% increase in scam activity as a result of the outbreak.

Employers

The strain that COVID-19 is putting on employers is recognised by the Regulator and accordingly it will take a proportionate and risk-based approach to enforcement decisions in the short term with the aim of helping employers get back on track and supporting them through this crisis.

Employers are, however, expected to continue paying employer and employee contributions as normal.

The Regulator

As well as cancelling or moving all scheduled events, the Regulator has temporarily suspended all of its initiatives. Accordingly, any schemes and employers that have been selected to take part in any such initiatives will be written to regarding the next steps.

The Regulator is also cancelling publication of its Corporate Plan, long term strategy and consultation on consolidating its codes of practice. The consultation on DB funding is still open and its timings will be reviewed in due course and the 2020 Annual Funding Statement is now due after Easter.

Comment

The Regulator is clearly concerned about how the COVID-19 pandemic is going to affect occupational pension schemes, and in particular their sponsoring employers. We are all in uncharted waters, and cannot with any certainty predict how businesses might be affected in the longer term. The "tougher" element of the Regulator's clearer, quicker, tougher approach needed some modification in the light of recent events. We welcome its relaxion of regulation in the short term, which is clearly a proportionate response to the situation.

While the pandemic may be only a relatively short-term issue, its long-term effects could be with us for some years to come.

Appendix - Corporate distress questions

Trustee questions
How has the employer considered how the impact of the virus and the measures to contain it may affect: • demand for the employer's products? • their business continuity plan (BCP) - including resource availability, including staff and materials? • Cashflow? - employers should be preparing 13 week cashflows where there is a significant impact on cashflow.
Are there any key payment dates in the next three months that will affect the business (e.g. rent quarter dates)?
What are the positions of lenders?
Are there any restrictions on using available borrowing?
When will the banking covenants next be tested and is it expected to be met?
For how long are current borrowing facilities expected to be sufficient?
Is the employer discussing further funding facilities?
Are funders seeking new security and, if so, what is the impact on the scheme?
What are the positions of key suppliers and creditors? Have they imposed any restrictions on normal credit availability or supply volumes?
What is the position of trade credit insurers?
What payments are proposed to associated or connected companies or shareholders in the next six months? Is this appropriate in the context of the directors' primary duties to their creditors where there is uncertainty over the solvency of the employer?
What support is expected to be available for the employer under the package of measures announced by the Chancellor on 17 March 2020? What is the timescale for this and are any key conditions attached?
How is this likely to impact the ability to meet commitments to the scheme?

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