In Touch technical update

June 2020

TPR updates COVID-19 guidance

- DB trustees' guidance re-written, setting out the practical challenges faced by trustees and employers, and TPR's expectation that due diligence be undertaken for new DRC suspensions
- Most of the reporting easements will cease at the end of June

In March, the Pensions Regulator (TPR) published guidance for pension scheme trustees and sponsoring employers relating to COVID-19; it has progressively expanded this suite of guidance. Its original guidance included easements which were to apply until 30 June 2020. TPR has now reviewed the position, and updated the guidance, including undertaking an extensive re-write of the guidance for trustees of DB schemes. This note focuses on the latest published changes.

DB trustees' guidance

TPR acknowledges that it cannot reflect all issues faced by trustees but highlights some good practice and outlines its current response to legislative breaches or trustee actions. It provides additional guidance on some of the practical challenges faced by trustees and employers. TPR will continue to monitor the situation but does not anticipate further updates unless circumstances change significantly. Some key changes are set out below.

Suspending or reducing contributions

The suspension or reduction of deficit repair contributions (DRCs) may remain appropriate. However, employers' financial situations should have become more visible and TPR does not expect trustees to "unquestioningly extend their original suspension arrangements on a three-month rolling basis on limited information and for this to become the new normal". Instead, trustees should undertake due diligence on the employer's financial position before agreeing a new suspension or reduction.

TPR highlights the distinction between visibility over short-term liquidity/affordability and visibility over the broader covenant in the medium to long term. Trustees need to decide whether there is genuine and possibly temporary uncertainty, or if there has been a material deterioration in the employer covenant.

If there is good evidence that the covenant has materially worsened and is not expected to recover in a reasonably short timeframe, trustees should consider whether it would be in the best interests of members to update the scheme's funding arrangements – e.g. by calling a new actuarial valuation and/or revising the recovery plan - to more accurately reflect the sponsoring employer's position.

Where a suspension or reduction in contributions is necessary and appropriate, trustees should seek protections and other mitigations - the guidance includes a list of examples.

In the absence of covenant and liquidity visibility in the short term, TPR expects trustees to agree only short-term concessions (the less confidence they have of getting access to timely and relevant financial information, the shorter the period should be); and consider carefully how appropriate a suspension is, if the contributions due are substantial.

The guidance sets out questions that trustees should ask in order to understand risks to sponsoring employers and assist in covenant monitoring. Trustees are reminded to follow TPR's guidance on integrated risk management.

TPR notes that it can sometimes be in the best interests of members to allow the employer some commercial and financial breathing space. Trustees need to understand how this will support the employer covenant and weigh that against the potential risks to the scheme, seeking appropriate protections where possible.

Valuations due to be finalised

TPR accepts that trustees may still need more time to complete valuations. TPR's preference is for the best outcome to be reached for the scheme, rather than one agreed under pressure simply to meet the deadline.

Decision-making

Trustees are reminded of the need to manage any conflicts, particularly in the current situation. TPR stresses the value of focused advice, which can highlight options or problems that the trustees may not be aware of, help save money in the long-term, and protect the trustees from claims of a breach of trust.

Trustees may need to seek advice beyond their usual advisers, for example, to understand the scheme's position in refinancing, restructuring and insolvency scenarios. This may help trustees to ensure that their interests are properly addressed.

Trustees are urged to be open with the employer to facilitate decision-making, and employers should provide trustees with the information they need in a timely manner

DB transfers

From 1 July 2020, TPR expects trustees to report any breaches of their transfer obligations, but it will continue to take a pragmatic approach to breaches caused by COVID-19 issues. TPR reminds schemes to send members the warning letter, which it prepared with the FCA and the Pensions Advisory, with cash equivalent transfer value (CETV) quotations.

DB employers' guidance

The DB scheme sponsor's guidance has been updated to make its message consistent with the updated guidance for trustees.

DC employers' guidance

This guidance has been updated to reflect the new part-time work option for furloughed employees under the Coronavirus Job Retention Scheme from 1 July 2020, and the fact that, from 1 August 2020, employers will no longer be able to claim a grant for pension scheme contributions.

Reporting guidance

TPR has been adopting a more flexible approach to its reporting and enforcement expectations. It will continue to assess breaches on a case-by-case basis and respond pragmatically where breaches are COVID-19 related. However, from 1 July 2020, reporting requirements will resume as normal, including for:

- Suspended DRCs - trustees will need to submit a revised recovery plan or report of missed contributions;
- Late valuations and recovery plans not agreed;
- Delays in CETV quotations and payments; and
- Failures to prepare audited accounts.

There is one exception - providers will continue to have 150 days (rather than 90 days) to report late payments of contributions (other than DRCs). TPR will review this easement again at the end of September.

Until 30 September 2020, TPR will continue not to review any chair's statements. It will take a pragmatic approach to late preparation of audited accounts and will accept delays to 30 September. However, the legislation imposing fines for failure to prepare the chair's statement cannot be waived. Such statements must be included in the annual report and accounts but can be prepared and signed off separately in order to meet the legislative deadlines.

TPR does not expect to not take regulatory action if a review of a statement of investment principles (or statement in relation to any default arrangement) is delayed provided this is not beyond 30 September.

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