

Coronavirus: actions for pension trustees

26 March 2020

Pension briefing

HIGHLIGHTS

The COVID19 crisis has changed the landscape for pension scheme trustees.

This note discusses the potential impacts and actions trustees should consider taking in relation to the following areas.

- Governance
- Maintaining business as usual
- Investment
- Funding and covenant issues
- Pension Protection Fund
- Contributions and benefits
- Death benefits
- Transfers out
- Regulation
- Current projects
- Disputes



GOVERNANCE

Trustee meetings

Trustee boards should make arrangements to ensure they can operate effectively during the period of isolation. Specific points to consider are given in the action list below.

The Pensions Regulator expects trustees to be alive to risks which could have significant consequences for their scheme. It has also recently [stated](#) that it expects trustees to have a business contingency plan.

Action for trustees

- Check whether your trust deed and rules allow trustee meetings (or sub-committee meetings) to be held remotely.
- For corporate trustees: check whether remote board meetings (or sub-committee meetings) are permitted under the articles of association.
- Does your scheme documentation require any particular formalities for remote meetings?
- What is the quorum for a valid trustee (or trustee board) meeting?
- Consider delegation of relevant powers to a sub-committee, if your scheme's governing documentation does not give you the flexibility you need.

- Check whether your governing documentation, including the articles of association of your trustee company, permits electronic signatures and take advice where necessary.
- Consider whether your trustee risk register should be updated.
- If you have a business continuity plan, implement (and update) it as needed.

MAINTAINING BUSINESS AS USUAL

Key functions

Trustees and pension managers should be taking steps to ensure that key functions can continue. The Regulator expects trustees to prioritise paying pensions, processing retirements and payment of death benefits.

GDPR / cybersecurity

Trustees should be alert to the additional risks that working remotely presents to the security of members' data and other sensitive information.

Action for trustees

- Agree priorities with your administrators and others.

- Check that your banking and payroll systems can be accessed, and instructions given, remotely. Is there back up provision if a key person is unable to give instructions?
- Review your cash flow management plans and consider whether holding a higher level of cash would be prudent in the current environment.
- Ask how your administrator intends to deal with post from members if the government requires offices to close entirely?
- Do you know what plans your administrator or other service providers have in place to deal with increased volumes of work or reduced staff capacity (as the Regulator expects)?
- If you are not already set up for home working, ask your sponsoring employer if it has developed home working protocols which you could consider, and liaise with the employer's IT and cybersecurity teams about remote access risks.
- Ask for assurances from administrators and other service providers (such as your lawyers) about steps they are taking to maintain the security of member and other data when working remotely.

INVESTMENT

Action for trustees

Questions trustees may want to consider, with their advisers include the following.

- Does your investment strategy (or flight plan) need adjusting?
- Could triggers under the current plan result in selling assets at an unfavourable time, so crystallising losses?
- If your scheme is cash flow negative, reconsider which assets are sold to pay benefits – is this still the most appropriate class or asset for this purpose?
- Check for limits in your hedge contracts – some hedging provisions fall away if market movements go beyond a specified point.
- If you own real property directly, consider the specific [implications of Coronavirus for landlords](#).

FUNDING AND COVENANT

Impact on scheme funding

The impact of the recent market turmoil on scheme funding will vary between schemes. A scheme holding low-risk assets and hedging liabilities may be shielded from much of the fall in asset values. However, other schemes have seen significant deterioration in their funding level.

Impact on the employer's business

Trustees should seek to understand how the crisis is impacting the employer's business.

While employers are likely to be busy managing the current crisis, the Regulator reminds trustees that they are key stakeholders and should expect to be informed with the best available information.

Deferral or renegotiation of contributions

Some employers are seeking to defer or renegotiate deficit repair contributions (DRCs). The Regulator recognises that this may be appropriate in the circumstances. However, it expects trustees to take the following principles into account when deciding how to respond to such requests.

- **Establishing the need:** considering the employer's cashflow and ensuring that payments will not be made to shareholders or other group companies instead of to the trustees.
- **Ensuring all parties are playing their part:** including support from banks; a share for the trustees in any new security granted; and avoidance of new intra-group loans or dividends.
- **Flexibility to restart DRCs:** there should be an end date to the suspension of DRCs but also triggers to restart DRC payments if the employer's business returns to normal levels.
- **Taking advice:** on legal and covenant issues from advisers with experience in insolvency and restructuring.
- **Obtaining information and considering timescales:** where a swift response is needed, trustees may agree a short-term easing of DRC payments, while waiting for more detailed information to be provided.

Current valuations

Schemes with a valuation date in March or April 2020 may be particularly badly hit. The Regulator has said it will publish a statement on schemes in this position after Easter in its annual funding statement.

Action for trustees

- If you are concerned about your employer's business, ask for further information, referring to some or all of the [questions](#) for trustees issued by the Pensions Regulator.
- If you are asked to defer or reduce DRCs, take account of the [Regulator's guidance](#) and seek professional advice.

PENSION PROTECTION FUND (PPF)

Contingent assets

The PPF released a helpful [statement](#) on 18 March that it will:

- allow non-wet ink signatures on contingent asset documentation; and
- accept documents submitted late because of reasons connected to Coronavirus.

For schemes with a Type A guarantee, any covenant reports already obtained may no longer accurately represent the guarantor's covenant strength. Where this applies, covenant advisers may have already been in touch with the trustees.

Longer term impact: PPF levies

It seems inevitable that PPF levies will need to rise in response to falling funding levels and raised insolvency risk of sponsoring employers.

Action for trustees

- If you are certifying (or recertifying) a Type A guarantee, take advice on the impact on the guarantor's business

and the amount of the realisable recovery it is appropriate to certify.

- Work with your advisers to submit your contingent asset documentation as soon as practicable.

CONTRIBUTIONS AND BENEFITS

Impact of reduced pay

If staff are required, agree or request to work shorter hours during the crisis, this may impact:

- pensionable salary under scheme rules used to calculate member contributions;
- pensionable salary used to calculate employer contributions in DC schemes;
- final pensionable salary for the purposes of final salary benefits or annual salary for calculating career-average benefits; and
- statutory auto-enrolment contributions.

The government's compensation scheme for "furloughed" employees will cover 80% of "wages costs", up to £2,500 per month. It is not clear whether wages costs will include employer or employee pension contributions.

Even if contributions are reduced to reflect lower incomes, this could cause additional work for payroll administrators, especially if the reductions take some workers below the auto-enrolment threshold.

Auto-enrolment

There have been calls for employers' auto-enrolment obligations to be suspended but so far there has been no indication that this will be done.

New emergency volunteering leave

The Bill creates a new category of statutory unpaid leave: "emergency volunteering leave" (EVL). Individuals, other than those working within specified fields such as the police, may take up to four weeks' EVL in a 16 week period. Compensation for loss of earnings will be payable by the government.

In relation to pensions:

- Schemes will be treated as having an EVL rule.
- Benefit accrual must continue during EVL in the same way as when the individual is not on EVL; and
- Member contributions while on EVL should be calculated on the pay (if any) paid by the employer during this time.

Reservists

A Parliamentary statement on 19 March says that measures have been taken to enable the call up of Reservists.

Action for trustees

- Confirm that your administrator is able to process changing contribution levels and corresponding impacts on benefits.
- For final salary schemes open to future accrual check whether benefits of members close to retirement will be

adversely affected. Consider with the employer whether changing the scheme rules would be appropriate.

- If needed, check whether provision for Reservists is made in your trust deed and rules? Is the administrator aware of this?

DEATH BENEFITS

Practicalities of processing death claims

Administrators need to be able to process death notifications and claims sensitively and in a timely manner, despite the challenges of the current working environment. Points to bear in mind include the following.

- Relatives of older members who have died may not be set up to deal with administrators online. Does your administrator still have capacity to deal with relatives via post or phone?
- If member nominations are held in hard copy, how may these be accessed if offices are required to close?
- Gathering information about potential beneficiaries of discretionary death benefits may take longer. Details of the will or of surviving family members may need to be obtained from the member's solicitor – whose office may be shut and who may not have immediate access to hard copy files.

Insured death benefits

Most insured death benefits apply on death in service. Many of the people most vulnerable to Covid 19 are over working age and so not eligible for death in service benefits. The impact of Covid 19 on insured death benefits may therefore be slight for many schemes.

However, where there is an upper limit in a death in service insurance policy, the trustees will be liable for any shortfall between the benefits promised under the scheme and the amount paid by the insurer. The same will apply if a "force majeure" clause in the policy means that no benefits are payable on Coronavirus-related deaths.

Action for trustees

- Ask your administrator to confirm that it can still process death notifications and claims appropriately and in line with your service level agreement.
- Check whether your insurance policy contains an upper limit on payouts, or a force majeure clause which might be triggered?
- Where policies covering death in service benefits are coming up for renewal, be prepared that insurers may seek to exclude or limit benefits on Coronavirus-related deaths

TRANSFERS OUT

Should transfers be suspended?

Although there have been calls for the government to suspend the right to take a transfer value (CETV) for six months, at the time of writing no such change has been proposed. In the current environment, calculation and

payment of CETVs is especially difficult: asset values vary significantly from day to day; the emergency cut in interest rates will impact the calculation of liabilities; and restrictions may apply on disinvestment from particular funds.

In addition, the practicalities of processing transfer requests are likely to be more difficult in the current situation.

Reducing CETVs?

In the absence of a temporary ban on transfers out, trustees of DB schemes should decide whether to reduce CETVs to reflect underfunding in the scheme. What is appropriate for your scheme will depend on the particular circumstances, including: the scheme's current funding level; how much protection your investment strategy (including any hedging) gives you against economic shocks; and your view of the employer's covenant.

Pension liberation fraud

Amid reports of increasing activity by scammers, the Regulator is concerned that the present economic uncertainty will make some members more susceptible to pension frauds:

- DC members may be persuaded to transfer to schemes with high risk investments, in the hope of recovering losses; and
- DB members may be taken in by scaremongering that their scheme (and sponsoring employer) will be unable to pay benefits due.

Action for trustees

- Consider whether to reduce CETVs during the present crisis. It would be appropriate to ask the employer for its views before reaching a decision.
- Before reducing CETVs, obtain an insufficiency report from your scheme actuary.
- If you have a scheme website, consider posting a message to members urging them to be extremely cautious if considering a transfer; with signposts to the Money Advice Service and ScamSmart.
- Give the same message to any member who asks about transferring out.

REGULATION

The Pensions Regulator issued online [guidance](#) for trustees on 20 March and intends to update this regularly.

- Trustees and administrators should contact the Regulator immediately if they are concerned they will not be able to pay benefits.
- Other breaches should be reported to the Regulator in the usual way. Helpfully, it recognises that administrative breaches of the law are likely to happen in current circumstances and it will take a proportionate and fair approach to this.
- The Regulator announced on 23 March that it is temporarily suspending all its regulatory initiatives. The Regulator will contact anyone currently involved in regulatory action directly to set out its expectations and next steps.

- The Regulator is postponing the publication of its consultation on bringing together its codes of practice to form one single code. The Regulator's current consultation on DB funding remains open, and it intends to review timings in the coming weeks.

Action for trustees

- Be aware of the Regulator's guidance, in particular that you should contact it immediately if you are concerned that you may not be able to pay benefits.

CURRENT PROJECTS

Current or pending projects such as internal reorganisations or changes of service provider may need to be reconsidered and, potentially, put on hold during the present crisis if going ahead would divert resources from priority functions such as ensuring payment of benefits.

On the other hand, there are reports of falling annuity prices relative to gilts. Trustees of schemes which already hold gilts may be able to buy-in or buyout benefits at an advantageous price, if they and their advisers have the resources to proceed swiftly.

Action for trustees

- Scheme specific: discuss with the other parties involved as appropriate.

DISPUTES

Investigating member complaints is likely to be considerably more difficult, especially where this requires access to historic documentation which may not be available electronically. Trustees are required to determine complaints through the scheme's internal dispute resolution procedure (IDRP) within a "reasonable period" – which the Regulator considers to mean within four months. More time may be needed, however, if the current working restrictions are prolonged or tightened. It will be important to keep members informed if there is likely to be delay in dealing with their dispute.

The Pensions Ombudsman has [stated](#) that staff are working from home and it may take longer for cases to be processed.

Action for trustees

- No immediate action, but be prepared for increased difficulties and delays in dealing with disputes.

CONTACT US

We would be pleased to speak to employers, trustees or other professionals who would like to discuss any of the issues covered in this note.

For further information, please speak to your usual Hogan Lovells contact or one of the pension partners listed below

This note is written as a general guide only. It should not be relied upon as a substitute for specific legal advice.

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