ALLEN & OVERY

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TPR provides easements on transfers and DRCs, plus further guidance

The Pensions Regulator (TPR) has announced further flexibility to schemes and sponsors in relation to the Covid-19 pandemic, including a 3-month grace period to 30 June 2020: it will not take regulatory action if transfer processes are put on hold or trustees agree to suspend deficit reduction contributions due in this period and will take a pragmatic approach to regulation, recognising market conditions. All trustees, and sponsors of DB schemes, should review the guidance relevant to them.

Guidance for trustees of DB arrangements: new flexibility on transfers and DRCs

TPR's guidance for trustees of DB schemes is lengthy and detailed, covering the following key issues:

Transfer processes

Significantly, TPR has announced that trustees may decide to suspend cash equivalent transfer value (CETV) quotations and payments for three months to gain time to review CETV terms and/or to assess the administrative impact of any increase in demand for CETV quotes. Where this delay results in a breach of the law, it must be reported, but TPR will not take regulatory action in the next three months against trustees who suspend CETV activity in this way. The Pensions Ombudsman will take TPR's guidance and the current situation into account in the event of future complaints.

Deficit reduction contributions

TPR has clarified and expanded last week's guidance on DRCs: it now states that trustees should be open to requests to reduce or suspend DRCs; if insufficient information is available to make a fully informed decision, trustees may agree to requests to suspend or reduce DRCs for as limited a period as possible while appropriate information is being provided. This period should normally be no longer than three months if the trustees are not able to fully assess the employer’s position, and the length should depend on trustees' access to timely, relevant information and on the size of the DRCs in question.

If DRCs are being waived, trustees should ensure that banks and other funders are being supportive and that no dividends or other distributions are being made by the employer (supported by legally binding commitments). In some cases, circumstances or an appropriate business case might justify a longer suspension or reduction period in line with TPR's previous guidance; trustees should take legal and actuarial advice to ensure there are no unintended consequences. Reporting requirements should be complied with as normal but TPR will not take regulatory action in relation to failures to make payment in line with the expected schedule over the next three months.

Requests to suspend or reduce payments for future service should be treated in a similar way, but trustees should exercise particular caution about any request for a release of security, which TPR says is unlikely to be in the best interests of members.

Valuation processes

Trustees who are close to completing a valuation process should consider post valuation experience when agreeing recovery plans, particularly with reference to the affordability of any provisionally agreed deficit reduction contributions (DRCs). Submission of valuation documents (including recovery plans) can be delayed by up to three months if more time is required to consider the issues.

Investment issues

The guidance also covers DB investment issues and provides a list of issues for trustees to consider including: cashflows; current strategy and mandates; derivative positions and collateral management arrangements; risk exposures including counterparty risk; the timing of any pre-agreed asset transitions; incremental strategy changes or de-risking milestones; and governance issues (also covered for DC schemes – see further below).

Trusteeship and governance

TPR emphasises the importance of specialist advice (particularly in situations of employer distress), good governance (with particular reference to conflicts of interest) and timely information from the employer. The guidance also underlines the need to fully document trustee decisions.

Guidance for sponsors of DB schemes: information flow and pragmatic regulation

TPR's guidance for DB sponsors highlights the need for good information flows from sponsors to the scheme trustees - even with many competing demands on management time and significant uncertainty in many areas, it expects trustees to receive regular updates on employer outlook and contingency planning as well as information about the impact on the employer covenant and the affordability of deficit repair contributions (DRCs).

TPR states that it will be pragmatic where trustees are asked to agree to DRC reductions or suspensions, or security for additional debt, provided that there is a plan for catching up on deferred payments, and for mitigating any detriment to the scheme. As always, TPR emphasises fair treatment of the scheme compared with other stakeholders.

Guidance for DC trustees: support members and review investment issues

TPR's guidance for trustees of DC schemes focuses on investment issues and sets out good practice, together with TPR's response to legislative breaches or trustee actions.

First, TPR flags concern about members whose DC savings are invested in high risk (e.g. equity) funds and who may see their fund values fall significantly. This could cause them to switch investments (crystallising losses), to opt out, or to become more vulnerable to investment scams. The members most affected by market volatility are likely to have longer time horizons, but it is also likely that there will be longer-term impacts on the market. TPR recommends that trustees consider communicating with members about these issues.

Trustees should also discuss with their investment advisers whether any specific actions are required – for example, in relation to:

- the suspension or adjustment of investment mandate rebalancing requirements;
- any wider investment strategy issues such as exposure to specific investments, sectors or counterparties; and
- the timing of any previously-agreed asset transitions or fund switches, to ensure they remain appropriate and do not introduce risks or crystallise losses.

Trustees will already have been considering governance issues such as quorum and signature requirements; the guidance includes specific commentary about the investment sub-committee, to ensure that actions can be taken promptly where required, including in the event of trustee incapacity or absence.

TPR again emphasises that it will take a pragmatic approach; where schemes fail to meet statutory deadlines or comply with statutory requirements it will, where possible, use discretion as to whether it would be appropriate to take action regarding specific breaches.

Comment

TPR's guidance is evolving swiftly in response to current issues. Many schemes will be relieved to gain additional flexibility in relation to transfer processes; DC schemes in particular should be aware of heightened scam risk for members (Action Fraud reported a 400% increase in scam activity in March, playing on fears about the markets or employer stability). If you would like to discuss any issues relating to the effects of the current crisis for your specific situation, please contact your usual Allen & Overy adviser.

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