In Touch technical update

March 2020

TPR publishes guidance on COVID-19

- TPR extends its guidance on COVID-19
- Trustee note gives more flexibility for DB schemes finalising valuations, further guidance for easements on agreed DB contributions, and guidance on investment and transfer values
- Guidance for employers and for DC schemes also published

Late on Friday 27 March, TPR published updated guidance for trustees and scheme sponsors, relating to COVID-19. This latest guidance included some specific new easements which will be maintained until 30 June 2020, with TPR reviewing this date as matters progress.

Background

On 20 March the Pensions Regulator published two sets of guidance on COVID-19: an update for trustees, employers and administrators, together with guidance for DB scheme trustees whose sponsoring employers are in corporate distress. On 27 March it published:

- DB scheme funding and investment: COVID-19 guidance for trustees;
- DB scheme funding: COVID-19 guidance for employers; and
- DC investment: COVID-19 guidance for trustees.

This note focuses on the 27 March guidance, which will be of interest to trustees and scheme sponsors.

DB trustee guidance

The DB trustee guidance extends to 14 pages and different elements may be relevant to different schemes. Trustees should read the guidance in full but some key points are set out below.

On completing valuations

TPR does not expect trustees who are close to completing their valuations to revisit their valuation assumptions.

TPR will not take action if the recovery plan submission (i.e. completion of the valuation) is delayed by up to 3 months (ie 18 months rather than 15 months after the effective date) in order to give trustees more time to consider the situation rather than submitting a recovery plan that may soon need to be renegotiated. Trustees need to consider whether completion or delay is in the best interests of members.

On Employer requests for easements to an existing Schedule of Contributions (SoC)

Trustees should be open to requests to reduce or suspend deficit reduction contributions (DRCs). Where sufficient information is not available to make a fully informed decision, trustees should limit such a reduction or suspension to as short a period as possible – not longer than three months – while appropriate information is provided. They should take particular care with requests that relate to large one-off payments due (e.g. when DRCs are paid annually) during the relevant period. A longer suspension may be appropriate where other lenders are willing to provide support for more than 3 months and restrictions would limit that support.

In agreeing DRC waivers trustees should ensure no dividends or other distributions are being made (this should be underpinned by legally binding commitments) – essential intra-group transfers may be appropriate in some "exceptional circumstances". TPR suggests DRC waivers could be achieved by amending the existing SoC (ideally keeping the same end date with contributions deferred to later in the recovery period) or by a short term suspension of payments without updating the SoC (TPR notes the need for legal advice and a possible risk of triggering wind-up provisions in the latter case).

TPR advises that any requests to reduce or suspend future service contributions should be treated in the same manner as such requests for DRCs, but notes that member contribution rates may be written into the scheme's rules and the risk in a multi-employer scheme of triggering a wind-up or an employer cessation event – TPR recommends legal advice.

Requests to release security

TPR states that releasing security (such as a previously agreed charge over employer assets) is very unlikely to be in members' best interests.

Advice and governance

The seriousness of the issues facing employers means that trustees should consider potential conflicts of interest on the trustee board and consider whether advice on how to manage the conflicts is necessary.

Investments

The guidance highlights in the executive summary 5 key actions for trustees:
- Review cashflow requirements;
- Review and manage specific risks in the portfolio or within the sponsor's business;
- Review previously agreed but yet to be implemented investment and risk management decisions;
- Review investment governance structures and delegations to ensure they can continue to function in the event of absence;
- Assess whether changes to the scheme's investment and risk management governance framework are needed.

The note includes the above key actions in a fuller list of 12 recommendations for trustees to consider.

Transfer values (CETVs)

Trustees may wish to review CETV terms. They may also be concerned about the strain placed on administration functions. Consequently, some trustees may decide to suspend (i.e. to delay calculating and issuing) CETV quotations for up to three months (the guidance also suggests payments could be suspended - presumably subject to the usual legislative timescales). TPR will not take any action in the next three months over consequent breaches of disclosure requirements. After three months trustees who have been suspending quotations will need to decide whether further suspension remains in members' best interests.

DB sponsors' guidance

The DB scheme sponsor's guidance is only 2 pages long. TPR expects trustees to be provided with regular updates on the sponsor's outlook including the information they need to assess the impact of COVID-19 on the sponsor covenant and the affordability of DRCs.

TPR will be pragmatic over the suspension of deficit reduction contributions (see above), or additional secured debt being taken on, provided:
- The need for such action can be justified;
- A plan is made for deferred payments to be caught up (beyond the shorter term);
- A plan is made for mitigating any detriment caused to the scheme (although TPR notes that this may not always be possible); and
- The scheme is treated fairly compared with other stakeholders – TPR first expects payments to shareholders and other forms of value leaving the employer to have ceased.

TPR strongly recommends employers document their position regarding the treatment of their schemes, particularly as this may assist in any future engagement with TPR.

DC trustees' guidance

The 4-page guidance highlights in the executive summary 5 key actions for trustees:
- Consider how members might react in the current environment – members might act inappropriately or be exploited by scams;
- Review and manage specific risks within portfolios or with service providers;
- Review previously agreed but yet to be implemented investment and risk management decisions;
- Review investment governance structures and delegations to ensure they can continue to function in the event of absence;
- Assess whether changes to the scheme's investment and risk management governance framework are needed.

The note includes the above key actions in a fuller list of 11 recommendations for trustees to consider.

TPR will take a "pragmatic approach" using discretion, where possible, to decide whether it would be appropriate to take action regarding specific breaches.

Next steps

TPR expects to publish its Annual Funding Statement after Easter. This will be relevant to all DB schemes but particularly those with valuation dates between 22 September 2019 and 21 September 2020, as well as schemes undergoing significant changes that require a review of their funding, investment and risk management strategies.

The new easements outlined in the 27 March guidance will be maintained until 30 June 2020, with TPR reviewing this date as matters progress.

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