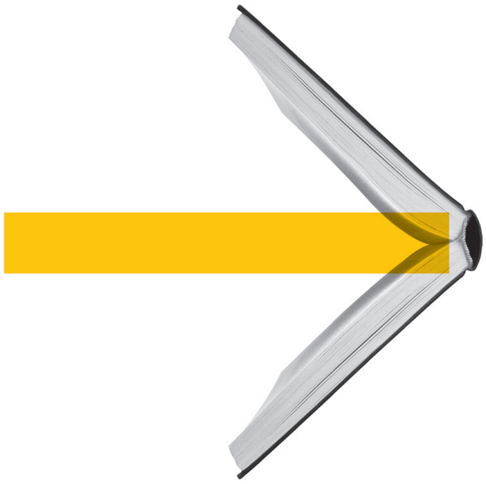
EVERSHEDS SUTHERLAND

Moving forward

Responding to COVID-19 – what pensions steps should you take now?



The speed and size of the impact of COVID-19 on the UK is unprecedented – we are seeing businesses closing, stock markets falling and much of the population staying at home.

Clearly all of this will have an impact on occupational pension plans and their sponsors. So, what can trustees do to help their plans continue to operate as normally as possible?

Administration and day to day activities

The Pensions Regulator has issued guidance relating to COVID-19 and acknowledges that it is placing huge additional pressures on the administration of pension plans.

Some of the tasks trustees should be undertaking are to contact administrators to check that they have contingency plans in place and to understand how they plan to ensure everything continues if offices close and/or key personnel are unwell.

They should also be checking the administration agreement. Does the administrator have a business continuity plan (**BCP**)? Are they implementing it? What happens under the agreement if the BCP is not successful? Does it cover catastrophic events?

Trustees should also be talking to their employer about arrangements for collecting contributions from employees. Will they continue as normal or are there issues which need to be addressed?

Another thing to think about is whether trustees will have access to sufficient cash to pay benefits? Generating cash in a hurry is expensive in current markets so it is important to plan ahead.

Trustees should think about contacting their bank to ensure that it too has an appropriate BCP in place.

Identifying all key service providers and contacting them to work out whether there are any risks that key services will be affected and arranging contingency plans are further actions to take.

Finally being vigilant about scams as more members may be considering transfers and ways to access cash. To help protect members, trustees can direct them to Scamsmart.

The Regulator expects "*trustees to have appropriate monitoring and contingency planning in place and to be alive to risks that would have significant consequences for their plan and members*". This includes "*having a business continuity plan… Trustees should also understand their service providers' business continuity arrangements*".

The Regulator also says that "*Trustees and administrators should report to us immediately if they believe they will be unable to pay members' benefits*".

Plan investments

As global stock markets continue to fall, trustees should check whether the arrangements in place to monitor investments are proving to be effective and adequate. They may need to make changes to the investment strategy and should ensure that all contributions continue to be passed to the fund managers to invest and check that they are they able to continue to invest them promptly. Many property funds open to DC members are being closed to withdrawals and new money: what alternatives will be put in place?

Where trustees have long-term investment plans in place, these might need to be revisited to ensure that they are still fit for purpose. Trustees should consider whether it is possible to put any additional risk mitigation strategies in place as the current situation could continue for the medium term. Where existing de-risking triggers are in place, it would be sensible to consider whether they should be reviewed in light of recent market movements.

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Defined benefit plans and funding

What trustees will need to do will depend on where they are in their valuation cycle:

Ongoing valuations: If the valuation date was before the current crisis, falling asset values may not have a significant impact. The Regulator doesn't expect trustees to revisit valuation assumptions and whilst you are not required to take into account post valuation experience it expects trustees to consider it when agreeing recovery plans. If trustees need more time to consider the position the Regulator indicates that trustees may decide to delay recovery plan submission by up to three months.

Valuation dates now: Where the valuation date falls at any time from March onwards, the problems are greater. The starting point for the valuation will be the asset value now. The Pensions Regulator has said that it will give some guidance in its annual funding statement, which is due out after Easter, so trustees (and sponsors) should look out for that.

Recovery plans: Sponsors with businesses particularly affected by COVID-19 may not be able to meet the deficit recovery contributions set out in any recovery plan. Trustees should ensure that they are fully aware of the financial position of the sponsor and monitor covenant strength. The Regulator has set out a number of questions that trustees should ask sponsors now to determine the impact of COVID-19 on their business and ability to support the plan.

The Regulator has acknowledged that delaying deficit recovery contributions might be appropriate in the current circumstances but says that trustees "*should consider any request [to delay contributions] carefully to ensure that any support given is part of a co-ordinated and fair response across key stakeholders*". The Regulator has given some guidance on issues that trustees should take into account to make sure that the plan is treated fairly. In particular it expects trustees to offer only short-term concessions of no more than three months until more reliable covenant visibility is available.

Guarantees: Where funding arrangements are supported by guarantees, trustees should consider whether they remain appropriate and whether further security is required. Trustees should also review the terms of the guarantee to see when it becomes enforceable.

Distressed employers

In addition to changes to recovery plans and deficit recovery plans discussed above, there are other actions which trustees may wish to consider taking. These include checking what the plan rules provide and whether they allow for a temporary suspension of contributions.

Trustees should consider what powers they hold under the plan rules if the employer does not pay contributions. It is also worth considering the implications for auto-enrolment and whether minimum contributions will continue to be met.

For DB plans, it would be sensible to establish whether the schedule of contributions/payment schedule will need to be adjusted and also consider how employees put on the Government's new retention (or "furlough") leave will be treated in relation to their pension. Finally, trustees will need to decide whether the Pensions Regulator should be contacted.

PPF levy deadlines and guarantees

The deadline for submitting PPF guarantees to the Pension Protection Fund is 31 March. The PPF has issued a statement saying it does not want hard-copy documents and explaining the electronic format in which documents should be sent. It has also said that it will accept documents with e-signatures.

Where plans have PPF-compliant contingent assets, such as parent company guarantees, trustees should consider whether they can still be relied upon and are appropriately certified.

Where PPF levy documents cannot be finalised because, for example, key individuals are not available, the PPF says that whilst it can't "*formally approve extensions in advance*", if trustees submit "*documents after the deadline, [it will] consider the circumstances and where it's reasonable... accept them*". Trustees will need to give reasons for late submission.

The PPF has also issued guidance saying that trustees should have a contingency plan in place to deal with a PPF assessment period in the event that the sponsor becomes insolvent. This would include ensuring that any member data stored by the employer remains available and that the pensioner payroll can still be run.

DC members approaching retirement

Falling stock markets will have had a significant impact on the fund value of many DC members. For most, this may be a short term issue only. However, for those looking to retire now or in the next few months, it could be a big issue.

Trustees should consider whether there is a need to communicate with members in this category. Sponsors could consider whether it might be possible to delay retirements.

The Regulator emphasises the need to ensure that members approaching retirement are directed to the Money and Pensions Service and has urged trustees to be vigilant against scams.

Death benefits and insurance

It is important to ensure that the plan can continue to pay death benefits so trustees should check this with the administrator. However, where lump sum death benefits are insured, there are some additional issues for trustees to consider such as checking if there are restrictions in the insurance policy that could apply in the current pandemic. It would also be worthwhile considering if the plan rules require a lump sum to be provided even if the underlying insurance policy does not pay out.

Trustee meetings and decision making

It is unlikely to be possible to hold normal face-to-face trustee meetings over coming months. To ensure that the plan can continue to be run properly trustees should check whether plan rules (and articles of association in the case of a corporate trustee) allow for meetings to be run remotely. Also consider more frequent meetings of shorter duration than the usual quarterly trustee meeting to aid concentration and focus when meeting virtually.

They will need to establish how many trustees need to be present for a meeting to be quorate and whether there are any provisions to appoint alternatives, should it become necessary.

In terms of general plan management, trustees should consider whether documents can be signed remotely or electronically where necessary and whether all trustees have access to online meeting papers. Finally consider whether individual trustees' home working arrangements are consistent with GDPR – are all documents stored safely and securely, and destroyed appropriately?

What next?

The situation will, of course, continue to develop over the next few months. As the situation unfolds, trustees should regularly monitor the impact on themselves and the ability of their plan to function as normal.

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