GUIDANCE ISSUED BY THE PENSIONS REGULATOR IN RELATION TO COVID-19

Since mid-March 2020, the Pensions Regulator has issued several sets of guidance on what trustees, employers and administrators can do to help manage the impact of the challenges that have arisen as a result of the COVID-19 outbreak. Further guidance is expected to be issued as the situation develops.

For trustees, the guidance revolves around the heightened need to understand the corporate health of sponsors, principles that should be applied in considering any request from sponsors to reduce or defer deficit recovery contributions, considering the adequacy of contingency plans, interactions with administrators and good practice ideas for trustees who are close to finalising valuations.

Guidance for employers sets out the Regulator's expectation that trustees are to be provided with regular updates on the sponsor's outlook and contingency plans. The guidance also provides some reassurance that the Regulator will take a reasonable and pragmatic approach to the regulation of scheme funding, as long as certain conditions are met, recognising that trustees may be asked to agree to previously unforeseen arrangements.

For administrators, guidance relates to them prioritising benefit payments and processing retirements and bereavements and acknowledges that there may be delays to non-critical trustee and member services. The guidance includes practical ways which trustees can support administrators in delivering critical services, such as permitting use of electronic signatures and holding larger cash bank balances. The guidance also warns of fraudsters taking advantage of the COVID-19 crisis to facilitate pension scams and trustees and administrators should be aware of this.

Please contact one of the BDO team if you would like to discuss any of the topics raised in more detail.

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What does that mean for employers and trustees?

Information requests

It is likely that trustees will be requesting additional information from their sponsors.

Within its guidance, the Regulator set out a list of questions that trustees should ask of employers in relation to COVID-19.

The suggested questions relate to:

- How the measures introduced by the UK government to contain the outbreak may impact operations, demand and financial performance of sponsors
- Business continuity plans, including availability of staff and materials
- Positions taken by lenders, any restrictions in use of facilities, expected covenant compliance, how long existing facilities are expected to be sufficient and plans for further borrowing
- Any impact on supplier terms or volumes
- Details of planned payments to shareholders and connected companies
- Eligibility for the package of support measures announced by the Chancellor on 17 March.

If these questions have not already been asked by trustees, employers should assume that they will be and start to consider responses.

Where there is an expected significant impact on cash flows due to current market conditions you should consider preparing a rolling 13 week short term cash flow forecast.

Requests to reduce or defer deficit recovery contributions (DRCs)

The Regulator states that trustees could consider requests to defer DRCs under the current circumstances. However, they suggest that trustees don't agree to long term deferrals without an appropriate level of information which demonstrates the need to do this.

Where sufficient information is not available, the Regulator suggests deferrals of no longer than 3 months. During this time more detailed information can be obtained, allowing trustees to make a more informed decision as to whether a longer term deferral is appropriate.

The guidance sets out a number of principles which should be taken into account when considering such requests. These include:

- Other stakeholders playing their part in supporting the employers and schemes being treated fairly
- Banks being supportive
- Payments to shareholders and other connected companies ceasing
- The scheme receiving a share of any new security issued.

Any deferral agreement should have an end date and should include triggers whereby deficit recovery contributions resume when the employer becomes able to afford them.

Where employers require a deferral of deficit recovery contributions, they should be able to expedite agreement by providing the appropriate level of information which clearly demonstrates the requirement, and by illustrating compliance with the principles set out in the guidance.

Situations where valuations are close to being finalised

The Regulator has advised within the guidance issued that they will be pragmatic where trustees finalising valuations are being asked to agree to a previously unforeseen arrangement (such as a reduction/deferral of deficit recovery contributions or additional debt being secured over the employer's assets), provided:

- The need for this can be justified
- A plan is made for deferred scheme payments to be caught up
- A plan is agreed to mitigate any scheme detriment arising (although the Regulator recognises that this will not always be possible)
- The scheme is being treated fairly, relative to other stakeholders. In particular, the expectation would be that payments to shareholders and other forms of value leaving the employer had first ceased.

The Regulator recommends that employers document their position regarding the treatment of their schemes in such situations as this may assist in any future engagement with them.

Where valuations are close to being concluded, the guidance also sets out that there is no requirement to revisit assumptions or to take account of post-valuation experience as a result of the impact of the COVID-19 outbreak.

The Regulator has also stated that it will not take regulatory action where recovery plan submissions are up to 3 months late, where additional time is required.

For further information please review the following links:

Guidance for DB scheme trustees whose sponsoring employers are in corporate distress

DB scheme funding: COVID-19 guidance for employers

COVID-19: an update for trustees, employers and administrators

DB scheme funding and investment: COVID-19 guidance for trustees

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