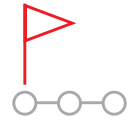


COVID-19: Tips for Employers and Pension Scheme Trustees

Very few pension schemes have sufficiently sophisticated risk management systems in place to deal with the economic and social disruption caused by COVID-19.

In this article, we outline the main issues trustees and employers should be considering, highlighting guidance recently issued by the Pensions Authority where relevant. We have also provided some practical first steps employers and trustees can take to minimise the impact of the current crisis.



Practical first steps

The issues flowing from COVID-19 have created an unfamiliar commercial environment. In terms of practical first steps that employers and trustees should be taking, we would advise the following:

- ensure that trustee decision making can continue;
- liaise with administrators to ensure pensions can continue to be paid and contributions invested within statutory timeframes;
- consider whether employer contribution obligations can continue to be met and whether amendments may be required to funding or security arrangements; and
- consider what actions, if any, are required with respect to employees that have temporarily been laid off.

Trustees and employers should also review guidance recently published by the Pensions Authority which is intended to assist trustees and employers to deal with the most immediate issues arising as a result of COVID-19, including service provider issues, investment concerns and scheme contribution obligations.



Trustee decision making

The social distancing requirements associated with COVID-19 have meant that many people are now working from home. Basic steps that should be taken to ensure that trustee decision making can continue in these circumstances include:

- review scheme documentation to ensure trustees have the flexibility to carry out meetings remotely and not just in person, noting that amendments to trust documents may be required in some circumstances. For example, is the scheme documentation silent on teleconferencing or other means of conducting meetings remotely? From a practical perspective, do all trustees have appropriate IT facilities to participate in meetings remotely and if not, can this be addressed?
- review the quorum requirements for trustee meetings (as well as delegation provisions) in the scheme documentation to ensure decisions can be validly made with a reduced trustee presence;
- consider how documents such as deeds of amendment or appointment and removal can continue to be executed;
- given the risk of trustees becoming unwell, consider identifying a reserve chairman / stand-by trustee candidates ready to fill vacancies; and
- check that authorised signature lists are up to date.



Statutory and regulatory deadlines

Statutory and regulatory deadlines continue to apply and, as reduced resources become a reality, tasks with such deadlines should be prioritised.

To avoid legislative and regulatory breaches and possible fines, steps should be taken to, for example, ensure timely and accurate payment of pensions and collection and investment of pension contributions. Relevant here is the Pensions Authority guidance on COVID-19. Referring to any failure to remit employee contributions to a scheme within statutory deadlines, the Authority reminded employers that this is a criminal offence, cases of which the Authority will pursue **'actively'**.



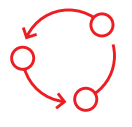
Service providers

As many of the day-to-day functions of a scheme are carried out by scheme service providers, trustees and employers should be aware of their providers' contingency plans. This will facilitate a better understanding of the impact COVID-19 is likely to have on the day-to-day running of the scheme and, where possible, ensure that contributions are collected and benefits continue to be paid as usual.

Key service providers should be requested to clarify which tasks they will prioritise in the event of a spike in staff absences and trustees and employers should consider if these are aligned with their scheme's priorities. Practical matters should also be confirmed with service providers. In particular, providers should be requested to confirm what arrangements they have in place that will allow them to continue to receive instructions and communicate with the trustees and / or the employer.

As an additional concern in respect of service providers, trustees and employers should be aware of and review the force majeure provisions within service provider contracts. Depending on how they are worded, such provisions may entitle service providers to suspend or modify their contractual obligations in the current circumstances. This review should give trustees and employers an understanding of whether COVID-19 may amount to force majeure under each key contract and plan accordingly for the potential risk.

With respect to investments, trustees should liaise with their investment advisors as early as possible to establish whether there are steps they should be taking to reduce exposure to the current market volatility. In light of market volatility, the Pensions Authority has cautioned against immediate investment decisions unless **'absolutely necessary'**. The Pensions Authority has also advised trustees of defined benefit schemes to consider the impact current market conditions have had on the funding position of their schemes and any actions which may need to be taken.



Employer covenant and funding issues

As they get to grips with a slowdown in world trade, increased employee absences and emergency legislation requirements, financially pressed employers may find it difficult to continue to meet their funding commitments. Trustees should liaise with their scheme's sponsoring employer as early as possible to understand how COVID-19 may impact on the employer's business and the steps that are being taken to mitigate against losses.

Both trustees and employers should familiarise themselves with the contribution obligations set out in their trust documentation as well as any contractual funding arrangements. They should also consider issues which may arise relating to these obligations and what options are available to them to deal with same. For example, is it open to employers to seek a **'payment holiday'** and how is such a request likely to be received by trustees? Does the scheme require the employer to continue to make contributions for employees who are temporarily laid off? On the trustee side, trustees should ensure they have a full understanding of the actions they can and should be taking to protect members' interests.



Member communications

With reports of falling stock market values, office closures and widespread uncertainty, it is very likely that there will be a large increase in the volume of queries received from concerned members. To reduce the volume of member queries and reassure members, the preparation and distribution of a FAQ document may be useful.

Conclusion

There is no doubt that COVID-19 has the potential to pose serious challenges for scheme trustees and employers in the management and administration of their pension schemes. In its guidance in relation to COVID-19, the Pensions Authority has acknowledged that the current crisis has created **"practical difficulties, and confirmed that this would be taken into account when assessing trustees"** compliance with their duties. However, the Pensions Authority has also stressed that it expects trustees to make a reasonable and member focused effort to resolve such difficulties. It seems likely that the Authority would expect the same from employers.

Acting quickly and, where possible, in close collaboration with one another, should assist trustees and employers to maintain as complete a service as possible for scheme members and limit the lasting effects of COVID-19 on their schemes from a governance, regulatory and financial perspective. Such an approach will also assist trustees and employers in demonstrating they have taken the **'reasonable'** and member focused approach the Pensions Authority has indicated that it expects in response to the ongoing crisis.

Should you have any queries, or require any assistance with the above or a related matter, please contact Deirdre Cummins, Jane McKeever, or your usual Matheson contact.