XPS Pensions Group

XPS Insights

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Pensions Regulator issues guidance for trustees on employer distress

What you **need to know**

- The Pensions Regulator (TPR) issued guidance on 12 November 2020 to help trustees protect their defined benefit (DB) schemes and members from sponsoring employer distress. It sets out actions TPR expects all trustees to take, with the exact detail depending on the current strength of the employer covenant.
- The guidance sets out TPR's views on best practice for Integrated Risk Management (IRM), describing the actions trustees should take depending on whether their sponsor is healthy, distressed or facing insolvency. To be able to take action quickly ahead of sponsor distress, TPR expects trustees to have robust IRM plans with workable contingency plans and triggers.
- Trustees are expected to ask sponsoring employers to share information on a regular basis and make sure they know who the other stakeholders of the business are, and what actions they might be taking to improve their position. They also need to consider member communications as appropriate.
- TPR asks trustees to monitor their sponsor's health, so that issues are identified early. TPR's view is the earlier issues are identified, the more options and time trustees will have to implement actions. This also mitigates the risk that other stakeholders take action earlier, to the detriment of the scheme.

Actions you can take

- **Review your scheme's processes** against the requirements of the new guidance
- **Understand your sponsor's legal obligation** to the scheme and options to improve this
- **Review and update your Integrated Risk Management plans** to ensure it is robust
- **Understand pension scam risk** in distressed scenarios and options to protect members
- **Review your covenant monitoring process**
- **Ask your sponsor to share** relevant and available business and financial information regularly

TPR's suggested actions to **reduce risk from sponsor distress**

Sponsor circumstance	Actions trustees should take
Any	**1)** Assess sponsor's legal obligations **2)** Ensure good IRM plans are in place **3)** Monitor covenant **4)** Seek appropriate advice
Showing signs of distress	**1)** Regularly engage with sponsor **2)** Increase covenant monitoring **3)** Review any security and insolvency outcomes **4)** Review investment strategy **5)** Ensure equitable treatment with other stakeholders **6)** be aware of the possibility of corporate transaction and review impact, **7)** Monitor any triggers in your IRM plan **8)** Seek specialist advice
Insolvency likely	**1)** Carry out Pension Protection Fund (PPF) contingency planning **2)** Review administration to ensure continuity (e.g. paying benefits) **3)** Review steps to realise any security or support from the sponsor **4)** Review investments to ensure liquidity **5)** Seek specialist advice

The finer detail: Key items in The Pensions Regulator's guidance on sponsor distress

Reason for the guidance	Despite the government's economic support packages, COVID-19 continues to have a profound impact on the economy. When sponsoring employers experience financial distress, the actions they take can lead to significant pension scheme losses. Trustees can improve member outcomes by identifying risks earlier and acting sooner.
What is included in the guidance	Broadly, the guidance covers two areas. Firstly, detail on best practice on IRM – which should allow trustees to spot when their sponsor becomes distressed and therefore take action early. Secondly, actions TPR expects trustees to take depending on the sponsor's financial position.
Best practice guidance on integrated risk management	
Employer legal obligation	Trustees should make sure they have a good understanding of the sponsor's legal obligations to the scheme, and the possible outcome for the scheme in a hypothetical insolvency.
Risk management	Trustees should ensure effective risk management processes are in place with documented and workable contingency plans, where possible.
Scheme governance	Four areas are highlighted: a) ensuring suitable trustee expertise and experience (using training or appointment of other trustees where there is a gap); b) managing conflicts effectively; c) a suitable information sharing protocol with the sponsor (covering timing and frequency); and d) clear documentation and record keeping.
Employer covenant	Trustees should regularly monitor the covenant and ensure the review is suitable and challenged.
Appropriate advice	Trustees should seriously consider taking professional advice when making decisions material to the scheme or sponsor.
Guidance for schemes whose sponsors are showing financial distress	
Understanding and monitoring	Ahead of setting out actions for trustees, TPR guides trustees to understand their sponsor's industry and identify the corresponding warning signs of distress. This can allow trustees to engage early to understand how their sponsor may be affected.
Actions	The guidance sets out a number of actions TPR expects trustees to take when their sponsor shows signs of financial distress (see previous page). These actions are aimed at developing a detailed understanding of the employer circumstance, options to improve the scheme's position and to plan for any action the business might pursue.
Scams	TPR sets out the importance of managing member concerns and the heightened risk of pension scams if members are worried about the security of their pension.
Guidance for schemes whose sponsors are at risk of insolvency	
Explore all options	TPR sets out further action if insolvency is likely (see page 1). These are aimed at exploring options to improve the position of and outcome for the scheme.
Engage with the PPF	Trustees should follow the PPF's contingency planning guidance and engage with the PPF on the practical steps they will need to take if they enter PPF assessment.

For further information, please get in touch with Elen Watson or Paula Haughton or speak to your usual XPS Pensions contact.

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