How will the current COVID-19 pandemic affect employer contributions in the longer term?

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Over the last few weeks, the Pensions Regulator (TPR) has been publishing a range of guidance for schemes and employers, which (amongst other easements) effectively gives the green light to trustees to consider the deferral of deficit reduction contributions for a period of up to three months. This guidance is helpful in the short term, but ultimately for most employers the consequences of the COVID-19 pandemic will stretch far beyond the immediate financial shock.

Employers adversely affected by the pandemic will be focusing on short-term liquidity, on testing the resilience of the business and its funding structure to a range of COVID-19 scenarios, and on the shape of the business post-coronavirus. This is placing significant demands on finance teams, who will have less bandwidth available in the immediate term to provide extensive information to trustees. Therefore, a three-month deferral may in some cases be useful to both parties in letting the immediate planning and actions settle, prior to working together to look at the post-summer landscape.

Trustees should now be seeking to understand the potential impacts of the COVID-19 pandemic on the employer's business and plans for mitigating those impacts, both immediately and in the longer term. This understanding will need to be highly specific to the scheme and the employer(s) in question. Trustees should recognise that the company is unlikely to have a firm strategy for emerging from the pandemic at this stage and that plans will need to be flexible, given that we have no clear idea of when and how the lockdown will be lifted, whether there will be a second wave of infections or how the sponsor will be structured. There may be a greater requirement for investment in the business, perhaps coupled with increased leverage, which could affect affordability and employer covenant as we emerge from the pandemic. Employers are likely to appreciate and work more collaboratively with trustee boards that are sympathetic to demands on the business and able to keep requests for information short, tailored and focused on the essential points. On the other hand, trustees will need to ensure that they see sufficient information from the employer to provide them with the reassurance that they have the best possible understanding of the employer's situation to enable them to take any action that might be needed.

We are seeing more collaboration between chairs of trustees and company representatives, for example through regular calls. This will help in ensuring that trustees aren't taken by surprise, if, for example, an employer asks for a contribution holiday in a few months' time to allow them to reinvest in their business. Although TPR's guidance has not yet looked beyond the initial three- month period, we would expect TPR to have regard to its sustainable growth objective as companies seek to rebuild businesses that were previously viable, and therefore for trustees to be sympathetic to such requests. In looking to provide additional support, trustees may wish to seek mitigation – they may even be instructed to by TPR. Sponsors, though, are likely to have limited assets and will be focused on balancing the needs of all stakeholders, so security or other comfort could be difficult to obtain.

Whilst collaborative working should be the norm, there may be cases where trustees need to take a more cautious approach. Where there are senior employer representatives on the board, it is likely to make sense for them to step outside any discussions relating to deferral of contributions (ideally without losing the insight into the company's position that they bring to the Board). Trustees should also bring a critical eye to any request by an employer to suspend contributions and ensure that any such request is adequately justified.

'Equitable treatment' is a phrase often used by TPR and it is important that sponsors, as well as trustees, are aware that the scheme should not be the only stakeholder to demonstrate flexibility. Whilst TPR has said that they won't retrospectively pursue trustees for the decisions they make in the current situation, trustees will still need to ensure that their thought-process has been adequately documented and that the pension scheme does not see a greater detriment than other stakeholders.

These are unprecedented times and collaboration between sponsor and scheme has never been more important.

This article is authored by **Simon Kew**, Director, Restructuring at Teneo, and **Jane Beverley**, Trustee Director, Law Debenture.

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