SLAUGHTER AND MAY

C-19

THE PENSIONS REGULATOR'S ANNOUNCED EASEMENTS

14 April 2020

The "*clearer, quicker, tougher*" Pensions Regulator ("TPR") is in reaction to Covid-19 now "*reasonable, pragmatic and proportionate*".

TPR has announced further easements that will stay in place until at least 30 June 2020: see link. TPR says it will additionally review whether more specific flexibilities or restrictions are required during the following weeks, and whether the date should be extended.

For pension schemes in relationship-managed supervision, TPR will be focussing on near-term risks rather than the standard activities in its supervisory cycle.

TPR will continue to take a risk-based approach, but with reference to the following "guiding principles":

- **On reporting breaches:** if the breach will be rectified within 3 months, and does not have a negative impact on members, there is no need to report, but administrators need to keep a record of the decisions made, and action taken; and
- **On enforcement:** decisions will be taken on a case-by-case basis; TPR says it will adopt a flexible approach, for example granting longer periods to comply, and taking COVID-19 into account.

The key easements are:

- **Failure to agree Recovery Plans:** As previously announced, no regulatory action will be taken for delays of up to 3 months if employers and trustees are unable to agree to recovery plans by the 15-month deadline. If a valuation cannot be submitted in the extended timeframe, the delay needs explaining to TPR with an outline of the remaining issues and when they will be resolved.
- **Late payments:** Late payment of employer contributions should only be reported to TPR where the breach is likely to be of material significance. TPR accepts an extension of the normal 90-day period, beyond which it consider all late payments to be material, to 150 days. Trustees should bear in mind the importance of DC contributions being invested promptly and employers must make all possible efforts to ensure that any contributions deducted from pay are paid into the scheme on time.

- **Failure to consult:** TPR will not take regulatory action for employers failing to consult on reducing pension contributions, provided that this is only for furloughed staff, and contributions do not reduce below minimum automatic enrolment requirements based on furloughed pay. Employers are encouraged to write to affected employees and provide as much by way of consultation as possible.
- **Accounts, SIPs and annual benefit statements:** Provided the delay is COVID-19-related, the general 3-month easement applies where there has been a failure to meet the deadline for producing annual benefit statements, a failure by trustees to review statements of investment principles (including for default funds), or late production of audited annual benefit statements.
- **Charges cap:** If the charges cap is exceeded because costs increase temporarily due to COVID-19, and the breach would constitute a "material breach", this should be reported. However, TPR will take a proportionate response to enforcement, where the trustees take all reasonable steps to bring charges back within the charges cap as swiftly as possible.
- **Chair's statement:** On the provision of chair's statement, TPR will not issue penalty notices before 30 June 2020. This is the case whether a statement has not been completed, or if it is not compliant. Any statements sent in will be returned unread.
- **DB transfers:** Trustees of DB schemes are permitted to suspend CETVs by up to 3 months to allow time to carry out a review of transfer value factors and to assess the administration impact of COVID-19. However, TPR urges caution in delaying the payment of transfer values effected before the onset of COVID-19. Also, it is not particularly clear what easements might apply in cases where payments are delayed beyond the statutory deadlines.
- **Transfers from DC and hybrid schemes:** TPR says it will be updating its guidance on these later this week.
- **Areas where no easements are to be offered:** TPR will not be offering easements for the following: the requirement to notify TPR of notifiable events; the prohibitions on employer-related investments; and notification by master trusts for all triggering events and significant events in accordance with the legislation.

F**urther easements may follow. Employers and trustees should keep records of any decisions made and actions taken. It will not always be possible to hide behind the shield of COVID-19.**

If you would like further information about the impact of COVID-19 on your business, please speak to your usual Slaughter and May contact.

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