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TPR – YOUR FLEXIBLE FRIEND?

1 INTRODUCTION

Recognising that these are difficult times, on 18 February 2009 the Pensions Regulator (TPR) issued a statement[1] to employers who sponsor defined benefit pension schemes regarding the impact of current economic conditions. This follows a similar statement issued to trustees last autumn[2].

2 KEY POINTS

- TPR reassures employers that the current scheme funding regime is flexible enough to cope with the economic downturn.
- Where a sponsor company is under financial pressure there is potential to renegotiate previously agreed plans to repair pension deficits (recovery plans).
- Trustees should be in a position to understand what is "reasonably affordable" for their sponsor.
- TPR will be pragmatic in its application of the scheme funding system and look for outcomes in the best interests of the scheme and sponsor.

3 GETTING THE BALANCE RIGHT

As trustees "normally have a shared interest in maintaining the health of the company", TPR highlights that a balance needs to be struck between trustees securing sufficient deficit payments for the pension scheme and sponsoring employers staying afloat. It believes that the scheme funding regime is

[1] http://www.thepensionsregulator.gov.uk/pdf/StatementToEmployersFeb2009.pdf
[2] http://www.thepensionsregulator.gov.uk/pdf/StatementToTrusteesOct08.pdf

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flexible enough to allow this. Trustees need to ensure that their sponsor is paying what it can "reasonably afford" and that the pension scheme is being treated fairly in comparison with other unsecured creditors. Therefore, "[any] recovery plan should not suffer, for example, in order to enable companies to continue paying dividends to shareholders."

Employers are urged to open discussions with trustees if they believe their existing recovery plan is "at serious risk of" jeopardising the company's future.

Trigger happy TPR

TPR continues to emphasise that the scheme funding regime is not "one size fits all". Although longer deficit recovery plans (those over 10 years) trigger greater scrutiny, they may be suitable in certain circumstances. To date TPR has seen, and considered appropriate, recovery plans ranging in length from 1 year to over 20 years. As pension schemes are "long-term undertakings", it considers that "the challenges presented by current economic conditions should be seen within this longer-term context".

Reasonable affordability

TPR advises that, in determining what is "reasonably affordable" for a sponsoring employer, "it is important for the employer and trustees to understand the difference between any temporary impacts of the economic cycle on sponsor cashflow and longer term structural changes to the strength of their scheme sponsor". It appreciates that this is a difficult judgment! Again, what is appropriate will depend on the individual situation.

Meeting the ongoing challenge

Trustees need to keep a close eye on their sponsor's position. With many schemes approaching a new valuation, TPR's statement may well provide the backdrop for funding discussions.

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