

## DB scheme funding and investment: TPR's COVID-19 guidance for trustees

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**Update:** On 16 June 2020, TPR published a “major rewrite” of this Guidance, designed to consolidate various strands of its guidance, to provide an update on TPR’s view of the impact of Coronavirus, to explain how TPR will continue to adapt its regulatory approach, and to “provide guidance for trustees dealing with difficult decisions”.

TPR also confirmed that the easements referenced below are not being extended beyond 30 June 2020 (see [7 Days](#)).

### Introduction

On 27 March 2020, TPR published [funding and investment guidance](#) (“the Guidance”) for DB trustees in light of the current coronavirus pandemic. The Guidance sets out a number of temporary regulatory easements, which will no doubt be welcomed by trustees and their advisers in these challenging times.

### Key points

- The Guidance looks at the difficulties being faced by trustees in key areas, including for schemes completing valuations now, requests by employers to suspend or reduce contributions, investments and transfer values.
- The possibility of an employer requesting the release of security is also considered briefly, with TPR noting that this is likely to “have significant legal and financial implications, compromising the security of members’ benefits”. Trustees considering a proposal along these lines should therefore take appropriate specialist advice.
- Helpfully, TPR confirms that it will not take regulatory action in certain circumstances, even where there has technically been a breach of the law.
- Alongside the Guidance, TPR also published DB scheme funding [guidance for employers](#), as well as [guidance on investment for DC trustees](#).
- The regulatory easements will be in place until 30 June 2020, although TPR will keep this date under review.

## Background

Whilst designed to support trustees facing difficult decisions and circumstances, TPR states that the Guidance should not supersede trustees' fiduciary duties, or their obligations under scheme rules or legislation. In particular, TPR emphasises that it is "not authorising, encouraging or compelling a particular course of action". It simply expects trustees to do the right thing in their situation and for their members.

The Guidance highlights some "good practice ideas" and outlines TPR's current response to trustee actions and potential legislative breaches.

## Schemes completing valuations now

TPR does not necessarily expect trustees who are close to completing their valuations to revisit their assumptions, even though they will have been set under very different conditions than those prevailing now. However, some trustees may be advised that it is in the "best interests" of members to do so.

For many schemes, the current funding position will be significantly worse and the deficit materially larger. TPR will not require trustees to allow for relevant experience since the effective date of the valuation in the recovery plan. However, it does expect trustees to consider post-valuation experience when agreeing the recovery plan in the context of the employer's affordability. In other words, whether provisionally agreed deficit repair contributions ("DRCs") are still affordable for the employer.

TPR acknowledges that some trustees might consider it in the best interests of members to take more time to consider the scheme's and employer's current situation, rather than submitting a valuation and associated documents now which may then need re-negotiating. **In these circumstances, it may be appropriate for trustees to delay submitting their valuation documents "by a short period of up to three months"**. Although TPR cannot waive the trustees' obligation to meet the 15 months statutory deadline for submission, reassuringly, it "will not take regulatory action in respect of a failure to submit".

That said, if trustees are ready to complete their valuation now, and think it is in members' best interests to do so, they should submit it to TPR.

## Requests to suspend or reduce contributions

### Employer requests to suspend or reduce DRCs

Trustees should be "open to requests to reduce or suspend DRCs", in line with the principles set out in TPR's recent [guidance](#) "for DB scheme trustees whose sponsoring employers are in corporate distress". TPR recognises that management forecasting may currently be difficult for employers. As such, trustees may not immediately have access to the information required to assess covenant and affordability.

Where an employer makes a request for an immediate reduction or suspension of DRCs due to liquidity constraints, but it is unable either to:

- provide time for trustees to carry out analysis and take appropriate advice, and/or
- provide the financial information required to fully assess the employer's position

any reduction or suspension of DRCs should be "limited to the shortest period possible and certainly by no more than three months". TPR also cautions trustees expecting annual or substantial DRCs within a proposed period of suspension to take especial care.

To help trustees monitor the employer covenant, employers should commit to providing trustees with “full and ongoing” information as part of any agreement. The less confident trustees are in having access to timely and relevant information, the shorter the suspension or reduction period should be.

As things evolve, trustees should continue to monitor both the employer’s covenant and its affordability of DRCs. As stability may not be restored for some time, trustees should generally continue to offer only short-term concessions of no more than three months until more reliable covenant visibility is available. However, where the employer’s lenders are willing to agree support for a longer period, TPR notes that “it may be appropriate for trustees to agree support of the same duration”. Trustees considering a longer suspension or reduction period should do so in line with TPR’s guidance, with full information on the business case and any agreement ideally underwritten by available protections.

Suspended or reduced contributions should ideally be repaid within the current recovery plan timeframe, without lengthening this period, unless there is sufficiently reliable covenant visibility.

Trustees should take legal and actuarial advice, not only on whether a suspension or reduction of DRCs is appropriate, but also as to the most appropriate method of achieving this (eg by amending the Schedule of Contributions (“the SOC”) or short-term suspension of payments without formal amendment to the SOC). In particular, advice should be sought to avoid possible unintended consequences of any suspension or reduction, such as missed payments accidentally triggering scheme wind-up.

**Whilst TPR cannot waive trustees’ statutory reporting obligations, it does not intend to use its regulatory powers in respect of either late reporting or failure to make contributions over the next three months.**

#### **Requests to suspend or reduce payments for future service**

Requests to suspend or reduce payments for future service (both by employers and possibly members) should be treated in the same way as requests to suspend or reduce DRCs. However, there are additional issues which trustees will need to consider, such as whether this is permitted under scheme rules. TPR therefore recommends trustees taking legal advice.

#### **Payments to related entities and shareholders**

Unsurprisingly, TPR expects trustees to be on an equal footing with other stakeholders. Therefore, in agreeing DRC waivers, trustees will need to ensure that dividends and other forms of shareholder return are likewise suspended. This should be underpinned by legally binding commitments. Trustees should also consider what is being asked of other creditors “to ensure the scheme is being treated equitably”.

However, TPR acknowledges that it may be appropriate for employers to make “extraordinary and essential” intra-group payments to support wider group liquidity, as well as maintaining its status as a going concern.

## Investments

Trustees should review (and, where appropriate, manage):

- the scheme’s cash flow requirements and how they expect those obligations to be met, allowing for additional strain arising from potential increased member movement, the suspension or reduction of DRCs, and lower levels of investment income and possible investment “cash calls”
- the degree of diversification and any specific risks which may now exist within their portfolios, eg concentrations of risk and/or exposures to deteriorating sectors

- any previously agreed investment and risk management decisions due to be implemented in the future, to “ensure they remain appropriate, efficient and do not introduce risks or crystallise losses”
  - the appropriateness of the derivative positions and structures they hold, and their collateral management arrangements
  - the extent of their exposure to certain counterparties
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- their investment governance structures and delegations (including terms of reference for any sub-committees) to ensure they can continue to function and make decisions in the event of trustee incapacity or absence. This might include a review of any quorum or signing requirements.

In light of recent scheme performance, trustees should assess whether to make any changes to their investment and risk management governance framework. Where trustees have serious concerns about the ability of the employer to trade, they should also consider whether any investment and risk management actions are needed to help protect their members’ benefits.

## Transfer values

Against the backdrop of current market volatility and the deterioration in funding levels, trustees may decide to suspend CETV quotations and payments, to give themselves more time to review terms and/or to assess the administrative impact of any increase in demand. Depending on the circumstances, this could result in a breach of both the disclosure and transfer value requirements.

**Again, although it cannot waive the trustees’ obligations here, TPR states that it will not “take regulatory action in the next three months against trustees who suspend CETV activity”. Helpfully, TPR also says that the Pensions Ombudsman will take the Guidance, and the impact of the coronavirus generally, into account when determining whether trustees took reasonable action.**

After three months, trustees may decide to continue with CETV suspensions or delayed quotations “if this is still in the best interests of their members”. However, they should be clear of their reasons for doing so, and should notify TPR. Reasons why this might be appropriate include continuing significant financial market uncertainty (leading to uncertainty over the appropriate CETV terms to apply), lack of liquidity or administrative constraints.

Communicating their approach to members, as well dealing with requests for quotations and payments that are currently being processed, will be key priorities for trustees. TPR also suggests that trustees may wish to review the terms they offer for other benefit options, such as cash commutation at retirement and early retirement terms.

Finally, trustees are encouraged to give “greater attention to the heightened risk of members being targeted by scammers and unscrupulous financial advisers”.

## What can trustees expect from TPR?

The regulatory easements announced in the Guidance will be in place until 30 June 2020, although TPR will keep this date under review. TPR says that it will take a reasonable, pragmatic and proportionate approach to its regulation of schemes, reflecting prevailing market conditions in its operational processes.

The trustees of schemes under managed supervision should contact their named supervisors with any queries. Trustees and employers of all other schemes should contact [customersupport@tpr.gov.uk](mailto:customersupport@tpr.gov.uk) if they require assistance.

## What next?

TPR's Annual Funding Statement will be published after Easter. As well as providing messages relevant to all DB schemes, but particularly those with valuation dates between 22 September 2019 and 21 September 2020 (Tranche 15), it will also consider schemes undergoing significant changes that require a review of their funding, investment and risk management strategies. Therefore, for trustees and employers with upcoming valuations, TPR's stance after Easter will be very important. Please watch this space!

If you have any questions on any of the above, **please speak to your usual Sackers contact.**

Sacker & Partners LLP  
20 Gresham Street  
London EC2V 7JE  
T +44 (0)20 7329 6699  
E [enquiries@sackers.com](mailto:enquiries@sackers.com)  
[www.sackers.com](http://www.sackers.com)

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