



Focus on  
**COVID-19**  
Coronavirus

## COVID-19 – *immediate considerations for pension trustees*

Faced with the Coronavirus Disease 2019 (COVID-19) crisis, we ask the question: What are pension scheme trustees' duties now and what specific considerations should they have regard to?

### **Core trustee duties**

Pension scheme trustees are required to administer their pension scheme in accordance with its governing provisions and in so doing act in the best interests of the scheme's beneficiaries.

This duty is broad-ranging. In the context of the COVID-19 crisis, trustees' immediate focus will be on ensuring:

- the scheme continues to function as normal
- any risks to normal scheme functioning are identified early and addressed on a continuous basis



You will find a full range of timely materials for businesses in our dedicated **COVID-19 HUB** on our website.

## Immediate response

We suggest trustees ask the following immediate questions to frame their response to the crisis

### Is the trustee decision-making infrastructure fit for purpose?

With trustee meetings likely to take place remotely for the immediate future, trustees will need to satisfy themselves that their scheme governing documentation (and company constitution, in the case of corporate trustees) allows for trustee meetings to be held otherwise than in person (for example, by conference call or videoconference) and that decisions can be taken by written resolution rather than at a meeting. The requisite number for a quorum, whether alternates could be used and whether delegates can still exercise their functions may also need to be checked.

Trustees may also want to consider whether a committee should be established to manage the scheme's response to the crisis and agree on appropriate terms of reference and membership of the committee. If desirable, this will need to be established in accordance with the scheme's governing documentation.

Amendments to scheme documentation may be required to allow for trustee business to be conducted properly and whether this can be done retrospectively may also need to be considered.

### Do the trustees have a business continuity plan (BCP) and has it been implemented?

Large schemes may have detailed BCPs in place as part of their preparations for complying with IORP II. Any schemes that have BCPs will likely have put their BCPs into effect or, at the very least, be ready to do so shortly. Schemes that do not have BCPs should consider putting them in place now.

The level of detail in a BCP will vary from scheme to scheme. However, we would suggest that, at a minimum, all pension scheme BCPs will need to cover the following matters:

### Pension scheme BCPs – key matters

- Rank the priority and risk associated with the scheme's activities and ascertain which activities are the critical activities to the proper functioning of the scheme. The purpose of a BCP is to focus on the core activities.
- Who is responsible for these critical activities?
- Which individuals will have responsibility for specific actions under the BCP? (e.g. scheme secretary, trustees, third parties, employees of the scheme sponsor). What if they are not available?
- Will service providers (particularly scheme administrators, investment advisers, managers and the scheme auditors) be capable of continuing to provide the same service to the scheme on the occurrence of an event such as the COVID-19 crisis? This might include:
  - » processing investment instructions in a timely manner
  - » communicating with members
  - » gathering information and evidence to assist with trustee decision-making
  - » processing pension adjustment orders
  - » paying benefits and transfers;
  - » retirement processing
  - » collection and investment of contributions
  - » preparing actuarial valuations (for DB schemes
  - » having sufficient staff and technological resources and capability to properly service the scheme's needs
  - » delivering on everyday scheme administration, registered administrator functions and meeting statutory deadlines

- What is the scheme's contingency plan if third parties cannot maintain the necessary service levels?
- How will trustee business be conducted? (Trustee meetings, resolutions, meeting packs, execution of documents).
- Do the trustees have sufficient cash to pay benefits?
- Data privacy matters – is personal data secure where third party BCPs are in operation and trustees are conducting business remotely?
- Risk register – risk register should be reviewed to ascertain if any of the risks on the register need to be updated or acted upon having regard to the COVID-19 crisis.

Agreements with service providers and service providers' own BCPs should be reviewed.

### Some specific considerations

In addition to the above, which we believe are questions all trustees should be asking themselves, some of the following considerations will apply to schemes and should be borne in mind by trustees.

### DB scheme-specific issues

#### DB trustees should:

- engage with their investment advisers immediately to discuss the scheme's financial exposure to the crisis and any steps that might be appropriate to take at this stage to help reduce this exposure
- work closely with the scheme's sponsor to understand the impact of the crisis on the sponsor's business and ability to continue to provide financial support to the scheme
- consider (where necessary, with the sponsor) whether any changes in work practices may impact on the scheme, for example early retirements could create a funding strain

- assess if funding proposals or funding agreements might go off-track and understand the consequences for the scheme of this happening
- understand what powers and options they have under the scheme and other contractual documentation to best protect the interests of the scheme's beneficiaries
- review any security arrangements in place with scheme sponsors and assess whether the crisis impacts on the value of the security or may lead to an event of default which would trigger the security. Even if security is triggered, trustees should separately assess whether they wish to enforce the security
- seek professional advice if there are specific concerns in relation to payment default, insolvency, termination of liability to contribute or triggering of a scheme wind-up

### DC scheme-specific issues

As with DB trustees, DC trustees will need to engage with their investment advisers to discuss the scheme's financial exposure to the crisis and any steps that might be appropriate to take at this stage to help reduce this exposure. With high annuity prices and market uncertainty, members approaching retirement may seek to defer exercising retirement options. Trustees should consider what their scheme rules say about circumstances where members refuse to take decisions on retirement options in time. Trustees should also monitor any regulatory announcements from the Revenue Commissioners for any suggestion that the Revenue might permit (as it has done exceptionally in the past) the deferral of the exercise of retirement options or the AVC encashment option to allow members early access to some portion of their AVCs.

## Employment-related matters

It is important that employers and trustees communicate often and effectively to enable the trustees to understand what employee entitlements and their membership status under the scheme are. This is important not only for ascertaining scheme benefits but also to enable the trustees to administer the scheme properly.

Lay-offs, short-time and part-time working may be a feature of employers' response to the crisis. Trustees will need to understand what changed working arrangements mean for contribution and accrual purposes under their scheme rules and the impact on scheme administration. Trustees should also pay particular attention to those employees who are on maternity or paternity leave where an employer invokes these practices in respect of its workforce.

Employers and employees may seek to opt out of pension scheme membership for a period or reduce contributions to a DC scheme to help deal with financial strain. Where it arises, the trustees will need to consider the extent to which their scheme rules permit this.

## Matters relevant to all schemes

### Conflicts of interest and confidential information

If trustees have a conflicts of interest policy in place, they should follow it.

Trustees who are also employees or shareholders of, or involved in decision-making in respect of the scheme with, a scheme's sponsor need to be aware of their duties to

- maintain the confidentiality of scheme information,
- disclose information relevant to trustee decision-making (such as the financial position of their employer) to their co-trustees
- take trustee decisions independently and in the interests of the scheme's beneficiaries, even if those interests contradict their own interests or their employer's interests

The COVID-19 crisis has the potential to give rise to competing demands on employer funds and a divergence of interests between management, employees, shareholders and the scheme. Trustees should be aware of their duties and, if they believe they may not be capable of acting in the best interests of scheme beneficiaries, it may be necessary for trustees to step down or step out of certain decision-making processes. Equally as important for employers will be to ensure that trustees are insulated from receiving sensitive information that might need to be disclosed to their co-trustees or otherwise placed in a position of conflict.

### Issues with advisers

In addition to the checks in relation to service providers outlined above, if issues in relation to service provision arise the relevant agreements will need to be checked to confirm where responsibility to rectify matters lies, the extent to which any force majeure provision applies and, if necessary, liability.

### Engaging with the scheme sponsor

Employers in all sectors are responding to the COVID-19 crisis in an attempt to ensure business continuity and manage cash flow in the short term and in the long term. Trustees should engage with scheme sponsors at the earliest available opportunity to make sponsors aware of pension scheme specific issues that may impact on sponsors' strategic priorities while also seeking to protect the interests of scheme beneficiaries. Trustees should seek explicit confirmation from scheme sponsors that the sponsor will continue to pay contributions that are due to the scheme. Frequent dialogue between trustees and employers, particularly in respect of defined benefit schemes, may enable schemes to assist employers in their contingency planning and give trustees a voice on matters that may affect scheme members.



## Scrutiny and availability of information

Trustees need to ensure that the decisions they are making are based on the best information available to them. How is this information sourced? Is there a gap in key information that trustees require to take decisions? How should trustees proceed in these circumstances?

## Life assurance benefits

Life offices will often impose a “catastrophe limit” on group life assurance policy capping the number or value of claims arising out of one cause in order to limit their exposure to mass fatality events. There could also be other restrictions which might be relevant in this context. It would be prudent for Trustees to check their policy terms and whether the rules of their scheme require benefits to be paid in full even where the payment under the policy is capped.

## How will trustees execute documents?

Some documentation can be executed electronically, where the appropriate technology is available. However, the technology to execute other documents is not currently available in the Irish market and physical execution of certain types of documents (such as deeds) may be the only option

## Giving instructions to third parties

Agreements with third parties should be checked to ascertain how instructions should be given to those third parties. For example, can investment instructions be given by email or over the phone? Are there any additional evidentiary or notice requirements to be complied with? Trustees should be particularly aware that cyber criminals may seek to take advantage of the increased use of electronic communications for their own means. For example, trustees should consider whether any instructions to transfer funds over a certain level require a written instruction and a phone call or other security measures to reduce the risk of a fraud being perpetrated on the scheme. New operating practices could necessitate amendments to such agreements

## Data privacy

Trustees should pay particular attention to ensure that the security of member personal data is not compromised when the trustees and scheme service providers are working remotely. Trustees should also familiarize themselves with data breach protocols and rules, particularly timelines for investigating and reporting data breaches so that they can respond quickly in the event that there is a data breach

## Member communications

Scheme members may be concerned over what the impact of COVID-19 might be on their scheme / ability to retire. Trustees will need to consider whether there is a need to communicate to members, particularly those close to retirement. Clear, timely and appropriate communications with members (where deemed necessary) will be important in keeping members informed of relevant matters and concerns to a minimum. For larger schemes, consider whether there is merit in producing FAQs to cover common queries.

Statutory time limits for issuing member communications and trustee annual reports remain in place and should be adhered to.

## Regulatory perspective

We don't yet know how the Revenue Commissioners or the Pensions Authority will react to this crisis or whether, for example, easements might be granted in relation to funding proposals. Trustees and their advisers will need to closely monitor all regulatory announcements.

Irish legislation transposing the IORP II Directive is long overdue. With the Irish political situation and the need for the Government to focus its attention on emergency legislation and measures to contain, and manage the fall-out related to, the COVID-19 crisis, it seems likely that Irish implementing legislation will be further delayed. However, trustees should continue their planning for the implementation of the IORP II Directive. Much of the Directive is aimed at putting measures and systems in place to enable schemes to deal with this sort of crisis.

## The bigger picture

Pension schemes are long term in nature and the response of schemes to the COVID-19 crisis needs to be considered in that context. Long term planning should continue but schemes must ensure that practical steps are taken now and a proper risk assessment and action plan is put in place to deal with the crisis both now and over the longer term.

This briefing document highlights the key initial considerations for trustees. The situation is an evolving and multi-faceted one. Trustees will be expected (by members, employers and regulators) to be proactive in taking steps to mitigate the risks their scheme faces. For this reason, early planning and understanding of these risks is crucial. Good and frequent communication with sponsors, advisers and, perhaps also scheme members, will be a core part of achieving this successfully.

If you would like further information or advice on any of the matters discussed above, on any other aspect of the impact of the COVID-19 crisis on Irish businesses or pension schemes, or any other pension related matter please get in touch with your usual [A&L Goodbody Pensions Group](#) contact.



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