A Living Will for your Pension Scheme?

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1. Introduction

Trustee contingency planning tends to focus on the scheme funding impact should the sponsoring employer fail. Whilst this will likely be the biggest determinant of the member benefits ultimately received, trustees should also consider plans to support the scheme's day-to-day running in the immediate aftermath of an employer failure event, such as insolvency or entering into administration.

Until member benefits are transitioned to a new entity, trustees will continue to be responsible for running the scheme. For example, if the scheme is likely to go into the PPF the assessment period can take up to two years. It can also take several months to find a new buyer for a business, or to conduct a tendering process to buy-out benefits.

In this article, we explore some areas that are sometimes overlooked by trustees with weak or failing sponsor covenants, as well as some practical remedies.

2. Documentation

Trustees should ensure that there is an up-to-date and independently held database of the key documentation needed to run the scheme. These typically include, the trust deed and rules, legal opinions, committee terms of reference, adviser contracts, member communications, and a register of participating employers.

Without the relevant information, trustees may find it difficult to demonstrate whether the scheme is eligible for the PPF, or obtain the most competitive terms for benefits that are bought out.

Most trustees will find that their scheme lawyer or another adviser is happy to maintain an archive of key documentation on their behalf. Alternatively, a number of independently hosted electronic solutions are now available. Making these documents easily available to the trustees assists with good governance.

3. Availability of key resources

Many schemes rely on sponsor provided pensions management support to implement executive decisions, provide secretariat support, deal with member dispute and ill-health procedures, and many other tasks delegated by the trustees. Unfortunately, in a crisis situation, the individuals concerned may no longer be employed or could be asked to focus on alternative priorities. The sponsor may also be providing additional services such as accounting and pensioner payroll which are also likely to be disrupted. Make sure your bank is aware that the trustee is a separate legal entity to your sponsor's banking arrangements as otherwise you run the risk of it being frozen in the event of sponsor insolvency.

At the same time, the availability of some employer and member nominated trustees may be affected, or conflicts may make their positions untenable. This can make it difficult to satisfy meeting quoracy requirements, and can impose an unmanageable burden on the remaining trustees, particularly if particular skillsets are suddenly lost.

Trustees should understand where their 'key person' and 'key service' risks lie, and form a view as to how gaps might be quickly filled should the need arise. Good risk management will encompass these risks.

4. Trustee communications

For security reasons, many trustees now have employer provided email addresses, and often employer hosted software for meetings packs and information. Again, trustees should be aware that if this support is abruptly withdrawn, alternatives will need to be put in place quickly. And in the wake of the recent GDPR legislation, 'makeshift' solutions with personal email addresses are unlikely to pass muster.

5. Member administration and communications

Member administration can also be interrupted where these services are provided by the employer, as can communications that depend on employer-hosted portals, websites or other resources. Solutions to ensure the continuity of these services will need to be swiftly implemented – trustees will continue to be responsible for honouring statutory timeframes and member support more generally.

There may be particular pressure on the administration service. For example, if a scheme enters a PPF assessment period, data will need to be validated to ensure the right compensation payments are made, and even before the scheme transitions to the PPF, benefit payments will need to be made at PPF levels. In addition, trustees will continue to be responsible for member communications through any PPF assessment period, including questions about pension entitlements, of which there are likely to be many.

6. Transition

In the event of the sponsor failing, there could be a variety of outcomes for the scheme. For example, if the actuary certifies that the scheme cannot pay members at or above PPF levels, then assuming it is eligible, it will transition to the PPF. Alternatively, if the employer is rescued as a going concern, or another body takes responsibility for the pension liabilities, there will be a new sponsoring entity to deal with. Another possible route would be for the benefits to be bought out with an insurance company.

All of these solutions will require a considerable amount of oversight by the trustees, and the greater the planning, the smoother the process is likely to be.

7. Conclusion

Many schemes will not feel there is a burning platform to urgently address these issues, and judgement should certainly be exercised before undertaking a significant amount of work. However, in the past there have been some high-profile failures for organisations not generally regarded as being in immediate danger, and trustees with sponsors where there are known risks should certainly put contingency plans in place.

In our view, it is a sensible and good governance for all schemes to actively consider this issue, and to have a 'living will' that is proportionate to their circumstances. A relatively small amount of planning in a benign environment, such as a facilitated workshop, will almost certainly pay dividends in a crisis situation.