Necessary delays

Summary
• The Pensions Regulator and the Financial Conduct Authority have delayed regulatory initiatives, including the defined benefit (DB) funding code consultation and DB transfer rule changes.
• Although this gives trustees the opportunity to focus on the short-term issues thrown up by the coronavirus, it could delay industry progression and affect schemes in the long term.
• Trustees have been urged to also use this time to prepare for consultation responses and future regulatory changes.

With the ongoing Covid-19 pandemic creating uncertainty in the markets and for pension schemes, the regulators have been delaying initiatives until the crisis, hopefully, subsides. Jack Gray analyses what trustees should be doing now and in the future, when relative normality resumes

In order to relieve short-term pressure on trustees trying to do what is best for their scheme and its members during these challenging times, regulators have been delaying regulatory initiatives and consultations. The Pensions Regulator (TPR) announced that it was postponing all its ongoing initiatives, including its *Corporate Plan*, long-term strategy and consultations on bringing together its codes of practice, while extending the submission deadline for the DB funding code consultation.

The Financial Conduct Authority (FCA) announced it was postponing the implementation of its proposed changes to DB pension transfers, its default investment pathways policy and the introduction of more stringent rules for pension transfer specialists.

Other organisations announcing delays that would affect the pensions industry included consultations from The Pensions Dashboard Programme on the implementation of the dashboard, and the UK Statistics Authority and HM Treasury agreed to extend the Retail Price Index (RPI) and Consumer Price Index including owner occupiers' housing costs (CPIH) alignment consultation deadline.

"Overall, most of the regulatory delays make sense because the regulators themselves need to focus on the impact of the current situation and not be distracted by worthy but resource-hungry long-term aims," says Aon partner, Lynda Whitney.

Taking the good with the bad

The delays, although necessary, could have both positive and negative consequences. "Some of these delays just give trustees a bit more time to get their house in order," explains Whitney. "Whereas others mean that trustees need to step in to protect members where regulations do not.

"Trustees get more time to fix data issues given the delay to TPR's poor data quality initiative. However, this should not be an excuse to delay for too long, as so many potential projects rely on good data."

PLSA director of policy and research, Nigel Peaple, adds that, although the delays will give trustees the opportunity to deal with short-term issues, the postponement of some of the changes could negatively impact members.

"Delays in consultations are welcome as they ensure that the whole industry will have time to fully feed into new policy and regulator initiatives," he says. "However, delays in the policy process where known risks could continue to cause harm need to be considered on a case-by-case basis.

"As for the easements in the current application of the regulatory regime, these too are generally welcome, although it is essential that the right balance is struck in taking account of the financial and operational pressures on sponsors and schemes, whilst also ensuring that such measures do not harm the scheme member."

LCP partner, Alex Waite, warns that trustees and sponsoring employers of DB and defined contribution (DC) schemes will face different issues to overcome, and the delays may give them the chance to help tackle them.

"Some employees might still be earning extra pension each year in a DB scheme, but employers that are struggling financially may need to review that and consult about moving to a less expensive form of pension provision in future," he notes.

"DC scheme members may have seen their fund values being quite volatile due to the current market turmoil, but what really matters is the value at the point of retirement and so hopefully there is still time for the asset value to recover."

Short-term action

Delays to regulatory initiatives may give trustees the opportunity to use this time to prepare for future policy implementation or to better coordinate consultation responses, if Covid-19 risk mitigation is not taking up all of their time.

Aegon head of pensions, Kate Smith, urges trustees to have more frequent discussions to ensure that their scheme is meeting regulatory requirements.

"In these extraordinary times, trustees can't afford to wait for the next quarterly meeting to make decisions. They need to meet frequently and review the scheme's investment and service providers.

"Trustees of DB schemes should be liaising with their actuarial and legal advisers to review their scheme's funding, investments, cashflow and cash equivalent transfer basis."

Trustees can also take steps to conform to future regulatory changes, despite the delays.

"An area where trustees and employers can usefully step in to fill a gap is in relation to FCA delays to removing independent financial adviser (IFA) contingent charging in relation to DB transfers," says Whitney. "If the trustees and employer provide a pre-selected IFA this means they can avoid contingent charging, ensure an IFA knows their scheme and ensure members get a better price for the IFA advice."

PwC pensions partner, Paul Kitson, adds that, despite the regulatory postponements, the fiduciary duties of trustees remain unchanged and the best interests of members should "remain at the forefront of trustees' decision-making processes".

"Trustees will need to consider what's more important for their members; cash or stronger downside protection in the form of contingent assets. For example, the use of third-party guarantees to 'underwrite' or 'insure' the cash deferral," he continues.

"Much of the anticipated DB funding reform is intended to accelerate the recovery of scheme deficits. Any decisions made now could therefore be closely scrutinised by TPR in the years to come."

Although the crisis has had a negative impact on some schemes, other schemes that were well-hedged against market risks may have had smaller deteriorations in their funding positions.

"Such schemes will need to ensure that they effect GMP reconciliation, rectification and equalisation and potentially GMP conversion in order to be able to move to buy-in and buyout," explains Fieldfisher pensions lawyer, Jeremy Harris.

"Trustees will also need to take account of the changes in aligning RPI with CPIH. Different schemes will be affected in different ways by those changes, depending on the extent to which their pension increases are based on RPI or CPI, or their investments comprise RPI-linked instruments such as bonds.

"It seems likely, however, that DB schemes will need to keep to the effective dates of their actuarial valuations."

DLA Piper partner, Tamara Calvert, advises trustees to "make sure benefits are paid, prioritising retirements and deaths over options like transfers, ensure DC contributions are invested promptly, consider strengthening scam warnings and keep great minutes – they will be key to setting the context for decisions made in these unusual times".

Planning for the long term

Although it may be difficult to plan for the long term with such immediate risks, it could be important for trustees to do so in order to not be caught out once normal service resumes.

"The delays in consultation periods, such as for the funding code, mean that the later stages will also be delayed," says Whitney. "The eventual implementation for the funding code is now more likely to be from the start of 2022.

"The delay has the advantage of enabling current valuations in stressed scenarios to occur under the existing more flexible code, but this also continues to put more responsibility on the trustees to agree valuations in the best interests of their members."

Calvert adds that actions taken now as a result of delays and regulatory easements, such as suspended transfers, deficit recovery contributions and finalising valuations, may have to be "unravelled".

"Consider whether there should be a right for furloughed members to make up missed DC contributions on their return to work, restoring pre-furlough processes and contribution levels if they were temporarily reduced, and take time to reflect on any lessons that can be learned from this period."

Written by Jack Gray