



According to the Pensions Institute's 2015 research paper *The Greatest Good for the Greatest Number*, there are around 1,000 stressed defined benefit (DB) schemes in the UK that are unlikely to be able to pay their member benefits in full.

In the most extreme cases, those business may fail entirely and the pension scheme fall into the Pension Protection Fund (PPF). Others may be able to agree restructuring exercises that keep the sponsor solvent and deliver benefits at a 'PPF Plus' level – offering an improvement over PPF entitlements, but not matching the full value of the benefits that would be paid out if the scheme remained fully solvent.

Recent high-profile stressed scheme cases such as BHS, the British Steel Pension Scheme and the 2016 restructuring of the Halcrow pension scheme have helped to shine a spotlight on trustees' and sponsors' options and responsibilities when the risk of administration looms large.

That risk raises a whole new set of challenges for the trustee board, particularly when it comes to negotiating and communicating. Giving members the right amount of information at the right time, and making sure that negotiations between the trustee board and sponsor are as effective as possible, are both vital.

Member communications

Establishing how and when to keep

Any information that is passed onto them can't be viewed as confidential any more. Deferred members who may now be working for a competitor will receive it, as well as active members who may then worry that their job is at risk. Lincoln Pensions managing director Richard Farr cautions: "Telling members anything could prejudice everything. What you tell members is effectively leaked information. There is a balance between communications and the best

Summary

- When the scheme sponsor is in distress, trustees need to carefully consider the messages they give to members.
- The tone needs to be calm and timing right – it is important not to panic members into making poor decisions about their pension.
- Good ongoing communications between the trustees and the sponsor are the bedrock of solid negotiations if something goes wrong.
- Negotiations are best handled by a sub-committee of the trustee board, and must be with decision makers from the sponsor side.

Discussing distress

When a scheme sponsor is in distress, trustees must communicate carefully with both members and the sponsor, finds Maggie Williams

members in the loop is a critical factor in handling scheme distress. "This is one of the most difficult elements of sponsor distress for trustees to manage and make decisions around," says 2020 Trustees director Naomi L'Estrange. "First, the main focus must be on the trustees themselves understanding the position. They can't know what to do until then," she adds.

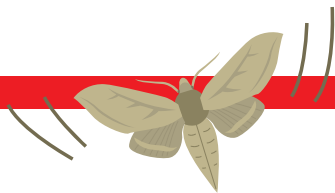
There is a fine line on getting this right, and trustees can feel that they will attract criticism either way. They need to be honest about the strength of the scheme, and enable members to make informed choices – but not drive them to make panicked decisions.

Trustees are also limited to some extent in what they can tell members.

result for members."

However, if stories are already circulating in the media about a company's performance, trustees may feel they need to issue some communications. JLT Employee Benefits head of trustee proposition James Auty says: "Trustees might need to communicate that the situation is being looked into. Members won't know about the regular routine covenant assessment that the trustees undertake. If information is in the media, members will otherwise draw their own conclusions."

But not keeping members informed has risks too. Engineering firm Halcrow and its owners CH2M Hill found that out when the scheme negotiated a Regulated Apportionment Arrangement (RAA)



in 2016. The scheme's 3,300 members were given the choice of transferring to a new company scheme on a fixed-income basis, or being transferred into the Pension Protection Fund. The Halcrow Pensioners Association launched a legal challenge against the deal, claiming that they had been given insufficient detail about the changes, and no opportunity for consultation.

Farr believes that Halcrow may not be the last legal challenge raised by members. "We may see more instances of lawyers acting for members as a class, particularly in high-profile cases." "Members need to feel that someone is on their side," agrees Auty. "Trustee communications should take that into account."

Communicating with the sponsor

While the challenge of what to tell members and when can be a new decision point for trustees, the process of communicating with the sponsor should be embedded into any well-run scheme. "Building a strong relationship with the sponsor, having open conversations, sharing information at regular intervals and taking action as early as possible are fundamental skills," says L'Estrange.

"Trustees need to dig into the detail, understand the risks to the business and when it's clear there are problems, to look objectively and ask if there is a deal that could or should be done – and also if there are actions the sponsor could be make that would have material detriment to the scheme."

That should all be business as usual for trustees, argues Auty. "Trustees should be regularly speaking to the employer. They need to have a good relationship where information is freely shared and confidentiality is respected. Being given flowery figures and told that everything is fine is no good – trustees need the real detail."

When the sponsor is preparing for the worst and administration looks inevitable, trustees' negotiating tactics

need to be at their very best. Farr advises that the whole board does not need to be involved. Discussions are best handled by a sub-committee with excellent negotiating skills, rather than the whole board or a single individual. Crucially, they need to really understand the issues, and have the trust of the rest of the board. The chair of trustees should be part of that sub-committee.

The selected sub-committee also needs to have a clearly defined brief, including details such as how often they will report back to the main trustee board, and whether they are empowered to do a deal with the sponsor.

"Trustees also need to make sure they are negotiating with the right person from the sponsor company," adds Farr. He says that should generally be the CEO – although in some instances, the finance director may represent the sponsor. "Negotiations will lock up if you are talking with the wrong person," he cautions. While The Pensions Regulator can act as a referee if one side believes they are being unfairly treated, its role is not to arbitrate.

"Look calmly and objectively at the situation for members," advises L'Estrange. "Ask if insolvency is inevitable, or if there are alternatives to the PPF for members." Auty adds that trustees need to be sympathetic, and open to options. "When the employer starts to struggle, there is a risk that trustees who are former employees can take a line of 'it wasn't like this in my day' – but they need to be sympathetic to the current state of the company."

He suggests discussing options such as whether the sponsor has property that could provide an income stream, or an intangible asset such as a trade mark that could be handed over to the pension scheme to provide more revenue. "They also have to be aware of negative pledges that could affect the scheme, such as continuing to pay a dividend when cashflow falls below a certain level. However, trustees must also keep in mind

that if they take too much money, they might be jeopardising the company even more."

Entering the PPF

"If trustees and the scheme is getting to the point where insolvency is looking unavoidable, trustees need to be appointing advisors and talking to The Pensions Regulator," says PPF director, restructuring and insolvency Malcolm Weir. "If there is a PPF risk, or a restructuring option, they mustn't weaken the scheme's hand further."

At that point, the nature and type of communications change for members, between the sponsor and the trustee board and possibly within the board itself, with the introduction of PPF-approved panel trustees to help guide the process.

The PPF has a selection of standard templates that can be used for member communications. The advantage of the PPF's templates is that members receive information in a consistent format – but the flipside is limited flexibility and messages will not be tailored to a specific membership profile. "The messages tell members that the PPF's processes have started, what that means for benefits, and contact numbers to call. Members can then be given more nuanced information over the phone," says L'Estrange.

At present, options are limited for schemes looking for alternatives to entering the PPF. There is interest and pressure from government and from the pensions industry to find a more flexible approach to sponsor distress. But the best advice for any scheme and trustee board is to make sure there is an open, honest relationship – and that both sides trust each other. That holds true, even if the scheme is not in trouble. "The strength of the employer covenant can change over time," concludes Weir. "Even if it's strong today it may not always be so."

➤ **Written by Maggie Williams, a freelance journalist**

