UK Regulator Offers Help For Struggling Employers

A softer approach results in calls for greater flexibility from trustees.

(May 8, 2013) -- Employers backed into a corner by their burgeoning pension deficits were offered a ray of hope today after the UK's Pensions Regulator's (TPR) called for greater flexibility to help struggling scheme sponsors.

In its 2013 funding statement, the regulator has iterated a shift away from the former hard and fast rules on determining the discount rate used to calculate future liabilities to take account of a much broader spectrum of issues affecting a scheme.

As a starting point, trustees should consider whether the current level of contributions can be maintained, TPR said in its statement.

"Where there are significant affordability issues trustees may need to consider whether it is appropriate to agree lower contributions and this may also include a longer recovery plan. Trustees should ensure that they document the reasons for any change and indicate that they have had due consideration of the risks."

The pro-employer rhetoric continued, with TPR adding: "A strong and ongoing employer alongside an appropriate funding plan is the best support for a scheme.

"Where there is tension between the need for scheme contributions and for investment in the employer's business, it is important that the solution found neither damages the employer's covenant nor benefits other stakeholders at the expense of the scheme."

The regulator also addressed how trustees should negotiate with employers who want to prioritise investment in the future growth of the companies: "If investment in the business is being prioritised at the expense of what otherwise would have been affordable contributions, it is important that it is being used to improve the employer's covenant.

"The treatment of the pension scheme should be compared to that of other stakeholders, taking account of their priority ranking, and continue to reflect the scheme's status as a creditor to the employer."

The 2013 statement also indicated that the regulator is moving away from other simple triggers for it to become involved in the recovery process, such as recovery plans longer than 10 years. Instead it will move towards monitoring a broader collection of risk factors.

These include:

1) whether recovery plan contributions and the amount of investment risk appropriately reflects the relative strength of the employer and also the affordability of contribution
2) any specific issues and concerns relating to deterioration in sponsor covenant strength or possible avoidance
3) the shape of recovery plans including initial low levels of contribution
4) the investment performance assumed over the life of the recovery plan and
5) and any significant issues that we had with previous valuation submissions

Overally, the regulator's annual statement is softer in tone than last year's missive, which focused more on prudence. By comparison, 2013's statement appeared to be "a stepping stone towards an era of flexibility" for DB sponsors to be ushered in with TPR's new objective to consider long-term affordability for scheme sponsors, according to Zoe Lynch, partner at specialist law firm Sackers.

"How TPR's 2013 funding statement will translate in practice remains to be seen as the programme of proactive early engagement with a number of key schemes will continue, and TPR must continue to work within their existing parameters," Lynch said.

Francois Barker, pensions partner at law firm Eversheds, said it was good to see the Regulator planning ahead for its introduction, and preparing to factor it into a consultation later this year on revisions to the Scheme Funding Code of Practice.

And Jennie Kreser, partner at law firm Silverman Sherliker and former legal director at the regulator in its previous incarnation of Occupational Pensions Regulatory Authority, told *aiCIO* the statement effectively underlined what was already happening at the regulator: having a greater ability to consider the health of the employer.

Joanne Segars, chief executive of the National Association of Pension Funds, also welcomed the statement.

"Many businesses going through their valuations in 2013 are facing much tougher conditions than they did three years ago, so they will be encouraged by this sign of support," she said.

"However, it is one thing to talk about flexibility and another to allow it to be used. The Regulator must stand by its signals. We are encouraged by this latest statement and the signs so far of a change in the Regulator's approach.