

## Protecting Schemes from Employer Distress: Legal Aspects of Contingency Planning

The Pensions Regulator's November 2020 guidance sets out its most up to date list of expectations for contingency planning to address risks that flow from insolvency. It emphasises the value of undertaking planning before an employer shows any signs of distress.

A core theme is integrated planning across legal, funding, investment and covenant work streams. Trustees (and employers) will want a proportionate approach.

There is no template policy or checklist and undertaking such a process can seem daunting. To help you get started, here are our suggested Top 10 Focus Areas.



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**Trust Deed and Rules** - core powers assessment and improvement where needed to ensure functionality on employer distress.

**Third party contracts** - ensure relevant continuation or transition powers and services are in place (starting with core ones – others might be parked until signs of employer distress).

**Expense reserving** – can arrangements be put in place and documented today to give greater insulation for member DC and DB benefits from employer distress or scheme termination?

**Identify and prioritise known issues** - actively decide whether technical or structural issues (e.g., benefit discrepancies) should be addressed whilst employer support is available.

**Funding arrangements** - at a proportionate level - of legal and practical support; in short, know what there is and what needs to be done should employer distress materialise.

### Top 10 Focus Areas

**Legal covenant** - document the understanding of the suite of support, triggers and processes.

**Information disclosure protocols** - understand or put in place appropriate, transparent and enforceable legal and practical arrangements covering employer financial disclosures (covenant monitoring) and a framework for member and regulatory disclosures.

**Operations and governance** - holistic consideration of operational continuity from administration, payroll, key personnel and a "go to" Continuity Policy framework itself - in short, ensuring the scheme can operate independently of the employer.

**Data protection by design** – embed this into all work streams.

**Trustee knowledge and understanding** - shaping the Continuity Policy; understanding delegated roles and "first response" actions; periodic review and refresh as with all governance frameworks.

To hear further detail on this topic (a ten minute listen), click [here](#). We would be delighted to speak to you about how we can help you develop contingency planning for your own scheme.