Providing trustee protection

Insurance cover is of ever-greater importance to trustees, OPDU's trustee survey reveals

The legislative and regulatory burden for pension schemes continues to increase and The Pensions Regulator (TPR) has put the role and responsibilities of trustees centre stage in its drive to improve governance. This has led to an increase in trustees' accountability and exposure to risk and places further duties on trustees to ensure their schemes are well run.

OPDU wanted to consult its client base and contacts to assess their reactions to a series of questions and comments that arose from our day-to-day dealings and through the feedback received from our free technical training sessions on insurance and how this interacts with existing trustee protections. This article highlights the main findings.

We asked the participants to rate on a scale of 1 to 5 the importance and urgency of each question or comment. Seventy-two per cent of respondents were from DB or hybrid schemes and 78 per cent were either trustees or pensions managers. The respondents represented schemes ranging from small DB schemes to some of the largest schemes in the UK

We found that 62 per cent of respondents believed that it was important or very important to provide insurance cover for meeting the costs of regulatory investigations and 70 per cent believed this was an urgent issue. This clearly reflects the increased potential exposure to these types of costs. Our experience in helping clients meet the costs of investigations is that costs can accumulate very quickly. This is because investigations can go through several stages and involve a number of different advisers as TPR seeks the information it requires, which may necessitate extensive disclosure from the scheme.

Furthermore, protecting trustees from personal loss is a key feature of insurance because the protections in place through any indemnity and exoneration clauses associated with a scheme are limited by legislation and sometimes through practical difficulties in a sponsor's willingness or ability to provide that indemnity. This leaves trustees with exposures, so it was no surprise that 81 per cent believed that it was important or very important that trustees should be able to act without fear of personal loss, and 70 per cent saw this as an urgent matter to address. The latter certainly corresponds with OPDU's experience where we have seen increasing numbers of enquiries for cover. The need to better understand how insurance can protect has never been greater. There are a number of pension trustee liability (PTL) and discontinuance policies available. It is important for trustees to understand these can provide very different coverage, both in breadth and depth. Therefore, having a policy that meets the trustees' specific needs and understanding the terms of the cover provided is very important.

A very high 91 per cent of respondents thought it was important that schemes should be covered for costs in pursuing a third-party administrator or adviser for a breach of a professional duty of care. This is an important element of cover given schemes extensive use of advisers. If there is an issue that should be pursued, for example, advice or action resulting in the failure to equalise benefits properly, then this cover can, and has, provided the relevant funding.

A number of schemes are either winding up or will do so in the near future and here there are no scheme assets and either no sponsor, or a potentially uninterested one. Trustees can be particularly exposed in such circumstances and 87 per cent of respondents believed that it was important or very important that run off/ discontinuance insurance was secured. Typically we see terms of at least 12 years, with 15 years common. About a third of clients opt for lifetime cover when it is available.

This links to the importance for insurance cover for retired trustees, which was rated important or very important by 82 per cent of our respondents. This is important because PTL policies may either fail to provide such cover, or limit it to six years. It is essential that trustees who retire in normal circumstances have lifetime cover.

Written by OPDU executive director, Martin Kellaway