

Running for cover

✓ Martin Kellaway highlights the significant protections trustee insurance can cover

The role of a pension trustee today is more challenging and risky than it has ever been.

A perfect storm of increasing and complex regulatory burden, the increasing scrutiny and requirements of The Pensions Regulator, and willingness of members to complain and hold you to account means that the job of being a trustee has never been more onerous.

Problems lie not just within day-to-day exposure, but also within risks emerging in the future: the operation of hindsight and the possibility of being held to account for something that the trustees never considered or were advised was an issue.

Thankfully, there are some protections in place. The indemnity clause from the sponsor, which gives trustees some comfort, as long as the sponsor exists and is willing to pay. An exoneration clause may excuse trustees from liability and the scheme itself may also indemnify. However, there are statutory exemptions. For example, neither clauses can be used to compensate for civil fines and penalties. And neither protection provides a comfortable place for the trustees to find themselves in.

This is where Pension Trustee Liability insurance (PTL) plays a vital role. An insurance policy should stand in front of the exoneration and indemnity clauses, thereby providing the first call for claims to protect scheme assets and the sponsor's balance sheet.

Even through trustees may use third-party administrators and advisers, they are still ultimately responsible for the running of their scheme. Insurance can



therefore provide valuable cover when things go wrong, or where The Pensions Regulator launches an investigation.

The scope of cover is important. Some PTL policies provide very basic cover, excluding certain individuals or circumstances, and even adding auto-cancellation clauses in the event of a corporate event. Trustees need to ensure that their policies include cover for the following:-

- **Defence Costs.** Trustees need to demonstrate proper process and consideration has been given, irrespective of any substance to a claim. You will need to take legal and other advice. Defence costs are by far the largest part of losses covered under PTL policies.
- **Third-Party Pursuit Costs** are there to cover costs for when trustees need to pursue advisers or administrators who have failed.
- **Public Relations and Reputation** costs will help trustees manage a message to their membership and the media. Especially helpful for high-profile schemes/sponsors.
- **Court Application Costs** in the event that a court is needed to settle a matter or interpret documents.
- **The Pensions Regulator (TPR) Investigation** costs. You will need

sufficient cover in place to respond to TPR enquiries and disclose documents, emails and advice. This is where costs can escalate very quickly.

- **Retirement of Trustees.** Cover for trustees who retire is provided for their lifetime.

- **Civil Fines and Penalties** where insurable provides cover for items such as fines issued by TPR etc.

A good PTL policy should extend cover to include: families and estates of trustees; sponsor corporate trustees and directors; sponsoring employer for indemnified losses; the pension scheme in respect of exonerated losses and pensions employees of the sponsor.

Trustees should also ensure that they have a separate, PTL policy and not share a limit under another policy, such as a PTL extension to a corporate D&O policy, as the policy limit could be eroded by a D&O claim, leaving no cover available for the trustees

PTL policies are written on a claims-made basis and therefore cover all historic acts that emerge in the policy period. Run-off policies provide trustees with protection where a scheme winds up, with no assets left to reimburse a fine or claim, or a disinterested or non-existent sponsor. Cover can typically run from six years up to a lifetime.

To reiterate, it is not enough that trustees simply ask if they have insurance. They need to carefully assess any insurance that they have in place to ensure it is suitable and provides proper cover for them.



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