



# Trustee liability insurance

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**Trustee liability - Recently the number of duties and obligations placed on trustees has grown as a result of government intervention, making the role of trustee more onerous than ever. Trustees who breach these increasingly complex responsibilities may place their personal assets at risk or, in certain circumstances, find themselves liable for civil and criminal penalties. Add to this scheme members becoming more aware of their pension rights, adverse market conditions and the ever increasing profile of pensions in the news and it is easy to understand why trustees are becoming more interested in the protections available to them.**



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## Protections available to a trustee

Companies can help reduce the liability exposure of trustees by the incorporation of exoneration and indemnification clauses in trust deeds which generally operate to exclude liability arising out of breach of fiduciary or other duty provided it is innocent. However, sentiment has begun to swing against sole reliance upon such provisions because their successful operation usually entails a financial loss to the employer or the pension fund. It is also difficult to ensure that the wording of these clauses includes every eventuality and of course they depend on the continuity and financial stability of the pension scheme or sponsoring employer.

Often trustees will look to subrogate to the third party to which they have outsourced. It is important to note that these types of breaches typically have a lifespan of 6 years, whereas breaches of trust have no such limitation. As a result trustees can be held to account for the mistakes of their advisors.

Thus, at a time when legislation and litigation continue to increase, pension trustees should look at the specific protections available to them and consider whether liability insurance would provide an extra layer of security.

## What is pension trustee liability insurance?

Pension trustee liability (PTL) cover is an insurance policy designed to provide a comprehensive and cost-effective means of protecting an individual's personal assets (usually a trustee but this can

also include employees and directors and officers of the employer company). It also looks to reimburse the scheme fund and/or the principal or participating employers in respect of any loss resulting from exoneration and indemnification. In addition, the employer may also benefit from any cover available in the case of any direct claims.

A policy may also provide cover for lawful spouses, estates, heirs or legal representatives in the event of death or bankruptcy of an insured individual.

## Policy coverage

A policy typically offers protection against a comprehensive range of allegations, including breaches of trust, duty and statutory provision, negligence, errors, omissions, mis-statements and misleading statements.

Cover would normally be triggered in the event of a written demand alleging a wrongful act, a civil or criminal suit, or administrative or regulatory proceeding. The policy may also pay all reasonable costs incurred in relation to an official or fact-finding investigation by a regulatory body.

The policy itself should be written in plain English, including pension specific terminology, and respond to UK legislation. Thus reference to maladministration, the Pensions Ombudsman and the Pensions Regulator would indicate that the policy wording is relevant and up to date.

## Defence cost allowance

Whilst attention is typically focused on the potential size of a claim, it is often the costs involved in investigating and

defending the action that can be prohibitive. Therefore, PTL insurance ideally should provide all reasonable third party costs and expenses, not just legal, which are incurred to defend or appeal against a claim.

## Added value

A typical policy can be tailored using additional extensions. E.g. there should be the option to provide cover for retired trustees and civil fines and penalties, although it should be noted that legislation prevents scheme assets to be used to purchase insurance for the latter. The policy should also respond to changing circumstances including company and scheme mergers, consolidations, acquisitions and wind-ups.

Trustees need to understand the specific risks they wish to be covered by such an insurance policy, such as loss of documents or theft, and request clarification on what the policy does and does not cover by way of added endorsements.

## Which provider is most appropriate?

When looking for a PTL insurance provider to suit a trustee's needs, there are some key differentiators that should be considered, including: the underwriters' knowledge and understanding of pensions; the insurer's claims department awareness and response; the policy wording and coverage; and the insurer's commitment to the product long-term. It is important to identify the areas that are of particular importance and concern and ensure that these are addressed in the product finally purchased.