

Pension trustee liability

CHUBB®

Pensions have become the topic of debate in most executive boardrooms, with pension issues increasingly influencing corporate activity.

Why do clients need pension trustee liability insurance?



Chubb provides a cost-effective means of protecting the assets of individual trustees, the pension scheme, the sponsoring employer and their employees where an actual or alleged wrongful act may have placed the pension scheme assets at risk. Whilst attention is usually focused on the potential size of a settlement, it is often the costs involved in investigating and defending the action that prove to be prohibitive.



Existing and forthcoming pension legislation, in tandem with recent court, Pensions Regulator and Pensions Ombudsman determinations, are increasing the responsibilities placed on those who sponsor and manage pension schemes. Failure to adequately fulfill statutory obligations, comply with legal requirements or exercise reasonable care and skill in their actions can result in considerable responsibility or sanctions for those individuals involved if things go awry. For instance, in the case of trustees, personal liability attaches to the role and so their personal assets are at risk if they fail to fulfill their duties.

When liability attaches, there are a variety of protections in place:

- A statutory indemnity might be applicable, but relies heavily on the court's opinion as to whether the individuals involved have acted honestly and reasonably, and ought fairly to be excused. By its very nature, this is decided after the event

- Many trustees will have the benefit of clauses within the trust deed and rules exonerating them from liability. However, such clauses have rarely been tested and it is difficult to ensure the wording covers every conceivable eventuality
- The sponsoring employer may give an indemnity, though this is dependent on the continued existence of that employer in a state of financial health
- These clauses are only effective between members and trustees; they cannot provide protection against claims from third parties or regulatory action. Nor can they provide protection for potential loss to the pension scheme or sponsoring employer as a result of exoneration and indemnification.

Given the uncertainty experienced by many trustees and the possible increase in pension cost to the employer as a consequence of exoneration and/or indemnification, many are turning to an external, independent source of protection in the form of pension trustee liability insurance.

Who do we cover?

- Past, present and future trustees
- Employees involved in the provision of services to the scheme
- Their respective lawful spouses, domestic or civil partners, estates, heirs or legal representatives in the event of death, incapacity, insolvency or bankruptcy
- The pension scheme
- A corporate trustee company
- The sponsoring employer company
- Directors and officers thereof

Triggers

- Court actions
- A civil or arbitral proceeding
- A criminal proceeding
- An administrative or regulatory proceeding asserting legal liability for a wrongful act
- A written demand
- An official investigation
- An extradition proceeding
- A fact-finding investigation or proceeding by the Pensions Ombudsman, the Pensions Regulator, or equivalent body
- A contribution notice as issued by the Pensions Regulator under Section 38 of the Pensions Act 2004



Innovation and excellence



Key Cover

We provide protection against a comprehensive range of allegations, including:

- A breach of trust
- A breach of duty
- A breach of statutory provision
- Maladministration
- Negligence
- Administrative errors
- Wrongful omissions
- Misstatements
- Misleading statements

Cover is provided up to the limit of liability agreed in the policy schedule.

Other key highlights

- Cover for damages, judgments, settlements, defence costs, legal representation expenses and awards (including distress awards and compensation as determined by the Pensions Ombudsman, the Pensions Regulator or any other regulatory body)
- Cover in respect of loss to the sponsoring employer or pension scheme as a result of the indemnification of trustees or others
- Cover against loss to the pension scheme as a result of exoneration of trustees or others

- Cover for acts committed prior to the inception of the policy
- Cover for named pension schemes including the facility to add new pension schemes if the company is merged with or acquires another company during the policy period
- Continuous cover in the event that the sponsoring employer company merges with or consolidates into another entity (any subsequent name changes to the sponsoring employer company and or pension scheme must be advised) or enters administration
- Cover for schemes during wind-up with the potential to provide an extended period of cover after the wind-up has been completed
- Automatic coverage for stakeholder pension schemes and a broad variety of employment benefit and welfare plans
- Provision to advance defence costs up to the policy limit
- Provision for allowing notification of circumstances that are not yet a claim but may in the future give rise to a claim
- The ability to authorise either the sponsoring employer company or the trustees to act on behalf of the other insured parties. Where the authorised party is the sponsoring employer, prior written agreement of all trustees must be obtained in order for them to effect cancellation or termination



Optional policy extensions include:

Public relations expenses (up to a specified sub limit) for the reasonable fees and related expenses of a public relations, crisis management or law firm used to prevent or limit adverse effects or negative publicity following a claim or investigation.

Civil fines and penalties, where insurable, made against the insured by a regulatory body such as the Pensions Regulator (Provided the premium is paid without recourse or reimbursement from the pension scheme or any of its assets).

Court application costs (up to a specified sub limit) for the reasonable legal and professional charges, costs and expenses incurred as a result of an actual or proposed proceeding to seek a declaration or direction from the court; arbitral proceeding as to how the trustee should act in a particular set of circumstances; or in relation to a complaint made or dispute referred to the Pensions Ombudsman.

Emergency costs provision (up to a specified sub aggregate limit) for defence costs, investigation expenses, prosecution costs, mitigation expenses, public relation expenses or bail bond costs that can be incurred with retrospective approval.

Associated or connected persons costs (up to a specified sub limit) when challenging the reasonableness of a contribution notice.

Court attendance and staff disruption costs (up to a specified sub limit).

Extradition proceeding defence costs, bail bond costs and public relations expenses.

Document costs (up to a specified sub limit) incurred in replacing or restoring pension scheme documents in the event of their loss, damage or destruction.

Prosecution costs (up to a specified sub limit) for the legal and professional fees, costs and expenses incurred to resist any application for, or to bring legal proceedings to obtain the discharge or revocation of, for example, an order disqualifying a trustee, an interim or interlocutory order, confiscating, freezing or creating a charge over real property or personal assets, or the deportation of an employee or trustee.

Unlimited period of cover for trustees and employees who retire prior to the expiry of the policy have no alternative cover.

Cover for costs incurred in the pursuit of legal proceedings against an advisor of the pension scheme for the purpose of establishing a breach of professional duty of care (up to specified sub limit).

Theft and fidelity of pension scheme assets (up to a specified sub limit).

This summary only describes the main features of the policy. The precise coverage afforded is subject to the terms and conditions of the policy as issued.

The benchmark for excellence.

More than just insurance ...

Chubb goes further than conventional insurance, with value-added services that include access to specialist services provided by the Occupational Pensions Defence Union (OPDU). The Advisory Service provides trustees and administrators with general guidance and advice on matters affecting the day-to-day administration of the pension fund. It aims to facilitate good governance. The confidential advice line is staffed by lawyers and provides access to the Advisory Panel Experts where appropriate. The Advisory Service is complementary to Chubb policy holders.



Why choose Chubb?

Unparalleled cover and services. Longevity. We have been pioneering management liability insurance for over 30 years.

- Global service. Our wholly-owned network delivers consistent, high quality services all over the world.
- Highest A.M. Best rating. Our A++ rating demonstrates our financial strength and long-term ability to pay claims.
- Award-winning claims service. Our claims team is consistently recognised as the best in the business.

Contact Us

For more information or to obtain a quote please call your local underwriting or sales contact. For all contacts, visit chubb.com/uk

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IMPORTANT NOTICE: In order to prepare for the UK's exit from the European Union, Chubb is making certain changes. It is currently anticipated that during 2018 Chubb European Group Limited will convert to a public limited company, when it will be known as Chubb European Group Plc. It is then proposed that the company converts into the legal form of a European Company (Societas Europaea), when it will be known as Chubb European Group SE. The company will still be domiciled and have its registered office at the same address in England and will remain authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

To stay up to date with our Brexit preparations and for more information about what it means for you, refer to our website at chubb.com/brexit/