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Trustee liability and overlooked beneficiary insurance-pension fund buy-outs

A pension "buy-out" changes the landscape for trustees when it comes to personal protection.

Pension buy-outs, when a pension fund transfers to a bulk annuity insurer, have become common in the UK, as companies look to manage their pension liabilities and reduce volatility. The fund assets and often a balancing payment go to the bulk annuity insurer, which becomes responsible for paying future pensions to beneficiaries. Defined contribution funds can also be wound-up after assets have transferred to alternative pension arrangements.

WHAT ARE THE EXPOSURES TO LIABILITY FOR TRUSTEES?

Trustees or directors of a corporate trustee may face future litigation after a scheme winds up. Even if a scheme has discharged its liabilities in relation to the beneficiaries, a past trustee remains personally liable, potentially for their lifetime, for any acts they undertook while in the role.

In addition to these day-to-day exposures from running a pension fund, there are also risks associated with the buy-out transaction, such as the selection of a buy-out provider, and the decision to make the buy-out. Despite extensive due diligence, there is no guarantee that a claim will not be made. Even for an unfounded allegation, defence costs can be substantial.

There are also potential liabilities for the sponsoring company and/or its employees.

WHAT ARE THE EXPOSURES TO OVERLOOKED BENEFICIARIES?

If beneficiaries are not included in the details passed to the bulk annuity insurer and are identified after the transaction completes, paying their pensions may become the responsibility of the trustee. This may also be the case if provision is made for them but the amount is incorrect. In some transactions, the bulk annuity insurer may be prepared to assume some or all of these risks.

ARE EXISTING INDEMNITIES OR INSURANCE SUFFICIENT?

A trustee may have different types of protection for their personal assets — exoneration/indemnities from the plan assets, indemnities from the sponsoring employer, or a pension trustee liability (PTL) policy.

Why an existing indemnity may not be sufficient

The sponsoring company or plan under the current trust deed may indemnify the trustee against liabilities incurred, but the indemnity may cease on wind-up and the sponsoring company may not want to offer a continuing indemnity. The party providing the indemnity may not exist at the time of claim or may not have the assets to satisfy any indemnity. Following the buy-in, it is likely that all or most of the plan assets are transferred, thus rendering any indemnities from plan of little or no value.

Existing pension trustee/fiduciary policies may also not be sufficient

If there is an existing policy:

- The cover will be on an annual basis, with no guarantee it will be renewed in future.
- The cover (and limit) may be shared with the trustees of other funds and the sponsoring employer.
- The policyholder will be the sponsoring employer, and trustees may have little or no influence over the policy.
- Limited or no cover may be provided in relation to claims from overlooked beneficiaries.

WHAT INSURANCE COVER IS USUALLY CONSIDERED BY TRUSTEES?

Marsh has worked with insurers to develop policies to meet these needs. The policies usually considered by trustees are:

Pre wind-up Pension Trustee Liability Insurance.	Can provide cover in the period up to completion of wind-up.
Residual PTL insurance.	Can provide run-off cover for trustees, for claims after the completion of the wind-up.
Overlooked beneficiaries insurance.	Insurance for trustees to cover the risk of beneficiaries being missed from the details provided to insurers, or if incorrect benefits are provided.
Bespoke solutions.	• A specialist Insurance provider is able to offer cover for an extended policy periods against specific risks. • Solutions may also be available to protect the sponsoring employer and its employees or directors.

BENCHMARKING

Marsh has advised on over 150 buy-out transactions and as a result we have benchmarking data to assist your decision on arranging suitable cover. We can provide proprietary benchmark statistics regarding the limit and period selected by other similar sized pension schemes.

POLICY TERM

Insurers differ in the period of run-off/overlooked beneficiary insurance cover they can offer. The appetite of insurers changes, so it's important to stay in contact with your broker for an up-to-date understanding of the market. Long periods of cover often requested by trustees, for example — 15 years — are not as easy to find as they used to be/readily available. There are fewer insurers currently offering the long periods of cover that trustees request. There are a few insurers who can offer cover for up to 15 year policy periods.

INFORMATION REQUIRED TO OBTAIN AN INDICATION OF PREMIUM

- Completed initial information form.
- Copy of most recent report and accounts of the pension fund.
- Copy of most recent Scheme return.

At a later stage additional information will be required to progress with arranging the insurance.

Contact

For more information, please contact:

Zelda Pitman
+44 (0) 7385 482658
zelda.pitman@marsh.com

Lauren Wood
+44 (0) 7392 123849
lauren.wood@marsh.com

2569330-UK

About Marsh

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