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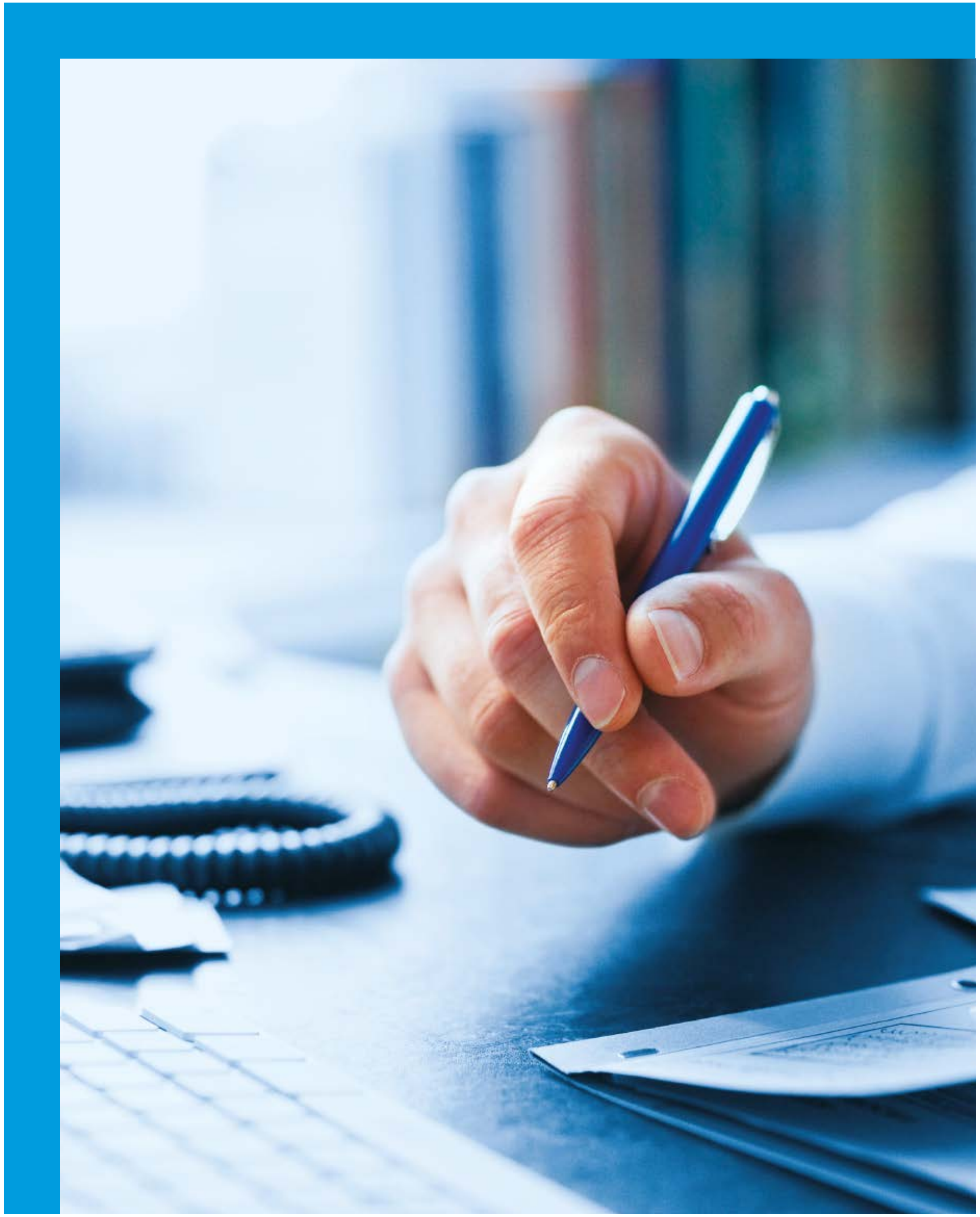
Corporate Guard / Pension Trustee Liability Insurance

Under a Spotlight

The overhaul of legislation and regulation affecting the running of pension schemes has completely changed the environment for pension trustees, pension administrators and others within the pensions community. Responsibilities are clearer, the capabilities of regulators to police and enforce these responsibilities much stronger, and the exposures of trustees (and many other people involved in running occupational pension schemes) much sharper.

This is why we have re-engineered our Corporate-Guard Pension Trustee Liability insurance product.

This brochure outlines how it covers many of the exposures presented by this tough environment, how it speaks the same language and addresses the same priorities.



CorporateGuard's Wrongful Act cover, why trustees are more exposed these days

Trustees are personally liable for the running of their scheme, and so CorporateGuard Pension Trustee provides wide third party liability cover for trustees. And there are some very good reasons why pension trustees are more in need of this protection than ever before.

The Pensions Regulator intends to raise the standards of governance for the 84,000 private sector occupational pension schemes in the UK. One of the 4 objectives outlined for the Pensions Regulator by the 2004 Pensions Act is "to promote, and to improve, understanding of the good administration of work-based pension schemes". And, as the Chief Executive noted in the regulator's annual report, "raising standards of governance, particularly in smaller schemes, remains an important focus for our work".

This is backed up by legislation and, under the Pensions Act, there is a legal requirement for trustees to know the law relating to pensions and to understand the investment principles relating to occupational pension schemes. Trustees are explicitly warned they need to know and understand enough to be able to ask "challenging questions of their advisors". They must keep up to date with regular training and it's up to trustees to demonstrate to the Regulator that they've met the required legal standards.

The Regulator has gone to some lengths to show what these required standards are, with a detailed and sophisticated online learning programme that trustees can access free of charge at www.trusteetoolkit.com.

The regulator's code of practice may not be law, but if trustees do not comply with it and things go wrong, then the code provides a clear basis of reference for regulatory action and enforcement.

Trustees are certainly expected to punch their weight when they are dealing with the employers that sponsor the schemes under their stewardship.

Trustees more exposed

- Regulator determined to raise standards of trustees' pension governance
- Legal requirement under the Pensions Act for trustees to have understanding of trust law and investment principles
- Trustees may need to demonstrate to regulator that they have kept up to date
- Regulator's code of practice a clear benchmark of standards for regulatory action against trustees
- Regulator can levy fines, disqualify trustees and "name and shame"

As OPRA warned them in 2004: "Trustees need to be assertive when making such representations and in subsequent negotiations". But events have not made trustees' circumstances any easier. While the Regulator asserts its intentions to raise trustees' knowledge on the one hand, on the other hand it requires at least a third of each scheme's trustees to be nominated and selected by scheme members.

Meanwhile it has sharper teeth than OPRA, it can levy fines, impose improvement notices and has recently disqualified its first trustee for life.

All this explains why the UK's hundreds of thousands of pension scheme trustees have never been so carefully scrutinised until now, so clearly held to account and why they need broad and strong liability protection more than ever before. The good news is that CorporateGuard Pension Trustee provides much more than this, as outlined in the following pages.

Pension Crisis Helpline

- CorporateGuard Pension Trustee policyholders are entitled to call on the services of the Pension Crisis Helpline
- Expert, confidential advice on aspects, of pension legislation, regulation, or an issue that any insured feels could give rise to a claim
- Up to an hour of expert telephone-based advice on each issue
- The Pension Crisis Helpline is provided at no extra cost within all CorporateGuard Pension Trustee policies

Contribution notices, and how CorporateGuard provides certainty for trustees

A key element of the regulatory regime, and an indicator of the regulator's power, is its statutory right to issue contribution notices against a wide range of people, such as trustees, advisors and directors associated with a pension scheme.

Contribution notices can be issued when someone's actions prevent the Regulator from recovering any debt owed to the pension scheme by the employer.

There are some important things to consider about contribution notices. For example they can specifically instruct the trustee, director or advisor to pay the amount personally out of their own pockets. Also it's uncertain how they will be used. One may not have to be fraudulent or dishonest to receive a contribution notice. Consider, for example, a company's good faith decision to pay outstanding debts to an unsecured creditor that leaves the fund with less security.

Although it's not easy to envisage a scenario where trustees could attract a contribution notice, this may not be much consolation to trustees, as these are early days for the Regulator. It's uncertain how it will apply its powers. And this uncertainty presents an unwelcome risk to trustees as, over time interpretations can change.

Fortunately with CorporateGuard Pension Trustee this is not a risk that trustees have to run because we have couched it in the language of the new legislation to provide a significant enhancement at a critical time for those responsible for occupational pension schemes. CorporateGuard Pension Trustee covers trustees' losses if they are issued with a contribution notice as well as the legal costs of challenging one up to £250,000. We also cover directors and employees involved in the administration of the plan against losses from contribution notices, because as the next session outlines, CorporateGuard Pension Trustee provides much more just third party liability cover for trustees.

Contribution Notices

- Regulator has power to issue contribution notices against trustees, advisors, directors
- Regulator may instruct individuals to pay contribution notices personally
- Area of great uncertainty: how will the Regulator use this power?

More than Trustee Liability Insurance: exoneration clauses, 1st party coverage and "pre-wrongful act" cover

Although traditional Trustee Liability Insurance covers trustees, the reality is that there are other entities exposed to the mistakes of trustees as well, such as the company and the plan itself.

This is because trustees may be personally liable for the running of their scheme, but many companies lay off much of the risk by providing trustees with indemnities and exoneration clauses within the trust deed.

CorporateGuard recognises this real, contemporary threat to the company and the plan (particularly in light of the increased regulatory scrutiny of trustees' actions). We cover the plan from any claim made against a trustee for which the plan becomes liable as a result of an exoneration clause. And if a company, plan or corporate trustee company pays the loss of an insured person because of any indemnities that have been provided, then we will reimburse them for such loss. This area of cover is a key feature of the cover provided by Corporate-Guard Pension Trustee.

These are not the only elements of 1st party cover provided by CorporateGuard Pension Trustee. For instance we, provide up to £100,000 cover to replace or restore lost documents relating to the pension plan (paper documents and electronic files).

This first party coverage recognises the responsibility of scheme administrators for retaining essential documents for individual members for many years, and the importance of protection if things go wrong.

CorporateGuard Pension Trustee also provides protection even before any allegations of wrongful acts have been made and we cover costs of expert preparation and legal representation for any investigations and inquiries by the Pensions Regulator.

There are several other areas where a more powerful, more insistent and demanding Regulator, creates a need for more responsive insurance protection.... which is exactly what CorporateGuard pension Trustee provides, as the next section shows.

More than trustee liability insurance...

- Companies may carry the risk of trustees' liabilities because indemnities they have granted
- Pension plans may carry the risk of trustees' liabilities because of exoneration clauses
- Some Pension Trustee Liability insurance providers may not cover such exposures to the companies and plans

A more demanding and insistent Regulator: emergency costs cover, inspections, whistleblowing and notifications

There are several areas in which the Regulator has much wider powers than its predecessor. Such as getting information about an occupational plan.

If it wants to, it can demand information from trustees, employers, administrators - indeed anyone it thinks might hold relevant information. It can inspect premises, it can seize and copy documentation, and it is a criminal offence if one fails to co-operate.

More regulatory muscle is also applied to whistleblowing which, under the new regime, is not just encouraged, but compulsory.

Previously, only scheme actuaries and auditors were compelled to blow the whistle; now trustees, employers and administrators (including pensions managers and secretaries) have to make written reports to the Regulator as soon as reasonably practicable if they find any non-compliance or significant failures.

Additionally, there is a range of events which the Regulator expects to be told about the next day. Such as any change in the employer's credit rating, changes of executive positions, changes in key scheme posts, and individual convictions (the full list is much longer). Failure to comply is an offence, and individuals and companies can be fined.

Each of these areas is indicative of a more demanding and insistent Regulator, with a keen appetite for specific, short-order information. Companies, directors, employees, advisors, administrators and trustees may now find themselves obliged to disclose sensitive material within extremely short timescales, leaving little or no time to consult their Pension Trustee Liability insurance providers. This is precisely why CorporateGuard Pension Trustee provides pre-approved cover, up to 10% of their limit of liability, for those occasions when, for reasons of timing, our policyholders are simply unable to get our written consent before defence costs have to be incurred.

A more demanding and insistent Regulator...

- Regulator can demand information, inspect premises, seize and copy documentation
- "Whistleblowing" is compulsory for many people involved in running a pension scheme
- Trustees and directors must notify the Regulator quickly of changes affecting employer or the pension scheme

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