SQUIRE PATTON BOGGS

PENSIONS LIFE HACKS

June 2024

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Trustee Protection on Winding Up

What Is the Issue?

For years, the thought of buyout and solvent winding up was a pipedream for many defined benefit schemes. Due to unprecedented market movements accelerating deficit reduction, it may now be a very real possibility, with many schemes currently considering, or already in the process of, a buyout.

While the immediate focus is on completing the buyout, the subsequent winding up of the scheme should not be forgotten about; once it completes, trustees will no longer have the benefit of exoneration and indemnity protections in their scheme's governing documentation (the law is unclear as to whether such provisions survive winding up), nor will trustees have any funds from which to meet future claims. Therefore, trustee protection should be considered at an early stage to avoid any unexpected liability in years to come.

What Protection Do I Need?

There is no "one-size-fits-all" approach; the protection required will depend on the engagement of the sponsor and the residual risks relevant to each scheme. It should include:

- Careful member communication and potential dispute mitigation
- Statutory protection by placing notices in relevant publications (referred to as section 27 notices)

It could also include:

- Insurance, including missing beneficiary, run off and/or residual risk insurance. The cost of insurance (particularly residual risk insurance) can be prohibitively expensive and will not always be necessary or good value. Insurance could be funded through the scheme (if the scheme rules allow this) or paid for by the sponsoring employer.
- Indemnity from the sponsoring employer or another group company. An indemnity is only as good as the company providing it – so consideration of which company should provide it and on what terms is essential.

Lessons Learned

Failure to put in place appropriate protection on wind up can put trustees at risk of personal liability (on a "joint and several" basis), should future claims arise. Trustees should address this at an early stage of a wind-up plan.

Top Tips

1. Start discussions with the sponsoring employer early, and before a buyout. Once the buyout of the scheme has completed, trustees will have very little bargaining power, so early engagement is key.
2. Consider a package of protections; try to avoid relying on just one form of protection.
3. Consider the specific residual risks applicable to your scheme, take advice and tailor the protection accordingly.