



## Pensions Life Hack by Philip Sutton

### Employer Indemnities – Will They Work If Push Comes to Shove?

#### What Is the Issue?

Trustees are generally volunteers. Many are unpaid. All trustees will remember the part of their trustee induction training about the risks of being a trustee – the words “unlimited joint and several liability” are hard to forget. All trustees will have taken comfort from the next slide in the training deck about the layers of protections available for trustees. At the heart of those protections is the indemnity that is generally provided under the scheme’s rules. But what if something bad happens and trustees need to rely on the indemnity?

#### The Value of the Indemnity

“An indemnity is only as good as the person giving it.” We have probably all heard that phrase at some point. The obvious issue for trustees is when the organisation giving the indemnity is in financial difficulty or, worse, insolvent. At this point the indemnity is worthless.

#### Lessons Learned

However, we also see rather more subtle scenarios. Trustee indemnities are generally given by the “principal employer”. In a multi-employer scheme, this can be problematic – the principal employer may be a non-trading holding company or represent a tiny fraction of the employer covenant. It may not even be a “[statutory employer](#)”.

Where trustee boards have incorporated (i.e. operate as a board of directors of a trustee company), some of the personal liability is removed by the separate legal status of the corporate vehicle. But if the trustee company is a subsidiary within the sponsor group, the indemnity may be void if it is not written as a “qualifying pension scheme indemnity provision” for the purposes of the Companies Act 2006.

#### Top Tips

1. Trustees should check their rules to understand who provides their indemnity. This is a key issue – take legal advice and make sure that all trustees understand the position.
2. If there is any concern, trustees may wish to discuss amendments to the indemnity with the sponsor. Ideally, the indemnity should come from the all the employers in a multi-employer scheme.
3. Trustee directors should check that their indemnity is a qualifying pension scheme indemnity provision.