



ACE OPDU Elite

*Pension trustee
liability insurance
Product profile*



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



Existing and forthcoming pension legislation, in tandem with recent court, Pensions Regulator and Pensions Ombudsman determinations, are increasing the considerable responsibilities placed on those who sponsor and manage pension schemes. At the same time, many insurance products, such as Directors & Officers protection, are specifically excluding claims relating to pensions. 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.

Thus, in this generally more litigious society, effective risk management is imperative although inevitably some risk usually remains. In a typical calendar year, the Pensions Ombudsman can have over 3,000 cases in total referred to him, with typically 98% originating from dissatisfied members of pension schemes, and the remaining 2% coming from employers, trustees and managers.

For example, in a case referred to the Pensions Ombudsman, pension scheme trustees were required to make good a deficit in the pension scheme and it was agreed that payments of £5,000 a month would be made by the employer. Because the employer's cash flow was unstable, the trustees (who were also directors and shareholders of the company) at the same time lent back £5,000 a month to the company. The company then went into administration. A member complained and the Pensions Ombudsman held that the loans were maladministered by the trustees and ordered them to pay the loan from their own resources (a total sum of £50,000) in addition to defence costs. The trustees appealed, but the appeals were dismissed.

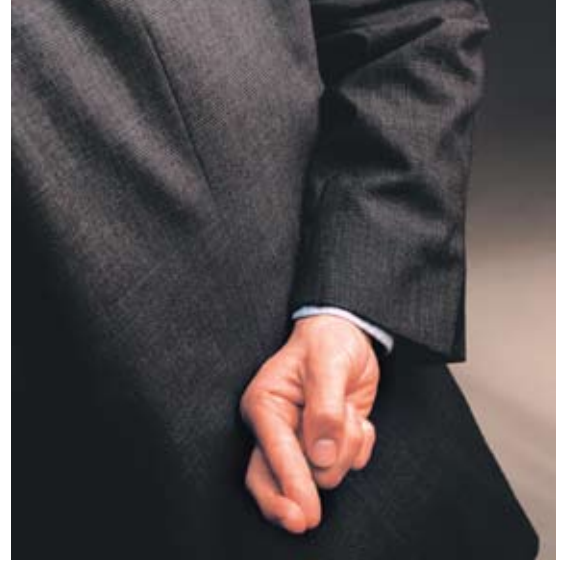
Many trustees and employers are turning to an external, independent source of protection in the form of pension trustee liability insurance.

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.
- Furthermore, such 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.

ACE OPDU Elite is an insurance policy that 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.



ACE OPDU Elite can advance funding to cover defence costs, in addition to providing cover for settlement of an action if required.

ACE OPDU Elite brings peace of mind, and provides trustees and the sponsoring employer with the confidence to perform their roles secure in the knowledge that they have considerable protection from one of the world's leading insurance and reinsurance companies.

Cover

ACE OPDU Elite cover is far reaching and includes:

- 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.

It offers 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.



This innovative contract is the benchmark for excellence.

Triggers

In addition to the long-standing accountability of pension trustees and employers to court actions, there are now a number of other types of forum in which these individuals can face proceedings. **ACE OPDU Elite** responds to all of the following:

- 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.

Other key highlights

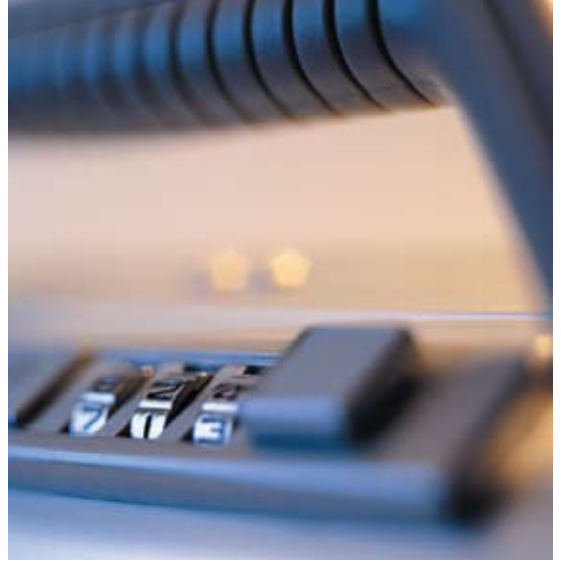
ACE OPDU Elite also offers the following:

- 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.
- The ability to include coverage for a broad variety of employment benefit and welfare plans in addition to pension schemes.
- 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.

Furthermore, the policy can be tailored to meet the specific requirements of each individual circumstance by optionally extending the policy to provide:

- 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 engaged to prevent or limit adverse effects or negative publicity which it is anticipated may arise from 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 a actual or proposed proceeding to seek a declaration or direction from the Court or 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 aggregate limit) such that defence costs, investigation expenses, prosecution costs, mitigation expenses, public relation expenses or bail bond costs can be incurred with retrospective approval.
 - Employer benefit programmes and/or employee share ownership programmes as listed in the schedule or by endorsement to the policy.
 - Cover for costs including defence costs, bail bond costs and public relation expenses incurred in relation to an extradition proceeding.
 - 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.
 - 12 years of cover for trustees and employees who retire prior to the expiry of the policy should no alternative cover be put in place.
 - 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 innovative contract is the benchmark for excellence. It is written in plain language and provides comprehensive cover. 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.
- More than just insurance . . .**
- ACE OPDU Elite** goes further than conventional insurance, with value-added services that include:
1. 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 **ACE OPDU Elite** policy holders.
 2. A pack containing helpful information for the trustees, received on inception of the policy.
 3. A newsletter from time to time containing information on topical pensions issues, regulatory items and recent Pension Ombudsman, the Pensions Regulator and Court determinations.

ACE is one of the most innovative providers of insurance products and services in today's global marketplace.

About ACE

ACE Europe has earned its leading position in the fiduciary pension marketplace by consistently providing superior service, exceptional expertise and commitment to clients. In particular, we pride ourselves on our:

- **Stability**
 - ACE Europe is a leading provider of insurance and reinsurance in Europe. Headquartered in London with a network of offices across 14 European countries, ACE Europe is part of The ACE Group of Companies, one of the world's largest providers of property and casualty insurance, reinsurance and financial services. Established in 1985, the ACE Group has grown rapidly by building long-term partnerships with our brokers and clients in each of the world's major insurance markets.
- **Innovation**
 - ACE is one of the most innovative providers of insurance products and services in today's global marketplace. We pride ourselves on the quality and experience of our staff, who are specialists in their individual fields. Using this experience, we focus on products and services in market segments where this specialised knowledge creates a natural alliance with customers. In addition, we tailor our products and services to support the key business goals of those select segments.
- **Experience and expertise**
 - ACE Europe has a highly respected underwriting team holding a significant degree of knowledge on pensions and experience in the pensions industry. We work with brokers and clients to provide quality cover and a claims service, which meet the needs of trustees and employers in a rapidly changing environment.

Other products available from ACE

We offer a wide range of products to diverse sectors of industry and can tailor policy wordings to meet our clients' individual needs. We have professional, experienced underwriters specialising in areas such as directors & officers liability, employment practices liability, crime, accident, health and business travel insurance.

To find out more about ACE's **ACE OPDU Elite** pension trustee liability policy, or any of the above listed products, contact your insurance broker or nearest ACE office.

Please note this information is descriptive only. The precise coverage afforded is subject to the terms and conditions of the policy as issued.



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