



PROFESSIONAL

## CLAIMS AGAINST PENSION TRUSTEES AND INVOLVING PENSION SCHEMES

The following examples have been supplied by our scheme solicitors CMS Cameron McKenna.

In the past many pension Trustees have taken the view that there is no need for insurance. Indeed some commentators queried whether expenditure on insurance premiums was justifiable, particularly when the Sponsoring Employer indemnified the Trustees or the Trust Deed itself provided some form of exclusion of liability. However the Legislative changes since 1995 and adverse movements in the equity markets have brought an increasing awareness of the vital role insurance can play to protect the interests of Trustees, and other parties to a Scheme. The large sums invested in a pension Scheme often mean that a small mistake can result in a significant sum being in dispute.

### EXAMPLE CLAIMS

1. Prior to the EC decisions in “Barber” and related cases in the early 1990s many OPS's treated part time workers differently from full time employees. Attempts were made to sex equalise the Schemes. However a surprising number of Schemes failed to do so correctly, with the result that members are entitled to significantly higher benefits than had been previously understood. Insurers have been involved in this problem in a variety of ways:
  - a) paying for the costs of obtaining the Court's opinion on whether amendments were effective and if not, what benefits are actually due.
  - b) paying for the defence costs of a claim made by the employer against the Trustees for failing to properly administer the Scheme
  - c) paying for defence costs of claims brought by excluded members.
  - d) meeting the shortfall in the Scheme caused by an impecunious Sponsoring Employer
2. Numerous problems arise from the failure to interpret the Trust Deed correctly. For example the Trustees discovered that the annual pension increases may have been improperly calculated. Insurers indemnified the claim made against the Trustees and funded a claim against the Trustees former advisers.
3. The Trustees elected to adopt an investment strategy, which failed to follow the Statement of Investment Principles. Following the falls in the market in 2002, significant losses to the Scheme's value were incurred. The Employer claimed against the Trustees.
4. The Trustees failed to take advice and so missed the opportunity of adopting an MFR matching policy when there was a prospect of the Scheme being closed and wound up and the Company going into voluntary liquidation. The result was that there was no statutory debt on the employer and so the value of the fund to be distributed was reduced. A claim for in excess of £1million was made by the new Trustees.
5. Trustees paid excessive transfer values and permitted incorrect early retirements. The Sponsoring Employer went into liquidation and so could not meet the shortfall or the indemnity it provided to the Trustees. The new Trustees claimed against the former Trustees. Insurance met the claim and enabled the former Trustees to claim against their advisers.