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**TRUSTEE LIABILITY  
IN LONGEVITY AND BUY-IN CONTRACTS**

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**WHITE PAPER**

**PENSIONS LAW CONFERENCE 2017**

# TRUSTEE LIABILITY IN LONGEVITY AND BUY-IN CONTRACTS

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*What can you do to protect trustees from liability under third party contracts including the power to give indemnities (especially in longevity and buy-in contracts)?*

# TRUSTEE LIABILITY UNDER THIRD PARTY CONTRACTS

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- **Personal liability**
- **Right of indemnity**
- **Subject to:**
  - Sufficiency of assets
  - Within scope of powers
  - Acting properly and for proper purposes
  - Other liability to trust
- **Power to grant indemnities to third parties?**

# LONGEVITY AND BUY-IN CONTRACTS AND SCOPE AND PURPOSE OF TRUSTEE POWERS

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- **Are longevity contracts and buy-ins within investment powers?**
  - *Hazell v Hammersmith and Fulham LBC*
  - *Dalriada v Faulds*
  - Transfer of investment risk and reward to insurer to the exclusion of beneficiaries and employer
  - Statutory investment powers include risk management
- **Determining the purpose of a power**
  - *Easterly v Headway*
  - *ITS v Hope*
  - *Pitmans Trustees v Telecommunications Group*

# TRUSTEE PROTECTION

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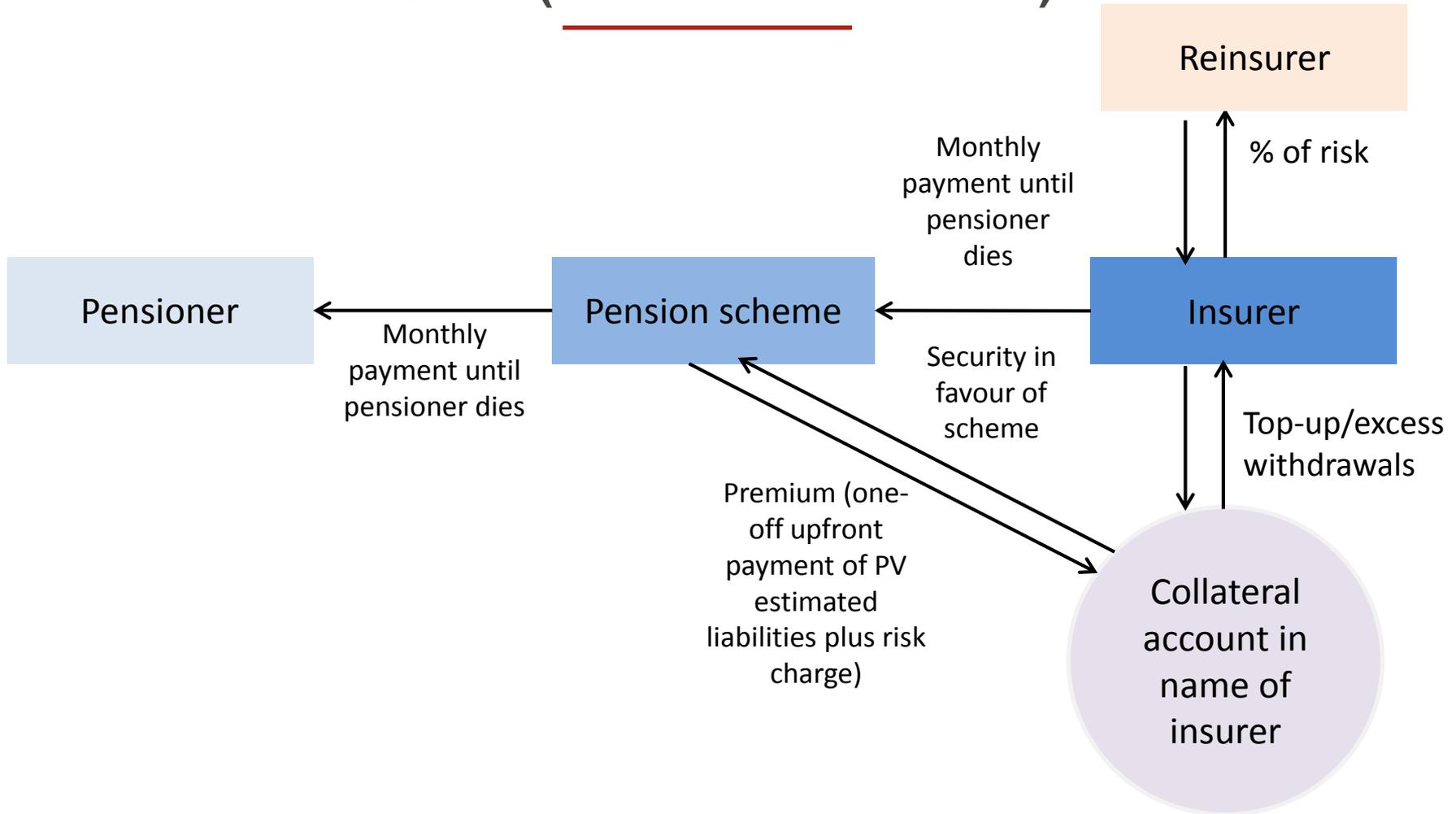
- **Incorporation**
- **Exoneration**
- **Employer indemnities**
- **Insurance**
  - Pension trust liability: “wrongful acts”
  - Cover for employer indemnities
  - Overlooked beneficiaries and benefits
- **Consent of employer? Grant of specific powers?**

# LONGEVITY AND BUY-IN TRANSACTIONS

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- **Duration**
- **Value**
- **Within investment powers? Other powers?**
- **Counterparty risk: due diligence, solvency regulation, FSCS**
- **Changes of trustee: assignment and discharge**
- **Trustee obligations**

# BUY-IN (NON-DEPOSIT BACK)



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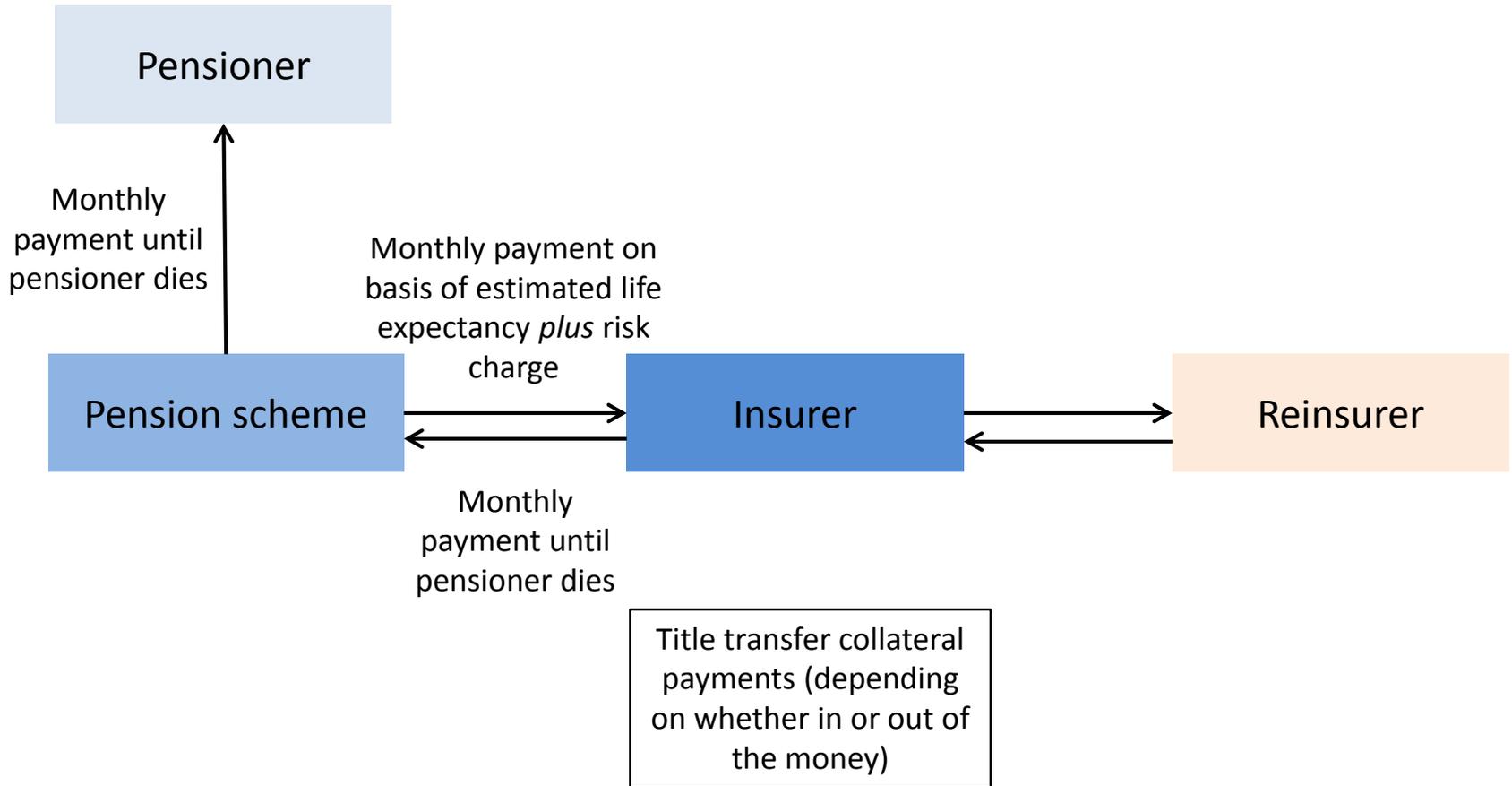
# TRUSTEE OBLIGATIONS UNDER A BUY-IN CONTRACT

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- **Premium at outset (may be held in collateral account)**
- **Warranties: within powers, duly authorised and binding etc., SIP and s.36 advice, data, trust deed and rules**
- **Charges and adjustments re data and other changes**
- **Indemnities for breach of warranties and claims from beneficiaries re overlooked beneficiaries and incorrect benefits**
- **Liability limited to assets of scheme and recoveries from insurance and indemnities?**

# LONGEVITY TRANSACTION

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# TRUSTEE OBLIGATIONS IN LONGEVITY TRANSACTIONS

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- **Pay monthly fixed leg net of floating leg**
- **Top-up collateral**
- **Warranties: within power, duly authorised and binding etc., SIP and s.36 advice, data, trust deed and rules**
- **Covenants: compliance with law, notification of winding-up, PPF assessment, no amendments impacting insurer, no encumbrance of assets (particularly if uncollateralised)**
- **Termination liability (NPV of floating leg – NPV of fixed leg + premium if Trustee fault) but usually collateralised**

# HOW TO PROTECT TRUSTEES UNDER THIRD PARTY CONTRACTS SUCH AS LONGEVITY AND BUY-INS?

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- **Incorporate**
- **Uncollateralised exposure to third party may be limited**
- **Limit liability to scheme assets and proceeds of insurance and indemnities?**
- **Get advice (legal and financial)**
- **Get employer support**
- **Proper assignment and discharge on retirement**

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