
# Episode 4:

# Co-fiduciary arrangements:<br>The next frontier of pension outsourcing

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**Lisa Alkon:** For Willis Towers Watson to take on that risk both financial and obligation wise is very attractive for clients who just don't want to be in the business of pension plan operation.

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**Dave Amendola:** Hi, everyone. My name is Dave Amendola. I'm the Intellectual Capital Leader for Willis Towers Watson's Benefits Advisory and Compliance Group. And I'll be your host today for the episode of Benefits, with Purpose! entitled: Co-fiduciary arrangements: the next frontier of pension outsourcing.

We will be discussing how employers have been increasingly compelled to outsource certain fiduciary responsibilities and liability associated with defined benefit pension plan administration to third party experts.

With me today are two terrific panelists. First, Laura Kelly, who is a Senior Director and a national leader for the Willis Towers Watson co-fiduciary offering. Welcome, Laura.

**Laura Kelly:** Glad to be here, Dave.

**Dave Amendola:** And secondly, we have Lisa Alkon, who is a Managing Director and the chairperson of the Willis Towers Watson Co-fiduciary Committee. Welcome, Lisa. Great to have you here.

**Lisa Alkon:** Thank you. Nice to be here too.

**Dave Amendola:** OK, so let's dive into it. And before we get into some of the details of the co-fiduciary offering, why don't we take a step back and set some context for the listeners and get at the overarching concept of what a fiduciary is.

Lisa, what does that mean with you being the chairperson of the Co-fiduciary Committee? What is being a fiduciary mean to you?

**Lisa Alkon:** What it means is a very specific legally defined term where you have responsibility for a pension plan in this case where you have both civil and criminal liability for the operation of the plan. In this context, we're talking about operation of a pension plan and the oversight of administration. And certain functions that are connected with administration are fiduciary obligations and come with a higher level of responsibility than, maybe some ministerial operations, which is kind of the day to day call center, making elections, providing participants with election kits.

There are fiduciary elements to all those things. But the people who are performing them are not considered to be a fiduciary. You would generally be a named fiduciary within a plan. You can become a fiduciary by your actions, but really what we're focusing here is on being a named fiduciary for a plan.

**Dave Amendola:** And in your experience, Lisa, I know you've spent your career in pension administration as well as fiduciary and compliance. But in your experience, do you think that most individuals who actually work in this area and actually have fiduciary responsibility recognize that fact, and sort of understand the level of responsibility and liability that they might be dealing with?

**Lisa Alkon:** So, Dave, it's a good question. I think you're also calling me old, but I'm not sure.

**Dave Amendola:** No, no, no.

[LAUGHING]

**Lisa Alkon:** I would say it's a mixed bag. The people who are current, you know operate at the committee level for a client, generally understand that they are fiduciaries. They may not understand what that really means, but they know that they're subject to a higher level of scrutiny than maybe the day-to-day folks at the client.

The reality is that in certain circumstances, either intentionally or not, the people who are dealing with plan operations on a daily basis are performing fiduciary functions and don't really understand that they have civil and criminal liability for the work that happens around the plan.

**Dave Amendola:** Yeah, that's helpful. So, Laura, why don't we turn to you and get into a little bit more of what the co-fiduciary offering is and what it's not. I think maybe some listeners have heard of, or may be more familiar with delegated investment arrangements, and certainly traditional pension outsourcing. How does the co-fiduciary offering differ from those and what's unique about it?

**Laura Kelly:** Sure. So, when we think about running the pension plan, we can think of two aspects to the pension plan. One being, the financial part of the pension plan, so the trust and the investments in the trust and your funding policy and determination of how much contribution you're putting into the plan each year in order to later pay out benefit payments to your participants and beneficiaries.

And then there's the operations of the plan, and the operations of the plan is actually doing the administration of the plan, making decisions with how to treat participants, following all the requirements for pension plans, all the government filings, all the required notices, making sure your plans are compliant.

So what we're focused on under this co-fiduciary offering is really the operational piece. This is not dealing with the financial part of the plan. That's where you'll see plans have delegated investments where they have delegated out the investments of the trusts to a third-party. Here, this is really talking about moving the fiduciary responsibility and risk that's associated with the operation of the plan from a plan sponsor over to Willis Towers Watson.

So, Lisa talked about the traditional outsourcing arrangement and under that arrangement, people are acting in a ministerial fashion, meaning they're not making decisions with regard to the plan. They are acting as they're directed to. So, they're performing tasks based on the direction of the fiduciary. Under this offering, that responsibility which today is always residing with the client, moves over to the Willis Towers Watson Fiduciary Committee. And our committee is responsible for making the decisions of the plan, plan interpretations, choosing how to treat participants, making sure that the plan is compliant, that there are no issues out there. That we're following all required legislation in addition to the plan documentation.

**Dave Amendola:** OK, so just to drill into that a little bit. So when an employer outsources the administration of the plan, they're outsourcing the operation and a lot of those ministerial factors, but traditionally, they would keep most if not all of the fiduciary responsibility and the accompanying liability and I think what you're saying is with this co-fiduciary offering the employer is able to essentially outsource and delegate a lot of those fiduciary responsibilities and thus some of that liability to, let's say Willis Towers Watson. Is that accurate?

**Laura Kelly:** That's correct. So in a traditional environment, the fiduciary decision making for the administration of the plan the fiduciary oversight responsibility for all actions around the operation of the plan are the client's responsibility. In this new arrangement, that work actually moves over to the Willis Towers Watson Fiduciary Committee.

**Dave Amendola:** So I think, Lisa, to me, that seems like a pretty valuable result for certain employers. Obviously, there are a lot of factors that go into this, but that element of risk mitigation would seem to be at least on its face a value proposition to employers. Is that what we've been seeing?

**Lisa Alkon:** Yes, Dave. I think that's right. The transfer of the risk relates to really two elements. One is the actual financial risk that companies face if there are audits, for example, and sanctions and the cost of corrections, which can be often times more than the sanction itself.

And the other element really is the transfer of risk because of the knowledge base and the depth of knowledge that the current fiduciaries at the client don't have honestly around the complex and esoteric rules, around defined benefit plans. They're asked to make plan interpretations and make decisions based on rules that are not obvious. You can't run a plan, a defined benefit plan based on common sense. That is exactly the opposite in many times of what you should be doing because there are so many rules and so much history around the regulation of these plans.

And so, for Willis Towers Watson to take on that risk both financial and obligation wise, is very attractive for clients, who just don't want to be in the business of pension plan operation.

**Dave Amendola:** And let me just follow up on that. Why do you think we're seeing, or at least perceiving this trend of either an employer not wanting to be in the business, or do they just not have the knowledgeable staff anymore because of the way retirement plans are shifting? What are some of the factors involved with this trend to move toward the co-fiduciary arrangement?

**Lisa Alkon:** I think the point that everybody needs to acknowledge is defined benefit plans are not necessarily the primary vehicle for delivering retirement benefits to employees. Things have shifted. They've shifted more to individual account plans, 401(k) plans, 403(b) plans, and many of the defined benefit plans for our clients are frozen, or they're acquiring a legacy company where they had a defined benefit plan and maybe the acquirer didn't have a defined benefit plan at all.

So they have no expertise. I think there are issues around staff and staff expertise that maybe Laura you want to just touch on for us.

**Laura Kelly:** Sure. So what we're seeing in the marketplace, why we developed and are offering this service for our clients is that people who had been responsible for pension plans back when they were open, back when this was a primary retirement option for employees have been retiring or have left the companies. And it is very difficult to go out and find employees with pension plan knowledge and expertise, because as Lisa said, pension plans aren't the way of the future.

So, people aren't growing their careers in the pension plan benefits business, instead they're growing their careers and focusing on other benefit programs that are open, that are supporting all employees. So there's a real difficulty to actually find someone who has the right skill set to be responsible for your pension plan. And what we see happening is people are being asked to make decisions with regard to the pension plan where it's not their skill set, that's not their background. And like Lisa said earlier, decisions around a DB pension plan are not necessarily common sense.

And so, these people who are making decisions don't have the background to do it. And so, the risk that has always existed with pension plans is rising when you have someone who's not a pension plan expert making these decisions. Couple that with the fact that these government audits and the sanctions around them have increased by a lot over the past few years.

So while these pension plans aren't the main retirement benefit for most employees or many employees, the government is still in there. Still looking at them. They're still changing the rules and expecting that pension plans are following them. So the risk is there. I feel like the risk has gotten higher over the last few years in terms of the operation of these plans. And the people aren't there to make the decisions who have the appropriate skill set.

**Dave Amendola:** Is there also a component to this that even if an employer had the staff who could handle this, that connecting to what Lisa was saying before that because this is not necessarily the primary retirement vehicle for the employee base that they just would rather, like a company would rather have those employees and staff who could do this work, they'd rather have them focus on different, maybe more valuable business objectives. Is that happening as well?

**Laura Kelly:** That's right. So we see this with our clients who have moved to this arrangement. There are clients of ours who had pension plans staff, but that wasn't their only responsibility. And so, having to focus time on the pension plan takes away from being able to meet strategic objectives of your other benefit plans that are covering all employees. We talk about moving the risk in the pension plan.

We have a client who recently said to us the reason that this arrangement is so great, is that I didn't think that there was a lot of risk in my pension plan, but I felt like there was a lot of risk with my other benefit plans because we didn't have the time to focus on them like we wanted to.

So moving the work of the pension plan off their plate so they can focus on those other benefit plans and other objectives has been really beneficial for them, either in meeting strategic objectives or in just reducing the risk of those other benefit programs.

**Dave Amendola:** So is there a concept of ignorance is bliss a little bit in terms of not really comprehending the level of risk that might be involved with these plans? And then, there becomes an issue that arises, whether it's an audit or a lawsuit or something, and then it really comes home to roost and shifting that liability is beneficial?

**Laura Kelly:** Absolutely. I think that many times a plan has not encountered an audit where they've had to deal with a government agency coming in, and asking a whole lot of questions, or they're only starting to see a lot of questions from their plan auditors who are noticing a lot more granular in their review of the plans than they may have in the past.

But when an issue is uncovered, it can be catastrophic in terms of having to deal with the issue and deal with the correction of the issue.

**Dave Amendola:** And Lisa, what we're touching on a little bit here is that transfer of risk, it's taking it away, or at least a large portion of it from the employer and then transferring it, let's say to us, Willis Towers Watson who are experts in this area. What are we potentially positioned, or more better positioned to be able to do with respect to the operation in the fiduciary issues relating to the plan that some employers just don't have the capacity and wherewithal to do?

**Lisa Alkon:** Many of the aspects of the co-fiduciary arrangement do play into gaps that probably the employer recognizes they have going in. So, for example, plan interpretation is an area where the co-fiduciary committee may be asked by the administrator, for example, what does this really mean? I don't know if anybody's ever sat down and tried to read through a pension plan, but it's convoluted. There's references, cross-references, and multi references, if that's a thing — where you really can't understand what the point of it is.

Our committee, in terms of its deep resources, we have actuaries, we have lawyers, we have experts on administration on the committee and can understand how to navigate through a plan document and be able to bring a plan interpretation. We don't do that work in a vacuum. We do try to understand what's happened in the past. But we don't necessarily follow exactly what happened in the past.

What we do is do our independent fiduciary obligation by looking at the plan, and saying what does this really mean, and how should it be interpreted. For example, as well, we take care of all participant escalations. We deal with participant escalations one by one or as a group, and work with the participant to get the issue resolved. And so, that doesn't have to be an obligation of the company. And it's kind of demystifies for participants, if they have an issue and it escalates, we will take care of it. We will converse with them. We will do the plan interpretation. We will respond to their inquiries on a timely basis, and do the research that's needed to resolve their various issue.

We also, for example, do all of the coordination with the plan auditor. So I'm sure that clients understand what the strain of this question, can you just give me one more participant data? Can you just explain this one more time? All that activity around the 5500 audit is organized and supported by the co-fiduciary team.

The one other important point is around approval of pension payments. Clients have to approve the trust payments. It's a fiduciary function, and so we take that on as well. On a monthly basis, reviewing calculations, making sure that the entry into the payment system is appropriate and based on the election that people made.

So there's an enormous amount of activity that the client is relieved of doing that is taken on by people who have a deep expertise in that area.

**Dave Amendola:** So let me be clear on this because I think it's really important for our listeners to understand. So you just went through a laundry list of items. And it sounds like there's two pieces to this that are really important to an employer.

One is the time and effort and resources that would be undertaken by the internal staff to deal with plan interpretation issues back and forth, maybe bringing legal counsel in, participant escalation situations, the government filings, reproval of trust payments. All of that time and energy is now off of the employer's plate and then on ours, the experts, but also the potential liability that goes along with that. And just to be clear, if there are issues that come out of that, that's for us unfortunate. But we're taking on that liability and thus taking that away from the employer, is that correct?

**Lisa Alkon:** Right. It's a true risk transfer. Willis Towers Watson is on the hook for whatever decisions and whatever activities they undertake, we undertake-- I undertake, actually-- around the fiduciary responsibility around that plan. The risk transfer element, besides just the operational freeing up of people's time and responsibilities, is huge. And that's really a benefit for clients who have gone into this co-fiduciary arrangement with us.

**Dave Amendola:** And Laura, I think, based on what we alluded to earlier, it sounds like, for a growing number of employers, that risk transfer is very valuable considering the fact that this plan may no longer be really a valuable benefit. It may be completely frozen. And employers--really, employees--may not be getting a further benefit out of this plan. So that calculus can be very attractive for an employer to say, I'd like to transfer that risk because we're really not getting as much of a value or a benefit from this plan as maybe we used to. Is that accurate, do you think?

**Laura Kelly:** Absolutely. So I think you introduced this podcast, Dave, as the frontier for pension outsourcing. And it's true. So pension plans, if you think back historically, were insourced. They covered all their employees. Then companies moved to outsourcing. They didn't want to have the responsibility for doing the administration of these plans, nor did they have the expertise to properly give employees everything that they wanted, or participants and beneficiaries everything that they wanted.

Well, plan sponsors still had these plans. But they don't want to deal with them anymore. They want to focus on other things. So they want to remove that risk. And this is really kind of the last area in pension plan operation that they need to move to if they really want to take the risk of the operation and the work associated with the operation of the pension plans off their plate.

**Dave Amendola:** I kind of alluded to this earlier, but I get the sense, at least with some employers, that when they have outsourced the pension administration, some may have felt that some of these things that we talked about may have actually been outsourced, when at least the responsibility and the liability may not have been, or it really wasn't outsourced at the same time. And so now sort of making them aware of the fact that these items relate to a continued liability, and having the ability to outsource that again, I think, can be very attractive to some employers.

Why don't I just ask kind of a question. Laura, what would you say from the clients that we've been working with in this arrangement, have you been surprised by anything? Is there anything that kind of pops out at you as being something that you've heard from clients that either they didn't understand before going to this arrangement or have found to be very valuable that they didn't necessarily think about even when they decided to engage us in this regard?

**Laura Kelly:** I think the response from our clients has been wonderful. I don't know that there's any items that they weren't aware of before. But what we've heard from clients is, this is such a relief to know that all of this is being taken care of by you. We periodically report out to the client. That's why they're the co-fiduciary. They can't give up all responsibility with regard to the plan. They need to make sure that our Willis Towers Watson Fiduciary Committee is doing what they're supposed to be doing.

And so periodically the committee reports out on all the activities that have taken place, all the benefit claims and appeals that may have happened with regard to the plan, how they're making sure that the operation of the plan is being performed in a compliant manner. And our clients say things like, we couldn't do this without you, or what a relief.

I think, for me, since we've been doing this offering, what's come to my attention is just how many individual participant escalations may occur, or benefit claims and appeals may occur, or just unique scenarios may occur that in the past, the client had to somehow figure out how to treat those people. And now our Willis Towers Watson Fiduciary Committee makes those decisions.

**Lisa Alkon:** I would say the pandemic has made an interesting turn of events for people. The whole idea of remote notarization has come up, and should plans allow that? I can't get out to get a notary for my spousal consent. Not being able to go to the post office. There's a million stories in the big city around the impact the pandemic has had on everybody's business, every aspect of everyone's business.

But it has had an impact directly on pension plan administration. And clients are dealing with the issues around the pandemic for their business, mission critical issues for their business. And they don't want to have to deal with figuring out if remote notarization is a good thing or a bad thing. But we have done that for our co-fiduciary clients.

**Dave Amendola:** So would you expect this - I mean, obviously, we're still in the pandemic. And there's obviously a lot of hope with the vaccine. We don't know how that's going to go and how quickly. But do you think this is going to continue, that trend, and that focus and need to focus on mission critical business objectives, and this trend to potentially have real value in outsourcing administrative fiduciary issues will continue?

**Lisa Alkon:** Well, what I think is really interesting is the trend towards companies deciding that working remotely actually works for them. And the issues around I can't look this up, this person's service history, because it's in a folder in the basement or in the trailer behind the building. And so trying to figure out strategies around remote workforce will continue indefinitely whether there's a pandemic or no pandemic because there are savings to be had, of course, in real estate. And we've all proven that we can work from home or from wherever. So I don't think the issues are going to subside. Maybe the emergency feeling will subside some, but there will still always be issues around remote workforce.

**Dave Amendola:** Lisa, I just want to get a little bit more into this concept of co-fiduciary because Laura alluded to it just before. But the fact that this is co-fiduciary, there still is at least a modicum of fiduciary responsibility that's left with the employer. Is that just, essentially, monitoring Willis Towers Watson and what, let's say, the co-fiduciary committee is doing to make sure that the committee and Willis Towers Watson is doing what it said it would do from a contractual perspective? Is that kind of the legacy or the leftover fiduciary responsibility and liability that's left with the employer in this arrangement?

**Lisa Alkon:** To be honest, they're still co-fiduciaries. Still, if there is a lawsuit or some kind of a catastrophic event, both the client and us are going to be involved in it. But ultimately it will be our responsibility. But as you point out appropriately, the fiduciary responsibility, really, that remains with the client is the oversight and monitoring of Willis Towers Watson's Co-fiduciary Committee.

And that's why Laura referenced the reporting out. We do report for some clients quarterly, for some twice a year. We really don't want to do anything less than that, and at a high level, report on what's going on with the plan and how we are satisfying the obligations that we've taken on in order to satisfy what we should be doing in light of our risk. But yes, it is a co-fiduciary model because you can't contractually make fiduciary obligations disappear.

**Dave Amendola:** Yeah. And Laura, do we do we typically connect that reporting out with our other pension outsourcing reporting? Is that usually done holistically, or is it done separately, just kind of depends on the client?

**Laura Kelly:** So Dave, when we take over as the co-fiduciary for the pension plan, we take over the oversight of the vendors associated with the pension plan. So the trustee, the administrator, the quadro outsourcer, et cetera. So our committee is responsible for monitoring those vendors for doing what they're supposed to be doing and meeting their contractual obligations.

Those people report right up to our committee. When we report periodically over to our clients' committee, when our co-fiduciary committee members report out to our clients' committee, they do include the highlights of those discussions so that our clients are aware of whether their vendors are meeting their obligations.

**Dave Amendola:** Got it.

**Lisa Alkon:** One item I'd like to just highlight is what it takes for us to get from OK, I want you to be the co-fiduciary, to us actually being the co-fiduciary. Again, I can't stress enough the seriousness with which we take this obligation. And so before we go live with any co-fiduciary responsibility, we do do an operational review of the plan. So really looking and saying, is everything happening the way it was supposed to happen, so that we can then go in with a clean slate in terms of the operations moving forward.

And then annually, we do do an operational assessment of, did everything go according to plan? Are the things that were noted in the original review corrected? Have there been change in legislation or regulations that need to be reflected, and have those been operationalized? So part of this is an annual compliance assessment, as well as a pretty deep dive before we even go live.

**Dave Amendola:** So just in and of itself, having that transfer entails a pretty thorough compliance or operational compliance review to kind of get us to a starting point. And then you go from there on an annual basis to make sure that each year things are in line. Is that accurate?

**Lisa Alkon:** Right. Right. Exactly right.

**Laura Kelly:** And that annual review is really what we would consider best practice. So under the co-fiduciary offering, you are transferring your workload, you're transferring your risk. But you're also ensuring that the activities around the plan are best practice activities. They may not even be required, but they are what we would consider best practice. We're bringing all of those solutions and activities to our clients under this offering.

**Dave Amendola:** Well, and I think that connects to what we were talking about earlier in terms of one of the value propositions for this arrangement is transferring the responsibilities to a third-party expert as opposed to the employer taking these on.

And that, I think, is a really important point, Laura, because it allows us to apply best practices, based on our experience and the fact that we're doing this all the time with a lot of different clients, to be used, best practices to be used with respect to the administration of this employer's plan, where even those employers that have the best intentions, it's very challenging to apply best practices, I think, on a given basis when they don't have this kind of outsource responsibility. Would you agree with that?

**Laura Kelly:** I would. And sometimes it's challenging just for staff. And so we talk a lot about our Willis Towers Watson Fiduciary Committee, but that committee is supported by a dedicated fiduciary services team who is on the ground doing all the day-to-day work associated with this offering and assisting, then, our committee with making sure that the plan is operating in a compliant manner.

**Dave Amendola:** Excellent. Well, I think we're close to time. So I just want to recap what I think the highlights are. From what I've heard, it really appears that there are maybe three major elements of value in an employer going to this co-fiduciary arrangement. It seems like risk mitigation is an absolute high point in this is terms of transferring that risk, like we talked about earlier, to an expert, a third-party expert, and kind of outsourcing that risk away from the employer, especially given the environment that we're in with defined benefit plans not being the primary vehicle anymore.

Shifting in responsibilities for staff in the environment where there just aren't as many of those knowledgeable people in the industry. And that's probably going to even continue to shrink. And then also associated with that is allowing the internal staff to focus more on what might be-- I think Lisa mentioned mission critical objectives, business objectives, as opposed to spending time worrying about and dealing with fiduciary matters and responsibilities with respect to the defined benefit plan.

And then what we just talked about, the enhanced compliance results and usage of best practices that we can apply as we do across our client base and that we can continue to enhance ourselves and that can pertain to the individual plans that we work with.

With that, I think we'll close up. This has been a great discussion. I would like to thank our guests. Laura Kelly, thank you very much for being here and providing your wisdom.

**Laura Kelly:** My pleasure.

**Dave Amendola:** And Lisa, thank you, especially, being the chairperson of the committee to give us your insights. And really appreciate your participation as well.

**Lisa Alkon:** It was great, Dave. Thanks.

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**Dave Amendola:** And of course, we want to thank our Benefits, with Purpose! listeners for joining us today. Please make sure to subscribe to join us for future episodes. And we look forward to seeing you next time.

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