



Willis Towers Watson 

DARCstar™  
Directors' All Risk Cover

The award recognises the initiative that “redefines the industry’s competitive landscape and raises the bar for customers’ or partners’ expectations”.



**WINNER**  
Insurance Initiative  
of the Year

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# DARCstar: An overview

Directors' All Risk Cover (DARCstar) is a ground breaking approach to Directors & Officers (D&O) liability insurance, designed to simplify and improve the protection available to directors and officers. First launched in May 2011, one year on, a significant number of FTSE 100, FTSE 250 and large multinational companies have bought DARCstar policies. Exclusive to Willis Towers Watson, the policy is now supported by all major D&O insurance markets, making the transition to DARCstar an easy and straightforward proposition for clients.

## The DARCstar concept

- DARCstar is based on the premise that many D&O liability insurance policies are too lengthy and cumbersome. Just 10 pages long, it confronts the paradox that more complex terms often do not deliver better cover.

The three planks on which the DARCstar concept rests are:

1. A single insuring clause covering directors regardless of whether loss is indemnifiable by the company
2. Focused and comprehensive cover for investigations and enquiries
3. A clear and transparent approach to claims conduct and control

## DARCstar: Not your conventional D&O cover

The ability to adjust a DARCstar policy to a client's particular needs without extensive re-writing is a popular feature with many clients.

The concept can also be applied to other forms of management liability insurance.

“I was attracted to the DARCstar product because, having carefully analysed the extent of cover provided, it seemed to offer broader all-round cover than the more traditional wordings and in a much shorter policy wording. Top marks to Willis Towers Watson for coming up with such an innovative product.”

**Andy Kirby,**  
**Group Insurance Risk Manager**  
**Carillion plc**

# DARCstar D&O liability insurance

Features	Benefits
One insuring clause	Instead of the conventional twin insuring clause approach, with indemnification being the barrier between the two, there is a single insuring clause providing direct access for the directors to insurers
D&O cover on an 'all risks' basis	Rather than an insured perils/affirmative cover approach, the assumption is that the risk is covered unless excluded
Waiver of right of subrogation by insurer against policyholder and subsidiary in all circumstances	A guarantee from the insurers that they will not seek recovery from the policyholder for indemnifiable loss
Nil deductibles	No compulsory deductibles or retentions other than with respect to securities claims
Clear triggers for investigation costs cover across a broad spectrum of external and internal investigations and enquiries	Legal costs protection tailored to the needs of directors and officers
Simple and transparent claims handling provisions	Greater certainty for directors in the coverage and claims handling process
A policy that is easy to understand	Clear, simple and concise terms

## Additional enhancements

- Advancement of all directors' costs in the event of an allocation dispute
- No absolute exclusion in relation to the gaining of profit or advantage
- Full defence and investigation costs cover for death
- Fully integrated Outside Directors Liability (ODL) cover
- Loss mitigation protection
- Suspended claims reporting requirements where legal restrictions apply

# More from the DARCstar stable

The transparent and simple approach to cover lends itself to a variety of other financial lines products. These include:

- DARCstar Eclipse (providing enhanced ring-fenced protection for non-executive directors); and
- DARCstar Public Offering of Securities Insurance (POSI)

Both of these wordings were launched in May 2012.

## Eclipse

DARCstar Eclipse offers a one stop solution to the twin problem of insurer insolvency and limit exhaustion. It is designed to sit excess of a DARCstar primary form as part of the excess programme.

Features	Benefits
Standard excess limit protection as part of a DARCstar programme limit	Seamless and simple to build into a standard DARCstar D&O tower
Insurer insolvency drop down for all loss covered under a DARCstar programme	Balance sheet and individual protection against insurer insolvency
An optional additional dedicated limit available either for the non-executive directors or the whole board of the parent company for which the sole trigger is exhaustion of the D&O insurance tower	Tailored protection for one or more 'black swan' events in any given policy year
Loss covered irrespective of insurance or indemnification available from any other source	No quibble certainty that ring-fenced class of individuals have enhanced liability protection

# DARCstar Public Offering of Securities Insurance (POSI)

When a company seeks to raise capital through the offer of securities to the public or seeks an admission to trading of securities, a prospectus or listing particulars will be issued detailing in-depth financial information about the company and its future objectives and strategies. Liabilities may be incurred by directors and officers and others if the prospectus contains errors or omissions which are relied upon by investors in making their decision to purchase the company's securities.

DARCstar POSI is a transaction specific insurance policy which ring-fences these liabilities under a separate aggregate limit, helping to preserve D&O limits for the day-to-day management of the company. Typically purchased for a three to six year period, the premiums may be treated as a transaction cost.

Features	Benefits
Automatic cover for secondary offerings	No need to seek insurers' consent nor to pay additional premium for qualifying secondary offerings
Separate ring-fenced limit of cover for prospectus exposures to cover ordinary limitation periods for any claims	Dedicated cover so that a purchaser does not face a 'renewal risk' of insurance premiums shifting upwards or market capacity not being available in future years
No 'changes in risk' clause	Full prospectus liability policy remains in place in the event the company is taken over or merges with another
One insuring clause	Instead of the conventional twin insuring clause approach, with indemnification being the barrier between the two, there is a single insuring clause providing direct access for the directors to insurers
D&O cover on an 'all risks' basis	Rather than an insured perils/affirmative cover approach, the assumption is that the risk is covered unless excluded
Project-based cover	Cover for the work relating to the transaction and not just the transaction itself

# Frequently asked questions – DARCstar

## What is DARCstar?

- DARCstar stands for ‘Directors All Risks Cover’. It is a revolutionary new approach to D&O liability insurance which starts from the premise that all liability risks faced by directors are covered. It aims to provide broad and relevant cover in concise and easily understood terms. It is just 10 pages long.

## D&O insurance is complicated and typical conventional policies are 20 or 30 pages long. How can a 10 page wording be any better?

- Conventional D&O insurance adopts an ‘insured perils’ approach to the cover i.e.: “These are the specific things for which you are covered and these are the terms on which cover is granted.” This approach breeds complexity. By contrast, DARCstar adopts an ‘all risks’ approach, i.e. unless excluded it is covered.

## What else is different about DARCstar?

- Conventional D&O insurance is based on a twin insuring clause approach: Side A indemnifies directors for loss in the event the company has not paid and Side B reimburses the company if it has already paid the loss to the directors. DARCstar contains only one insuring clause.

## What’s so good about a single insuring clause approach?

- Quite a lot of things actually. Firstly, from the company’s perspective, a single insuring clause approach provides certainty. There is no risk of arguments with insurers about whether any particular loss is or is not indemnifiable. In conventional D&O insurance, insurers have a commercial interest in ensuring that companies indemnify their directors as frequently as possible since this delays and/or reduces the size of the insured loss, and in some cases removes it entirely. That option is not open to insurers in DARCstar.

## What else is good about the single insuring clause approach?

- From the individual directors’ perspective the single insuring clause delivers certainty of outcome. In conventional D&O insurance there is always a risk that individual directors are caught in the crossfire between insurers and companies about whether a particular loss is or is not indemnifiable. This may delay, restrict or even preclude essential defence costs cover. The single insuring clause removes that risk.

## Under DARCstar can the company claim back a loss/losses from insurers where it has paid that loss straight to the directors?

- Yes, under the voluntary payments clause a company can claim such loss back from insurers provided the claim is otherwise covered.

## Is it true that DARCstar adopts a different approach to cover for investigations and enquiries?

- Yes, in conventional D&O insurance the triggers for cover for legal representation expenses payable to directors for investigations or enquiries are quite restrictive and do not always appear relevant to the real world. DARCstar provides cover across a full spectrum of internal and external investigations and enquiries subject only to the need to establish as triggers for cover any one of the following: (1) the existence of circumstances that are reasonably likely to give rise to a claim or (2) an actual or potential conflict between the director and the company or (3) insolvency of the company.

## What about claims handling?

- Conventional D&O insurance typically contains fairly onerous claims handling and control provisions from the insured's perspective. These might include a duty to cooperate, a duty to defend the claim and a duty to provide all information requested by the insurer at the insured's own expense. DARCstar contains none of these provisions. Other than a duty to seek insurers' consent to settlements, there are no prescriptive claims handling provisions.

## I have often heard it said that insurers can delay the point at which they provide a clear indication as to whether a claim is covered. How does DARCstar address this issue?

- DARCstar is, we believe, the only D&O insurance which imposes a positive obligation on the insurer to state its position with respect to coverage within 30 days of having received the information it reasonably requires in order to do so.

## How does DARCstar address disputes between insurers and the insured as to how much of a claim is covered, if for example the company is sued alongside the company directors?

- DARCstar (as with conventional D&O insurance) recognises the possibility that these disputes may arise and may need to be resolved. In order to protect the position of the individual directors, in the event of such dispute, DARCstar provides that all defence costs and legal representation expenses will be advanced to the individual directors pending resolution of any such allocation dispute.

## Is it true under DARCstar that the consequences of fraudulent misrepresentation and/or non-disclosure to the insurers can only fall on those guilty of such fraud?

- Yes, unlike many conventional D&O policies, if insurers believe there has been fraud in the submission process, the consequences of such fraud in the form of rescission or avoidance of the policy can only apply to the persons responsible and not to the policy as a whole.

## Is there any cover under DARCstar for securities claims?

- Yes, DARCstar provides cover for securities claims where the entity is sued alongside individual directors and/or officers. Subject to the payment of any applicable deductible, the securities claims extension contains a provision ensuring payment of all covered losses irrespective of whether such loss is incurred by the company or by the individual directors.

## Can't I get all of the advantages and benefits of DARCstar by adding them into my conventional D&O policy?

- The 'all risks' approach taken in drafting the DARCstar contract is fundamentally different from that adopted in conventional D&O insurance. Whilst it is theoretically possible to lift clauses from one policy to another, we would not recommend it. There is significant risk of confusion and ambiguity. Moreover, the DARCstar brand is protected by trademark and the product by copyright.

## Does DARCstar solve the problem of locally admitted insurance?

- DARCstar is suitable for any company which currently purchases D&O insurance.

## Who is DARCstar targeted at?

- DARCstar is suitable for any company which currently purchases D&O insurance.

## Which insurers are behind DARCstar?

- DARCstar was developed in association with Allianz, QBE and XL. It is widely supported by many large and well known insurers in the London market. Current capacity is running at USD 200m and is continuing to build.

## Are there any other benefits of DARCstar?

- Yes, there are several important benefits available to companies and directors which for reasons of length we do not list and address here. Many of them are contained in the key features document. Alternatively, we would be more than happy to answer any further questions if you email us at [darstar@willis.com](mailto:darstar@willis.com).

## If Willis Towers Watson is not my broker, can I still obtain a DARCstar policy?

- No, DARCstar is only available to Willis Towers Watson clients.

## How do I apply for a DARCstar policy and how long will it take to get a quote?

- You can request a quote from your Willis Towers Watson Client Advocate® or send an email to [darstar@willis.com](mailto:darstar@willis.com). Alternatively contact Leslie Wright, Mark Wakefield, Mark Payne or Edward House (contact details the back). We aim to provide a quote within five working days (in some cases a letter of authority may be needed which may affect the five day turnaround).

# Frequently asked questions – Eclipse

## What is DARCstar Eclipse?

- A policy which incorporates:
  - i) standard excess cover forming part of a DARCstar programme,
  - ii) insurer insolvency protection both for the company and the directors, and
  - iii) an additional ring-fenced limit available to non-executive directors (NEDs) or main board directors in respect of the same claim.

## What is different about DARCstar Eclipse?

- Quite a lot really; there are a number of so called 'Side A only' policies available in the market. These are policies which offer a number of benefits similar to those identified in the answer to the question above, but the majority of such benefits are only available to the extent the relevant loss is 'non-indemnifiable' by the company. In other words, they provide funding to the directors only and subject to the ability of insurers to claw back funds advanced from the company. DARCstar Eclipse uniquely provides these benefits irrespective of whether the relevant loss is indemnifiable by the company.

## I understand that but I like the idea of a separate Side A only policy because I want the reassurance that it is cover just for the directors. Does DARCstar Eclipse offer that?

- Yes it does, the ring-fenced limit is available just for the directors. This is achieved by dis-applying the voluntary payment clause from the primary policy. In other words, if and to the extent that a director chooses to seek indemnity from the company (as opposed to the insurer), the company has no recourse for reimbursement against the ring-fenced limit.

## Couldn't you ring-fence part of a standard excess tower of DARCstar insurance in the same way without buying an Eclipse form?

- Yes, it is certainly possible to delete the voluntary payments clause from as much or as little of the programme tower as the client wishes. Of course, without Eclipse, you won't be buying an additional limit. You will just be buying cover for the directors but at least (as with Eclipse) there is no claw back possible against the company if the loss is indemnifiable.

## What else is different about DARCstar Eclipse?

- Many conventional D&O policies offer an additional limit of cover to NEDs. Indeed DARCstar primary does this too. The theory is sound, but the problem with these extensions, which are usually (as with DARCstar) added into the programme free of charge, is that they are only accessible after every other form of indemnification and/ or insurance has been exhausted and, even then, often only in relation to separate claims. Only DARCstar Eclipse provides a no quibble ring-fenced additional limit protection available to directors in relation to the same claim.

## Why is it necessary or desirable to have additional limit cover available in respect of the same claim?

- D&O liability insurance is often said to be low incidence and high impact. The directors of Equitable Life who faced a claim for in excess of GBP 2bn certainly came to understand quite how high that impact could be. The problem here is simply one of scale. No matter how large the limit in the main programme, it is unlikely ever to be enough to accommodate a black swan type claim. Because the prospect of two black swans coming along in a single policy year are considerably more remote than those relating to a single swan, the standard NED additional limit is unlikely to be called upon often in practice. The ability of Eclipse to provide additional resource to directors once the tower has been exhausted in respect of the same claim is key.



# Frequently asked questions – POSI

## What is DARCstar POSI?

- All the benefits and advantages built into the DARCstar concept with respect to D&O liability insurance have been fully integrated into the POSI form. Refer to the DARCstar FAQ and brochure for a full list of these features.

## What is different about DARCstar POSI?

1. Unlike conventional prospectus liability forms, which are often complicated and may run to many pages, DARCstar POSI adopts an 'all risks' approach, i.e. unless excluded, it is covered
2. It offers a project-based approach under which the policy covers all decisions and actions taken by the directors in the run up to and placement of the securities.

## What else is different about DARCstar POSI?

- Unlike conventional public offering liability insurance policies, DARCstar contains built in automatic cover for many categories of secondary and subsequent offerings of securities by the policyholder.

## Is it true that there are only two exclusions in the DARCstar POSI form?

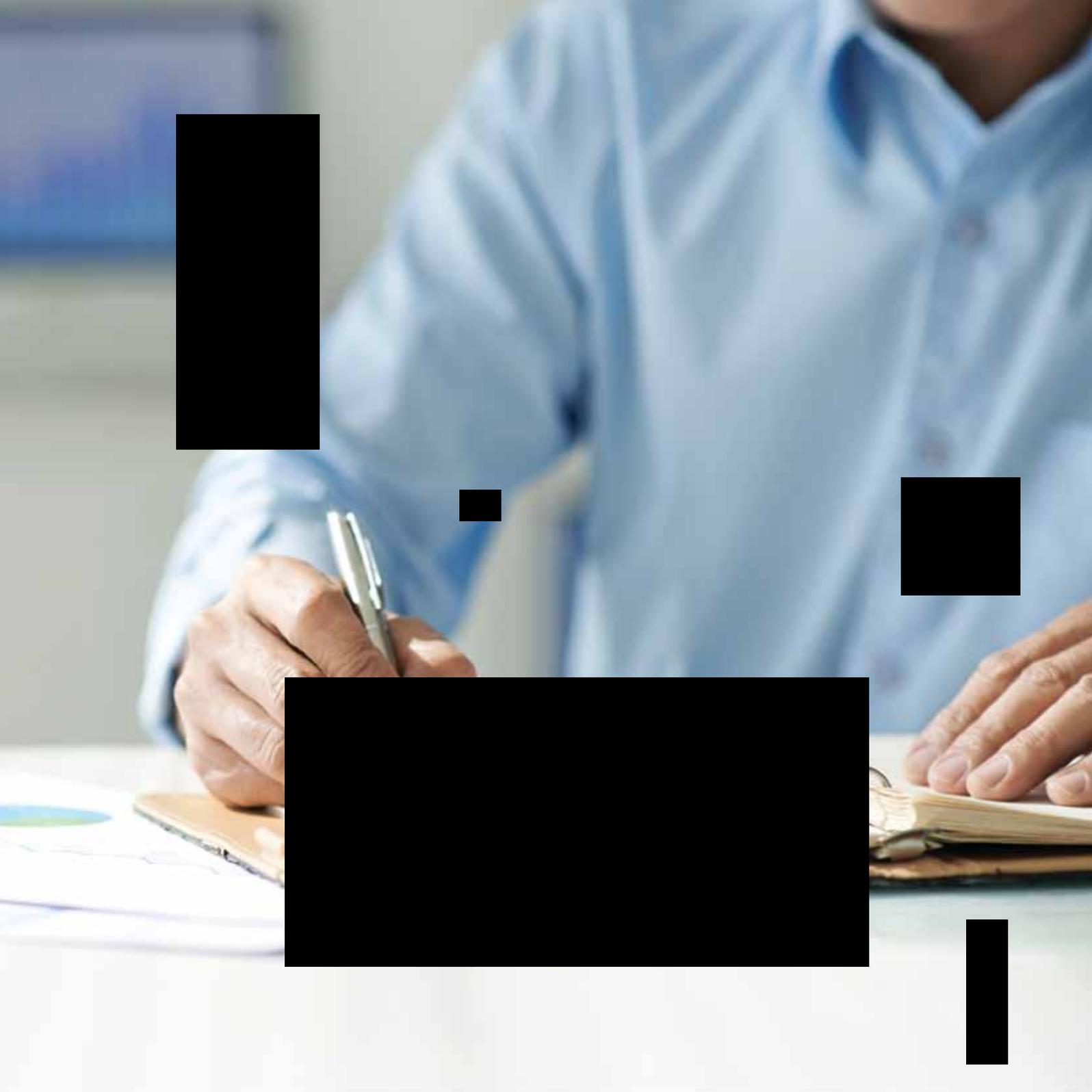
- Yes, the only exclusions in the form relate to fraud and dishonesty once proven or admitted and with respect to claims made or circumstances notified prior to the period of insurance.

## Who is DARCstar POSI targeted at?

- DARCstar POSI is aimed at any company seeking to raise capital through the offer of securities to the public as well as the company's directors and officers and the issuing underwriter, the selling shareholders, the controlling shareholders and the advisers to the transaction.

## How much will it cost me?

- The premium is usually calculated as a percentage of the overall limit of cover. Key factors which will affect pricing are (i) whether the share listing is being undertaken on a main or specialist exchange (ii) whether it is multi-jurisdictional (iii) the number of interested parties being covered under the policy (iv) the amount being raised and (v) the balance of US and non-US investors.



# Claims scenario

## Phase 1

Fixit is a manufacturing conglomerate with headquarters in the UK. Its reputation is based primarily on its market-leading precision engineering operation. Its group general counsel is contacted by the company's head of human resources and told that a disgruntled senior manager (recently thwarted in the bonus and promotions round) is threatening to 'wreak revenge' and go public with the contents of a memory stick full of embarrassing and damaging facts concerning the group.

These supposedly include:

1. Health and safety concerns in Automotive Solutions Ltd (AS Ltd) one of its largest subsidiaries - producing precision engineered components for Formula 1 engines
2. Anti-competitive trade practices in the bidding process for lucrative contracts for the supply of specialised components
3. The misuse of confidential client information
4. Further unspecified misdemeanours by senior members of the group management

On the same day the general counsel receives a letter from the Health and Safety Executive saying that it has received an anonymous tip-off concerning unsafe work practices at AS Ltd and that it wishes to inspect the relevant premises and meet the director or directors with board responsibility for plant safety.

### *Is the policy triggered at this stage?*

Phase 1	Conventional D&O policy response	DARCstar policy response
<b>Is there a claim or investigation?</b>	No claim or investigation	Investigation costs cover probably triggered
<b>What is the time frame for reporting of claims?</b>	'As soon as practicable'	'Promptly' upon risk manager or in-house counsel of policyholder becoming aware
<b>Are there notifiable circumstances?</b>	Yes	Yes
<b>Emergency costs</b>	Yes, but usually restricted and subject to sub-limit	Yes, sub-limit automatically available plus additional funds with consent

## Phase 2

Six months have elapsed and things have gone from bad to worse at Fixit. The employee has made good on his threat and brought a claim for constructive dismissal. He has thrown in allegations of race discrimination against three named directors. In addition:

1. In a freak accident, someone has been killed on the production line of AS Ltd
2. The Office of Fair Trading (OFT) has launched an investigation into the alleged anti-competitive trade practices involving Fixit and two other manufacturers of precision engineered components
3. The press has got hold of various stories and rumours and as a result the Fixit brand is taking a battering in the media
4. One of these rumours suggests that the managing director of Fixit had known about both the safety and the competition issues for some time
5. Although Fixit has no stock exchange listing, a number of private investors have expressed concern and said that they will seek redress for the value of their lost investments

*What coverage issues are likely to emerge as Fixit seeks access to its D&O insurance to fight the various battles it faces?*

Phase 2	Conventional D&O policy response	DARCstar policy response
<b>Indemnification</b>	Delay and uncertainty on question as to whether loss indemnifiable	No issue. Policy response guaranteed
<b>Separate legal representation for directors</b>	Argument over necessity and presence or absence of 'material conflict'	Confirmed if conflict of interest possible
<b>The gaining of profit or advantage exclusion</b>	'Guilt' or admission by Fixit and/or directors a bar to cover	No issue. Only targets individuals 'for' the profit or advantage they have gained
<b>The corporate manslaughter extension</b>	Problems in construction of corporate manslaughter extension	No issue. Cover for all defence costs and investigation costs

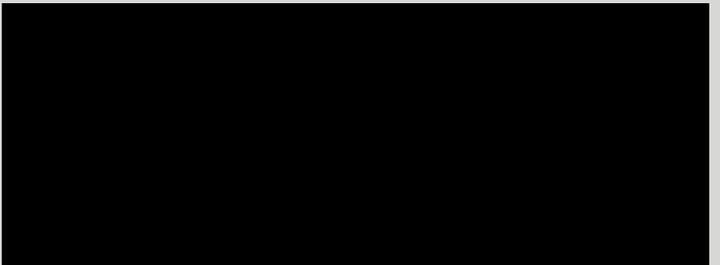
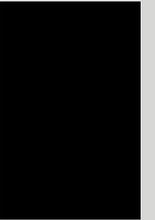
### Phase 3

As the various claims and investigation develop and diversify, Fixit wants to know to what extent the policy will respond and whether the defence costs incurred on behalf of insured persons will be covered. During their investigation into the claim, insurers unearth an email exchange between the now ex-managing director of Fixit and an external safety consultant raising concerns about the safety culture in the company.

Various claims handling issues arise, including the appointment of separate lawyers to act for individual insured persons in the context of the OFT investigation and the possibility of settlement of one or more of the underlying claims.

### Coverage, defence and settlement issues

Phase 1	Conventional D&O policy response	DARCstar policy response
<b>Threatened rescission</b>	Possible reservation of rights in respect of fraudulent misrepresentation for policy as a whole	Possible reservation of rights in respect of fraudulent misrepresentation only against managing director
<b>Failure by the insured to cooperate with insurers</b>	Pinch-points over information and documentation flow in response to policy requirements	Only reasonable claims cooperation expected
<b>Allocation</b>	Only losses derived 'exclusively' from a covered claim?	Best efforts to achieve fair and proper allocation. Advancement of all defence costs and investigation costs incurred by directors in the meantime
<b>Policy Coverage</b>	No requirement on insurers to state position	Request on insurers to provide written and reasoned statement within 30 days
<b>Consent to settle</b>	Tension over extent of insurers' right to 'effectively associate' in conduct and settlement of claim and duty to defend	Needs to obtain consent not to be unreasonably withheld or delayed



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## About Willis Towers Watson

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