

NabarroNathanson

Protect Your Client, Protect Yourself

Client care for Consulting Actuaries

A Seminar on Managing Risk and Expectation

by

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Duties of the Actuary (1)

- Duties depend on role asked to perform
- Follow Trust Deed – act expert/advise
- Aggregate method not consistent with Rules – Hillsdown
- Actuaries should be careful advising on legal issues – Mettoy
- Role differs:
 - Trustees/Employer decide on advice
 - Actuary Performing Expert Role

Duties of the Actuary (2)

"To give properly informed consideration to the discretion they [i.e. the trustees] had to exercise, they needed also to know the relevance of the value of the fund to the problem at hand in relation to actuaries principles and the implications of their decision on future contributions. That information the actuaries could have given them (and in my view should have given them) since it was the actuaries' duty to put the trustees in a position, so far as the actuaries could, to make a properly informed decision."

Mettoy Pension Trustees v Evans

Set out range of possible answers – Not One Answer
already discussed with Employer

Duties of the Actuary (3)

- Expert Valuation Role
 - Actuaries most concerned
 - Least risk
- Very difficult to attack actuarial certification

Duties of Actuary (4)

"The function of an actuary, in advising how a pension scheme of this kind should be dealt with on the determination of the scheme, is to achieve the greatest practicable degree of fairness between the various persons interested under the scheme consistent with the rules governing the scheme. He cannot ignore or contravene those rules, and in pursuit of fairness he may also have to pay regard to the spirit of those rules in respects which are not controlled by their express terms or necessary implication, but consistently with the rules, he must do his best to achieve as fair a distribution of benefits as the size of the available fund, the character of the Scheme and the circumstances of the contributors make it possible"

George Newnes

Duties of Actuary (4)

"I accept entirely the principle enunciated by Buckley J in *Re George Newnes Group Pension Fund* (1969) 98 J Inst of Actuaries 251 that the function of an actuary in any particular situation not governed precisely by the provisions of the trust deed is to achieve the greatest possible degree of fairness between the various persons interested under the scheme".

Imperial Foods

Risk Management Principles

- Check rules
- If in doubt, take legal advice = risk shift
- If certify as expert very difficult to attack
- If employer/trustees decide – put in position to decide
- Watch out for conflicts

Doing business in increasingly litigious environment

- Underfunded schemes = blame = risk
- Levels of PI cover
- NRG v Bacon & Woodrow
- Sita v Watson Wyatt
- Precis (521) PLC v William M. Mercer
- US – US\$2 billion
- Size liabilities actuaries advise on - staggering

Types of Claims

- Concurrent duties tort/contract to Trustees/Employer
- Fiduciary duties/conflicts/breach trust
- Duty care negligence to employer
- Duty care negligence to members
- Duty third party purchasers – disclaimer/Bannerman
- Pension Ombudsman cases
 - Manager
 - Administrator/actuarial functions
 - Leete

Risk Areas claims – The good news – It is hard to sue actuaries

- Responsible body of opinion test
- “bracket” cases
- is there any loss – contribution rate
- but Pension Protection Fund does not help
- conflict issues give rise to claims

Risk Areas – Corporate Transactions

- Assist Pension Schedule/due Diligence
- Reliance will be placed on advice at 2.00 a.m.
- Overestimate/Underestimate – same risk
- Put Advice in context
- Due Diligence set out terms of reference
- *Precis v William Mercer* – providing information

Risk areas – Documentation/Admin

- Documentation work = high risk
- Peer review all announcements/lawyer review?
- Benefit quotation – always check
- Admin deadlines
- Realising assets

Controlling Liability through liability caps (1)

- Much more common
- Subject reasonableness UCTA 1977
 - resources available to meet liability
 - availability insurance
 - genuine commercial negotiation
- Large/small firms?
- Competition Law Firms collusion
- Lose business?

Controlling liability through liability caps (2)

- Third parties not bound
- Methods dealing
 - disclaimer
 - restrict communication advice without agreement
 - indemnity? aggressive

Handling Claims and Risk Management

- Proper systems
- Notify insurers
- Continue relationship with agreement of insurers
- Watch out for admissions liability
- Risk management something everyone should do

Controlling Risk Through Good File Management

- Evidential – who do you believe
- Make file notes
- Win a crate of champagne from your old firm
- Why not e-mail to confirm advice client does not want to hear
- Clear who is doing what

Peer Review Systems and E-mail

- Actuaries are very good at this
- Watch out for e-mails
- Detailed advice as letter attachment?
- Always check attachments
- Watch out for Word track changes

Protect Your Client, Protect Yourself

- Think how to protect your client
- Must explain risks so client can make commercial decision –eg post completion valuation
- Do not assume client understands risks
- Think about presentation of information
- Be aware of conflicts – if in hole stop digging
- Don't get it out of proportion