

GN6: Advice on Policyholders Protection Act 1975

Classification

Recommended Practice

Legislation or Authority

Policyholders Protection Act 1975 (as amended) (1975, c.75).

Application

Any actuary required to produce a report to the Policyholders Protection Board recommending whether any of the benefits under a long-term business policy of an insurance company in liquidation or in financial difficulties should be disregarded or treated as reduced, and the value that should be attributed to the policy in the winding-up.

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Status

Approved prior to Due Process being introduced.

<i>Version</i>	<i>Effective from</i>
1.0	01.01.80
1.1	01.09.90
1.2	1.7.98

1. Sections 12(1) and 17(4) of the Policyholders Protection Act 1975 require the Policyholders Protection Board to refer a policy to an independent actuary if it appears to it “that the benefits provided for thereunder are or may be excessive in any respect, having regard to the premiums paid or payable and to any other terms of the policy”. Sections 12(2) and 17(5) refer to the report which is made by the actuary to the Board, in particular where as envisaged in Section 12(2) (a) or 17(5) (a), the actuary states that “with respect to any of the benefits provided for under the policy, in his view the benefit or benefits in question are excessive” and where as envisaged in Section 12(2) (b) or 17(5) (b), the actuary recommends “accordingly” that for the purposes specified in the Act such benefit or benefits should be treated as reduced or disregarded.
2. This Note gives guidance to actuaries on the matters to which they should have regard should they act in response to a reference under either Section 12(1) or 17(4) of the Act. The courts have not yet had occasion to interpret these sections of the Act, and some uncertainties must remain until they have done so. The advice in this Guidance Note is based on legal opinions received.
 - 2.1 However, if an insurer, in the light of regulatory requirements or recommendations, has increased benefits or provided guarantees on existing

policies, or has written new policies without any additional premium, the actuary is advised to obtain legal advice on the interpretation of the Act.

3. The first question which arises is whether, in reporting that benefits are excessive as envisaged in Sections 12(2)(a) and 17(5)(a), an actuary should have regard to matters other than “the premiums paid or payable and to any other terms of the policy” bearing in mind that these words are not repeated in these sections. An actuary asked to advise on whether benefits are excessive would not necessarily wish to be limited by having regard only to these criteria. The legal advice obtained is, however, unanimous to the effect that an actuary should have regard to these criteria and to no other and our Counsel advises that the actuary should report that benefits are excessive only if “they are in excess of the benefits which sounder and more conservative insurers were offering at that time” .
4. The second question, which arises if excessive benefits are found to exist, is whether other matters should be taken into account when recommending “accordingly” under Section 12(2) (b) or 17(5) (b) that benefits should be treated as reduced or disregarded. There is a difference of legal opinion on this point. On the one hand it is considered that the use of the word “accordingly” means that the actuary should not take into account any matters other than those taken into account when reporting that benefits are excessive. On the other hand, it is considered that because the Board, in deciding whether benefits shall be treated as reduced or disregarded, may take into account other matters, it should be able to find any relevant actuarial aspects included within the actuary’s report. Examples of matters which might be considered relevant are:
 - 4.1 the availability to the insurer of investments particularly suitable to the policy in question;
 - 4.2 the level of expenses;
 - 4.3 the financial strength of the insurer when the policy was issued and the volume of business involved in relation thereto; and
 - 4.4 the effective linking of a policy to another when, although the benefits under the policy taken by itself are excessive, they are not so when combined with the benefits under the other policy.
5. Because there is a difference of legal opinion as regards the matters which the actuary should take into account under Section 12(2) (b) or 17(5) (b), the actuary’s recommendations should include both those based on the criterion of “the premiums paid or payable and to any other terms of the policy”, and those having regard also to any other matters which are considered relevant. These other matters should be specified in the report.

6. We have been advised by Counsel:
 - 6.1 that the report of the actuary would be subject to qualified privilege. There would, therefore, be no danger of the actuary being liable for defamation if in the report it is stated that certain benefits were excessive provided that there was no malice on the actuary's part;
 - 6.2 that the duty of the actuary is to the Board and not to the policyholder, and therefore no action would lie against the actuary at the instigation of the policyholder, provided that the actuary acted with good faith and fairly.
7. The Policyholders Protection Board is aware of the guidance to members given in this Guidance Note.