

**The Actuarial Profession**  
making financial sense of the future

## Actuaries and the Law Seminar

Tuesday 13 September 2005, Staple Inn Hall, London UK

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### HOW TO MANAGE YOUR RISKS INCLUDING CONFLICTS, LIMITATIONS OF LIABILITY AND STATUS OF PROFESSIONAL GUIDANCE

BILL DIXON  
PINSENT MASONS

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### WHAT RISKS NEED AVOIDING?

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- Formal professional negligence claims
- Unhappy clients
- Need to waive/discount fees

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## MAIN PLANKS OF A PROFESSIONAL NEGLIGENCE CLAIM

### One needs

- Some kind of legal duty which is owed by the actuary to someone (eg in contract or tort)
- The duty of care needs to have been breached (eg the actuary has fallen short of the standards of the reasonably competent actuary)
- A loss needs to have been suffered by the claimant
- The breach of duty needs to have caused the loss

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## PROFESSIONAL NEGLIGENCE

### Some themes:-

- The reasonably competent actuary
- Expert evidence
- Professional guidance
- the "hindsight effect": Equitable Life
- Causation and loss in the context of pension schemes

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## CONTRACT VERSUS TORT

### This is important from a risk management perspective

- Ability to control and define the contractual relationship
- Risk of assuming a duty to third parties in tort

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## TORT - NEGLIGENCE

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### Possible duties may be owed to

- Employers
- Members
- Others? Intended purchaser of the principal employer?
- The need to control who advice is given to

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## CONTRACT

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- Defining scope of the work – letter of engagement
- Limitation of liability – the legal position
- Why is it important? Joint and several liability

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## DEFINING ASSIGNMENTS

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- Clarifying the roles of oneself and others eg solicitors/ investment advisers
- If you expect client to consult another professional – say so!
- An ongoing process – not just matter of writing a good engagement letter

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## COMMUNICATION ISSUES

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### Consider the need to explain

- Assumptions which advice based on
  - Possible implications – especially risks
  - Timing (especially important in context of financial market movements)
  - Using language which is appropriate (eg to lay trustees)
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## THE WRITTEN RECORD

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### Need to consider

- Putting advice in writing
  - Attendance notes
  - “Casual Email Syndrome”
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## CONFLICTS

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### A historic position of a more relaxed attitude in the pensions industry but

- The Morris Review
  - The strict legal position as applied in other professions
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## TRAINING AND SUPERVISION

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**Need to meet the standards of the reasonably competent actuary**

- Supervising junior staff
- The Scheme Actuary
- Specialist skills and expertise
- Legal expertise
- Training/risk management policies

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## IF THE WORST HAPPENS....

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**If, despite all the above, a claim still arises**

- The need to act as soon as aware of circumstances which might lead to claim
- Notifying internally to insurers/legal department
- Admissions
- Preserving/creation of documents

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## QUESTIONS?

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