

## LEGAL PITFALLS FOR ACTUARIES

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### Overview

- Views from an expert witness
- Stay within your training
- Don't give legal advice
- Be careful of conflicts
- Keep good records
- Check work
- Peer review advice

### What causes negligence claims?

- Law
- Communications
- Individual promises
- Scheme changes
- Merger and acquisition advice
- Settlements
- Investment advice
- Professional requirements
- Regulator
- Simple cock-ups

## Scope of appointment

- Very helpful
- Limit this to what you are doing ...
- ... & who you are doing it for
- Don't stray outside it

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## Law

- Don't give legal advice!
- Leave law to the lawyers
- Not that easy
  - Smaller clients
  - Trusted advisor
- Barber window
- PA95
  - LPI

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## Barber

- Huge source of claims
- Window wasn't closed
- Members still get NRA 60
- Will Dubery open this up again?
  - Entitled to higher benefits
  - And now (was) greater protection on wind up
- Often introduced by booklet/letter
- Rules not changed until later

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## LPI PA95

- Scheme with fixed 3% pa
- Actuary advised on PA95 impacts
- But didn't cover impact of 5%LPI?
- Scheme operated as if LPI
- Booklet changed
- TD&R unchanged
- Problems when RPI fell below 3% pa

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## When asked to advise on the law

- Say no
- Put it in writing
  - Imputed to be advising
  - Just being helpful!
- Current examples
  - MNTs
  - 2.5% LPI?

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## Rules vs booklets

- Which one wins?
- TD&R?
  - Formal documents
  - Booklet says so
- Booklet?
  - Members don't see TD&R
  - TD&R often out of date
  - But TD&R is formal document
- Assume better one wins

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## Communications

- Booklets
  - Why not reviewed by lawyers?
  - Want to make it “readable”
- Individual member letters
  - Give members rights
  - Sloppy drafting
  - Definition of FPS
  - Any augmentations
- Scheme mergers
  - Benefits changed unintentionally
  - Or not changed as intended

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## Valuation calculations?

- Probably not
- Not a settlement
  - Timing of contributions
  - Not new benefit promises
  - Or contribution obligations
- Liabilities same
- Unless report used for other reasons
  - Eg Sale documentation
- Ensure limit purpose of report

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## Contribution power

- Who has it?
  - Get advice
- Trustees?
  - If so, why not ask for buy-out coverage?
  - Ensure advised on options
- Actuary decides?
  - How to position advice?
  - Exposed if something goes wrong

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## Sale & Purchase work

- High profile
- Company's value depends on answer
- Settlement
- Miss some liabilities
- Or mis-value
- Member options
  - Early retirement
- Contribution triggers

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## Contribution rule

- Purchase of company
- With DB pension scheme
- Actuary asked what risks?
- Excellent report
  - Mortality
  - Investment returns
  - Etc
- Missed contribution rule
  - Trustees determine
  - Asked for full buy out in 1 year

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## Rule changes

- Cessation of accrual
  - Do the rules allow it?
  - Does it trigger a winding up debt?
- Powers of amendment
  - Who exercises them?
  - Ensure proper paper trail
  - Process

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## Rectification

- Find a problem in TD&R – eg Barber
- Simply “rectify”?
- Not so easy
- Need clear evidence of intention
- Records incomplete
- Minutes unclear
- Imprecise communications

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## Investment advice

- Individual members
  - DC pots/AVCs
  - Transfers
  - Annuity options
- Group schemes
  - Timing of transactions
    - Need to be prompt
  - Winding up
  - Gilt matching

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## Gilt matching

- MFR option
- Maximised debt
- But required investment change
- Tilted assets towards younger members
- Finite assets?
  - Robbing Peter to pay Paul
- Greater claim on sponsor
  - Possibly greater injection

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## Professional standards

- Easy pickings for attack
- Follow GNs
  - Print off & put on each file
  - Then follow carefully
- Ensure identify right version!
- "Should normally"
- PCS
- Actuaries Code

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## Process vs advice

- Claimants have benefit of hindsight
- Good advice turned out bad
- So attack process
- Watch GNs
- FSA requirements
- Keep good notes

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## Conflicts

- Advise company & trustees
- Advise buyer and seller
- Don't do it!
- Chinese walls
  - Another actuary in your firm
- Another firm
- Can you really give strong advice?
- Could you advise your client to sue?

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## TPR Powers

- Does he really have them?
- Uses Guidance to encourage
- Beyond the legal position?
- Danger of following them blindly?
- Could be criticised by client for going too far
- New area
- Trapped surpluses?

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## Client relationship

- Know your client
- Discuss issues with client
- Difficult if arm's length
- Third party
  - External consultant
  - IFA
  - Insured arrangement
- Give your advice direct
- Ensure clear lines of communication

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## But client will change!

- By time issue arises
- Your contacts will have gone
- New people feel a wrong was done
- Benefit of hindsight
- Need someone to blame
- KEEP GOOD RECORDS!!!

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