The Actuarial Profession making financial sense of the future

LEGAL PITFALLS FOR ACTUARIES 18 SEPTEMBER 2007, LONDON

> NICK SALTER BARNETT WADDINGHAM

## Overview

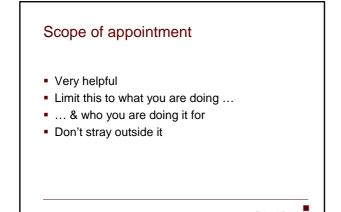
- Views from an expert witness
- Stay within your training
- Don't give legal advice
- Be careful of conflicts
- Keep good records
- Check work
- Peer review advice

The Actuarial Profession making financial sense of the fit

# What causes negligence claims?

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

The Actuarial Profession making financial sense of the I



### Law

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

The Actuarial Profession making financial sense of the fi

The Actuarial Profes

#### 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



## LPI PA95

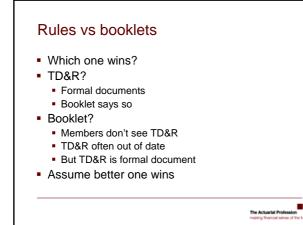
- Scheme with fixed 3% pa
- Actuary advised on PA95 impacts
- But didn't cover impact of 5%LPI?
- Scheme operated as if LPI
- Booklet changed
- TD&R unchanged
- Problems when RPI fell below 3% pa

The Actuarial Profession making financial sense of the fut

#### 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?

The Actuarial Profession making financial sense of the fi





## 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

The Actuarial Profession making financial sense of the fit

#### 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



#### Sale & Purchase work

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

The Actuarial Profession making financial sense of the fu

### Contribution rule

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

The Actuarial Profession making financial sense of the fi

# 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





## Investment advice

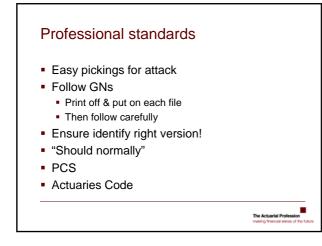
- Individual members
  - DC pots/AVCs
  - Transfers
  - Annuity options
- Group schemes
  - Timing of transactions
  - Need to be prompt
  - Winding up
  - Gilt matching

The Actuarial Profession making financial sense of the fi

# 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





## Process vs advice

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

The Actuarial Profession making financial sense of the fi

## 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?



#### **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?

The Actuarial Profession making financial sense of the fu

# **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

The Actuarial Profession making financial sense of the fi

#### 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!!!

