



The Actuarial Profession
making financial sense of the future

GIRO Conference

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Schemes of Arrangement and Business Transfers Working Party
David Hindley, Kate Angell, Helen Wilkinson and Darren Michaels
and members of the working party

Schemes of Arrangements and Business Transfers Working Party Members

- David Hindley (Chairman)
- Kate Angell
- Peter Matthews
- Darren Michaels
- Karen Newbury
- Gregory Overton
- Dominic Sharp
- Andy Whiting
- Helen Wilkinson
- Edgar Wilson

Schemes of Arrangements and Business Transfers

- Introduction – David Hindley
- Business Transfers – Kate Angell and Helen Wilkinson
- Schemes of Arrangement – Darren Michaels

Introduction

Introduction

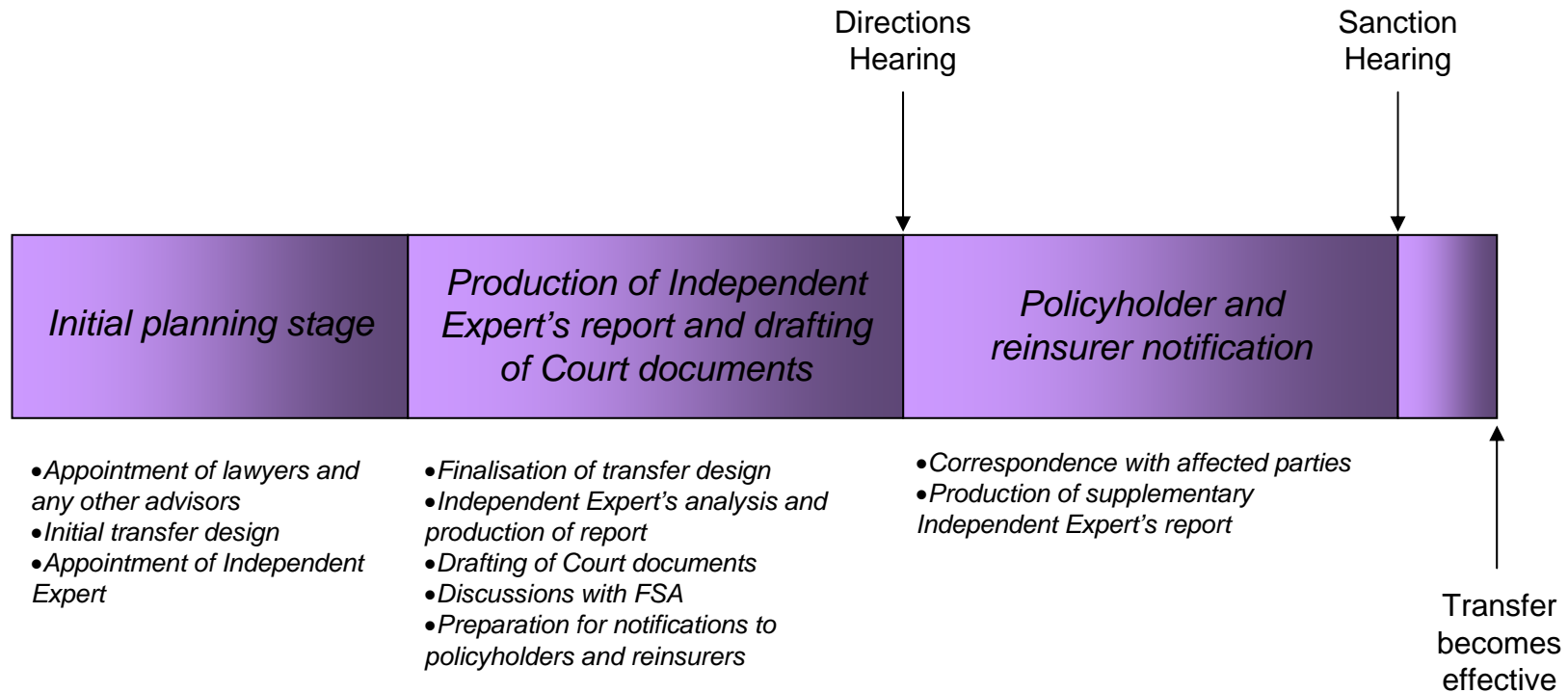
- SA or BT?
- Rationale for paper
- Uncertainty Rules, OK?
- The need for Standards (not Guidance)
- A good report card?
- The ethical dimension
- Further work?

Business Transfers

Introduction

- Complete transfer of business from one insurer to another
 - Part VII of the Financial Services & Markets Act 2000
- Covers insurers / reinsurers / Lloyd's
- Paper focussed on :
 - Non-life insurance business transfers
 - Transfers in the UK
 - The main Part VII regime (rather than the Part VII “lite” regime)
- Similar procedures exist for both insurance and reinsurance in other EU countries, but without IE role

Business Transfer Process



Structure of Business Transfers Paper

1. Background & introduction
2. Details of the Part VII process
3. Role of FSA and FSA guidance on Part VII transfers
4. Guidance relevant to business transfers
5. The appointment of the Independent Expert
6. Nature and extent of work of Independent Expert
7. Uncertainty considerations in the context of business transfers
8. Topics which might be covered in the Independent Expert's report
9. Opinion wording in Independent Expert report
10. Liaison with policyholders
11. Dealing with objections
12. Other roles

Discussion Topics

1. Opinion wording
2. Scope of the Independent Expert's opinion
3. Guidance

Opinion wording

- No specified form of words
- Evolving precedents
- Subtle variations in wordings can be important so care is needed
- Consistency in wording throughout report
- Broad audience
- Clear definitions of words or expressions

Opinion wording – Typical components

Indication of the basis for the conclusion (sometimes in more detail or by referring to analysis described elsewhere in the report)

A phrase to communicate uncertainty, where there is a risk that something could go wrong

“Based on the analysis set out in this report I have concluded that it is highly unlikely that the transferring policyholders would be adversely affected by the proposed transfer.”

A phrase showing that it is an opinion rather than a factual statement

Typically consider each group of policyholders separately. Usually referred to in aggregate rather than individually

The central phrase, varying depending on the degree to which the parties are affected

Scope of Independent Expert's opinion

Category	Within IE's scope?
Policyholders	Yes – several groups
Employees	No
Reinsurers	Possibly
Other insurers	Possibly
FSCS	Possibly
Brokers, suppliers and other service-providers	No

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Guidance – current situation

- Existing:
 - FSA – SUP 18
 - CPR 35
 - Board for Actuarial Standards – GN12 and GN50
 - Institute of Actuaries – PCS and IAN on “The Actuary as an Expert Witness”

- New:
 - Board for Actuarial Standards – TAS R

Guidance – future

- Issues in applying TAS R?
 - Definition of “aggregate report”
 - Requirement to state the intended meaning of any material description which is not uniquely defined
- Future standard from BAS on “Business Rearrangements”
 - Consultation Paper - Q4 2009, Exposure Draft - Q2 2010 and TAS - Q4 2010
- Should the Institute produce an IAN on “ethical” issues?

Feedback & Next Steps

- Comments on business transfers section of paper?
- Suggestions for further work?

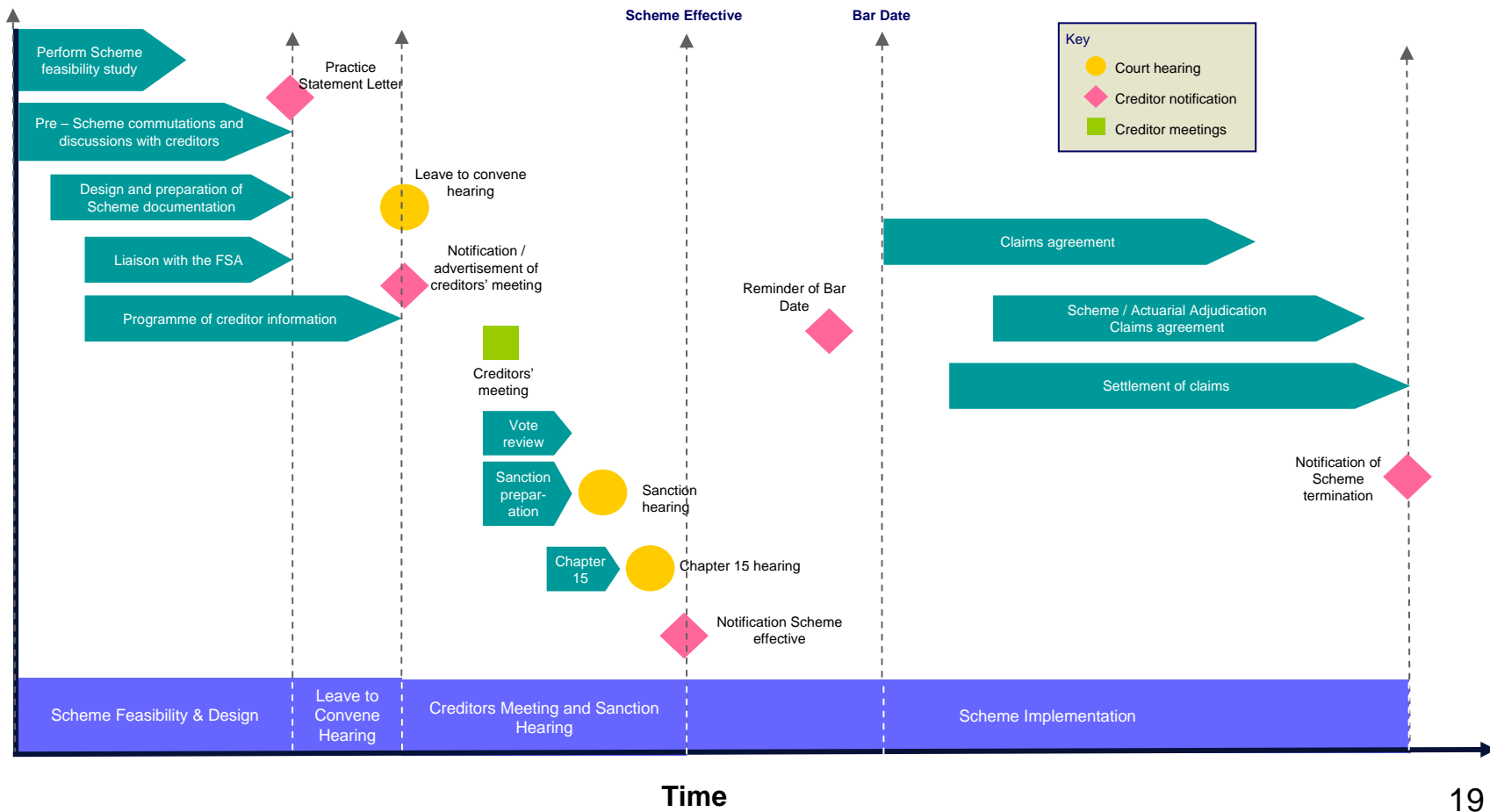
Schemes of Arrangement

Introduction

- Compromise under English law between a company and its creditors
 - Part 26 of the Companies Act 2006
- Not unique to insurers
- Possible for solvent and insolvent insurers
- Binding “commutation” with all policyholders
- Cannot be used to terminate compulsory classes of business
- Need to demonstrate business has a “sufficient connection” to UK
- Theoretically possible in other countries
- Design can be very flexible as there are few statutory requirements

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Scheme of Arrangement Process



Structure of Schemes Paper

1. Background and Introduction
2. Scheme Preparation
3. Role of the FSA in the Scheme Process
4. Roles of Actuaries in Schemes
5. Estimation Guidelines and Supporting Evidence
6. Reporting Considerations
7. Dealing with Objections

Discussion Topics

1. Voting Process
2. Estimation Guidelines & Supporting Evidence
3. Valuation Basis
4. Guidance
5. Reporting
6. Scottish Lion
7. Other Discussion Points

Voting Process

- Should all Schemes have a Vote Adjudicator?
- Should the Vote Adjudicator look at all votes?
- Who should decide which votes are reviewed by a Vote Adjudicator?
- Who should have the ultimate decision on the vote values?
- To what extent should votes be submitted and assessed in line with the Estimation Guidelines?

Estimation Guidelines & Supporting Evidence

- What should be included within the Estimation Guidelines?
- What is the appropriate level of detail?

Valuation Basis

- What basis should be used to value claims?
 - Best estimate?
 - Financial incentive / enhanced value?
- How should any enhanced value be calculated?
 - Undiscounted
 - Explicit calculation
- How do we show that creditors are getting an appropriate value for the loss of coverage?
- What is the actuary's role?

Guidance

- Currently no formal guidance for Actuaries on Schemes
- Is there a need for formal guidance to be issued?
 - What should any guidance cover?
 - What form should it take (“must” vs. “should normally”?)
- Should there be any specific guidance for actuaries providing evidence in Court?

Reporting

- Generally no reporting requirements for Schemes
 - Need to consider whether documentation of actuarial work needs a GN12 compliant report
 - Currently up to actuary to decide what is appropriate
- Should there be any reporting requirements for actuaries in Schemes?
- What will the new TAS (R) requirements mean?

Scottish Lion Scheme

- Run-off since 1994 with significant APH exposures
- Solvent Scheme was proposed in October 2008
- Leave to Convene Hearing was heard in Scottish Court: December 2008
- Opposed by some policyholders represented by Covington & Burling
- Lord Glennie's opinion 10 September 2009

Lord Glennie's Opinion

- “the scheme is put forward in a situation **where there is a problem requiring a solution**; that it is in the interests of the creditors as a body that a solution should be found and implemented; and that, to this end, **the creditors must act as one** and, in identifying the appropriate solution, must agree to be governed by the wishes of the majority, because **if they did not then their failure to agree would ruin it for all**”
- “**A solvent scheme is an instance of a case where, subject to other considerations, creditor democracy should not carry the day**”
- “**There may, of course, be reasons apart from financial uncertainty which might justify the majority of the creditors in attempting to coerce the minority in this way**”
- “But in a solvent scheme, I would expect petitioners, applying for a scheme to be sanctioned, to be able to **place before the court averments and supporting material justifying the proposition that** in the particular case, notwithstanding that it is a solvent scheme, **the minority should be bound by the decision of the majority**”
- The petition to sanction the Scheme has not been dismissed and was scheduled to be heard in January 2010

Scottish Lion Consequences

- What is the future for solvent Schemes?
- One vote veto for Schemes not being used to resolve “a problem”?

Other Discussion Points

- How should the costs of an adjudication be apportioned between the company and creditor?
- Should unpaid paid claims be included as part of a vote value?
- What reversion to run-off clauses are appropriate?
- What voting classes are appropriate?
- How much prior engagement with creditors is appropriate?

Next Steps

- Standards
- IAN
- Further work