



The Actuarial Profession

making financial sense of the future

Actuaries and the Law Seminar

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

BILL DIXON
PINSENT MASON

WHAT RISKS NEED AVOIDING?

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

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

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

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

TORT - NEGLIGENCE

Possible duties may be owed to

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

CONTRACT

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

DEFINING ASSIGNMENTS

- 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

COMMUNICATION ISSUES

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)

THE WRITTEN RECORD

Need to consider

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

CONFLICTS

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

TRAINING AND SUPERVISION

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

IF THE WORST HAPPENS....

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

QUESTIONS?
