

GN30: Compensation for Professional Shortcomings

Classification

Practice Standard

Legislation or Authority

None

Application

All actuaries who give advice to clients directly or through their employer

Author

Professional Affairs Board

Status

Approved under Due Process

<i>Version</i>	<i>Effective from</i>
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1 Introduction and Duty of Care

- 1.1 Actuaries have duties of care to clients, whether as a result of direct contractual relationship or indirectly through their employers. Breach of such duty of care may result in disciplinary proceedings.
- 1.2 A duty of care includes working to appropriate professional standards at all times (whether the work is full or part-time), considering how advice may be interpreted by third parties who can reasonably be expected to rely on that advice and communicating any significant uncertainty or risk.
- 1.3 It is the professional responsibility of all actuaries to consider the potential for clients to suffer loss as a result of any breach of their duty of care and to ensure that appropriate arrangements are maintained, firstly, to minimise the risk of breach of their duty of care and, secondly, to provide compensation for loss in the event of any breach.
- 1.4 Actuaries are becoming increasingly involved outwith the profession's traditional areas of insurance and pensions. It is not intended to impose obligations on actuaries involved in work which is not strictly actuarial which would put them at a commercial disadvantage relative to competitors. However, the principles underlying potential loss to a client or third party and how any need for compensation might be met must always be borne in mind if the high regard in which the profession is held is to be maintained.

2 Appropriate Arrangements

- 2.1 Appropriate arrangements may take one or more forms, depending upon the circumstances, including:
- 2.1.1 operational policies and procedures to minimise the possibility of a breach of the duty of care and related loss occurring; it may be appropriate to seek advice from a specialist in the risk management field;
- 2.1.2 agreement in the contract with the client on limitations, within those acceptable under law, to the scope and extent of potential responsibility for any losses, taking into account the impact of such limitations on the client's total cost;
- 2.1.3 being satisfied that appropriate means exist from which compensation may be paid; these may include, for example:
- the terms of the contract between the client and the actuary and/or his or her employer,
 - the resources available to the actuary's employer,
 - the personal financial resources of the actuary.
 - the scope and extent of professional indemnity insurance (PII) applicable to the work.
- 2.2 The terms of contract between the client and the actuary or between the actuary and his or her employer will typically define the matters (and possibly the monetary amount) for which responsibility is accepted. It may also explicitly address the issue of financial responsibility to others who are not themselves parties to the contract, such as pension scheme members.
- 2.3 The actuary should identify those who are at risk as a result of work undertaken, either directly or through a clearly defined contractual chain. That should determine whether any claim for compensation would be made directly or through another party in the contractual chain. If the latter, then consideration must be given to whether that action would result in a corresponding direct claim from the intermediate party. The actuary must be able to demonstrate awareness of these issues and be prepared to justify satisfaction with the arrangements made for potential compensation.
- 2.4 Where the actuary is in private practice, or the link between actuary and client is a direct one, PII is likely to be appropriate. In certain circumstances PII may be mandatory and also from time to time it may be stipulated as a contractual requirement by the client for specified categories of actuarial work. However, PII is not universally available or may only be available at unacceptable cost. If so other arrangements would be necessary.

3 Insurance Considerations

3.1 General

PII provides an indemnity to the individuals and/or firms insured in the event of their incurring a civil liability to pay damages, for example, as a result of negligence or wrongful acts. In addition it may meet legal and other defence costs.

3.2 Named Insured

The actuary should consider the terms of any PII policy under which cover is potentially provided and be satisfied that it is reasonable in his or her particular circumstances. With the possible exception of sole practitioners, the insured party under a PII policy would normally be the firm or employer, not the individual actuary. Although these organisations undoubtedly have vicarious liabilities for the actions of their actuaries, individual actuaries still retain personal liability for their own actions. Whilst the actuary can usually expect to be covered under an employer's policy, the approach varies by insurer; some policies will automatically indemnify individual employees directly; others provide such indemnity only when requested by the employer at the time of a claim.

3.3 Scope of Cover

It is not the purpose of this Guidance Note to list definitive wordings or concepts which must be incorporated into every PII policy but the following are relevant:

- consideration of the risk exposure involved in the work undertaken, both in terms of the scope of individual losses and the accumulation of claims over time;
- the advisability of seeking suitably qualified advice which represents a sensible balance between best practice and premium outlay;
- the operative clause of the policy should provide cover appropriate to the circumstances for which the actuary has identified a potential liability.

3.4 Limit of Indemnity

3.4.1 There is no universally accepted rule quantifying an adequate or appropriate limit of indemnity. Factors taken into account in determining the limits selected by professional organisations include:

- estimation of maximum possible risk exposure both in terms of the maximum individual loss and the scope for accumulations of claims within any 12 month period, by virtue of the nature of the work and the scale of activity within the organisation;

- estimation of the value to be placed on protecting the continuing viability of the business;
- the associated costs of defending a claim for compensation;
- comparison with the approach adopted by similar organisations (benchmarking);
- PII market capacity;
- prevailing PII premium levels.

3.4.2 An actuary identifying that it is appropriate for professional work to be covered by PII must be aware of these issues and ensure that the balance established is a reasonable one.

3.5 **Level of Excess**

Actuaries must be satisfied that obligations within any excess, i.e. the amount to be paid by the insured before the insurers become liable to make any payment under the policy, can be funded personally or, if they are indemnified by their organisation, by that organisation. The level of that excess is sometimes imposed by insurers, but is more normally by mutual agreement. As with the limit of indemnity, there are no clearly defined rules to determine what is appropriate or acceptable.

3.6 **Duration of Cover**

3.6.1 Typically PII relates to claims made during the period of insurance. These will as a rule relate to work carried out some time earlier. The gap between the claim and the work giving rise to it could be considerable, particularly in pensions matters.

3.6.2 It follows that there is a requirement for continuing PII cover even when the actuary has ceased to practice. In these circumstances the actuary must ensure that annual policies should continue to be renewed for a minimum of five years after actuarial practice ceases or, if the circumstances indicate that this would be prudent, for even longer if possible.

4 Other Considerations

- 4.1 Where the conclusion is that PII is not required, for example because of the financial strength of his or her organisation or the availability of PII cover is limited, the actuary should ensure that the organisation will provide an indemnity in respect of personal liability for any errors or omissions.
- 4.2 If such an indemnity is not forthcoming, it is open to the actuary to arrange PII cover in the actuary's own name against claims made by third parties, but this would not cover claims brought by the employer.