Market Conduct matters faced by the Actuarial Profession relating to COVID-19

COVID-19 Task Team (Market Conduct Workstream) of the Actuarial Society of South Africa

1 Overview

The COVID-19 Task Team was established by the Actuarial Society of South Africa to investigate a range of actuarial matters relating to COVID-19 faced by its members. The role of the Market Conduct Workstream was to identify market conduct issues that may have negatively affected policyholders or bring the Profession into disrepute; and to develop recommendations to manage identified market conduct issues. A discussion document was developed by the Workstream covering a range of potential market conduct issues across the various fields in which actuaries operate during the COVID-19 pandemic. Indicative market conduct risk ratings were included to aid further discussion, whilst issues of medium and high risk were referred to the applicable ASSA structures for further discussion.

This article provides a summary of the key findings of the Workstream, including the role of actuaries in navigating the pandemic, and discusses areas of potential market conduct risk identified by the Workstream. The article considers lessons that can be learnt with the benefit of hindsight, but it does not express an opinion on the appropriateness of any actions already taken.

It is noted that the investigations were conducted internally and under the Task Team's terms of reference, even though some external sources were reviewed. The work is the basis of further discussions to ratify the conclusions and recommendations, or to identify further areas of interest to investigate.

2 Navigating the Pandemic

Actuaries have been responsible to investigate and recommend actions relating to a range of critical issues during the pandemic. Actuaries faced unprecedented challenges, but also witnessed remarkable resilience and innovation. Some of the key areas at the forefront of efforts included:

- Pandemic modelling played a crucial role in guiding decisions. It enabled actuaries to demonstrate the impact of various scenarios, helping to make informed choices and develop strategies to safeguard businesses, to protect clients and in the public interest.
- Capital and liquidity management have been pivotal in maintaining financial stability. By carefully managing available resources, actuaries could meet commitments to clients, even in the face of economic uncertainty.
- Recognising the economic hardships faced by many, actuaries were involved in taking proactive steps to manage premium affordability for clients. This included revisiting pricing structures and offering more flexible payment options to ease the financial burden on clients.
- During these challenging times, actuaries continued to innovate, creating products and services that cater to the evolving needs of clients. Actuaries explored new digital solutions and introduced products that were aligned with the changing landscape.
- Actuaries developed recommendations to assist clients by delaying medical aid contribution increases and finding innovative and sustainable ways of returning built up reserves.
- Actuaries were involved in enabling and optimising operational processes like claims and underwriting during lockdowns, such as by embracing digitalisation. This helped organisations improve the customer experience, but also empowered employees to work more effectively in remote settings.

Actuaries were faced with many difficult decisions with various degrees of market conduct risk, needing to balance their prudential accountabilities with individual client or public interest demands. The Workstream identified a number of key areas which are explored further below.

3 UNDERWRITING PRACTICES

Underwriting practices had to be adapted to allow for the impact of the virus on mortality and morbidity rates. Vaccination status and recent infection were introduced into underwriting questions, which attracted a fair bit of media attention and mixed reactions from the public.

Based on a review of the Insurance Act, TCF guidance, Policyholder Protection Rules, the Promotion of Equality and Prevention of Unfair Discrimination Act, the Workstream has not identified any regulatory or legal barriers to implementing vaccination status as a rating factor in life insurance underwriting.

Based on ethical frameworks proposed by ASSA members (e.g. The Fair Discrimination Principle developed by AF Marais), the Workstream has not identified ethical concerns regarding the implementation of this factor.

In the workstream's opinion it is up to individual insurers to decide if vaccination status should be included in their underwriting processes. However, care needs to be taken to ensure that any distinctions between premiums and benefits are actuarially justified at underwriting stage and over time. For example, if there is a change in how vaccination status affects claims, loadings for unvaccinated lives should arguably be reconsidered.

It is therefore likely to be up to individual insurers to decide whether vaccination status (with respect to existing or future vaccines) should be included in their underwriting processes. However, care needs to be taken to ensure that any distinctions between premiums and benefits are actuarially justified at underwriting stage and over time (e.g. if there is a change in the how vaccination status affects claims).

It is not yet clear how past COVID-19 infections will impact future mortality and particularly disability experience. If severe past COVID-19 is indicative of a higher risk of death of disability, the benefit of underwriting for these risks needs to be weighed up against fairness principles.

The industry responded to underwriting for HIV/AIDS with self-regulation through ASISA guidelines. This will be a useful reference to consider by ASSA if past COVID-19 infections become more prominent in underwriting.

Underwriting practices were allocated a medium market conduct risk rating.

4 CLIENT COMMUNICATION

Actuaries were not only involved in drafting or reviewing new client communication, but also interpreting past communication and policy exclusions that were written many years before.

There were instances where certain products did not behave as a layperson might have expected during the pandemic. For example, Business Interruption Cover and Credit Life protection did not always provide clients with the protection that they may have expected.

As a result, actuaries need to consider not only the risks covered by a product, but also the potential consequences of excluding certain risks. This may be important in identifying gaps in cover to improve product design, or to clarify any excluded risks in communication so that clients know what they are covered for.

Press coverage of the South African Customer Satisfaction Index (SAcsi) for Life Insurance was considered. The latest SAcsi shows that insurers have made solid headway and that customer loyalty and satisfaction are improving. Abigail Boikhutso, the CEO of Consulta, said the following: "However, we still do see that the hangover of the reputational damage caused by highly publicised claims repudiations – whether in the life or short-term space is irrelevant – remain fairly front and centre for many consumers. Any hint of a blunder in respect of the trust and reliability of an insurer is likely to have a significant impact on customer loyalty, and in turn, the overall perception of satisfaction with the insurer. The coming months will demand that insurers become honed across every aspect of the customer journey – from product research, advice, purchase, admin and servicing to claims and renewals."

Given the highly publicised nature of claims repudiation, Client Communication was allocated a high market conduct risk rating. The following sections provide more detail on business interruption and credit life products.

4.1 Business Interruption Cover

Ordinarily, business interruption cover is only triggered by physical damage to the insured property. However, it can also be triggered by expressly defined events in the policy unrelated to physical damage. As such, unless expressly defined in the policy wording, a contagious and infectious disease event would not result in a valid business interruption claim.

Further, policy wording may be sufficiently tight such that a claim event is still not triggered. This extends to a number of contentions which include the intention of the protection, the cause of the business interruption being lockdown rather than the outbreak of the disease itself and the proximity of the breakout to the business.

A risk emerged where misalignment might have occurred between reinsurance wording and interpretation, relative to insurer wording and interpretation.

Within the market, these policy wording limitations raised several issues as policyholders incorrectly believed that they were indemnified against such an event. This might have been as a result of inappropriate sales of the policies at the time of inception, far prior to the pandemic, as well as an incomplete needs assessment at the point of inception of the policy.

These policy wordings were challenged at the High Court in the Ma-Africa Hotels (Pty) Ltd and Another v Santam Limited case, which determined that "it cannot be said that the nationwide or global events were not contemplated or insured" by the policies, and found in favour of the insured party.

The ruling resulted in a larger number of claims being paid without significant challenge as well as a significant distrust in the Insurance sector.

In the aformentioned case, the Supreme Court of Appeal stated "It is, in our view, hardly possible to imagine a more tortured, convoluted and intricate an approach to the reading of the policy".

In order to avoid such cases in the future, it is expected that business interruption policy wordings will be reviewed to ensure further clarity is provided to the policyholder, including more refined definitions of what triggers cover (definition of loss, aggregation period definitions), as well as ensuring that policyholders are better informed of the cover and the risk events that would trigger it.

4.2 Credit Life Protection

The Annual Report from the Ombudsman for Long-Term Insurance (2020) noted approximately 36% of complaints which were directly related to COVID-19 or to the lockdown were in respect of credit life benefits, compared to overall complaints where credit life benefits make up c9% of cases. It was further noted that claims for retrenchment and inability to earn an income caused the highest number of complaints, likely due to the economic environment and that these are typically more disputable claims.

A key issue is whether an insurer is obliged to pay a claim for benefits related to an inability to earn an income when an insured receives Temporary Employee/Employer Relief Scheme/TERS payments. The 2021 Annual Report noted that TERS benefits are not considered regular income but rather passive benefits created by the National Disaster Benefit Fund, and the insurer agreed to pay for these loss of income cases.

5 Market Perception

The perceptions of customers and the public of companies and the Profession (including individual actuaries in the public eye) were considered. This section provides an overview of general market conduct matters identified by the Workstream that apply to the Profession as a whole and across the different industries within which actuaries operate.

5.1 The Actuarial Profession

Actuaries do not only have a responsibility to employers and clients, but also to act in the public interest. ASSA provided significant input behind the scenes through involvement with Business for South Africa (B4SA) and issued a number of media releases.

The Profession needs to consider its role in phenomena such as COVID-19 (and other pandemics) in terms of its responsibility to the public (as codified in ASSA's Code of Conduct). In particular, the role that ASSA plays in public debates and analysis may be considered, where ASSA generally limits itself to factual commentary and leaves speculation to other forums. Given ASSA's prominent role and expertise, it may be beneficial to consider a more active role in public debate where appropriate.

The method via which the public is made aware of how the Profession is honouring its public interest responsibilities is, to a great extent, communication. Communication is a particularly important facet of market conduct as it provides a means to influence the reputation of the Profession, broadcast reliable and clear messaging, and share expertise in a way that is useful, educational and, perhaps, reassuring to policyholders and the public at large. The COVID-19 pandemic highlighted the importance of intentional and informed communication, both from individuals in their capacity as members of ASSA and from the Profession itself. To understand lessons learned, conversations were conducted with three actuaries (in South Africa and the UK) who played relatively public roles during the pandemic.

The output of these conversations was a series of questions which have bearing on market conduct. These questions may be used to prompt discussions on guidelines and ideas that may be implemented in future pandemics or states of disaster.

- Where can actuaries add value?
  - Should we be advising policymakers or rather be a technical resource upon which they draw as necessary?
  - What are the areas of core actuarial expertise that can be applied to these situations (and what should be left to experts in other fields)?
  - How does our professional obligation to act in the public interest balance with the need for adequate and sustainable risk mitigation and protection?
- What should the content and frequency of messaging to the public be?
  - Building on work already done as part of ASSA's PR strategy, how should we enlist the help of PR/marketing/communications/psychology experts to optimise potential marketing opportunities for the Profession?
  - Is there value in presenting an analysis of experience with or without forecasts?
- Can we be more organised in terms of capacity/resources/working groups?
  - It has been suggested that the Profession's level of public engagement and public prominence should be proportional to the resources allocated to this work – a lot of work is required to enable a meaningful contribution. This should be taken into consideration when allocating resources and setting objectives around communication.
  - There are lessons to be learned from the UK's COVID-19 Actuaries Response Group regarding communication from actuaries to the public that could be valuable for future pandemics and similar scenarios. Their lessons included:
    - Speed and relevance of response are important. It's better to be broadly right and in time than perfect but late.
    - Prepare as much as possible but don't underestimate the extent to which things will differ in unpredictable ways. For example, if the current pandemic had happened 5-10 years earlier, the rapid shift to working from home might not have been possible.
  - Investigations might be conducted into their operations and which aspects might be relevant to South Africa.
- How can we fortify the processes and guidance around work done by committees and the ratification of such work by Council?

- Should work done by various ASSA committees and individuals be supported more formally by ASSA Council, especially when there are opposing voices in the public from other experts incl. actuaries?
- Is there a need for a formal mandate for vetting work done by committees and adopting it as the "official" ASSA stance?

The public perception of the Profession has been allocated a medium market conduct risk rating given the deliberately conservative approach taken by ASSA during the pandemic. There could be potential to have a bigger positive impact in the public domain, although this could introduce additional risk.

5.2 Information Sharing in the Industry

Actuaries need data in order to perform their duty to act in the public interest. The workstream considered collaboration during the pandemic through various ASSA structures. For example, the COVID-19 Task Team worked together by sharing analysis and developments to assist the Profession in thinking and responding to COVID-19. Similarly, the gathering of mortality and exposure data on a monthly basis was done as part of the Continuous Statistical Investigation (CSI) initiatives.

Information sharing in the industry has been allocated a medium market conduct risk rating given the uncertainty around the ongoing Competition Commission investigation into Life insurance companies. It is the understanding of the workstream that Council intends to engage with the Competition Commission after the investigation is completed, which may assist in formalising professional guidance to be followed by actuaries and the various ASSA structures when sharing information.

6 Conclusion

Overall, no major market conduct issues have been identified relating to COVID-19 given the need to balance solvency and consumer interests, although ongoing discussions and engagement remain necessary.

The challenges posed by the pandemic have tested actuaries in many ways, but they've also highlighted our resilience and adaptability. As we move forward, let us continue to learn from these experiences, ensuring that we emerge stronger and more prepared for whatever the future may bring.

The Workstream would like to thank relevant members of the Life Assurance Committee, Short Term Insurance Committee, Healthcare Committee, Retirement Matters Committee, Microinsurance Committee and Market Conduct Committee for their valuable input.