Source for Disclosure of Contingent Liabilities in the Notes: Selected Government Institutions

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Abstract: Contingent liabilities have commonly been disclosed by public organisations in the notes to their financial statements, and in terms of a generally accepted accounting framework. However, the concept of contingent liabilities has not been widely discussed in the public sector accounting literature globally, and there remains a notable absence of discussion in South African literature in particular. This study attempts to report this gap in the literature by providing an analysis of archival annual reports. The research methodology employed in this paper is an archival research method, using the annual financial reports of government in South Africa. Disclosure notes of financial information are pertinent as they communicate to users the relevant financial data that is not ordinarily captured in the line items of financial statements. This study investigates the sources for disclosure of contingent liabilities in the notes, using selected government institutions. Hence, concerns for the disclosure relate to inaccurate information about the financial performance of the public organization. The paper reveals that the sources for the disclosure of contingencies still rest on the biased judgement of whether the outcome is remote and probable. This paper is intended to inform the general public and other users of government financial statements about losses which occur due to government accounting commitments oversights, and the reasonable measures which could have been put in place to prevent these and similar further such losses.

Keywords: Accounting policies, Contingent liabilities, Disclosure notes, Financial statements, Public sector

1. Introduction

During the last two decades, several financial accounting regulations were reformed in the South African public sector. These accounting reforms were introduced to enable and promote greater public interest (Cîrstea, 2014). Although the disclosure of financial statements in the South African public sector has historically followed the Generally Accepted Accounting Principles (GAAP) for making financial disclosures (Mead, 2001), for a short period of time the Accounting Standards Board (ASB) changed the practices of accounting in the public sector to enable them to become more practicable for public to understand and to follow. According to the Accounting Standards Board (2019) "financial statements are prepared and presented to meet the common information needs of a wide range of users. While the information in the financial statements aims to address a wide range of users' information needs, it is not possible to meet all users' information needs through the financial statements alone". Financial statements in the public sector are prepared in terms of the framework for the Standards of Generally Recognized Accounting Practice (GRAP) (Accounting Standards Board, 2019). The public sector financial statements aimed to justify public accountability and to empower citizens in making decisions (Oulasvirta, 2010; Cîrstea, 2014). Financial statements are therefore an important tool for government to fulfil its service delivery accountability and justify their actions to the public (Mead, 2001). They are used for reporting of all government finances.

For many years, the public and many interested users of public sector accounts could not understand how to analyse and interpret the technical presentation of financial statements (Oulasvirta, 2010; Trewavas et al., 2012). Yet, one of the underlying intentions of promoting public accountability is to simplify information (Smith, 1990) through the disclosure of financial records in financial statements. It is perhaps worth accentuating that many users of financial statements are interested in the positive audit opinion, as presented by the auditors, as an endorsement of the coherent and effective use of public funds (Kaur & van der Laan, 2013). However, this paper seeks to investigate sources for the disclosure of contingent liabilities in the public sector, as a means of highlighting deficiencies in the

entities' control activities. The basic argument within this paper is that contingent liability elaborates on the most likely outcome and most likely amount to be incurred for as yet incomplete contracts and/or unintended expenditure (National Treasury, 2012). Thus, until such contingencies are realised, the public may not be aware of these undisclosed accounting events, as the department's obligations report them may or may not arise due to the uncertain nature of these events. These obligations are generally not recognized in the balance sheet prior to certain conditions. These conditions contain the outcome of lawsuits and pending investigations (Hennes, 2014). For example, an entity may guarantee a loan to a borrower by a third party. The guarantor does not immediately incur any liability, but may do so in the future, should the borrower fail to meet their obligations. When a business or person is subject to pending investigations, a liability will depend on the outcome of a court case (Shoenthal, 1976). If it is found that the individual or the company is in default, then they must bear the penalty as prescribed by the court of law (Allen, 2014; Kaur & van der Laan, 2013). For example, litigations include legal claims which may have not be resolved (Koprowski et al., 2009), while on the other hand, Allen (2014) describes such outcomes as having negative impact for the future running of the business.

Bevis (1968) states that contingent liabilities should not be recorded until they are realized, as they depend on future events (Rosell, 1992; Fitzsimons & Thompson, 1997). Gross (2011) asserts that, since it cannot be determined whether an amount must be paid until the conclusion of future events, the company's likelihood of incurring such costs should be presented as 'probable', 'reasonably possible' or 'remote'. Manuela and Neonila (2015) explain that the correct way of disclosing the provisions and contingencies is to treat them according to the IAS37. Thus, it has to be treated at the end of an accounting period (Manuela & Neonila, 2015). According to the IAS 37, all contingencies should be disclosed in the financial position. Thus, for contingent liabilities to be disclosed as a note to financial statements there must be a claim which, according to legal opinion, has a 75% chance of success. However, if it is unlikely to succeed or has only a remote probability, then it is not disclosed. In other words, it has to be probable (Darabi & Faghani, 2012). Therefore, if any probable or reasonably possible estimate of the event taking place does not apply, a department should put a disclosure in the footnotes. This

paper adds to the scarce literature on public sector accounting, especially in the South African public sector environment. As the paper contributes to the ongoing building of literature, it highlights the important aspects of treating contingent liabilities in an appropriate manner.

2. Related Literature Review

Building on the earlier insights of the accounting treatment of contingent liabilities in the public sector environment (Brixi & Mody, 2000), Cenar (2011) argued that contingent liabilities cannot be accurately determined, but only estimated. Contingent liabilities depend on the likelihood of occurrence of an obligation or situation (Bova, 2016; White, 2009), and to the occurrence's probable impact (Wittsiepe, 2008). Accordingly, the likelihood of occurrence highlights the importance of an event (Brixi & Mody, 2000). White (2009) states that such outcomes could be positive or negative. For example, in the study of contingency information, (the empirical associations between possible causes and outcomes) White's study concludes that negative contingencies can also lead to positive causal judgments (White, 2009).

While liabilities differ in their degree of uncertainty, most liabilities are nevertheless legally enforced (Deloitte, 2019). This aspect of contingent liabilities creates management problems for governments (Irwin & Mokdad, 2010) as they have gained prominence in the analysis of public finance (Cebotari, 2008). For example, contingent obligations are not recognised in the run of the financial statements, in the period under review for its impact. Despite the fact that a contingent liability may have a negative impact on an entity's financial position, it has to be recorded. Thus, any contingent liabilities where resolution is guestionable it has to be disclosed in the footnotes of the financial statements. Contingent liabilities may or may not have to be disclosed depending on the degree of probability that the contingency is likely to materialize. If the likelihood is remote, then the disclosure is not necessary, and if it is probable/emanant, disclosure should then take place by means of a footnote, and the estimate of exposure would be based on legal advice.

As noted by Gamper *et al.* (2017) the presence of contingent liabilities can materially impact government balance sheets. For example, an entity may disclose that a claim for indefinite costs was made

against the entity during the financial period regarding the damages allegedly caused by an official of the entity, a member of the public or another entity in the execution of service delivery. The department has rejected liability and is defending the action. The management of the department are therefore of the view, at the date of these financial statements, that no quantifiable loss to arise in respect of the claim. Thus, this is a contingent liability that is dependent on the outcome of lawsuits, and because there are elements of uncertainty, the need for payment can only be confirmed by the outcome of a specific event (legal judgement) and the statement of its consequences. As a result, the amount and timing of any outflow must also be uncertain.

Berger (2018) calls that the existence of contingent liability should be confirmed once there are uncertain future events. Thus, contingent liabilities may or may not need to be disclosed, depending on the level of probability (Schroeder & Clark, 1995). However, Shoenthal (1976) reports that if the probability is remote no disclosure is required. Du et al. (2016) report that it is difficult to apply categories such as probable, more likely than not, and remote, in a financially meaningful manner. As a result, a probable event would imply that contingency is more likely to occur than not, and that its quantum can be measured reliably; this should then be recognized in the financial statements, and therefore requires disclosure (Tsakumis et al. 2009; Burnside, 2004). While the remote likelihood of an event occurring simply implies that the occurrence does not require disclosure (Hennes, 2014).

Contingencies give rise to a contingent liability (Rosell, 1992; Fitzsimons & Thompson (1997). According to Vargo (2012), such obligation should not be recognised if it cannot be measured reliably. Contingent liabilities do not include provisions for situations for which the entity has a present and certain obligation that is more likely than not to lead to an outflow of cash or other economic resources, even though the amount or timing is uncertain. For example, Deloitte (2019) defines contingent liability as a liability which arises where there is uncertainty about whether a loss has been incurred. Contingent liabilities are not recognized (Walton, 2006), but are disclosed (Ball & Pflugrath, 2012; Cenar, 2011; Cebotari, 2008; Benjamin & Stanga, 1977), unless the possibility of an outflow is remote (Simon, 2002). Thus, for an entity to recognize a contingency requires that it be *probable* (Shaked & Orelowitz, 2015).

According to National Treasury (2019:x) contingent liabilities in the government sector are increasing in billions of Rand annually. Since the financial statement treatment requires that contingent liabilities be recognised, the International Financial Reporting Standards' require entities to record contingent liabilities in accord with the following accounting principles: full disclosure principle, materiality principle, and prudence principle. Thus, under full disclosure, if a contingent liability comes with the potential to negatively impact the financial performance and health of a company, this potential disruption of the status quo must be disclosed in the financial statements, per the full disclosure principle. Additionally, the materiality principle requires a contingent liability to be disclosed if it negatively impacts a company's financial performance and health; thus where it is clear that the knowledge of it might influence the decisionmaking of different users of the company's financial statements, disclosure is required. Nevertheless, since the outcome of contingent liabilities cannot, by definition, be known for certain, the probability of the occurrence of the contingent event is estimated and, if it is greater than fifty percent, then a liability must be recognised and a corresponding expense recorded.

3. Research Methods

This paper investigated the disclosure of contingent liabilities for accounting treatment in public sector financial statements in South Africa. An archival research method was selected. Archival research involves studying data from files, documents, records and other sources relating to organizations' activities (Ventresca & Mohr, 2017). This paper used the annual reports published by government departments, for which the "financial statement data" was identified as archival data. Data was collected from the annual reports of the South African Police Services, Department of Justice; and Gauteng Department of Health, for the period 2010, 2013 and 2018. According to Moers (2006), archival data is data "for which the original purpose for gathering it was not academic research". Lewis-Beck et al. (2004) describe archival research as a method to evaluate, interpret and analysis of sources found in archives for purposes other than those for which they were originally collected. Hageman (2008) states that the advantage of archival research is its low sampling requirement and potential for easy replication. Hence, it can be used as a qualitative research method to analyze historical records and other historical data like financial statements. For example, Maines and Wahlen (2006) used an archival research method to assess accounting information usefulness. Their study revealed that the methodology could assist academics in conducting research to produce new insights on reliability and in conveying the important role of reliability to students. In similar vein, this paper tries to alert users and the public to the significant facts which indicate what has been achieved through accounting for public money. This paper presents management assertions in relation to contingent liabilities together with statements of fact indicating what actually happened. By exploring in more detail a number of disclosed notes regarding contingent liabilities in the public sector, this paper presents an overview of research methodology as a qualitative research approach employing archival research method as a means of interpreting the nature and existence of financial obligations in the financial statements. The paper intentionally omits full descriptions of pending cases contributing to the probability of contingent liabilities from the financial statements. The logical presentation of the footnotes is intended to show the different explanations of notes.

This article tackles the following key questions: How are contingent liabilities disclosed and treated in South Africa's public sector accounting records? What kind of information is disclosed as contingent liabilities in the footnotes? Given that addressing these issues has been mandatory in terms of the Accounting Standard Board's regulations

and guidance, the employment of the archival research approach was deemed appropriate. Financial accounting topics are more amenable to archival research methodologies as their more dominant events become apparent over time (Oler *et al.*, 2010).

4. Results and Discussion

This section presents an analysis of examples of significant judgements of contingent liability as presented in foot notes in the financial statements of selected government departments' annual reports. These specimens are verbatim copies of the footnotes with the omission of the names of parties affected such as individual names and surnames. Since, the information is drawn from publicly published government annual reports, the names of the affected government departments are mentioned.

The specimen 1 shows a recorded note on the potential liability on the side of the SAPS on the basis of contingent event and it also show that the liability is certain that the SAPS will suffer the such a liability. Thus, the disclosure rule for contingent liabilities specifies that liability should be recorded in the accounts when it is probable, for the future event that will occur.

Specimen 2 on the next page illustrates that the department exactly what the department should do, when it anticipates a loss which may results from uncertainty. Thus, the legal claims against the Gauteng Department of Health is part of the outcome of lawsuit, yet to be determined, but have a negative future impact in the financial statements.

Specimen 1:

"The note refers, the department is disclosing a contingent liability for the lease contract of the Pretoria building. The Department of Public Works has taken a decision to apply for a declaratory order in the Sanlam Middestad lease agreement for the court to make a ruling on the legality or otherwise of the lease agreement".

"Due to the fact that the Department of Public Works has taken a decision to apply for a declaratory order in the Sanlam Middestad Lease Agreement for the Court to make a ruling on the legality or otherwise of the lease agreement, it was decided to include it as a contingent liability".

"Furthermore, the external investigations conducted within the department show that the Public Protector conducted two investigations regarding a building in Pretoria and a building in Durban. At the date of this report, the Department of Police included the building in Pretoria as a contingent liability and the Department of Public Works confirmed that there was no lease contract for the Durban building – this matter show a significant uncertainty in the financial statements".

Source: https://www.saps.gov.za/about/stratframework/annual_report/2010_2011/8_annual_financial_statements.pdf

Specimen 2:

"The province's contingent liabilities have increased from R3.5 billion in 2011/12 to R18.5 billion in 2015/16. This represents an increase of 424% over the past five years. From 2014/15 to 2015/16 alone there was a 18.6% increase in the province's contingent liabilities. It is reported that the major item for contingent liabilities is litigation claims against the GPG departments. From the R18.4 billion claims against the departments, Health was the largest contributor with R16.5 billion".

Source: https://www.politicsweb.co.za/politics/gautengs-contingent-liabilities-rocket-up-to-r185-

Specimen 3:

"Civil claims instituted against the South African Police Services over the past two financial years of which a settlement was reached, or court order issued during a specific financial year, revealed that the amounts paid compared to the original claim amounts, which were settled during a financial year, is on average 4,98%. In other words, on average 95,02% from original claim amounts is cancelled or reduced during the settlement process".

Source: https://www.saps.gov.za/about/stratframework/annual_report/2012_2013/ar2013_05_parte.pdf

Specimen 4:

"Contingent liabilities mainly consist of summonses (claims against the Department) received by the Department of which the outcome and timing is uncertain. The contingent liability disclosed is based on management's estimate of the Department's financial exposure. Management based the calculation of the claims for malicious prosecutions at 5% of the summons amount. Contingent liabilities include costs and disbursements that emanate from legal claims and litigations against the Department".

Source: https://www.justice.gov.za/reportfiles/anr2017-18.pdf

Table 1: Treatment of Contingent Liability

	Summarised Definition	Disclosure	Example
Contingent liability	Possible/remote outflow No reliable estimate	Disclosure Note	Claim against the department awaiting the
	Dependant on uncertain future event	Note	outcome of a court case

National Treasury (2011)

The disclosure in Specimen 3 is correct, because there was a probable liability determination before the preparation of financial statements has occurred. Therefore, the liability must be disclosed and recognized. This financial recognition and disclosure are recognized in the current financial statements, and the balance sheet is typically impacted by contingent liabilities.

The above disclosure in the financial statements is appropriate and it can be deduced that legal advisors believe that these claims are unlikely to succeed, therefore, the department has accepted and received summons for claims. Claim amounts are subject to change as some matters become subjects of litigation, and claim amounts are revised by claimants or subsequent actuarial or medical assessments of damages suffered (Kaur & van der Laan, 2013). "Contingent liabilities are recorded in

the notes to the financial statements when there is a possible obligation that arises from past events, and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not within the control of the department or when there is a present obligation that is not recognised because it is not probable that an outflow of resources will be required to settle the obligation or the amount of the obligation cannot be measured reliably" (National Treasury, 2019). Treatment of contingent liabilities on the basis of their unfavourable resolution being *remote*, reasonably *possible* or *probable*. (Table 1).

Accordingly, if the contingent loss is remote with less than a fifty percent chances of occurrence, such liability should not be reflected in the balance sheet. Hence, it should be disclosed in the footnotes to the financial statements.

5. Conclusion and Recommendations

This paper provides a series of examples to remind the public and other users of government entities' financial statements of the magnitude of public funds committed to legal claims and other contingencies, and the vulnerability of departments to such unquantified financial outflows. The objective is not merely to highlight that such vulnerabilities may distort the accuracy of financial reporting, but also to draw attention to the need for greater clarity and uniformity in application of accounting treatments of events and situations which could result in liabilities if the department loses court cases against other parties. Thus, the significance of this paper lies in its ability to help readers to understand how contingent liabilities work and through specific examples, to inform them about the loss of money which is occurring essentially because reasonable control measures have not been put in place. This paper was concerned with the accounting treatment of contingent liabilities, which is one item not recorded in the financial statement entries but disclosed in the notes should they be deemed reasonably possible. In other words, the paper presents the view that the disclosure of contingent liabilities should be a clear and simple statement of the event's probability (the likelihood that it may or may not happen), reasons why the outcome is unforeseeable and thus undetermined, and whether it is dependent on some future event or process. Given that the disclosure of contingent liabilities requires a footnote in the financial statements, the disclosures may be simple statements regarding the explanation for the events resulting in the contingent liability. However, because of the relatively vague nature of the guidance on how to present these in the financial statements might be sufficient reason to change the government's accounting policies and procedures. As this article has discussed, it is as important how contingent liabilities are disclosed in the public sector financial statements as it is to establish the financial amounts. The paper concludes that for contingent liabilities to be reported in a useful and meaningful format they have to be measured in terms of reliability, and there must be clearer indications of the degree of uncertainty about the fulfilment of the obligation.

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