



Institute
and Faculty
of Actuaries

Actuaries' Code Guide

Guidance to support the principles and
provisions in the Actuaries' Code

by the Regulation Board

Contents

1. Introduction	1
2. The Code – Application, Scope, and Status and Purpose	2
– Application	2
– Scope	2
– Status and Purpose	3
3. Principle 1 - Integrity	5
– The general principle of integrity	5
– The duty of confidentiality	5
4. Principle 2 – Competence and Care	6
– The general duty to act with competence and care	6
– Acting with relevant knowledge and skill	7
– Developing knowledge and skill and compliance with CPD requirements	8
– Ensuring that work is appropriate to the needs and instructions of users	8
– Obtaining input from other professionals or specialists	10
5. Principle 3 - Impartiality	10
– The general principle of impartiality	10
– Conflicts of interest	12
6. Principle 4 - Compliance	31
7. Principle 5 – Speaking Up	31
– The general duty to speak up	31
– What is required of a Member?	33
– Relevant law and other requirements	37
– Some practical considerations and questions for Members	38
– Making a report to the IFoA	40
– Sources of guidance and advice	41
8. Principle 6 – Communication	42
– Social Media	43

9. Sources of guidance and advice	44
10. Further questions and information	44
Appendix A: Issues which may occur to Members who consider speaking up	45
Appendix B: Questions to help pensions actuaries identify and manage conflicts of interest	46
Appendix C: Questions to help general insurance actuaries identify and manage conflicts of interest	47
Appendix D: Questions to help life actuaries identify and manage conflicts of interest	48

1. INTRODUCTION

- 1.1. The Institute and Faculty of Actuaries (IFoA) is responsible for the regulation of the actuarial profession in the public interest. As part of its regulatory function, it also sets and maintains a framework of standards for its Members. Members of the IFoA must comply with those standards as a condition of membership.
- 1.2. Central to the IFoA's framework of standards is its overarching ethical code, known as the Actuaries' Code (the Code), which was first published in 2009. The framework also contains Actuarial Profession Standards (APSSs), which apply specific requirements to Members, building on the principles of the Code, as well as non-mandatory guidance and resource material designed to assist Members in meeting their professional obligations. For Members carrying out UK work, there are also Technical Actuarial Standards (TASs) set by the UK's Financial Reporting Council (FRC) and enforced by the IFoA.
- 1.3. This Guide has been prepared by the Actuaries' Code Working Party, and is issued by the Regulation Board of the IFoA. Its purpose is to build on the principles contained within the Code and to help Members better understand their ethical and professional responsibilities under it.
- 1.4. This Guide comprises separate sections containing further information about each of the six principles contained within the Code, as well as more detailed guidance which builds upon some of the non-mandatory guidance previously published by the IFoA on specific topics that are strongly connected with the requirements of the Code, including speaking up (whistleblowing) and conflicts of interest.
- 1.5. Each of the principles contained within the Code is accorded equal importance. The length and/or level of detail of the guidance provided for each of the principles should not, therefore, be taken to mean that any one principle is more or less important than another.
- 1.6. It is hoped that this Guide will be a useful tool for Members who find themselves facing ethical issues and are considering how to handle them appropriately and professionally. It is not prescriptive in relation to how Members should apply the Code, but rather aims to help Members to use their own judgement in determining how to comply with its provisions.
- 1.7. It is anticipated that this Guide will be used mainly by Members. However, the Guide also contains information that may be useful for people who work with actuaries (including employers of Members), particularly sections 5 and 7 which deal with conflicts of interest and speaking up. Separate guides also exist for employers of Members on these topics.
- 1.8. Given the variety of matters which are covered in this Guide, and given that it is designed to be useful for Members in all practice areas, this is, of necessity, a broad, cross-practice guide. Members are encouraged to consider how the general principles discussed in this Guide should be applied to issues arising in their particular area of practice since the issues and application will vary between areas.
- 1.9. Please note, the term "you" is used in certain sections of this Guide to refer to Members.
- 1.10. This Guide is non-mandatory guidance for Members; it imposes no obligation upon Members over and above those embodied in the Code or APSSs.

- 1.11. This Guide does not constitute legal advice. While care has been taken to ensure that it is accurate, up to date and useful, the IFoA will not accept any legal liability in relation to its content.
- 1.12. Non-compliance with the Code may lead to Members becoming liable to disciplinary action. While this Guide may be referred to and considered in the course of disciplinary proceedings, it will not necessarily provide a defence to allegations of misconduct.

2. THE CODE – APPLICATION, SCOPE and STATUS AND PURPOSE

Application

- 2.1 The Code applies to all categories of Members without exception (i.e. it applies to Students, Student Actuarial Analysts, Certified Actuarial Analysts, Affiliates, Associates, Fellows and Honorary Fellows).
- 2.2 The Code has no geographic restrictions and applies to Members in all locations and in relation to work carried out in respect of any part of the world.
- 2.3 The Code applies regardless of the nature of a Member's client or employer or of their employment status. This means that the Code would apply to an unemployed Member.

Scope

- 2.4 The Code applies at all times to all Members' conduct in relation to an actuarial role. The Code does not define an 'actuarial role' so it is for an individual Member to determine if they are carrying out an actuarial role for these purposes.
- 2.5 The sort of circumstances that point to a role being an 'actuarial role' might include whether Members, users or the general public could reasonably perceive the role as being actuarial. This is likely to include work for a traditional employer of actuaries (such as a pension scheme or an insurance company) but would also include other instances, including honorary and business roles, where:
 - a Member is performing a role that requires, or benefits from, specific actuarial skills, for example, a Member employed (either directly or as an external adviser) by the trustees or sponsor of a pension scheme to assist in the management of the pension scheme, or where a Member is appointed to an honorary role in light of their numerical, analytical and other professional skills;
 - a Member is performing a role in which they have presented themselves as an actuary, for example, by signing off correspondence with the letters 'FIA' or 'FFA' after their name or having been appointed or elected as a result of their IFoA membership; or
 - reliance is placed on a Member's actuarial judgement due to their membership of the IFoA, for example, where a Member is appointed to a governing body by reason of their actuarial experience and expertise and where the use of that experience and expertise could influence the decisions of that governing body. Examples of this might include a Non-Executive Director to the board of an insurance company

considering the Actuarial Function Report, a trustee of a pension scheme considering an actuarial issue, or a director of a board considering a pensions, insurance, risk or investment issue.

- 2.6 The Code also applies to all Members' other conduct if that conduct could reasonably be considered to reflect upon the profession. This means conduct by a Member that may have an impact upon the reputation of the actuarial profession as a whole, even if that conduct occurs outside of a Member's actuarial professional life.
- 2.7 In most cases, it will be clear whether or not a course of conduct is likely to be considered to reflect on the profession. An example of this could be where a Member commits a serious criminal offence.¹
- 2.8 Examples of 'other' conduct might include conduct where a Member is:
- discussing matters outside of a professional context, but where their opinion might be given more weight because of their membership of the IFoA or their qualifications;
 - carrying out an honorary, volunteer or business role such as acting as a trustee or the treasurer or board member of a charitable foundation; or
 - doing something else that has nothing to do with actuarial work as such, but where they are clearly identifiable, or are subsequently identified, as actuaries and an observer might be inclined to take their behaviour as representative of actuaries more generally.

Status and Purpose

The Public Interest

- 2.9 The IFoA is incorporated by Royal Charter. Amongst other things, the Charter defines the IFoA's purpose as the regulation of the actuarial profession in the public interest. The IFoA sets appropriate standards, and requires Members to comply with them, in order to promote high quality actuarial work and ensure that Members maintain a high standard of professionalism and ethics.
- 2.10 There is no specific obligation imposed upon Members to consider the public interest impact in respect of the work that they carry out, or in their day-to-day conduct. Rather, by acting in accordance with the standards set by the IFoA, including the Code, Members will be helping the IFoA to ensure that it succeeds in meeting its wider public interest aims.

The structure of the Code

- 2.11 The Code contains six principles which are shown in italics. Those six principles are supported by 'amplifications' that clarify specific requirements of the principles for some particular issues. Members must comply with both the principles and the amplifications. The amplifications are not intended to be read as exhaustive lists of types of behaviours that

¹ There are specific requirements imposed upon Members in Principle 4 of the Code (Compliance) and through the Disciplinary Scheme, both of which require notification to the IFoA of criminal convictions.

fall under the principles themselves; the principles go further than the amplifications that support them. Rather, they are intended to highlight some specific requirements that the IFoA considers particularly important for Members to follow.

- 2.12 The Code uses the words ‘must’ and ‘should’ to clarify the level of obligation in relation to each of the provisions in the Code. The word “must” denotes a mandatory requirement, whereas the word “should” is used in the Code to indicate that, while there is a general presumption that Members will comply with the provision in question, there will be situations in which non-compliance with one or more of the requirements within the Code may be justified; for example, situations in which a Member is complying with a legal requirement to report which is at odds with amplification 1.2 of the Code which deals with confidentiality.

Departures from the Code

- 2.13 Failure by a Member to comply with the ethical requirements set out in the Code may lead to disciplinary proceedings under the IFoA’s Disciplinary Scheme.²
- 2.14 The IFoA considers allegations that an individual Member (or former Member) is guilty of Misconduct. The question of whether a Member’s conduct amounts to ‘Misconduct’ for the purposes of the Disciplinary Scheme will be one for an Adjudication Panel or Disciplinary Tribunal Panel to determine, taking into account the particular facts and circumstances of each case.³
- 2.15 The final paragraph within the ‘Status and Purpose’ section of the Code reminds Members that nothing in the Code is intended to require them to act in breach of legal requirements. This means that a Member will not be treated as having breached the Code if they are complying with a legal obligation, even where there is an apparent conflict between that legal obligation and any requirement(s) set out in the Code. Section 7 of this Guide, which provides guidance on the ‘Speaking Up’ Principle, contains some specific examples of when such a conflict might occur.
- 2.16 Members should note that the reference to ‘legal requirements’ in the ‘Status and Purpose’ section of the Code is intended to cover requirements imposed by legislation, regulation or the common law. It does not extend to contractual provisions agreed with a user or provisions imposed by a Member’s employer, which seek to prevent the Member from complying with the Code or other legal or regulatory requirements. It is not possible to contract out of complying with the Code and Members should bear this in mind when entering into contracts that have provisions relating to confidentiality.

² <https://www.actuaries.org.uk/documents/institute-and-faculty-actuaries-disciplinary-scheme-effective-1-august-2010-amended-18>

The FRC also operates a disciplinary scheme for the actuarial profession. The FRC’s Actuarial Scheme undertakes the investigation and prosecution of cases which raise or appear to raise important issues affecting the public interest in the UK. You can find out more about the FRC’s Actuarial Scheme here -

³ There is further information available on the IFoA’s website which provides practical information about the meaning of Misconduct in the context of the Disciplinary Scheme: <https://www.actuaries.org.uk/documents/safeguarding-public-interest-faqs>

3. PRINCIPLE 1 - INTEGRITY

General principle of integrity

- 3.1 Members are expected to demonstrate high standards of behaviour. This is reflected in the first principle of the Code, which states:

“Members must act honestly and with integrity.”

- 3.2 Integrity is generally accepted as a fundamental requirement to act in an ethical and professional manner. If someone has integrity, their actions are consistent with their beliefs, both stated and real. They will not claim to have a certain belief and then act in a way that contradicts this, whether or not they are likely to be caught out.
- 3.3 Acting with integrity in a professional setting will generally mean being straightforward and honest in your professional and business relationships and dealing fairly with those around you.
- 3.4 The first amplification under the Integrity principle provides that: *“Members must show respect for others in the way they conduct themselves.”* The scope of this requirement extends not only to users, but to anyone with whom Members interact in the course of their professional and private life. Amongst other things, showing ‘respect for others’ includes not deceiving or manipulating others, not taking credit for others’ work, not spreading false or defamatory information about people, etc. More subtly, showing respect for people includes such things as avoiding the temptation to publicly ridicule others’ ideas and giving people a fair hearing.

The duty of confidentiality

- 3.5 Users and the general public are entitled to expect that sensitive information will not be misused, treated carelessly or, other than in exceptional circumstances, be shared without permission. This is reflected in the second amplification under the Integrity principle which provides that: *“Members should respect confidentiality.”*
- 3.6 Confidential information to which a Member may have access includes personal data about third parties such as insurance or pension policy holders. It may also include communications from clients, such as emails, and some commercially sensitive information relating to businesses with which the Member interacts. Sometimes confidential information will not be labelled as such, and Members will need to exercise judgment as to whether there is a reasonable expectation that information should be considered confidential.
- 3.7 Information which is already lawfully in the public domain is not ordinarily confidential.
- 3.8 The duty of confidentiality, while important, is not absolute. Information can be disclosed in certain circumstances where disclosure is required by law, or is permitted by law, and can be justified in the public interest. The IFoA recognises that certain situations will arise in which legal or other requirements will override a Member’s duty of confidentiality. That is why the specific amplification dealing with confidentiality has been drafted as a ‘should’ provision, rather than a ‘must’. Indeed, the ‘Speaking up’ principle of the Code may require confidential information to be disclosed under certain circumstances – in such situations

Members need to carefully consider the extent and manner of disclosure necessary and avoid disclosing more than is necessary to fulfil their obligations.

- 3.9 A number of statutes empower government and other bodies, for example HM Revenue and Customs in the UK, to require any person to disclose documents and/or information. This might be, for example, in situations where confidential information indicates criminal wrongdoing. In the absence of a user's specific consent, you should check under which statutory power the information is being sought and consider the relevant provisions carefully before proceeding with the disclosure.
- 3.10 Disclosures which are permitted by law, and justified in the public interest, might include situations in which criminal or unethical conduct is indicated, but where there is no legal requirement to disclose, or where disclosure is necessary for the purposes of reporting a serious impropriety to a relevant regulatory body.
- 3.11 Further guidance on the interaction between the duties of confidentiality and disclosure is set out in section 7 of this Guide. Guidance on the duty of confidentiality, as it relates to conflicts of interest, is set out in section 5.
- 3.12 The duty of confidentiality is a difficult area; therefore, you might want to take legal advice on these issues.

4. PRINCIPLE 2 – COMPETENCE AND CARE

The general duty to act with competence and care

- 4.1 Members have a duty to ensure that they are competent to perform services in their area(s) of expertise. This is reflected in the second principle of the Code, which states:

“Members must carry out work competently and with care.”

- 4.2 Due to the specialist nature of the work of actuaries, and the reliance that clients or other users of their work place on their professional status, it can be difficult for non-Members to know whether a Member is competent to carry out the work they are performing. They must, to a great extent, trust the Member. Thus, a Member who performs a piece of work that he or she is not competent to perform would be failing in an important responsibility and betraying the trust of users and the public.
- 4.3 Professional competence has two stages, the first being the attainment of professional competence, and the second being the maintenance of that professional competence.
- 4.4 The attainment of professional competence will necessarily depend on matters such as educational qualifications, practical training and experience.
- 4.5 The maintenance of professional competence relies on the Member taking certain steps to ensure they continue to develop their knowledge and skills in order to be able to continue carrying out their work to a satisfactory standard, for example through compliance with Continuing Professional Development (CPD) requirements.

4.6 Generally, acting with competence and care will involve such things as:

- ensuring that work is carried out accurately, in line with instructions and to any agreed deadlines;
- obtaining additional advice or training where a Member considers that it is required;
- ensuring that adequate time is set aside to carry out a piece of work;
- keeping users updated on the progress of the work as appropriate;
- ensuring that work has been subject to an appropriate level of review; and
- communicating to users any limitations in the service that is being provided, as well as whether any other professionals or experts should be instructed in relation to the piece of work.

4.7 Competence can be achieved at any stage of a Member's career. For more experienced Members, acting with competence and care may involve ensuring that work is delegated to appropriately competent and experienced individuals and that the work delegated is ultimately performed to a satisfactory standard.

4.8 Acting with competence and care does not mean that a Member is prevented from branching out into new areas of practice. Members are encouraged to widen their professional knowledge and develop experience in new fields. In pursuing new areas of work, Members should ensure that they have the appropriate level of knowledge and training or are acting under the supervision of a suitably experienced individual. The onus is on the individual Member to determine what is appropriate in each case.

Acting with relevant knowledge and skill

4.9 The first amplification under the 'Competence and Care' principle provides that:

"Members must ensure they have an appropriate level of relevant knowledge and skill to carry out a piece of work."

4.10 This amplification is designed to prevent Members from acting outside the boundaries of their competence. This is because users and the public trust Members to be competent to perform the services they are engaged to perform.

4.11 If a Member decides that they do not have an appropriate level of knowledge and skill to carry out a piece of work, they should consider whether this can be resolved, for example by working as a team with a more experienced individual, or by obtaining further training, or whether the most appropriate course of action would be to inform the user that they are unable to take on the piece of work and recommend that the user instructs a more experienced or more suitably qualified person.

4.12 It is important Members are honest with users about the level of expertise and experience that they have.

- 4.13 What constitutes an “appropriate level of relevant knowledge and skill” will depend on the nature and scope of the instruction. An actuarial student, for example, would not be expected to be able to carry out a piece of work that would normally be carried out by a Fellow.

Developing knowledge and skills and compliance with CPD requirements

- 4.14 The maintenance of professional competence requires a commitment to CPD and an ongoing awareness and understanding of relevant technical, professional and business developments. It is not enough simply to achieve competence and then do no further training. In order to maintain competence, Members are expected to keep abreast of any developments affecting their particular practice area as well as anything which has the potential to directly or indirectly impact the interests of users for which a Member carries out work. An example of this would be developments in approaches to risk management and application of new modelling techniques.
- 4.15 Members have a duty to keep their competence up to date through CPD. CPD is learning that is relevant to a Member’s work or role and addresses a personal development need. The IFoA operates a mandatory CPD scheme, and it is the responsibility of individual Members to ensure that they comply with the requirements set by the IFoA. These are a mandatory minimum requirement, and Members should consider whether, in order to carry out their work, they need to undertake additional CPD.
- 4.16 The CPD that a Member is required to carry out is set out in the IFoA’s CPD Scheme and is dependent on the category of membership held by an individual. It is up to individual Members to take responsibility for ensuring that any CPD undertaken is both helpful and relevant.
- 4.17 Further information about the IFoA’s CPD Scheme can be found on the IFoA’s website.⁴
- 4.18 Members are also expected to act with competence and care when carrying out non-actuarial roles, where their conduct could reasonably be considered to reflect on the profession.

Ensuring that work is appropriate to the needs and instructions of users

- 4.19 Amplification 2.3 provides that:

“Members must ensure their work is appropriate to the needs and, where applicable, instructions of user(s)”.

- 4.20 To be able to meet this requirement, Members should, as a starting point, ensure that they have a clear understanding of the scope and intended purpose of the proposed work before taking on an instruction or carrying out a piece of work. This applies regardless of the environment in which Members work. It is as important to have the same degree of clarity on the scope of work for users within a Member’s employer organisation as it would be for external clients of a consultancy firm.

⁴ <https://www.actuaries.org.uk/learn-and-develop/continuing-professional-development-cpd-and-professional-skills-training>

- 4.21 Cost will often be an important issue for users and can often drive the scope of the work actuaries are engaged to perform. In circumstances where cost is a particular issue, this can be addressed by ensuring that the basis of remuneration in respect of the agreed scope of work is agreed with users before commencing an appointment or instruction. This is particularly key when users are charged directly for a piece of work (rather than the work being carried out as part of an employed role). If there is an arrangement for remuneration which is more 'open ended' then keeping users regularly informed as to costs will be important. Open communication with users about the basis for remuneration for professional work is key to ensuring the ongoing trust between the user and the Member.
- 4.22 It is important, however, that issues of cost and a limited budget are not allowed to prevent a Member from complying with the Code's requirements relating to competence and care. Fee structures are not an excuse to provide incomplete or unbalanced advice. Once the scope of work is agreed, a Member must carry it out competently and with care. This may lead to situations where a Member has to refuse to carry out a piece of work (if they are unable to do so while still complying with the Code).
- 4.23 In addition to agreeing the basis for remuneration with users before commencing an appointment or instruction, it is also important that users are made aware of any issues at the outset which may impact on a Member's ability to deliver the work that they have been instructed to carry out within any agreed time scales. This includes any limitations to the availability or expertise of internal resources (especially where a Member is working in an in-house setting) or any adverse cost implications associated with a piece of work.
- 4.24 Often, during the course of an appointment or instruction, the scope of a piece of work can change; a project might suffer setbacks and be delayed, or additional work might be required that was not originally anticipated. Members are encouraged, therefore, to ensure that any agreements for remuneration are kept under review and that they are prepared to communicate to users at the earliest opportunity any material change to the scope of an existing appointment or instruction.
- 4.25 The users of actuarial work may extend to a wide range of groups, for example, insurance policyholders or pension scheme members who are not a Member's direct clients, but are stakeholders in the Member's work. It is important that in carrying out a piece of work for a user, Members do not ignore the needs and interests of other affected parties, including these stakeholders as well as, for example, fellow professionals.
- 4.26 In certain situations, a user's instructions might not accord with the user's needs. Members will need to use their judgment in determining whether a user's instructions have the potential to result in adverse consequences for the user, or for others, and communicate any such concerns to the user before deciding whether they are able to accept an instruction. This applies both to actuaries working in a consulting environment with an external client and to those working for a user within their own organisation.
- 4.27 Members will need to ensure that they do not accept instructions from a user where the instructions are in direct conflict with the user's needs. For example, a Member would be expected to refuse an instruction from a user to dis-apply the requirements of the FRC's TASs to a particular piece of UK work, or an instruction to ignore the requirements of a local financial services regulator. That would also be supported by the compliance principle under the Code.

Obtaining input from other professionals or specialists

- 4.28 Members cannot work in isolation and so should be ready to take advice from other professionals (both actuaries and non-actuaries) and/or experts who may have particular expertise in an area which might be required for a piece of work, and which the Member might not be qualified to advise on. Members should consider whether taking advice is necessary and appropriate; good practice probably entails taking advice when in doubt about this.
- 4.29 In such circumstances, Members might use their actuarial skills to instruct such professionals, either to advise the Member directly or to commission supplementary work that is needed by the ultimate user. In such circumstances, Members should take care to ensure that the instructions so issued are consistent with the needs of the ultimate user of the advice.
- 4.30 Users should be made aware when input has been obtained from other professionals and/or experts, including when advice has been received from external actuaries and has been summarised by the member for the benefit of the user.

5. PRINCIPLE 3 – IMPARTIALITY

The general principle of impartiality

- 5.1 Principle 3 of the Code provides that:

“Members must ensure that their professional judgement is not compromised, and cannot reasonably be seen to be compromised, by bias, conflict of interest, or the undue influence of others.”

- 5.2 Impartiality can be described as the principle that decisions should be based on objective criteria, rather than on the basis of bias, prejudice, or preferring to benefit one person over another for improper reasons.
- 5.3 A Member exercising professional judgement will need to do so, and be seen to do so, in a way which is free from bias (actual or perceived) and that ensures they are able to give advice which is independent of any personal interests or feelings.
- 5.4 From time to time, Members may be exposed to situations that risk impairing their objectivity. If the circumstances of an instruction, relationship with a user and/or other factors increase the risk of compromising the impartiality of a Member’s professional judgement over the course of a piece of work, then the Member may be better not to accept the instruction. If, having accepted an instruction, a Member identifies circumstances that compromise, or are seen to compromise, their professional judgement, the Member will need to desist from acting; this may involve explaining the situation to the user and helping them make alternative arrangements.
- 5.5 When thinking about impartiality, a Member should ask themselves whether there is any conflict between the advice which they are giving, or decisions which they are making, and their own personal interests. A good test is to imagine a fair-minded and informed observer:

would this person have any reason to suspect that your impartiality might be compromised?⁵ If so, you should take action to rectify this.

- 5.6 Threats to a Member's impartiality might include being asked to act in a way that contravenes a Member's duties under the Code, other professional requirements or even the law. Members directly employed by an organisation might face particular pressures to carry out work in a way that is favourable to the commercial interests of that organisation and will need to be careful to avoid misleading regulators, boards or other users.
- 5.7 When considering the potential for bias, Members need be aware that there are many forms of bias, including ethical and technical bias. Some examples of bias might include situations where a technical methodology is selected because the Member is familiar with it, even if others are more appropriate (that is not to say that using a technique that can be applied quickly is necessarily wrong; rather that Members need to be clear about the justification for their chosen approach) or where a Member is reluctant to challenge the work of a colleague who is also friend, even though such a challenge would be appropriate.
- 5.8 Members can mitigate the risk of acting in a way which is biased by being aware of the potential for bias and taking this into account when making decisions or providing advice to ensure they are acting impartially.
- 5.9 A further threat to impartiality Members ought to be aware of is the potential influence of 'Group Think' in their decision-making. Group Think is defined as "*the tendency for one's own judgement to be influenced by the apparent consensus view of assumptions, methods, processes or approaches leading to a reduction in the variety of ideas in the market*".⁶
- 5.10 One of the dangers of Group Think is that it has the potential to result in poor conduct or systematic business failures brought on by working environments in which perspectives are not challenged and people act in the same way as others do without sufficient justification.
- 5.11 Members can address this risk by being aware of their propensity to participate in Group Think in the first place and by being prepared to challenge or speak up where processes or approaches are not appropriate for the work being carried out. When making decisions in relation to a piece of work, Members may wish to ask themselves whether, in following the crowd, they are doing so because it is easier (or they are reluctant to challenge the status quo) or because it is appropriate to the work.

5 This is the test for bias as set out by Lord Hope in *Porter v Magill* [2002] 2 AC 357, which states that: "The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the [Tribunal] was biased".

6 This is the definition of "Group Think" as set out in the review by the Joint Forum on Actuarial Regulation' on Group Think - <https://www.actuaries.org.uk/documents/jfar-review-group-think>

The Review includes guidance for individual actuaries on how to address Group Think.

Conflicts of interest

- 5.12 One of the most common threats to professional impartiality arises from conflicts of interest. The amplifications of principle 3 of the Code are, therefore, predominantly, but not solely, concerned with conflicts of interest.
- 5.13 Conflicts of interest for Members can arise in many different situations. Perhaps most obviously, the Member – or their friends or family, or employer – may have a financial interest in the outcome of a transaction that will be influenced by advice being given by the Member. There might also be situations in which the Member has two separate clients whose interests come into conflict. The Member might then be tempted to act in the interest of one client, where this works against the interest of the other client. A particularly difficult type of conflict arises where a client's interest is in conflict with the public interest.
- 5.14 In situations where a conflict of interest is identified, Members are encouraged to document the reasoning for their decision to either continue or desist from acting, including any steps that they have taken to reconcile the conflict. Being able to explain and justify the approach they have taken in reaching their decision will assist the Member when being called upon to do so, for example in response to a request from a user or a regulator.
- 5.15 This section provides guidance for Members on conflicts of interest: how they are to be defined, how to spot them, and what should be done about them. It also provides guidance on what can be classed as an 'unreconciled conflict of interest' and how such conflicts can be 'reconciled'.
- 5.16 Throughout a Member's working life, the difficult issue of conflicts of interest will arise. Some conflicts are easy to recognise and resolve; others are much harder and it can be difficult to know what to do. You may be worried about whether you have properly identified the relevant issues, anxious that raising concerns about conflicts may affect your relationships at work or with your clients, or wonder whether you or your firm have adequate safeguards in place to manage conflicts of interest effectively.
- 5.17 This section is intended to help you if you experience such concerns. It contains information on:
- i. what is required of a Member;
 - ii. identifying conflicts of interest: practical considerations and questions;
 - iii. the relevant law and your duties of confidentiality and disclosure;
 - iv. managing conflicts between your different clients (referred to as "client conflicts"); and
 - v. managing conflicts between you (or your employer) and your client (referred to as "professional conflicts"). This includes any personal conflict which may arise from other appointments or from your personal life, including, but not limited to, personal financial interests.
- 5.18 Some questions for Members working in different areas of work are included in Appendices C to E to help them assess and handle conflicts of interest confidently and constructively.

- 5.19 Conflicts of interest are very often not simply black and white. This means that handling conflicts involves professional judgement. Consequently, if at any stage you are unsure of whether to raise a concern, the IFoA encourages you to seek guidance from appropriate sources. This section, therefore, also sets out where you can go for advice on handling conflicts (pages []).

What is required of a Member?

- 5.20 The Code further states: “Members must take reasonable steps to ensure that they are aware of any relevant interests that might create a conflict”, and that they “must not act where there is an unreconciled conflict of interest”.
- 5.21 These provisions of the Code set the context in which you should approach all questions concerning actual or potential conflicts of interest and are the yardstick by which, in the event of a complaint, your actions will be judged.
- 5.22 Members should also be aware of the practice-specific conflicts of interest provisions in the Actuarial Profession Standards: APS P1 Duties and Responsibilities of Members Undertaking Work in Relation To Pension Schemes (“APS P1”) and APS L1: Duties and Responsibilities of Life Assurance Actuaries (“APS L1”).⁷
- 5.23 APS P1 imposes specific requirements on Scheme Actuaries and others involved in pensions work in relation to the production of a conflict management plan, and of the specific restriction on the types of advice which may be provided to trustees and employers.
- 5.24 Section 7 of APS L1 imposes specific requirements on those working in life assurance. With-Profits Actuaries and Actuarial Function Holders should also be aware of the rules on conflicts of interest in SUP 4.3 of the FCA Handbook.

Identifying conflicts of interest: practical considerations and questions

- 5.25 A conflict of interest arises if a Member’s duty to act in the best interests of a user conflicts with:
- a) the Member’s own interests (including those of their close family); or
 - b) an interest of the Member’s firm; or
 - c) the interests of other users.
- 5.26 Ensuring that conflicts are (a) understood; (b) easily identified; and (c) reconciled or eliminated, is the key to avoiding serious problems.
- 5.27 You may wish to consider taking a phased approach to the identification of conflicts of interest as follows:
- **identify** your interests in the particular scenario – who do you work for, who are your clients, do you have a personal interest in the matter?;

⁷ For both standards, please see: <http://www.actuaries.org.uk/regulation/pages/professional-standards-directory>

- **assess** whether your personal or professional interests create a conflict which might make it hard for you to continue to act without compromising your objectivity; and
- **evaluate** whether your interest is so remote or generic that it will not interfere with your ability to act impartially or be seen to be acting impartially.

5.28 Put differently, if you consider that you are not in a position to act without inhibition (or reasonably perceived inhibition) in the best interests of each of your user(s), you will have a conflict. This means, of course, that, unless you are able to agree action to reconcile that conflict, you will be unable to proceed with the associated appointment or work.

5.29 Before accepting any assignment, a Member may wish to consider carefully whether they should consult with any Member who previously held such a position with the client, to establish whether there might be any professional reason why the assignment should be declined.

What are some examples of conflicts of interest?

5.30 Whether a conflict exists in any given situation will, of course, depend on the specific circumstances, which might vary significantly between practice areas. You will need to take account of those specific circumstances, as well as any established practice norms, in deciding whether a conflict exists. So, if you find yourself in a situation similar to that in one of the examples in the following table at pages [], you will need to consider the specific circumstances to assess whether a conflict actually exists or not.

5.31 The table sets out some practical examples of conflicts of interest that you might face, depending on your area of practice. This list is not exhaustive: new and unforeseen conflicts may develop as financial products become more complex, embracing more providers and options, or as greater or different economic pressures arise. However, it might give you some initial guidance as to whether or not you are facing a conflict of interest.

Area	Example	Example of Source of Conflict
Applicable to all Members	Client versus client or client versus former client	<ul style="list-style-type: none"> • Duty owed to one client may impact on duty to another. • Confidential information gained from one client may benefit another client. • Knowledge gained from former, or existing, client may be of advantage to another client.
	Personal or professional values conflict with client objectives	<ul style="list-style-type: none"> • The course of action proposed by the client is at odds with the values of the Member or his/her obligations to the IFoA, or his/her employer.
	Personal or family interest	<ul style="list-style-type: none"> • The Member's advice could personally affect the Member or his/her family, financially or otherwise, for example, where the With-Profits Actuary is also

Area	Example	Example of Source of Conflict
		a policyholder.
	Conflict between the best interests of a client and the interests of the Member's firm	<ul style="list-style-type: none"> Advice given by a Member to a client may be sound but unpalatable to the client and risk jeopardising the relationship between the client and the firm in other areas. A Member's advice may bring in more fee income for the Member's firm but be of questionable value to the client.
Life⁸	Conflict between interests of policyholders and commercial interests of life office employing the Member	<ul style="list-style-type: none"> This is likely to be most acute in advising on management of with-profits business; for example, the level of investment risk taken in the fund and the use of the fund's assets to support business development.
	Conflict between solvency of life office and immediate management objectives	<ul style="list-style-type: none"> A Member's duty to advise on risks to the long-term solvency of a firm may conflict with shorter-term commercial objectives; for example, to maintain dividends or to write new business.
Pensions⁹	Direct conflicts as adviser to trustees and adviser to company	<ul style="list-style-type: none"> Trustee interests are likely to be in increasing prudence and funding. Companies will often be interested in reducing prudence or reducing funding. When advising on whether or not to call for an actuarial valuation in response to a material change in circumstances. When advising on appropriate actuarial factors such as commutation or early-retirement factors.
	Conflicts arising due to client being conflicted	<ul style="list-style-type: none"> A finance director who is also a trustee (or a chair of trustees who reports it to the finance director) might ask for the Scheme Actuary's advice to the trustees to be favourable to the company. The trustees do not want to be "difficult" and upset the company.
	Direct conflicts between two connected or unconnected clients	<ul style="list-style-type: none"> The Member is acting for two entirely separate clients who (possibly confidentially) become involved in a corporate transaction (either between each other or in connection with a third party).

⁸ Life actuaries' attention is particularly drawn to APS L1 "Duties and Responsibilities of Life Assurance Actuaries".

⁹ Pensions actuaries' attention is particularly drawn to APS P1 Duties and Responsibilities of Members Undertaking Work In Relation To Pension Schemes.

Area	Example	Example of Source of Conflict
		<ul style="list-style-type: none"> The Member is a Scheme Actuary for more than one pension scheme of the same employer and there is a proposal to merge the pension schemes or the pension schemes are "competing" for limited funds from the employer (particularly difficult if the employer covenant becomes weak).
	Conflicts of interest with own employer	<ul style="list-style-type: none"> Scheme Actuary is directly employed by the company sponsoring the pension scheme. Member advising own employer gives advice potentially benefitting his/her part of the business.
General Insurance	Conflict between commercial and professional interests	<ul style="list-style-type: none"> General insurance Member is under pressure from management to hold down reserves.
	Conflict arising from being a policyholder	<ul style="list-style-type: none"> Pricing actuary is a policyholder of the insurance company for which he/she works.
	Conflict between providing accurate reserve calculations and personal gains	<ul style="list-style-type: none"> Methodology and assumptions on reserve calculations will affect profit and business value, which may in turn affect bonuses and long-term incentives.

Identifying a conflict: policies and procedures

5.32	<p>You might also derive some assistance from the organisation you work for in identifying a conflict. Organisations are encouraged to have processes to identify any potential or actual conflicts of interest, both at the start of an instruction and during the course of carrying out the work. Such processes, especially for consultancy work, could include the following:</p> <ul style="list-style-type: none"> Conflict checks could be carried out, perhaps using a live client engagement database: It is good practice to carry out a conflict check before accepting a piece of work, and on an ongoing basis while the work is being undertaken. If this is combined with the maintenance of a database of ongoing client engagements, the conflict-checking procedures can include a check as to whether or not each potential new engagement conflicts with any other ongoing client engagements. A conflicts register could be maintained: It is recommended that actual and potential conflicts are logged and that all correspondence and decisions regarding the matter are recorded.
5.33	<p>The above may be particularly helpful in consultancy but the general principles will still be relevant if your client is your employer, although how best to apply them will depend on the nature of the work.</p>
5.34	<p>In determining whether a conflict of interest exists, it may be important to take account of the purpose of the proposed work. This may include considering the interests of the various parties, in addition to those of your client - for example, policyholders, shareholders, or</p>

members of a pension scheme - and will require the exercise of professional judgement according to the circumstances.

Example: You are a With-Profits Actuary. Your client is the life insurance company and your advice relates to how it may exercise discretion in managing the with-profits business, considering in particular the fair treatment of policyholders.

Ensuring that the management actions take appropriate account of policyholders' interests may conflict with the immediate commercial interests of the company but commercial considerations clearly must not influence your advice.

Your assessment of whether or not you have a conflict of interest may therefore depend on the extent to which, in addition to your responsibilities as a With-Profits Actuary, you have a direct responsibility to further those commercial interests.

This conflict would be exacerbated if the With-Profits Actuary's remuneration was linked to e.g. the profitability of the life insurance company.

Questions to help me identify and manage a conflict

5.35 Provided below and in Appendices C to E are some examples of questions that you might ask yourself if you are seeking to establish either:

- whether there are any conflicts of interest in your work, so that you can then seek to determine what action you need to take, if any, in order to reconcile or eliminate those conflicts; or
- what protection is in place to reconcile or eliminate those conflicts, so that, if necessary, additional protection mechanisms can be put in place.

5.36 In this context, "reconcile" means averting through careful management while "eliminate" means withdrawing from one or both of the client engagements.

5.37 These are not exhaustive lists, nor are they all relevant to all situations.

- i. What advice might be sought by one client that might be detrimental to the other client?
- ii. What information might I receive from one client that, if disclosed to the other client, could be helpful to that client in that it might cause or enable them to take some action?
- iii. Have I made appropriate disclosure of relevant potential or actual conflicts to all relevant parties?
- iv. How significant, commercially (or otherwise), to my firm (or me) is each client relationship?
- v. Do any of my different roles within the firm give rise to conflicts?
- vi. Are there appropriate peer review or similar procedures in place that help me to ensure that my professional obligations are not compromised owing to potential conflicts arising from commercial or other pressures (as referred to elsewhere in this guide)?
- vii. Is my remuneration linked to the results of my work and, if so, is it linked in a way which might reasonably give rise to an actual or a perceived conflict of interest?

- viii. Have I been put under pressure to produce a certain outcome and, if so, how have I ensured that such pressure has not had undue influence?
- ix. Is there a trusted individual to whom I can talk about conflicts of interest that might arise in my work?

The “tabloid” test

- 5.38 Whilst acknowledging conflicts vary substantially due to the different facts and circumstances you may face, one question that you might like to ask yourself when considering whether or not you are facing a conflict of interest situation is: how would this look if it was reported on the front page of a national newspaper?

Relevant law and duties relating to conflicts of interest, applicable to all Members

- 5.39 Two important legal issues that may arise in the context of conflicts of interest are the professional duties of confidentiality and disclosure that you, like other professionals, owe to your client.¹⁰ They are considered in turn below, and Section 4 sets out how they may be managed.

Who is my client?

- 5.40 One of the most important questions you will need to ask before you assess whether you owe duties of confidentiality or disclosure is, “who is my client”?
- 5.41 Your client can be either (a) an existing, (b) a former, or (c) a potential client. Before taking on any new client, you need to consider whether your duty of confidentiality to your existing and former clients would give rise to a conflict of interest in doing so.
- 5.42 For some Members working in-house (e.g. for insurers or pension scheme sponsors), their “client” for these purposes may be, or include, their employer or former employer.
- 5.43 If you are working for a consulting firm, you should be particularly aware of the requirement in paragraph 3.1 of the Code to take reasonable steps to ensure that you are aware of any relevant interests that might create a conflict. This might include matters such as the income of the organisation and its corporate structure.
- 5.44 Members should take reasonable steps to ascertain whether their firm might be acting for two clients with conflicting interests. This may involve sending out a ‘conflict check’ email to staff in your firm and/or to its conflict committee and/or a search of your conflicts database. The requirement is for reasonable and proportionate checks to be undertaken, as appropriate in the circumstances.
- 5.45 For members working for a large, global multi-discipline firm, it will not always be possible to be aware of all of the relevant interests that might create a conflict. In these circumstances, taking “reasonable steps” to ensure that you are aware of any relevant interests will include

¹⁰ Those other duties include duties of loyalty, trust and not to profit from your position at your clients’ expense.

ensuring that you adhere to any internal processes for identifying conflicts, for example checking any client engagement databases or conflict registers that exist within the organisation, as set out above.

- 5.46 Additionally, there can be circumstances in which within one legal entity there are two separate bodies with divergent interests (for example, a finance committee and a remuneration committee), or one body with two different responsibilities (for example, the sponsoring employer of a pension scheme might also be the trustee or manager of that scheme). In such circumstances, you may have to think hard about whether you should consider yourself to have one client or two, with a “two clients” scenario carrying the potential for conflicts which would need to be handled in accordance with the Code (supported by this guidance).

Confidentiality

- 5.47 The duty of confidentiality is discussed in detail in sections 3 and 7 of this Guide. Confidentiality means that you should keep the affairs of your clients and former clients confidential, except where disclosure is permitted or required by law, or is otherwise permitted by those clients.
- 5.48 Section 7 of this Guide provides information about the range of circumstances in which the disclosure of information, which would otherwise be confidential, is permitted.
- 5.49 You should ensure that, other than in those limited circumstances where disclosure is permitted, information which is confidential to your client remains protected at all times. This obligation continues after the termination of any agreement/client relationship.
- 5.50 With regard to conflicts of interest, the courts have held¹¹ that in the context of a new engagement that is proposed for another client, “confidential information” is information which:
- is private or sensitive in nature;
 - was originally communicated in confidence i.e.:
 - was not already lawfully in the public domain or readily available from another public source; and
 - has been shared in circumstances where the person giving the information could reasonably expect that it would not be shared with others;
 - at the date of the proposed new engagement is still confidential; and
 - is relevant to the subject matter of the proposed new engagement.

¹¹ In *Re a Firm of Solicitors* [1997] Ch1.

Duty to disclose relevant information to your client

- 5.51 There are at least two duties of disclosure which may arise in this context. The first is the primary duty to disclose to your client information which is relevant to their interests. The second, which is addressed in further detail at Section 4 below, is the duty to disclose the existence of a conflict, in the event that one arises.
- 5.52 You have a duty to disclose all information relevant to the matter in which you are engaged with your client because you have a duty to act in the best interests of your client. Your duty is limited to information of which you are aware or ought reasonably to be aware, but is not limited to information obtained while acting on your client's matter.
- 5.53 As to what is relevant "information", this is information which is relevant to the specific matter in which you are engaged with your client, rather than information which might be of general interest to your client. You need, therefore, to assess the possible impact of the disclosure on your client. If you think the information might reasonably affect your client's decision on the engagement, then it is likely to be "relevant information".
- 5.54 This is the general position but there may be circumstances in which disclosure to your client is prohibited by law; for example, the Proceeds of Crime Act 2002 prevents you tipping off your client about an investigation of suspected money laundering.

Relationship between the duties of confidentiality and disclosure

- 5.55 Your duty of confidentiality to one client may, in some circumstances, conflict with your duty of disclosure to another and you will then be in a position where you cannot satisfy both duties. In general, you should not breach the duty of confidentiality, but this will mean that you are unable to act for one or both clients, unless the conflict can be appropriately reconciled. One way of managing such a conflict may, if appropriate in the circumstances, be to ensure that engagement terms make it clear that you will keep your client's information confidential from other clients and your client accepts that he/she will not have other clients' information disclosed to him/her.
- 5.56 In summary, you should:
- keep your clients' affairs confidential, unless disclosure is permitted or required by law;
 - disclose all relevant information to your client, regardless of the source of that information, unless there is a conflicting duty of confidentiality; and
 - identify and disclose any conflict of interests which arises and either reconcile it, if this is possible and appropriate, or cease to act for one or both clients.

Managing client conflicts

5.57 The Code refers to the fact that you may in certain circumstances continue to act, despite a conflict, if that conflict can be “reconciled”. “Reconciliation” should be understood to mean carefully managing the conflict such that, within the scope of your engagement, the conflict is averted, so that it can have (and it is seen that it can have) no adverse effect on the work for your client(s). This is likely to mean, as a minimum, defining very clearly your role and any limitation on the extent and type of advice which you can provide.

Case study: You are the Scheme Actuary to Scheme Merlin and have also been advising (an unrelated company), Pendragon Co. on the pensions aspects of various proposed corporate transactions. Pendragon Co. decides to investigate the possibility of acquiring the sponsor of Scheme Merlin, thereby creating a conflict of interest between your two clients.

Depending upon the circumstances, it might be possible to reconcile the conflict by restricting your advisory role for Pendragon Co. so that it does not include advice relating to the acquisition of Scheme Merlin or by passing this advisory role (at least for the time being) to a colleague in your firm.

However, in other circumstances this might not be sufficient to reconcile the conflict and you (and perhaps also your firm) may need to resign permanently at least one of the appointments in accordance with paragraph 3.2 of the Code: normally this would be the appointment to Pendragon Co.

5.58 In this section, the IFoA sets out some good practice recommendations for Members in managing client conflicts of interest. These are not intended to be exhaustive.

5.59 It should be noted that, although the principles still apply to very small firms and sole practitioners, the implementation of the guidance below will need to reflect the scale of the organisation. For such smaller firms, where some of the outlined systems and procedures are not practicable, external peer review may be the best tool to manage conflicts in order to ensure transparency and the objectivity of your work.

5.60 Effective conflict management requires:

- appropriate systems and procedures;
- their correct implementation in individual cases; and
- the right attitude: you have to want to be aware of and want to manage conflicts.

Processes and procedures

5.61 (Where appropriate) you and the recipients of your advice, should be aware of the processes to be followed when an actual or potential conflict of interest arises. As a minimum, this should help the parties to decide whether they are satisfied with your proposals for addressing conflicts. Additionally, conflicts arrangements may need to address some or all of the following, taking into account any established market norms for handling such conflicts:

Client engagement letter

- 5.62 It is good practice to highlight in a client engagement letter or employment contract any actual or potential conflicts of interest that may exist at the start of that relationship and to outline the process to be followed if a new one arises.

Agree a handling plan

- 5.63 In some situations, it is useful to agree a handling plan (approved at the appropriate level) that sets out what conflicts might exist and how they should be managed. It can be easier to deal with the conflict if this has been done before the conflict arises.
- 5.64 This document might:
- be provided to your client at the start of the engagement;
 - be appropriate to the size and complexity of your firm and the nature of the work undertaken by you or your firm;
 - explain the extent to which information will remain confidential to your client;
 - encourage effective communication between you and your client;
 - set out effective systems and controls to ensure you are able to identify and assess potential and actual conflicts of interest;
 - set out the steps that you will take if you believe you can continue to act for a client on the basis that you reasonably believe the conflict of interest can be reconciled; and
 - set out the steps you will take if you cannot continue to act for a client because of a conflict of interest.
- 5.65 If you are a pensions actuary, you should also be aware of your obligations under sections 5 and 6 of APS P1, which require you to have a conflicts management plan in most circumstances where the same firm is advising both the trustees and employer in relation to a scheme. Note the requirements of paragraph 6.8 if you are acting for a local government scheme, which can have many different and varied interests where there will be a potential for various types of conflict of interest to arise.
- 5.66 Additionally, for plans involving your firm acting for both the trustees and the employer, paragraph 5.6.5 of APS P1, in conjunction with principle 5.4 of the Code, requires you (where you are the Scheme Actuary) to be reasonably satisfied that the trustees, in agreeing to the plan, are appropriately informed as to its implications and that they have, as a minimum, considered taking independent legal advice. To meet this requirement, it would normally be sufficient for you to advise the trustees to consider taking independent legal advice. It would not normally be necessary for you to check that the trustees had in fact done so, although you should not, of course, ignore information which comes to your attention which suggests that the trustees are not appropriately informed.
- 5.67 If it came to your attention that the trustees had in some way not approached the matter appropriately, this might, in those specific circumstances, mean that you should do something further under the provisions of paragraph 4.3 of APS P1.

Separation of teams

- 5.68 Where an organisation has engagements with two clients with competing interests, it may be possible to reconcile a conflict by ensuring that the parties are advised by different client teams within the organisation. In some cases, the more mechanical work might still be undertaken for both clients by a common team (this is what is sometimes referred to as the “Y model”).
- 5.69 In pensions work, it will be important to consider whether the role of those in the common team means that any or all of them are subject to the specific restrictions and requirements set out in sections 5 and 6 of APS P1. In particular, it would normally be appropriate for Members of a common team to be included within a conflicts management plan, and in the case of advice on behalf of one firm to both the trustees and employer this is an explicit requirement of 5.6 of APS P1. In general, the “Y model” should be used with care, and it may not be an appropriate means of managing a conflict.

Information barriers

- 5.70 One option for managing conflicts of interest internally is to establish and maintain arrangements which restrict the flow of sensitive information within the organisation i.e. an “information barrier”. Information barriers are administrative, electronic and/or physical barriers to ensure that information used by one part of the organisation is withheld from, or not used by, other parts of the organisation.
- 5.71 Information barriers have been the subject of significant debate in the courts over the last decade or so. Where they are used, firms need, for example, to consider and manage the risk of information passing inadvertently through support or other staff.
- 5.72 Case law is helpful in highlighting factors which may tend to point for or against the effectiveness of information barriers.¹² It emphasises the need for conflicts management procedures to be more than just written documents and for firms to ensure that they work in practice. There are warnings against the frequent turnover of junior personnel between teams and the sharing of information with many people. However, each case should be considered in light of its specific circumstances.

¹² See, for example, *Bolkiah v KPMG* [1999] 2 WLR 215: A transaction-specific information barrier was held not to be effective. There must be an “institutional” information barrier which is an established part of the firm’s organisational structure. The Court noted that the two teams were from the same department and that there was a steady turnover of junior personnel. Firms may need to consider whether to put procedures in place to ensure that there is no turnover in the relevant teams until the conclusion of the litigation.

Young v Robson Rhodes, [1999] 3 All ER 524: An ad hoc information barrier was held to be permissible. Nonetheless, a well-established barrier will carry more weight and it is necessary to show that such a barrier is actually effective. The key question is whether the barrier will actually work.

Marks & Spencer plc v Freshfields [2004] 3 All ER 773: The Court noted the importance of perception - an information barrier must be seen to work. It was held that the barrier did not work due to the very large number of people who had the relevant information. The Court was not confident that adequate arrangements had been implemented to protect confidential information.

Halewood International v Addleshaw Booth & Co, Unreported 5 November 1999: The Court insisted on physical separation between those who hold the information and those to whom it may be relevant.

Case Study: You are a consulting actuary advising your client, Oliver, on his evaluation of a company which he is considering purchasing, Artful Dodger Co. This is your first assignment for Oliver.

You are then approached by another client, Fagin, whom you have advised on several previous occasions on similar transactions. Fagin wants you to act for him in relation to his evaluation of Artful Dodger Co. How you respond to Fagin should be influenced by several factors, including:

- your duty of confidentiality to Oliver (since it may well be inappropriate to disclose to Fagin that you are working for Oliver, even if only anonymously, in relation to Artful Dodger Co.);
- the ability of your firm to establish appropriate information barriers so that your firm can potentially act for both Oliver and Fagin in relation to Artful Dodger Co.; and
- the terms of your engagement with Oliver.

Navigating this sort of situation, including determining whether it is appropriate for your firm to offer to act for both Oliver and Fagin, even with completely separate teams, may be best achieved through the use of a conflicts tracking team or database, or through a colleague who is not involved with the work of your firm for Oliver or Fagin.

Peer review

5.73 Peer review may be an appropriate component of a conflict management policy. It may, particularly if external, be considered good practice in ensuring the transparency and objectivity of your work.

5.74 Where your work for one client might be seen as potentially creating a conflict with work for another of your clients or for your firm, peer review of that work can form part of the process for checking that any conflicts have been appropriately managed.

5.75 However, for this to be effective, the peer reviewer should be sufficiently independent; depending on the circumstances, this might require the reviewer to be from a different firm. Consider the following example:

Example: The trustees of the Bennet Pension Fund were encouraged by Bennet Corporation to appoint Elizabeth as their Scheme Actuary. Elizabeth's employer, Darcy & Co, had just been awarded a large contract covering a variety of services to Bennet Corporation.

The trustees discussed this with Elizabeth, and they were both concerned that her ability to provide objective advice to the trustees could be seen to be compromised by the commercial relationship between Darcy & Co and Bennet Corporation. In the end, the trustees decided to appoint a Scheme Actuary from another firm.

However, if Elizabeth had already been the Scheme Actuary, an alternative way forward *might* have been for Elizabeth to continue in that role but with her significant trustee advice being subject to external peer review.

5.76 In pensions work, note that a peer reviewer would normally be expected to be covered by a conflicts management plan agreed under paragraph 5.6 of APS P1. He/she would also be likely to be subject to the specific restriction imposed by paragraph 6.5 of APS P1 on the extent of any advice which he/she might provide to the employer.

Remuneration

5.77 Organisations should not incentivise employees in a way that might be seen to encourage them to provide anything other than the most suitable and appropriate advice for the client.

Conflicts committees

5.78 It is good practice to establish a conflicts committee, or to appoint an individual, to deal with any issues arising from actual or potential conflicts of interest. Such a committee or individual may be tasked with:

- overseeing conflicts of interest policies and handling plans;
- arranging appropriate training;
- monitoring high-risk conflict situations;
- monitoring the effectiveness of procedures for managing clients' confidential information; and
- providing guidance where necessary.

Training

5.79 Regular training for employees ensures that they are aware of their duties of confidentiality and of disclosure and are able to identify and manage conflicts of interest.

Ceasing to act

5.80 Where there is a conflict of interest, either actual or potential, you or your colleagues within an organisation should consider whether it is appropriate to continue to act for the client(s) involved and should, in any event, resign the appointment(s) if the conflict cannot be resolved to the client's or clients' satisfaction in accordance with the requirements at section 3.2 of the Code.

Handling conflict situations after they have arisen

5.81 If you intend to act for two or more clients with related interests, then any potential or actual conflict of interest should, where appropriate to do so, be disclosed to each of your clients as soon as possible.

5.82 Where you determine that there is an actual or potential conflict of interest, some of the steps you should consider are set out below:

Explaining

5.83 The relevant issues and risks to your client should be explained such that you form a reasonable belief that your client understands them.

Assessing what is in your client's best interests

- 5.84 You should normally only proceed with the instruction if to do so would not contravene any regulatory or legal requirements, if you believe it is in your client's best interests to do so and if the benefits to your client of your continuing to act outweigh any risk, perceived or real, continuing to act while there is a potential conflict of interest.

Recognising confidentiality agreements

- 5.85 Where confidentiality agreements are in place, you should respect them and consider carefully if you need to withdraw from an engagement if you cannot reconcile the actual or potential conflict of interest.

Reconciling a conflict

- 5.86 Before putting in place an appropriate conflicts management plan, you need to consider and be satisfied whether a conflict is indeed reconcilable. In doing so, you should consider in particular principle 3 of the Code.
- 5.87 Pensions actuaries' attention is also drawn to the presumption at paragraphs 5.3 and 5.4 (Scheme Actuaries) and 6.5 and 6.6 (other pensions actuaries) of APS P1. A conflict to which these provisions apply is presumed to be irreconcilable. This presumption (that such circumstances will give rise to an irreconcilable conflict of interest) may be departed from only in exceptional circumstances. The same principles have been extended also to apply to Members advising other (including public sector¹³) pension schemes, unless they can be considered not to be relevant to the particular situation.

Agreeing an appropriate plan

- 5.88 If, having considered the Code and if appropriate, APS P1 or APS L1, you conclude that a (potential) conflict of interest can reasonably be reconciled, this should normally be effected through a conflicts management plan, as agreed with all parties.
- 5.89 The conflicts management plan should disclose any steps that a Member has taken, or proposes to take, to reconcile any actual or reasonably foreseeable conflict of interest.

Managing professional conflicts

- 5.90 Many of the points outlined above in relation to client conflicts of interest apply equally to conflicts between you (as an individual or as the organisation that employs you) and a client – your 'client' here being the person to whom your work is directed, which for much actuarial work would be your employer. In these situations, one of the best ways of handling and avoiding conflicts of interest is to ensure that you can explicitly identify a conflict and consider how to remove or decrease the likelihood that a conflict will cause problems.
- 5.91 A conflict can arise in a number of situations, not only by reason of personal financial interest. It may involve other relationships or interests. It may be helpful for you to apply the

¹³ Paragraph 6.8 of APS P1.

test for bias as set out by Lord Hope in *Porter v Magill* [2002] 2 AC 357, which states that:

“The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the [Tribunal] was biased”.

- 5.92 Relevant considerations may include, in addition to direct financial interests, personal appointments or memberships or, in some circumstances, religious or ethical values or beliefs which make it difficult for you to act, and to be seen to act, in your client’s best interests.
- 5.93 Employed Members can face particular issues in a conflict between their professional judgement and the commercial objectives of their own organisation (which, for this purpose, may also be the “client”). Pressure might be experienced, directly or indirectly, from your supervisor, manager, director or another person within your own organisation. Such threats to your independence may include being asked to act in a way which contravenes the law, regulations or your duties under the Code, being asked to mislead regulators, auditors or accountants or preparing or being involved in preparing reports which misrepresent your organisation’s true financial position.
- 5.94 Conflicts of interest between your professional judgement and the commercial objectives of your own organisation may mean that your objectivity may be questioned. Therefore, whether acting as an employee or as a consultant, it is important that you:
- consider carefully and regularly whether there are any conflicts of interest in the work that you do; and
 - determine whether you are managing those conflicts appropriately.

Example: You are one of a few actuaries performing a wide range of tasks for a medium sized non-life insurance company, Neverland. For the first time this year, your role now includes providing input to the claims reserves, prior to determination of Neverland’s annual results.

While carrying out the underlying reserving work, you become aware that there is a direct conflict of interest due to the fact that, along with Neverland’s other employees, your end-of-year bonus is significantly dependent on Neverland’s performance.

This means that you are able to affect the level of your bonus through the sensitivity of the results to the assumptions that you select as part of the process to estimate the reserves. The declared profit is particularly sensitive to assumptions such as the loss ratio for the current accident year and the tail factor for a book of long-tail liability business.

To manage the conflict of interest, you might consider calling on independent external advice; for example, by using Hook & Smee, who are external consultants with appropriate expertise in the relevant area(s).

Alternatively, having discussed and disclosed the extent of the conflict of interest to Neverland’s senior management, you might decide that an external review is not necessary (at least not every year), because you are satisfied that the following existing procedures provide a reasonable level of conflict management:

- internal procedures within the actuarial team to ensure there is appropriate and documented sign-off (at different grades of staff) of methodology, key assumptions and

resulting reserve estimates;

- full documentation of your work, detailing for example the justification of key assumptions and the impact on results of changes in key assumptions;
- all work is done in accordance with relevant Technical Actuarial Standards; and
- reserving is included as part of the annual external audit and is also subject to occasional internal audit procedures (in fact, you decide to ask for this to be included in the internal audit plan this year).

5.95 But, having gone through this thought process, what can you do, in practice, to manage any professional conflicts that you identify? There are often no simple or perfect answers, or a solution that works in all cases, but the following are suggestions which might help you to manage and reconcile professional conflicts of interest:

Make use of peer review

5.96 Peer review (either internal or external) can help to ensure that your advice is sufficiently objective. This might relate to specific aspects of your work or specific points in time, or as a matter of routine.

5.97 In particular, if you are giving advice in a situation where you have duties to policyholders whose interests might conflict with those of your employer, you may wish to use an external peer reviewer to ensure that he or she is not subject to the same potential conflict as you.

5.98 Aside from formal peer review, the Member might have the benefit of independent investigations against which his or her own advice can be tested.

Example: Romeo, an Actuarial Function Holder in a life office will have the benefit of, and will want to pay particular attention to, challenge from and discussion with the Reviewing Actuary, Juliet, who advises the auditors. Romeo must, though, have regard to paragraph 9.1 of APS L1 and not rely on Juliet's checks or opinions.

Likewise, a With-Profits Actuary will have the benefit of review by, discussion with and challenge from a With-Profits Committee or other independent adviser, although not all such advisers have actuarial expertise.

Rotate responsibility

5.99 In some cases, it may be possible and appropriate to rotate responsibility across personnel for certain roles to help ensure continuing objectivity.

Consult others

5.100 Consult other Members of the IFoA or other professionals with regard to a particular conflict, to seek advice on how the conflict might be managed. This should, of course, be done without breaching any confidentiality obligations. The IFoA can offer useful assistance through its Professional Support Service.¹⁴

Introduce a gifts/hospitality policy

5.101 Employees should not knowingly receive gifts or hospitality which could lead to an actual or potential conflict of interest. Therefore, you might wish to consider introducing a gifts/hospitality policy with procedures to follow where gifts or hospitality are offered/accepted. The policy might set out:

- that the receipt of gifts/hospitality should be recorded;
- the consideration to be given to the timing of the gift and/or if it is related to any client-related projects being undertaken;
- that approval may need to be sought for higher value gifts; and
- the restrictions imposed by, and obligations you might have under, the *Bribery Act* 2010.

Example: You receive a gift from your client, Scrooge. You should ask yourself why the gift was being provided and the circumstances in which it was given; for example, was it:

- a regular Christmas gift provided to all of Scrooge's advisers? Or
- being given just before your firm was to sign off on an important piece of work?

As a general rule, you should always question the appropriateness of accepting gifts, having regard to all of the circumstances, the timing and nature of the gift and, in particular, the perception, in relation to your professional objectivity, to which acceptance might give rise.

What happens next?

5.102 If you have considered the questions above and determined that there is a conflict which cannot be reconciled to an acceptable level through the use of appropriate safeguards (for more on this, see paragraphs 5.59 to 5.78 above), then you should:

- not accept that specific engagement; or
- resign from one or more of the conflicting engagements.

5.103 Equally, if you have requested consent from your client to act or continue to act for another client where their interests are in conflict and that client has refused its consent, you will need to decline to act (or to cease to act) for one or both of the parties concerned. Failure to do so will mean that you are in breach of your obligations under paragraph 3.2 of the Code.

¹⁴ <http://www.actuaries.org.uk/regulation/pages/professional-support-service>

Sources of guidance and advice

5.104 The information contained in this section is intended as a useful starting point for you in considering your conflicts of interest obligations. The following organisations and bodies offer additional guidance which you may find of assistance.

Independent organisations

5.105 Financial Services Authority
020 7066 9200
www.fsa.gov.uk

The FSA has set out rules and guidance on managing conflicts of interest in firms providing services to your client in the course of carrying out, amongst other things, regulated activities, which can be found in the [FSA Handbook](#).¹⁵

5.106 The Pensions Regulator
0845 600 0707
customersupport@thepensionsregulator.gov.uk
www.thepensionsregulator.gov.uk

The Pensions Regulator (tPR) has issued guidance to trustees on conflicts of interest¹⁶ which you may find useful.

This guidance sets out the standards trustees are required to meet and the requirement for Members to challenge non-compliant behaviour and consider whistleblowing to the tPR if their concerns are not addressed.

The IFoA, with input from tPR, has also issued a Note for Pension Scheme Trustees¹⁷ on the conflicts of interest a Scheme Actuary may face.

TPR has also issued guidance to trustees on relations with their advisors¹⁸, including Scheme Actuaries, which also might be of relevance to pensions actuaries.

¹⁵ <http://fsahandbook.info/FSA/html/handbook/SYSC/10/1>

¹⁶ <http://www.thepensionsregulator.gov.uk/guidance/guidance-conflicts-of-interest.aspx>

¹⁷ http://www.actuaries.org.uk/regulation/pages/conflicts_of_interest

¹⁸ <http://www.thepensionsregulator.gov.uk/guidance/guidance-relations-with-advisers.aspx#s1683>

6. PRINCIPLE 4 – COMPLIANCE

6.1 Principle 4 of the Code provides that:

“Members must comply with all relevant legal, regulatory and professional requirements”.

- 6.2 This includes any rules governing matters in the practice area in which a Member is practising, for example, pensions or financial markets legislation, as well as standards imposed by regulators which regulate the Member or their work.
- 6.3 To be able to comply with their obligations under the ‘Compliance’ principle, Members need to be aware of, and understand, the relevant laws and regulations which apply to the work they are undertaking, and ensure that they keep abreast of any changes or developments to those laws and regulations.
- 6.4 It is important to bear in mind that the relevant legal, regulatory and professional requirements will not necessarily always be those that apply in the geographic location where the Member carries out their work, for example, where a Member works remotely but carries out work for an entity in another country. The IFoA’s Actuarial Profession Standard (APS) APS X1: Applying Standards to Actuarial Work¹⁹, sets out how to determine which standards are applicable to actuarial work. Guidance for Members to assist them in determining which standards to apply is contained in the accompanying guide which can be found on the IFoA’s website.²⁰
- 6.5 As stated earlier in this Guide, from time to time certain situations might arise in which the legal requirements with which a Member is obliged to comply, appear, on the face of it, to be at odds with one or more of the principles of the Code. Where such a situation arises, the Code makes it clear that legal requirements will take precedence and the Member will not be treated as having breached the provisions of the Code if they are complying with an obligation under an applicable law.

7. PRINCIPLE 5 – SPEAKING UP

The general duty to speak up

- 7.1 At some point in their careers, Members may be concerned about issues they see or hear during the course of their work, or by certain conduct by another Member that they notice outside of the workplace. Usually these concerns are easily resolved but sometimes they may not be. It can be difficult to know what to do. Members may be worried about raising such issues, anxious that doing so may be seen as disloyalty and put at risk relationships with colleagues, or even their job. They may want to keep the concerns to themselves, perhaps feeling that it’s none of their business, or only a suspicion, or that they will be seen as a ‘troublemaker’ if they raise them.

¹⁹ <https://www.actuaries.org.uk/documents/aps-x1-applying-standards-actuarial-work>

²⁰ <https://www.actuaries.org.uk/documents/applying-standards-guide-aps-x1-applying-standards-actuarial-work>

- 7.2 The IFoA recognises that the rules around speaking up are not always straightforward and that when a Member is faced with a situation that requires them to speak up in order to comply with the Code, they may not always know who to speak to or when to do it. The information in this section of the Guide has therefore been developed to help Members with what can be a complex and difficult area.
- 7.3 It is important that Members feel encouraged to raise and question any incidences of non-compliance, wrongdoing or risk of malpractice, as speaking up early can mean a problem being addressed before the damage is done, or a disaster being prevented. Ultimately, this better protects the reputation of any organisation and protects clients, customers and the wider public at large.
- 7.4 This section is intended to help all Members, including any Members who may find themselves experiencing problems when deciding whether to raise such a concern. It sets out:
- i. the expectations placed on a Member by their professional body, the IFoA, in respect of reporting suspected professional misconduct by a Member outside the workplace;
 - ii. the relevant law;
 - iii. some questions for Members to consider to help them ensure they can handle any such situations of concern confidently and constructively; and
 - iv. sources of further help and advice.
- 7.5 The information contained in this section is only an indicator of relevant considerations. The IFoA hopes that it will be a useful tool for Members if they find themselves in complex or difficult situations where they may be thinking about speaking up. If you are unsure at any stage whether to raise a concern, you may wish to seek advice from one of the sources listed later in this section.
- 7.6 This section is entitled 'Speaking Up'. In practice, the terms 'speaking up' and 'whistleblowing' are often used interchangeably. In this section, the term 'speaking up' is applied broadly and is used to describe any act of reporting or challenging others about illegal or unethical behaviour.
- 7.7 Speaking up can range from formal or informal reporting to a third party (whether clients, regulators or relevant authorities) about an issue uncovered in a Member's place of work, to challenging a colleague or user by addressing them directly when they appear to be behaving in a way they should not (whether intentionally or not). The term 'whistleblowing' is used in this section specifically to describe the act of reporting to a relevant regulator or other authority any wrongdoing, risk or malpractice that an individual becomes aware of through their work.
- 7.8 The information in this section is mainly aimed at Members but may also be helpful to those who employ Members, insofar as it identifies the professional expectations Members are under and what Members' expectations of their employers or clients in this matter may reasonably be. To help those who employ Members, especially those in smaller firms, the IFoA has also produced a parallel guide for employers, which includes a sample

whistleblowing policy. You may wish to refer, or refer your employer, to that guide, which is available on the IFoA's website.²¹

- 7.9 This section sets out the IFoA's view of good practice in relation to speaking up. It is not intended to be the only standard of good practice for Members and their employers to follow. Demonstrating that you followed the steps set out in this section will make it easier to account to the IFoA for your actions. This guidance in this section does not, however, constitute legal advice, nor does it necessarily provide a defence to allegations of misconduct.

What is required of a Member?

- 7.10 Principle 5 of the Code provides that:

"Members should speak up if they believe, or have reasonable cause to believe, that a course of action is unethical or is unlawful".

What is 'unethical' conduct?

- 7.11 Unethical conduct can be described as conduct that falls outside of what is considered morally right or proper for a person, a profession or an industry. Unethical behaviour can occur in the relationships between a Member and a user, in the way a Member goes about their day to day work, or how they conduct themselves in their private life.
- 7.12 While the principles of the Code are applied to Members universally, what is classed as unethical conduct will sometimes depend on particular cultural and geographical circumstances; what is considered unethical in one country or for one culture might not be considered to be unethical in another where commercial and other practices may differ.
- 7.13 Members are expected to use their reasonable judgement in determining what might constitute unethical conduct and whether that conduct should appropriately be reported to relevant regulators or other authorities.
- 7.14 When determining whether a course of conduct is unethical, Members may wish to ask themselves the following questions:
- does the conduct violate the basic principles of the Code? If so, this is an indication that it may be unethical;
 - does the conduct go against company policy or any ethical codes of the organisation by which I am employed?;
 - would a local regulator require this type of behaviour to be disclosed?;
 - is the conduct widely acceptable socially, commercially or professionally in the country in which I work? Some actions are wrong no matter where they take place;
 - what might happen if I don't report the conduct?;

²¹ <https://www.actuaries.org.uk/documents/whistleblowing-guide-employers-actuaries-feb-2015>

- will it damage my reputation, my organisation's reputation or the reputation of the profession as a whole in the eyes of the general public if it is not reported to the relevant regulators or other authorities? How would it look for example if it was reported in the media?; and/or
- what would a trusted colleague say if I asked them for advice? What advice would I give to them if the situation were reversed? If you think your own judgement might be clouded it can be helpful to try and reassess the situation from a more neutral perspective.

7.15 Where a Member is unsure whether the course of conduct they are concerned about would be classed as unethical, they are encouraged to seek advice from any ethics or professionalism committee which exists in their place of work, or to contact the IFoA's Professional Support Service (described further in section 9).

The amplifications: challenging and reporting

7.16 The 'speaking up' principle contains some specific requirements that are expected of Members in addition to their general obligation to speak up.

7.17 Amplification 5.1 provides that:

"Members should challenge others on their non-compliance with relevant legal, regulatory and professional requirements".

7.18 Actuaries, in common with other professionals, must be aware of, and ensure that they comply with, all applicable laws and regulations. This will usually include some legal requirements to report certain breaches of the law and/or regulations to the relevant authorities (including regulators).

7.19 Beyond this, however, they also have a duty to challenge any incidences of non-compliance by others. This extends not only to incidences of non-compliance by fellow Members but also to those by clients, employers and other professionals who may be found to be engaging in illegal conduct or breaching their professional requirements.

7.20 Amplification 5.2 provides that:

"Members must report to the Institute and Faculty of Actuaries, without delay, any matter which appears to constitute misconduct and/or a material breach of any relevant legal, regulatory or professional requirements by one of its Members."

7.21 Whether or not a breach is material will depend on the particular circumstances of each case. Members will be required to use their judgement in determining whether a breach is material or not. Relevant factors to consider might include:

- the cause of the breach (and whether it was it a genuine error, caused by carelessness or incompetence or a wilful breach of a rule);
- the extent of the breach and whether it can easily be rectified;
- whether the breach was disclosed at the earliest opportunity;

- whether the breach is likely to be repeated;
- the consequences of the breach (for example, has it resulted in any financial, reputational or other detriment to a user?); and
- the wider implications of the breach (for example, is the breach indicative of wider problems in the Member's work or judgement, is it likely to cause other Members to act in a similar way, or is it likely to bring the profession into disrepute in the eyes of the general public?).

- 7.22 If the breach was an isolated incident and was disclosed without delay and the Member considers that the breach has not resulted in any discernible adverse consequences, can be easily rectified and is unlikely to be repeated, then she/he may conclude that the breach was not material. Members should note, however, that in certain circumstances a series of immaterial breaches can have the effect of amounting to a material breach. Members should use their judgement in determining whether this is the case with reference to the factors set out in the list above.
- 7.23 In the majority of cases, Members will be expected to speak to the individual concerned and/or to another colleague before proceeding to report a breach to a regulator or to the IFoA. It is recognised, however, that there may be circumstances where it is appropriate to report without such a discussion such as where the circumstances make it difficult to raise it with the individual or with another manager (for example, raising an issue about the competence and care of your senior colleague in a very small firm where you are the only two actuaries and they are your line manager).
- 7.24 There may, exceptionally, be circumstances where you should not flag up the issue to the individual and, in some cases, to the organisation (for example, in cases of money laundering where this would constitute 'tipping off' or in situations where raising the issue is likely to lead to the destruction of evidence of a regulatory breach).
- 7.25 The IFoA will take a reasoned and proportionate approach to what it views as a delay in reporting. This will depend on the particular facts and circumstances of each case, including the nature and severity of the breach, as well as the reason for any delay in notifying the IFoA of the relevant issue. A delay in reporting an issue might be justified in order to comply with a legal obligation, for example (this might include situations in which a Member is prohibited from reporting an issue in order to comply with money laundering legislation and avoid "tipping off").
- 7.26 Where a Member delays in reporting an issue for whatever reason, they may be expected to provide justification for that delay.
- 7.27 In circumstances where a breach is discovered but a Member chooses not to report it because they do not consider it to be material, Members will need to be prepared to explain and justify the approach they have taken in reaching that conclusion, if reasonably called upon to do so. This may be in response to a request from a user or a regulator. Members are, therefore, encouraged to document the reasons for their overall approach, including whether they have sought any guidance or advice about whether to report, for example, from a solicitor or their organisation's professionalism committee.

- 7.28 In certain circumstances which are set out in the Rules of the IFoA's Disciplinary Scheme, Members may also be found guilty of Misconduct if they fail to take action when they become aware of certain kinds of conduct by a person with whom they are connected. There is no requirement that the connected person be a Member of the IFoA, only that the actions, if they were committed by a Member, would amount to misconduct.
- 7.29 Amplification 5.3 provides that:
- "In addition to complying with any legal requirements to report matters to relevant regulators or other authorities, Members should also report to those bodies any behaviour that they have reasonable cause to believe is unethical or unlawful, and carries significant risk of materially affecting outcomes."*
- 7.30 What this amplification means is that Members are expected to report unethical or unlawful behaviour to the relevant regulators or other authorities (for example, the police) where it is likely have a material effect on an outcome, even where there is no legal requirement to report.
- 7.31 For behaviour to carry significant risk of materially affecting outcomes, it should be behaviour that carries more than simply a remote possibility that the user might be impacted in some material way; it should be a real and identifiable risk which is more probable than simply possible.
- 7.32 Having reasonable cause to believe that something is unethical or unlawful means more than merely having a suspicion that cannot be substantiated. It must be rational and based on the knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person, knowing the same facts, to reasonably conclude the same thing.
- 7.33 Where a Member does not know the facts or events surrounding the conduct they are concerned about, it will usually be appropriate to check the relevant facts and obtain supporting material wherever possible before making a report. If the concern, however, is that a fraud or other serious crime has been committed, and discussion with any parties involved might alert those implicated or impede the actions of the police or a regulatory authority, then it will not be appropriate to check the facts with them.
- 7.34 Amplification 5.4 provides that:
- "Members must take reasonable steps to ensure users are aware of any substantial issues with a piece of work for which they are responsible or in which they have had significant involvement, if those issues might reasonably influence the decision-making or judgement of users".*
- 7.35 A 'substantial issue' with a piece of work is one where there is a real and identifiable risk of material adverse consequences for a user, or users, of a piece of work if the issue is not resolved.
- 7.36 Issues with a piece of work might not be limited to technical errors, but might also include unethical or unlawful matters, for example the wilful manipulation of models or concealment of information from a user.

- 7.37 Substantial issues might be those which have the potential to impact a user's financial or reputational standing or would under normal circumstances involve a report to a regulator or other relevant authority.
- 7.38 Taking reasonable steps in this context means acting as soon as possible to escalate your concerns in a way that you can be confident the user will be made aware of the issue. This might involve notifying the user directly, or, in situations where it may not be practical or appropriate for the Member to contact the user directly themselves, by highlighting the issue to a colleague or manager who is responsible for reporting matters to the user.
- 7.39 A starting point for Members might be to check whether their organisation has in place an internal audit plan or procedures which may set out what is expected of them when an issue is uncovered with a piece of work.
- 7.40 Before taking steps to notify anyone of the issue, Members may want to consider what the most appropriate method of escalating the issue might be. It would not be appropriate, for example, to 'bury' the notification of a substantial issue within the body of a 20 page report.
- 7.41 Where a Member uncovers a substantial issue, they will need to be able to demonstrate that they took appropriate steps to escalate their concerns to the right person. It is sensible, therefore, to document the nature of the issue including when and where it was uncovered, the rationale for escalating the concern and the specific steps taken to ensure that the user was informed of the issue.
- 7.42 Some FAQs for Members who are considering speaking up are included at Appendix A to this Guide.

Relevant law and other requirements

- 7.43 Certain statutory and regulatory provisions place a duty on individuals to make particular disclosures to a third party whilst other provisions are permissive, allowing disclosures to be made in certain circumstances. Where there is a statutory duty to disclose, any contractual confidentiality clauses would most probably be overridden. Those involved in the negotiation of such contracts should, therefore, bear this in mind when drafting the contract terms. These duties should also be considered when an organisation's standard terms and conditions of business are being reviewed.
- 7.44 An overview of the provisions most likely to affect Members carrying out work for UK entities is available on the IFoA's website.²² Similar rules and regulations may exist in other countries, however, Members should take independent advice about the statutory and regulatory provisions which apply in the country in which they are carrying out a piece of work (and, where they are working remotely, the country in which the piece of work is being delivered).

Situations where the law prevents disclosure

- 7.45 None of the provisions in the Code are intended to require Members to act in a way that is unlawful. This means that where any legal provisions exist in the country in which the

²² [link to be included at a later stage].

Member is working which prohibit disclosure, those legal provisions will override any regulatory duty to report.

- 7.46 An example of situations where disclosure might be prohibited is when a Member making that disclosure risks committing a crime by default, such as where he/she discloses information which he/she comes into possession of relating to state security or intelligence matters, or where he/she alerts a person who has engaged in unlawful conduct to the fact that they are under investigation by the relevant authorities (so called “tipping off” offences).

Some practical considerations and questions for Members

- 7.47 In some cases, Members will be under a legal or regulatory duty to report information outside their employment as soon as their suspicions are aroused. In others, where there is no immediate duty to report, speaking up externally is not the first step to consider but the last one. The aim of everyone – Members, their clients and employers – should be to promote an open culture, in which all involved feel able to articulate any concern they may have and are not inhibited from, or penalised for, doing so.

- 7.48 Members can help in developing such a culture by:

- ensuring that their clients and/or employer understand the professional and legal obligations on Members, whether through contractual terms or the provision of a separate information note;
- checking that their firm has a clear policy for staff on whistleblowing that is effectively promoted and regularly reviewed; and
- ensuring that their employer’s policy on whistleblowing is properly recognised in client contracts.

- 7.49 Against this background, here are some practical questions which Members might ask themselves both (a) before any situation of concern arises and (b) if and when one does.

Before any problem arises

1. Do I know and understand my professional obligations, rights and responsibilities under the law?
2. Do I know whether my firm/employer has a written policy on whistleblowing?
3. If it does, am I familiar with the policy?
4. If I am a manager, do my staff know about the policy?
5. If I found myself in a situation where I might have to blow the whistle, am I clear about my obligations and the protections available under the law?
6. Do I know where I can go for further advice?
7. Do I understand that the Code is not simply a set of rules and that Members are expected to observe the spirit as well as the letter of the Code in their professional conduct?

8. Do I understand what constitutes misconduct which may lead to reporting, and what constitutes a material breach of relevant requirements, under amplification 5.2 of the Code?
9. Do I understand what constitutes behaviour that is unethical or unlawful, under amplification 5.3 of the Code?
10. Do I understand that, while some situations will very clearly require me to blow the whistle, others may be less clear cut, and that nevertheless, it would be prudent to keep a note of all such concerns as a series of actions, each in itself below the reporting threshold, which may in aggregate become serious enough to require external reporting?
11. Have I developed a clear picture of the distinction which can be made between actions which are minor, part of work in progress, and can potentially be remedied, and actions which are so advanced that remedies are no longer possible, when deciding at what point to progress from raising a concern within my employer and raising it externally?

If a problem does arise

1. Do I understand my obligations as a Member and the obligations and protections available to me under the law?
2. Have I re-read my firm's whistleblowing policy?
3. Do I have reasonable grounds for believing my concerns tend to show wrongdoing or malpractice and disclosure of the information is in the public interest?
4. Have I raised my concerns at the appropriate level within my organisation?
5. If I decide to raise the concern externally, am I clear how, and to whom, I should make the report?
6. Am I clear who should be informed that I have made the report?
7. Do I have reasonable grounds to believe that any disclosure outside the firm to an appropriate third party is substantially true?
8. Do I need to/want to look for further sources of advice?
9. Have I properly assessed the risks of not reporting this issue?

Points to note when considering whether to blow the whistle

In any situation in which you are contemplating whistleblowing to an appropriate individual either within or outside your organisation, you may find it helpful to note down:

- the nature of your concern;
- your reason(s) for believing that there is an issue;
- the full name(s) of those involved, including any with whom you have already raised the issue;
- times and dates when your concerns were first aroused;
- details of the location(s) concerned;
- details of any evidence;
- details of any witnesses; and
- whether any action has already been taken by anyone else.

If, having identified an issue, you decide that it is not necessary to raise the concern, you may find it helpful to note down contemporaneously your reasons for your decision.

When considering whether to raise a concern outside an employing organisation, Members should first consider, where appropriate, whether they may follow the internal procedures laid down by their employer.

Making a report to the IFoA

7.50 To report concerns about the conduct of another Member, details of the alleged misconduct must be submitted in writing to the IFoA. Written reports should where possible contain:

- the contact details of the Member or Members concerned;
- details of what, in your view, the Member has done wrong;
- the dates on which the events that you describe took place;
- copies of any relevant papers (being careful not to breach confidentiality when doing so); and
- the names and addresses of anyone who could support your concern from their own personal knowledge.

7.51 Disclosures made to the IFoA may not be protected by law. Members are, therefore, advised to consider seeking advice before making a report if that report is likely to result in the disclosure of confidential information. Where it is possible for a Member to protect confidentiality by redacting supporting documents or preserving the anonymity of users, then they should do so.

7.52 Further information on making a report can be found on the IFoA's website.²³

²³ <http://www.actuaries.org.uk/regulation/pages/how-complain-about-Member>

Sources of guidance and advice

- 7.53 Your first course of action should be to check what advice is available within your own firm. Many actuarial firms have whistleblowing policies in place. The Whistleblowing Commission Code of Practice provides practical guidance for employers and workers in relation to raising and handling whistleblowing in the workplace. A suitable whistleblowing policy would normally contain the following:
- a clear instruction to workers to inform their line manager (or, if the issue involves the line manager, another senior manager) immediately if they become aware that any malpractice or wrongdoing is happening, has happened, or is likely to happen;
 - details of any alternative sources of reporting, such as confidential telephone helplines or email boxes;
 - the types of concerns to which the policy relates. For employers of actuaries in the UK, this may include reference to obligations under the Pensions Act 2004 or the Financial Services and Markets Act 2000, which contain specific reporting obligations. It would be helpful to include specific examples of unacceptable behaviour;
 - an undertaking to treat the concerns in confidence unless disclosure is required by law;
 - an undertaking that workers will not be penalised for raising their concerns and informing management about their concerns;
 - options for reporting matters externally to appropriate regulatory or professional bodies; and
 - an explanation that it is a disciplinary matter either to victimise a bona fide whistleblower or for someone maliciously to make a false allegation.
- 7.54 Larger firms may also have professionalism and/or ethics committees whose Members are available to help their colleagues deal with issues of professional ethics arising in the course of actuarial work.
- 7.55 In addition, the IFoA offers general advice to Members on matters of professional ethics, including speaking up. Members can access this confidential service at whistleblowing@actuaries.org.uk.
- 7.56 A list of organisations and bodies providing guidance on speaking up in the UK is available on the IFoA's website.²⁴ Similar organisations and bodies may exist in other countries and Members may therefore wish to contact their local actuarial association or regulator to see if any exist in the country in which they are working.

²⁴ [link to be included at a later stage].

8. PRINCIPLE 6 – COMMUNICATION

8.1 Principle 6 of the Code provides that:

“Members must communicate appropriately.”

8.2 Members are expected to present information in a way that is accurate, impartial and in accordance with relevant professional standards²⁵ so that users who are relying on that information can both understand the context of the information and be clear about the message being conveyed. Communication is, therefore, a key part of a Member’s role. In order for Members to ensure that their communications are appropriate, understanding the purpose and nature of their instruction is key.

8.3 Appropriate communication is very often a matter of putting oneself in the place of the intended audience. For example:

- Is the communication courteous and professional?
- Are recommendations or options to be considered and the implications of each set out clearly?
- Is it clear what you are asking of the user where you are requesting something from them?
- Will they be able to navigate easily to the sections that are most relevant to their needs?
- Will they understand the basis on which estimates and calculations have been made, and the appropriate degree of confidence in the results?
- Above all, is the document fit for purpose, and appropriate for the use to which it is to be put?

8.4 Answering these questions requires not just good judgement and a high standard of written communication, but also a degree of imagination and empathy.

8.5 Amplification 6.2 requires that Members *“show clearly that they take responsibility for their work”*. It is essential to the trust in which the profession is held that there is clear accountability for any work carried out by Members. It may sometimes be the case that the person taking ultimate responsibility for work has not themselves carried out the bulk of the work. In cases like this, the person taking responsibility for the work will need to ensure that they have fully understood what has been done and have carried out any relevant checks before signing the work.

8.6 Users are entitled to expect that the Member who has carried out a piece of work is satisfied that the information being provided is suitable and accurate. A Member should ensure that they are never knowingly associated with misleading information. Communications to users are unlikely to be appropriate if they are presented anonymously, especially where they are likely to influence or be relied upon by the user.

²⁵ Members carrying out work within the UK Geographic Scope should have regard to the FRC’s framework of TASs which sets out some specific requirements in relation to actuarial communication in respect of work deemed to be ‘technical actuarial work’- <https://frc.org.uk/actuaries/actuarial-policy/technical-actuarial-standards/technical-actuarial-standards-2017>

Social media

- 8.7 When used appropriately social media can be an extremely useful tool which allows Members to communicate quickly and effectively with other Members as well as the wider public. Discussion forums and social networking sites enable Members to reach a larger audience than they might otherwise be able to and are a way for Members to share ideas and develop professional working relationships. While the use of social media is therefore encouraged, its many benefits should be balanced against the risk that it can sometimes pose to a Member's professional reputation if used inappropriately.
- 8.8 Members can put their professional reputation and membership of the IFoA at risk if they act in a way on social media that is unprofessional or unlawful. This might include (but is not limited to):
- sharing confidential information inappropriately - often there will be legal requirements prohibiting the disclosure of certain personal and sensitive information whether online or otherwise;
 - posting inappropriate comments about others (including users and other Members);
 - using inappropriate language;
 - implicating oneself in unprofessional or unlawful conduct or encouraging others to behave unprofessionally or unlawfully;
 - posting comments that are bullying or threatening; and
 - posting anything that may be viewed as inappropriately discriminatory or that incites hatred or such discrimination;
- 8.9 Information shared online can be copied and passed on much more quickly than by any other means and potentially to a much wider audience. Once something is published online it is no longer private. What is more, once shared, information published online can remain in the public domain for a very long time. It is important, therefore, that before posting anything online, Members carefully consider the content of what they are posting and how it might be perceived by others.
- 8.10 Nothing in this Guide is intended to discourage Members from communicating through social media, however, it is important to remember that even when posting in personal forums, others may be aware that you are a Member of the IFoA and any information you provide or opinions you express may be judged in that light of that. This is particularly true where you identify yourself as being a Member in those forums. You should remember that the publication of information on social media carries the same obligations as for other types of communications and you should therefore be careful not to engage in any conduct online that threatens your ability to comply with your requirements under Code or impact on any of your other professional obligations.
- 8.11 If you are unsure whether something you are considering posting online is appropriate, think about what the impact might be if the information once shared is then disseminated widely. Remember that there can be consequences. It is not only the information that you post directly that has the potential to call into question your professionalism; endorsing someone else's point of view on a public post also has the potential to impact on how others perceive you. If in doubt, it is probably safer not to post than to post something you are unsure about and then regret it later.

- 8.12 When engaging in online discussion, be aware that the views you express may provoke a response; it is important to be open to the opinions of others and to treat others with respect, even if they are disagreeing with your view.

9. SOURCES OF GUIDANCE AND ADVICE

The Professional Support Service

- 9.1 The IFoA offers a confidential Professional Support Service (PSS), to assist Members with professional ethical matters, including conflicts of interest and speaking up. The service is free to all Members.
- 9.2 If Members have any specific issues that they wish to discuss then they can contact the PSS to obtain assistance with any professional or technical actuarial matters. Queries can be submitted through the IFoA's website using the PSS form.²⁶
- 9.3 The only circumstances in which an enquiring Member's confidence cannot be assured by the PSS is where the IFoA has a legal obligation to report information or where the query submitted to the PSS discloses details of an illegal act.
- 9.4 Depending on the situation, the IFoA's staff may first encourage the enquiring Member to make the disclosure him or herself. If that advice is not taken, the IFoA may be required to breach the Member's confidence and make the report itself. A decision to take such a step would be made by the IFoA's senior legal advisor, the General Counsel to the IFoA.

10. FURTHER QUESTION AND INFORMATION

- 10.1 The content of this guidance will be kept under review and for that reason we would be pleased to receive any comments you may wish to offer on it. Any comments should be directed to:

Regulation Team
The Institute and Faculty of Actuaries
Level 2, Exchange Crescent
7 Conference Square
Edinburgh
EH3 8RA

or

regulation@actuaries.org.uk

²⁶ <https://www.actuaries.org.uk/upholding-standards/professional-support-service/submit-query-professional-support-service>

Appendix A

Issues which may occur to Members who consider speaking up

I may be sued or disciplined for breaches of confidentiality.

There are a number of public interest exceptions to a claim for breach of confidentiality. In general, courts usually favour disclosure in such cases, provided that the disclosure is made to the appropriate body, honestly and in the public interest.

I only need to speak up where I have a specific duty to do so.

The Code imposes requirements upon Members to speak up in certain circumstances and Members risk being subject to disciplinary proceedings if they don't meet those speaking up requirements. If in doubt about the need to speak up, Members can obtain assistance from the IFoA either through the PSS or by having an informal discussion with the Disciplinary Investigations Team.

I can only speak up where I am certain of the facts.

It will not always be possible for someone speaking up to be 100% certain of the facts and for that reason, especially when raising a concern with your employer, a reasonable suspicion of wrongdoing is generally sufficient. When taking information outside of the organisation there must be a reasonable belief in the truth of the information.

I am unsure how to proceed because my contract of employment contains a confidentiality clause

Even where your employment contract does not include an exemption relating to your professional duties, you are still subject to the professional duties set out in the Actuaries' Code, particularly the requirement that you challenge non-compliance (principle 5).

In the UK, The Public Interest Disclosure Act 1998 (the Act) provides anyone who makes a "protected disclosure" under the terms of the Act with a specific statutory defence to any breach of confidence action raised against a whistleblower.

Under the Act, any agreement in a contract or otherwise, insofar as it operates to prevent a worker from making a protected disclosure, is rendered void. If, for example, a worker is able to meet the conditions contained within the Act and makes a reasonable disclosure of information about wrongdoing or risk of malpractice, the worker can defend any claim for breach of confidentiality using the principles of the Act.

The whistleblowing charity, Public Concern at Work (+44 (0)20 7404 6609 or whistle@pcaw.org.uk) is able to provide free confidential advice on making a disclosure in accordance with the Act.

I am concerned that I may lose my job or upset an important client if I blow the whistle.

Although legitimate concerns, these possibilities should not dissuade you from blowing the whistle. Protection for workers who raise a public interest concern honestly and reasonably can be found within the Public Interest Disclosure Act 1998. It is important to bear in mind that reputable employers and other Members expect all Members to report concerns which they have, in accordance with their professional duties.

I think that the regulatory reaction to a disclosure is likely to be disproportionate to the concerns that I have.

Small concerns can often provide clues to much larger problems and so it is essential that a decision on the relative importance of a disclosure is left up to your employer, the IFoA or the appropriate regulator.

Questions for Pensions, General Insurance, Life Insurance and Health and Care Actuaries

Further to the questions set out in in section 5 of this Guide on identifying conflicts of interest, [Appendices B, C and D] contain some practical questions which are directed at pensions, general insurance and life actuaries to help Members identify and manage conflicts of interest. Some health and care actuaries may find the general insurance examples useful while others will find the life examples more pertinent.

Appendix B

Questions for pensions actuaries

A. Identifying conflicts

1. What conflicts are inherent to the trustee board?
2. Are relations between the trustees and the employer likely to be adversarial?
3. Do certain functions reserved to the Scheme Actuary (e.g. under the trust deed and rules or legislation) give rise to potential conflicts?
4. In what areas requiring actuarial advice are the interests of trustees and the company not aligned?
5. Does my firm advise the sponsoring companies in any material capacity?
6. In my view, could the trustee board be at risk of being unduly influenced by company management in some circumstances?
7. What conflicts within the trustee board have the potential to impact on my ability (or perceived ability) to give unconstrained advice to the trustee?
8. Do I or my family have a stake (e.g. stocks/shares, employment or scheme membership) in the client I am advising or in another party with competing interests to those of my client?
9. Do I have more than one client in the same industry (e.g. one consideration may be whether there is potential for merger between two clients).

B. Managing conflicts

10. Is there an independent trustee on the trustee board?
11. If the trustees have an appointed investment adviser, what role might that adviser be playing which might be significant in the management of a potential conflict?
12. Have the trustees actively considered the Pensions Regulator's conflicts guidance including setting up a conflicts register?
13. Does the employer use another firm of actuaries for all or some corporate advice (e.g. for advice where my firm may be conflicted, such as funding)?

Appendix C

Questions for general insurance actuaries

A. Identifying conflicts

1. Does any of my work in areas such as pricing, reserving and capital give rise to any inherent conflicts across those different types of work and how am I managing these conflicts?
2. Am I in a position as pricing actuary or underwriter where competitive pressures will compromise my ability to comply fully with TAS 200 and/or the Code?
3. Are my rewards, or the manner in which I am rewarded, likely to give rise to a perception of conflict e.g. bonus or commission?
4. Do I or my firm provide an audit service as well as advice to the client?
5. Is there a conflict between the commercial interests of my client/employer and those of policyholders or others whose interests may ultimately depend on my advice?

B. Managing conflicts

6. If I am responsible for key judgements around reserving, pricing, capital work, catastrophe modelling etc., what element of peer review and checking exists in relation to my work?
7. If I am taking on new roles as a result of regulatory or other internal or external drivers (such as Solvency II), have I considered whether there are any particular conflicts in relation to those roles that I need to manage and, if so, how am I going to do that?
8. Does the Board have appropriate personnel who are able to judge whether my conclusions around, for example, reserving levels are appropriate?
9. Does the company rely entirely on my advice in relation to certain actuarial matters (such as setting reserves) or are there other advisers who might be involved in providing advice?
10. If the company solely relies on my advice in relation to actuarial matters, does that create any need to manage potential conflicts any differently to situations where there are personnel at the company who are able to form their own expert opinion on the results of my work?
11. Have I considered how I would manage potential conflicts arising from my having a duty to a different body in the organisation which contracted me to perform the work?
12. As an actuarial employee of a small Lloyd's syndicate, on what support can I call to bounce ideas and check approaches/decisions?

Appendix D

Questions for life insurance actuaries

A. Identifying conflicts

1. Do I or my firm provide advice to both the life office and to its With-Profits (WP) Committee (or other independent adviser on WP business)?
2. Do I act in the role of WP Actuary as well as providing other, commercial advice to my employer or client?
3. Do I or my firm provide an audit service as well as advice to the client?
4. Is there a conflict between the commercial interests of my client/employer and those of policyholders or others whose interests may ultimately depend on my advice?
5. Is there any conflict between the advice which I am giving or decisions which I am making and my own personal interests (e.g. remuneration)?
6. Am I in a position as a pricing actuary or underwriter where competitive pressures will compromise my ability to comply fully with TAS 200 and/or the Code?
7. Are my rewards, or the manner in which I am rewarded, likely to give rise to a perception of conflict e.g. bonus or commission?

B. Managing conflicts

8. If acting as WP Actuary or Actuarial Function Holder, will I have appropriate access to independent external advice if I consider this to be necessary?
9. If I am responsible for key judgements around reserving, pricing, capital management, with profits surplus distribution etc., what element of peer review and checking exists in relation to my work?
10. If I am taking on new roles as a result of regulatory or other internal or external drivers (such as Solvency II), have I considered whether there are any particular conflicts in relation to those roles that I need to manage and, if so, how am I going to do that?
11. Does the company rely entirely on my advice in relation to certain actuarial matters (such as setting reserves) or are there other advisers who might be involved in providing advice?
12. If the company relies solely on my advice in relation to actuarial matters, does that create any need to manage potential conflicts any differently to situations where there are personnel at the company who are able to form their own expert opinion on the results of my work?
13. Have I considered how I would manage potential conflicts arising from my having a duty to a different body in the organisation which contracted me to perform the work?