

Conflicts of Interest

Update from the Working Party

March 2012

© 2012 The Actuarial Profession • www.actuaries.org.uk

Why Conflicts of Interest Matter

- Professionals occupy a privileged position of trust
- This brings obligations to act impartially and in the public interest
- Recognised in Principle 3 of the Actuaries' Code
- *"Members will not allow bias, conflict of interest or the undue influence of others to override their professional judgement."*

© 2010 The Actuarial Profession • www.actuaries.org.uk

1

A Long History

- Long history of previous uncompleted attempts to tackle the matter
- Morris Report 2005
- Successive Professional Oversight Board reports
- Led to establishment of Working Party in July 2010

Working Party's Progress

- Discussion Paper, end 2010
- Targeted consultation with users and other regulators
- Consultation Paper, October 2011
- Consultation closed, December 2011

Responses to the Consultation

- Over 200 received
- Strong response from members, firms and other regulators
- Fewer from users

What did the Consultation tell us? (1)

- Situation considerably improved since Morris
- Conflict situations frequent but mainly well-handled
- Contributory factors to the changed environment
 - Action by Regulators – e.g. FSA and tPR
 - Action by Firms
 - Action by the Profession – e.g. the Code

What did the Consultation tell us? (2)

- However, still significant concerns about potential for conflicts
- Especially so in respect of pensions as e.g. pressures on DB schemes increase
- Problem is one partly of reality, partly of perception
- WP's initial conclusion that further action is needed therefore justified

Response to the WP's Proposals

- Overwhelming support for a targeted and proportionate package of measures
- Clear majority support for most of the draft proposals on pensions, but
 - Opinion evenly divided on proposal to ban Scheme Actuary from advising employer on funding and factors
 - Genuine issues raised about how ban would work in practice and its implications, e.g. for smaller firms and schemes

The Emerging Final Package (1)

- The WP still in the process of finalising its conclusions
- Therefore what follows is only an indication of its thinking
- The final package will need to be approved by PREC and shared with the Profession's Council before publication
- It will be a package, not a single one-shot solution, and should be viewed as a whole

The Emerging Final Package (2)

- The Actuaries' Code sets the overarching principles
- A review of the Code is now underway, but
- This is to be 'light touch', and
- The basic approach to the conflict provisions in the Code is unlikely to change

The Emerging Final Package (3)

- Additional specific regulatory provision not currently required outside pensions
- This is because the existing mix of regulation by the Profession (e.g. APS L1) and external regulation (e.g. by the FSA) is judged to be adequate
- However, the rest of the package will cover non pension as well as pension practice areas

The Emerging Final Package (4)

Pensions

- The intention behind new Section 5 of APS P1 is confirmed
- *But* the need to address certain issues is acknowledged

Current plan:

- Start with general principle based on para 5.2 of ED
 - Client advice
- Then add specific additional provision on funding/benefits
 - Presumption of underlying conflict
 - Exceptions to general rule need to be justified
- Principle rather than rule extended to other types of scheme

The Emerging Final Package (4): APS P1 revisions

5.1 Having regard to principle 3 of the Actuaries' Code, and subject to paragraph 5.2 below, a **Scheme Actuary** to a **Relevant Scheme** must not provide **Client advice** to the **Employer** of that **Scheme**, except where all of the following conditions are satisfied;-

5.1.1 The **Scheme Actuary** has agreed with the **Trustees** and **Employer** an appropriate plan in writing, which is to be reviewed at appropriate intervals, setting out how conflicts of interest are to be reconciled and including any limitation on the extent of any **Client advice** which may be provided to the **Employer**.

5.1.2 So far as necessary to safeguard the interests of the **Trustees**, the plan provides for the waiver of any duty of confidentiality which would otherwise be owed to the **Employer**.

5.1.3 In the event that the **Scheme Actuary** becomes unable to continue to provide **Client advice** to both parties, preference is given to a right of the **Trustees** to continue with the **Scheme Actuary** appointment.

5.2. ...

Advice: Information or recommendation, conveyed in writing or orally, which includes a material element of judgement or analysis.

Client advice: **Advice** provided by a **Member** to a client upon which that client is entitled to rely in their capacity as such.

The Emerging Final Package (4): APS P1 revisions

5.2. The provision by the **Scheme Actuary** of **Client Advice** to the **Employer** of that **Scheme**, in relation to the funding of that **Scheme**, or in relation to any matter which has a direct bearing on the benefits payable under that **Scheme**, must be presumed to give rise to an irreconcilable conflict of interest.

Paragraph 5.3 makes further provision in relation to the application of this presumption.

5.3 In considering whether, exceptionally, it is appropriate to depart from the presumption set out in paragraph 5.2, the **Scheme Actuary** must have regard to all of the relevant circumstances, including, as applicable, the following;-

[References to scheme rules, public interest...]

It will be for the **Scheme Actuary** to justify any such departure from the presumption set out in paragraph 5.2, if reasonably called upon to do so.

[5.4 Other actuaries in the same Firm]

[6.4 Non scheme actuary and other schemes]

The Emerging Final Package (5)

- More guidance and CPD provision asked for by actuaries in all practice areas
- WP's draft Guide for Actuaries welcomed in consultation responses
- Being revised to include more material on identifying conflicts, improved case studies, etc.
- Additional CPD provision will follow after package finalised

The Emerging Final Package (6)

- Consultation revealed confusion about purpose of Guide for Pension Trustees prepared by WP
- Guide is for actuaries to give to Trustees to explain how actuaries approach handling of conflicts
- Incidental purpose is to help Trustees raise their game
- Being revised in light of consultation to clarify its purpose
- tPR consulted and happy

Next Steps

- Proposals expected to be finalised in May
- Final report then published
- Implementation – WP will recommend a year's grace to comply
- Briefings to be planned to help ensure implementation is smooth

Conclusion

- Nearing the end of a long process
- The WP believes its final proposals will be targeted and proportionate
- They will also put the Profession in a strong and coherent position in responding to continued external interest in this issue
- The WP will welcome your feedback and questions as it moves into the final phase of its work