

Conflicts of Interest

Update from the Working Party

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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."*

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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** a 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 The terms of the plan are such that, if the **Scheme Actuary** becomes unable to continue to provide **Client advice** to both parties, the **Trustees** will have the option to continue with the **Scheme Actuary** appointment.

5.2. ...

Client advice: Information or recommendation provided by a Member to a client, which includes a material element of judgement or analysis, upon which that client is entitled to rely.

The Emerging Final Package (4): APS P1 revisions

5.2. Subject to paragraph 5.3, the **Scheme Actuary** should presume that the provision by him or her 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**, would give rise to an irreconcilable conflict of interest.

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