

**The Actuarial Profession**

making financial sense of the future



## **Consultation paper**

Conflicts of interest: new policy proposals  
Appendices 1 - 8

# **Conflicts of Interest Working Party**

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**Conflict of interest provisions in the Actuaries' Code**

**Principle 3: Impartiality:** Members will not allow bias, conflict of interest, or the undue influence of others override their professional judgment.

- 3.1 Members will ensure that their ability to provide objective advice to their clients is not, and cannot reasonably be seen to be, compromised.
- 3.2 A conflict of interests arises if a member's duty to act in the best interests of any client conflicts with:
  - (a) the member's own interests; or
  - (b) an interest of the member's firm; or
  - (c) the interests of other clients.
- 3.3 Members will take reasonable steps to ensure that they are aware of any relevant interest, including income, of their firm.
- 3.4 Members will disqualify themselves from acting where there is a conflict of interest that cannot be reconciled.
- 3.5 Members will document the steps they have taken to reconcile a conflict and will agree those steps with their clients if they would be ineffective without agreement.
- 3.6 Before accepting any assignment, members will 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.



**The Actuarial Profession**  
making financial sense of the future

**Discussion paper: Conflicts of interest**  
Discussion paper feedback and responses

# Professional Regulation Executive Committee

April 2011

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## 1 Introduction

### Sir Philip Mawer, Chairman of the Professional Regulation Executive Committee

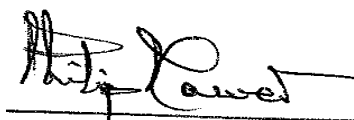
I am pleased to introduce this summary of the feedback received in response to the Discussion Paper on Conflicts of Interest (the Discussion Paper) issued by the Actuarial Profession in the summer of last year. The deadline for comments on the issues raised in the Discussion Paper and its accompanying surveys was 1 September 2010. The Conflicts of Interest Working Party (Working Party) set up by the Professional Regulation Executive Committee has now analysed all of the responses received and this feedback document sets out the result.

The Working Party received:

- 278 responses to the “Actuaries and their Employers” survey; and
- 16 responses to the “Other Respondents” survey.

In addition to the survey being sent to all members of the Actuarial Profession, it was also sent to a large number of external organisations, all of which were invited to comment. In spite of this, the number of responses we received from users of actuarial services was disappointingly small. We have therefore made further approaches to a number of interested stakeholders and meetings have been held with several of them. The results of those discussions are not reflected in the attached summary but, like other responses, are being taken into account in our further work.

We are extremely grateful for the care and attention shown by all respondents in preparing their comments on the Discussion Paper and I hope you will find this summary of the feedback received both useful and informative. We are considering all the views expressed to us as we finalise proposals for a new approach in this area. We intend to publish and consult on our proposals later this year. This feedback document will provide a key part of the backdrop to the consideration of our proposals within the Profession and beyond.

A handwritten signature in black ink, appearing to read 'Philip Mawer', written over a horizontal line.

**Sir Philip Mawer**  
**April 2011**

## 2 Explanatory note

A brief explanatory note on the questions asked and the data received now follows.

Throughout this summary, not all the totals add up. This is due to the fact that:

- not all respondents answered every question; or
- there were multiple answers to a question e.g. when asked which actuarial field a respondent was involved in, that respondent could have answered that they been involved in both the pensions and education fields.

The percentages listed in the results are percentages of the responses received to each individual question, rather than the overall (294) responses received.

Some questions had pre-populated answer fields, while others had free text fields:

- In the Actuaries and their Employers' survey, the questions:
  - with pre-populated fields were: questions 2 to 5, 12, 14, 16 and 24;
  - with free text fields were: questions 1, 9 to 11, 13, 15, 17 to 23, 25 and 26; and
  - which had a mix of pre-populated and free text fields were questions 6 to 8.
- In the Other Respondents' survey, the:
  - questions with pre-populated fields were: questions 2 to 4, 8, 10 and 16;
  - questions with free text fields were: questions 1, 6 to 9, 11 to 15, 17 and 18; and
  - question which had a mix of pre-populated and free text fields was question 5.

Summaries of the responses to each of the questions raised in the surveys now follow. Section 3 deals with the Other Respondents' survey results and section 4 deals with Actuaries and their Employers' survey results.

### **The Conflicts of Interest Working Party of the Professional Regulation Executive Committee (PREC)**

Sir Philip Mawer, Chairman

Charles Cowling

Graham Everness

David Hindley

Trevor Llanwarne

Douglas Morrison

Fiona Morrison

Chris Norden

### 3 Other Respondents' Survey: Summary of responses to questions

#### Question 2: About you

Answer Options	Percent	Response Count
Name	81.3%	13
Position held	81.3%	13
Organisation	81.3%	13
<b>answered question</b>		<b>16</b>

#### Question 3: Confidential response?

Answer Options	Percent	Response Count
Yes	57.2%	8
No	42.8%	6
<b>answered question</b>		<b>14</b>

#### Question 4: Fields of actuarial work

Answer Options	Percent	Response Count
Pensions	35.7%	5
Life Insurance	35.7%	5
Health and care	21.4%	3
General Insurance	14.3%	2
Enterprise Risk Management	7.1%	1
Investment Management	35.7%	5
Investment Banking	14.3%	2
Education	14.3%	2
Information Technology	14.3%	2
Other Actuarial	14.3%	2
Other Non-Actuarial	21.4%	3
<b>answered question</b>		<b>14</b>



**Question 5: To what extent do conflicts of interest feature in your experience of the work of actuaries?**

Answer Options	Percent	Response Count
Frequently	50.0%	4
Occasionally	50.0%	4
Never	-	0
<b>answered question</b>		<b>8</b>

**Question 6: What kinds of conflicts of interest have you encountered?**

Answer Options	Percent	Response Count
Client vs. actuary's personal/professional interests	87.5%	7
Client vs. client	62.5%	5
Client vs. former client	12.5%	1
None	-	0
Other	25.0%	2
<b>answered question</b>		<b>8</b>

“Other” includes: conflicts between the actuary and shareholders, boards and members in relation to a life company and dual appointments (2 responses).

**Question 7: If you have encountered conflicts of interest, how have any conflicts that have arisen been reconciled?**

Answer Options	Percent	Response Count
Affected parties informed and orally consented to waive the conflict	85.7%	6
Affected parties informed and gave written consent to waive the conflict	42.9%	3
Actuary declined to act because of the conflict	14.3%	1
Actuary consulted a senior actuary and decided whether to continue to act	14.3%	1
Actuary consulted a legal practitioner and decided whether to continue to act	14.3%	1
Actuary believed could objectively continue to act despite the conflict	42.9%	3
Other	-	0
<b>answered question</b>		<b>7</b>

**Question 8: If you have been involved in situations which have required conflicts to be reconciled, how satisfied were you with the outcomes?**

Answer Options	Percent	Response Count
Satisfied	71.4%	5
Somewhat satisfied	-	0
Neither satisfied nor dissatisfied	-	0
Somewhat dissatisfied	14.3	1
Dissatisfied	14.3%	1
<b>answered question</b>		<b>7</b>

The reason for the one “somewhat dissatisfied” response was because of arrogance and commercial expediency. The reason for the one “dissatisfied” response was because of opacity and the self-interest of individuals.

**Question 9: Are there any situations where you believe that the options available to the actuary to reconcile a conflict should be specifically restricted, e.g. because it is in the public interest to ensure that there is no perceived threat to the independence of the actuary’s advice?**

Answer Options	Percent	Response Count
Yes	57.1%	4
No	42.9%	3
<b>answered question</b>		<b>7</b>

If the response was “yes”, the circumstances where the ability to reconcile a conflict should be specifically restricted were as follows:

- dual appointments (for individual scheme actuary or for the scheme actuary’s firm) (1 response);
- scheme actuary advising the employer and the trustees (1 response);
- scheme actuary’s firm acting for the employer and the trustees (1 response); and
- where the perception of a conflict means that the appointment should be refused (1 response).

**Question 10: Do you think any change or addition to the existing principles-based guidance given in the Actuaries’ Code is needed?**

Of the 5 responses, 3 (60.0%) believed that no change to the Actuaries’ Code was needed. The other 2 responses indicated that changes should be made to the Code to include “Treating Customers Fairly” (TCF) principles and because the existing guidance assists actuaries in pretending they can manage conflicts.

**Question 11: Do you think there should be changes to professional regulation?**

Of the 5 responses, 3 (60.0%) believed that no changes needed to be made to professional regulation. Of the other 2 responses, one response indicated that possible changes could be made but that these should be principles-based rather than prescriptive and the other response indicated that a ban should be introduced on actuaries acting for two clients with potentially differing needs e.g. trustees and sponsors of occupational pension schemes.

**Question 12: Do you think there should be additional member support?**

Of the 5 responses, 4 (80.0%) believed that no additional member support was necessary. The remaining response indicated that training from compliance and legal professionals would also be useful.

**Question 13: Do you think there should be changes to education and CPD?**

Of the 5 responses, 2 (40.0%) believed that no changes were required. The 3 other responses indicated that there should be more emphasis on the TCF principles, that conflicts management was extremely important to the Profession's brand and that actuaries should undergo legal training in avoiding conflicts of interest.

**Question 14: Are there any other options for action you would like to suggest?**

Answer Options	Percent	Response Count
Yes	16.7%	1
No	83.3%	5
answered question		6

The one respondent who provided a comment indicated that an additional option for action would be to copy all advice to both parties the actuary is acting for to prove there is no conflict problem.

## 4 Actuaries and their Employers' Survey: Summary of responses to questions

### Question 2: About you

Answer Options	Percent	Response Count
Name	88.6%	243
Position held	89.0%	244
Organisation	88.6%	243
<b>Answered question</b>		<b>274</b>

### Question 3: Confidential response?

Answer Options	Percent	Response Count
Yes	70.0%	182
No	30.0%	78
<b>answered question</b>		<b>260</b>

### Question 4: Fields of actuarial work

Answer Options	Percent	Response Count
Pensions	49.4%	134
Life Insurance	39.5%	107
Health and care	6.3%	17
General Insurance	14.4%	39
Enterprise Risk Management	7.0%	19
Investment Management	5.2%	14
Investment Banking	0.4%	1
Education	0.4%	1
Information Technology	2.2%	6
Other Actuarial	8.1%	22
Other Non-Actuarial	5.2%	14
<b>answered question</b>		<b>271</b>

**Question 5: To what extent do conflicts of interest feature in your experience of the work of actuaries?**

Answer Options	Percent	Response Count
Frequently	23.6%	41
Occasionally	70.7%	123
Never	5.7%	10
<b>answered question</b>		<b>174</b>

**Question 6: What kinds of conflicts of interest have you encountered?**

Answer Options	Percent	Response Count
Client vs. client	57.4%	89
Client vs. former client	12.3%	19
Personal/professional values vs. client objectives	55.5%	86
Personal/professional interests	15.5%	24
Client's interests vs. actuary's firm's interests	46.4%	73
Other	16.1%	25
<b>answered question</b>		<b>155</b>

“Other” includes:

- Actuary vs. actuary's firm's interests (5 responses);
- Trustee vs. employer (4 responses);
- Client unable to resolve a conflict (3 responses);
- Actuary's clients vs. the interests of the wider public (2 responses);
- Actuarial adviser to company vs. auditor to company (1 response);
- Investment manager/product provider recommendation process (2 responses)
- Conflicts peculiar to the Government Actuary's Department (1 response);
- Best course of action for client vs. regulatory environment (1 response);
- Adviser to company vs adviser to remuneration committee (1 response);
- Advising two companies who are then involved in a merger (2 responses);
- Advising clients in the same sector (1 response);
- Student actuary advising on company's student study package (1 response);
- Examiner for a subject where a staff member is a candidate (1 response);
- Dual roles e.g. pricing vs. reserving (1 response),
- Shareholder vs. management (1 response);

- Actuary to pension scheme when employer provides actuary with confidential information (1 response);
- Confidential information between authorities and clients (1 response);
- Public interest vs. employer's interests (1 response);and
- Dual roles e.g. pricing vs. reserving, signing actuary vs. director (1 response).

**Question 7: For life actuaries: what kinds of conflicts of interest have you encountered?**

Answer Options	Percent	Response Count
Policyholder's interests vs. the actuary's employer	69.2%	36
Solvency of life office vs. immediate management objectives	42.3%	22
Other	26.9%	14
<b>answered question</b>		<b>52</b>

"Other" includes:

- Receipt of commissions/benefits if provided particular advice (3 responses);
- Actuary representing different groups of policyholders/shareholders whose interests conflict (2 responses);
- Client unable to resolve a conflict (1 response);
- Best course of action for client vs. regulatory environment (1 response);
- Confidential information between regulatory authorities and clients (1 response);
- Being asked to support a methodology which is sub-optimal (1 response);
- Management/directors' interests vs. the company (1 response);
- Management incentives vs. reported results (1 response);
- Conflicts between shareholders, subsidiary boards and member interests for the appointed actuary in a life company (1 response);
- Solvency calculations in a takeover situation (1 response); and
- Actuary acting for one client on reinsurance arrangement where they also act for the reinsurer (1 response).

**Question 8: For pensions actuaries: what kinds of conflicts of interest have you encountered?**

Answer Options	Percent	Response Count
Adviser to trustees vs. adviser to company	84.0%	74
Client was conflicted	50.0%	44
Conflicts between two connected or unconnected clients	42.0%	37
Conflicts of interest with own employer	34.1%	30

Other	7.9%	7
<b>answered question</b>		<b>88</b>

“Other” includes:

- Pensions trustees were owners/officeholders/members of sponsoring employer (2 responses);
- Sponsor attempting to influence trustees (2 responses);
- Conflict of regulators (1 response);
- Client is conflicted (1 response);
- Trustees vs. employer in the case of commissions on insurance premiums (1 response);
- Mergers and acquisitions (1 response); and
- Having to sell own shares when client taken on by the actuary’s firm (1 response).

**Question 9: For general insurance actuaries: what kinds of conflicts of interest have you encountered?**

Answer Options	Percent	Response Count
Conflict of differing regulators	18.7%	3
Commercial vs. professional interests	50.0%	8
Conflicts arising from being a policyholder	6.3%	1
Accurate reserve calculations vs. personal gains	25.0%	4
Other	31.3%	5
<b>answered question</b>		<b>16</b>

“Other” includes:

- Dual roles e.g. pricing vs. reserving, signing actuary vs. director (2 responses);
- Advising firm on capital requirements vs. employer’s solvency/financial strength rating (1 response);
- Being involved with handling setting IBNR (Incurred But Not Reported) for two assureds where one is expecting a recovery from another (1 response);
- Confidential information between authorities and clients (1 response); and
- Advising on pricing for complex/risky transactions where incentives regarding the actuary’s firm’s interests are at stake (1 response).

**Question 10: Do you have any other comments or have you encountered any conflict situations not referred to above?**

23 responses were received and were broken down as follows:

Other conflict situations

- Pressure from management to boost results (3 responses);
- Financial incentives/bonus schemes vs. actuary's personal/client interests (3 responses);
- Client conflicted and unable/unwilling to resolve conflict (2 responses);
- Actuarial advisor to company vs. auditor to the company (2 responses);
- Actuary in a firm supplying an opinion on another piece of work developed by the same firm (2 responses);
- Directors of various companies with limited potential business relationships with one another (1 response);
- Financial incentives given to sales teams promoting actions the actuary disagreed with (1 response);
- Mergers and acquisitions (1 response);
- Actuarial consultants then becoming a client's auditors (1 response);
- Friends who were employees vs. actuary's firm (1 response);
- "Independent" directors who are employed by firms which also provide advice to the company (1 response);
- Actuaries being appointed to two competing reinsurance companies and helping them set pricing terms in competition in the market (1 response);
- Different offices of a single firm of actuaries being hired by opposing parties in court proceedings (1 response); and
- Actuaries supplying opinions on another piece of work developed by that same firm (1 response).

Other comments:

- The perception of a conflict of interest is as important to manage as an actual conflict of interest (4 comments);
- Surprise over how rarely actuaries have conflicts: no pressure to manage a company's solvency position or suggest management actions which are unreasonable for policyholders (1 comment);
- Conflicts are minor at reinsurer employers as customer is an insurer so there was no direct customer impact (1 comment);
- Potential conflicts where you advise both the trustees and the company can be avoided or reduced if your client understands your position (1 comment);
- Often it is the individuals at the client's end, their own conflicts and their ability to resolve them which determines whether or not the actuary becomes conflicted (1 comment); and
- The examples of conflicts of interest relating to "fees received" or "bad advice given to please a client" are distracting and would not normally be regarded as true conflict of interest situations by other professional bodies (1 comment).



**Question 11: If you have encountered conflicts of interest, how have any conflicts that have arisen been reconciled?**

Answer Options	Percent	Response Count
Affected parties informed and orally consented to waive the conflict	40.1%	59
Affected parties informed and gave written consent to waive the conflict	40.8%	60
Actuary declined to act because of the conflict	40.1%	59
Actuary consulted a senior actuary and decided whether to continue to act	42.9%	63
Actuary consulted a legal practitioner and decided whether to continue to act	13.6%	20
Actuary believed could objectively continue to act despite the conflict	52.4%	77
Other	25.8%	38
<b>answered question</b>		<b>147</b>

“Other” includes:

- Chinese walls/information barriers within firms (11 responses);
- Full disclosure of conflict in report or to affected parties (10 responses);
- Client managed conflict (8 responses);
- Use of independent actuary/external consultant/in-house conflicts committees to review the issues (7 responses);
- Actuary’s personal/family interests overridden (3 responses);
- Firm’s interests overridden by client’s needs (3 responses);
- Notification and full disclosure to auditors (2 responses);
- Conflicted parties removed themselves (2 responses);
- Multiple ways of resolving conflicts (1 response);
- Diplomacy/pragmatism in satisfying client’s wishes but not compromising professional obligations (1 response);
- Individual actuaries specifically asked not to act (1 response);
- No reconciliation at all and client lost money (1 response);
- No reconciliation and actuarial firm resigned (1 response);
- Share sales (1 response);
- Resignation from employer (1 response);
- Appointment of another firm of actuaries in relation to the transaction (1 response);
- Conflict resolved itself before the actuary had to decide on his/her course of action (1 response);

- Raised the conflict with the other actuary involved and threatened to report them (1 response); and
- Scope of work actuarial firm able to undertake reduced following conflict (1 response).

**Question 12: If you have been involved in situations which have required conflicts to be reconciled, how satisfied were you with the outcomes?**

Answer Options	Percent	Response Count
Satisfied	N/A	105
Somewhat satisfied	N/A	47
Neither satisfied nor dissatisfied	N/A	14
Somewhat dissatisfied	N/A	20
Dissatisfied	N/A	10
<b>answered question</b>		<b>125</b>

If the response was “somewhat dissatisfied” or “dissatisfied”, the reasons for this included:

- Business/employer's commercial considerations (5 responses);
- Client did not agree there was a conflict and continued with their conflict (5 responses);
- Client commercially unhappy (4 responses);
- Failure to understand parties' intentions (3 responses);
- Actuary unhappy as made a loss on selling shares they had independently bought in a company prior to that company becoming a client of his/her firm (1 response);
- Continuing to act despite the conflict by using another actuary from within the same firm (1 response);
- Line manager unable to accept the actuary's reasons for putting his/her client's interests first (1 response);
- Desire to maintain good relationship with regulator (1 response);
- Time and expense of continuing discussions to resolve conflict (1 response);
- Mistake was by another firm (1 response);
- Actuary unhappy because employer playing unreasonable time on employees' time (1 response);
- Confidentiality agreements (1 response); and
- Lack of transparency (1 response).

**Question 13: Are there any situations where you believe that the options available to the actuary to reconcile a conflict should be specifically restricted, e.g. because it is in the public interest to ensure that there is no perceived threat to the independence of the actuary's advice?**

Answer Options	Percent	Response Count
Yes	29.5%	44
No	70.5%	105
<b>answered question</b>		<b>149</b>

If the response was "yes", the circumstances where the ability to reconcile a conflict should be specifically restricted were as follows:

- Dual appointments in the context of acting for trustee/sponsoring employee) (12 responses);
- High profile/public interest cases where there will be wide public scrutiny or many individuals affected by the outcome (8 responses);
- Trustee/corporate conflicts where negotiations over scheme funding contributions were required (6 responses);
- Yes (but could not think of any specific examples) (5 responses);
- Commissions dependent on advice (4 responses);
- Advice on mergers/acquisitions should not involve two actuaries from the same firm (3 responses);
- Situations without peer review (2 responses);
- Statutory positions (2 responses);
- Audit positions (2 responses);
- Where the actuary is required to provide an opinion on their own firm's product/services (2 responses);
- Where the advice is presented as being independent (1 response);
- Matters which involve litigation or regulator involvement (1 response); and
- Insider dealing (1 response).

**Question 14: Do you feel that there are any new areas/situations where conflicts are developing?**

Answer Options	Percent	Response Count
Yes	28.5%	41
No	71.5%	103
<b>answered question</b>		<b>144</b>

If the response was “yes”, those new areas were as follows:

- Solvency II (7 responses);
- Profession being aware of areas which might cause trouble in the future but not speaking up about what is in the public interest (4 responses);
- Conflict of regulators (5 responses);
- Recommended funding targets which could place employer into insolvency (3 responses);
- Yes (but could not think of specific examples) (3 responses)
- Local (particularly developing countries) vs. international regulations/standards (3 responses) ;
- Advice on increasingly complex investment products by firm that produced product (2 responses);
- Enhanced transfer values vs. public interest (3 responses);
- Enterprise risk management – giving the impression that risks are really being managed versus the reality (2 response);
- Pension increase conversion exercises (2 responses);
- Implemented investment consulting (2 responses);
- Enhanced reporting requirements (2 responses);
- Professional developments e.g. consultation with government over policy whilst working for a commercial enterprise (1 response);
- Scheme actuaries involved in liability reduction exercises (1 response) ;
- More pension scheme trustee/employer conflicts (1 response);
- Risk management with management determination of risks impacting on required capital (1 response);
- Partial sales of businesses (1 response);
- Commissions dependent on advice (1 responses);
- Conflicted clients not recognising conflicts (1 response);
- Conflict of increasing regulation and employers' costs (1 response);
- Distribution of orphaned estates (1 response); and
- Conflicts for company appointed trustees (1 response).

**Question 15: In your experience, how are conflicts managed and reconciled within the working environment?**

The 106 responses indicated that most respondents and their firms had robust conflict management procedures in place and that those involved:

- Internal discussions;
- Discussions with senior actuaries;
- Discussions with/disclosures made to clients;
- Chinese walls/information barriers (although a few respondents called for a ban on this);

- Documented decision-making;
- Corporate hotlines for whistleblowing;
- Not accepting appointments which would create conflicts of interests with other clients of the firm;
- Written conflicts of interest/personal investment protocols/policies;
- Each engagement having to be put through anti-conflict measures;
- Regional review body which provides independent advice;
- Establishment of professional affairs committees/senior conflicts manager role;
- Willingness to step down if conflict cannot be resolved;
- Online learning and assessment for conflicts (in some cases, on an annual, mandatory basis);
- In-house training; and
- Appointing different actuaries for each role.

**Question 16: What role is there for training and other means of support? We would like to hear about other media, e.g. attending training events, case studies etc, which actuaries have found useful in understanding the issues surrounding potential conflicts and to have your thoughts on what further support either firms or the Profession might offer actuaries in this area.**

The 87 responses indicated that the Profession could usefully offer:

- Case studies;
- Anecdotes/depersonalised accounts;
- Professionalism courses with a conflicts flavour;
- CPD events involving conflicts of interest;
- Small group discussions on conflicts of interest scenarios;
- Online courses/seminars/webinars;
- Discussion papers/Information and Assistance Notes (IANs);
- Articles in the Actuary; and
- FAQs/Q&As.

**Question 17: Do you think any change or addition to the existing principles-based guidance given in the Actuaries' Code is needed?**

Of the 107 responses, 87 (81.3%) believed that no change to the Actuaries' Code was needed.

Of the 20 responses which stated that changes were required to the Code, those respondents commented as follows:

- Yes (but no specific comments on any amendments to the Code) (9 responses);
- Clarify the options on conflicts of interest and when to act (5 responses);
- Clarify the use of Chinese Walls/information barriers (3 responses);

- Amend to refer to specific practice areas (3 responses);
- Amend to include more disclosure when actuaries are advising clients on the merits of products designed by their employer (2 responses);
- Specifically ban dual appointments of scheme actuaries (1 response);
- Mention that actuaries should be involved in the ongoing monitoring of conflicts of interest (1 response);
- More weight should be given to the interests of the affected parties rather than the client (1 response);
- A major strategic rethink is needed to bridge the gap between the Profession's words and its deeds (1 response);
- Change the wording in the Code referring to "cannot reasonably be seen to be" (1 response);
- Remove the reference to the Code applying to all aspect of an actuary's life (1 response); and
- Amend to include a presumption that conflicts are to be completely avoided unless there is demonstrably no impact (1 response).

#### Question 18: Do you think there should be changes to professional regulation?

Of the 101 responses, the vast majority of responses seem not to be in favour of further regulation but are in favour of more training and support from the Profession, along the lines of the items listed in response to question 16 above.

Of the 18 respondents (17.8%) of those who thought there should be changes to professional regulation, their comments were:

- Yes (but no specific suggestions made) (7 responses);
- Specific Actuarial Profession Standard or an IAN (5 responses);
- Ban on dual appointments (2 responses);
- Additional prescribed requirements where an employer/firm does not operate a formal policy (1 response);
- Changes to the CPD system to ensure all actuaries make a contribution to the long term public interest (1 response);
- More emphasis on the public interest (1 response);
- More emphasis on helping the client rather than protecting the adviser (1 response);
- Introduction of a conflicts register (1 response);
- Regular practice reviews of firms as part of the CPD process including a review of conflicts (1 response); and
- Mandatory peer review in conflict situations (1 response).

**Question 19: Do you think there should be additional member support?**

Of the 104 responses, the majority of responses (69 respondents) were in favour of more training and support from the Profession, along the lines of the items listed in 3.17 above and including an ethics/agonny aunt hotline/web-service for members to contact the Profession to discuss conflicts issues.

35 respondents (33.6%) believed there was no need for additional member support and offered no further comments.

**Question 20: Do you think there should be changes to education and CPD?**

Of the 104 responses, the majority of responses took education to mean pre-qualification exams where there was a groundswell of support for junior actuaries to be made aware of conflicts of interest situations. In relation to CPD, it was thought that there should be more detail in the professionalism courses/business awareness modules and more CPD events dealing with conflicts.

**Question 21: Are there any other options for action you would like to suggest?**

Answer Options	Percent	Response Count
Yes	5.1%	6
No	94.9%	112
<b>answered question</b>		<b>118</b>

Of those who said “yes”, the responses were:

- Actuarial Profession being more vocal re public interest matters e.g. whether defined contribution pensions will be sufficient (2 responses);
- Training should consider “near misses” that might/might not be conflicts;
- The Actuarial Profession should provide a support unit for actuaries who need advice;
- Senior actuaries could offer to discuss conflicts on a confidential basis; and
- Transparency: if advice cannot be shared, it should not be given.

## APS L1: DUTIES AND RESPONSIBILITIES OF LIFE ASSURANCE ACTUARIES

**Author:** Life Practice Executive Committee

**Status:** Approved under the Standards Approval Process

**Version:** 1.0, effective 1 October 2011

**To be reviewed:** No later than 1 January 2014

**Purpose:** To set out the requirements for actuaries carrying out the statutory roles of **Actuarial Function Holder**, **With-Profits Actuary**, **Reviewing Actuary** and **Appropriate Actuary** for **Firms** transacting long term insurance business, and the relationships between them and the **Members** who support those role holders.

**Authority:** The Institute and Faculty of Actuaries

**Target Audience:** **Actuarial Function Holders**, **With-Profits Actuaries**, **Appropriate Actuaries**, and **Reviewing Actuaries**, appointed by or in respect of UK authorised insurance companies and friendly societies writing long-term insurance business. **Members** who support those role holders.

### General Professional Obligations:

All **Members** are reminded of the Status and Purpose preamble to the Actuaries' Code which states that the Code will be taken into account if a **Member's** conduct is called into question for the purposes of the Institute and Faculty of Actuaries' Disciplinary Scheme. Rule 1.6 of the Disciplinary Scheme states that misconduct:

"means any conduct by a Member...in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity or professional judgement which other Members or the public might reasonably expect of a Member having regard to...any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or...the Board for Actuarial Standards".

**Members** are required to comply with all applicable provisions of **APs**.



In the event of any inconsistency between this **APS** and the Actuaries' Code, the Code prevails.

#### **Use of the words "must" and "should":**

This **APS** uses the word "must" to mean a specific mandatory requirement.

In contrast, this **APS** uses the word "should" to indicate that, while the presumption is that **Members** comply with the provision in question, it is recognised that there will be some circumstances in which **Members** are able to justify non-compliance.

## **1. Introduction**

- 1.1. In this **APS**, requirements of legislation or of **FSA** rules and guidance are specifically referred to as such. The inclusion of summarised references to, or quotations from, particular provisions of the **FSA Handbook** is not a substitute for referring to the **FSA Handbook**.
- 1.2. The responsibilities of **Members** to whom this **APS** applies are central to the financial soundness of the long-term insurance business of the **Firms** in respect of which they act, and to the fair treatment of policyholders. **Members** who support the various named role holders should be aware of the responsibilities of those other members when assisting them.
- 1.3. A **Member** must not accept an appointment as an **Actuarial Function Holder** or **With-Profits Actuary** if he/she does not have the necessary skill and experience to provide appropriate actuarial advice. Similar considerations apply within the **FSA** rules applying to **Approved Persons**. The requirement to have the necessary skill and experience also applies to the role of the **Reviewing Actuary** and the role of the **Appropriate Actuary**.
- 1.4. Before taking up an appointment, a **Member** must ensure that the relevant requirements of the Actuaries' Code have been met, including the need to consider a discussion with his/her immediate predecessor, if any.
- 1.5. A **Member** must take reasonable steps to ensure that his/her principal understands when he/she is providing advice as a result of legislation, **FSA** rules and guidance, **APSs** and **TASs**, as opposed to providing advice or expressing an opinion as an employee, director or external adviser, as the case may be.

## **2. General obligations**

- 2.1. **Actuarial Function Holders** and **With-Profits Actuaries** (other than those appointed by the **FSA** for **Firms**, unless that appointment is confirmed by the **Firm**) are **Approved Persons** and must be familiar with the obligations which this imposes on them. In particular, they must be aware of the extent to which the **Statements of Principle** go beyond the specific requirements applying to **Actuarial Function Holders** and **With-Profits Actuaries** and must act in accordance with them. Some of the requirements of this **APS** may contribute towards compliance with some aspects of **APER**; however this is a matter for the individual **Approved Person** to determine and no guidance on this is provided.
- 2.2. **Actuarial Function Holders**, **With-Profits Actuaries** and **Appropriate Actuaries** are required by **SUP 4.5.13R** to pay due regard to generally accepted actuarial practice. The **TASs**, the Actuaries' Code and **APSs** establish some elements of generally accepted practice. Such actuaries must also consider whether there are any other practices that may be non-mandatory but still considered as generally accepted actuarial practice.
- 2.3. If a **Member** adopts a practice which is significantly different from non-mandatory generally accepted actuarial practice, then the **Member** must disclose the reasons for the practice actually

adopted. In this context “significant” refers to the effect of the practice on the results. A major difference in practice on an item which is trivial in its effect is not significant for this purpose.

- 2.4. **Actuarial Function Holders, With-Profits Actuaries and Appropriate Actuaries** are required by section 344 of the **Act** to communicate particular matters to the **FSA**, and other matters are required by the **Regulations**. The requirements under section 344 are to notify the **FSA** without delay:

- 2.4.1. when they resign;
- 2.4.2. when their appointment is terminated or not renewed; or
- 2.4.3. of any matters connected with the cessation of their appointment which they think ought to be brought to its attention, or that there is no such matter.

Guidance on applying the requirements of the **Regulations** is given in **APS L2** and holders of these roles must be familiar with its contents.

### 3. The Actuarial Function Holder

- 3.1. The **Actuarial Function Holder** must hold a **Life Actuary Practising Certificate** which must cover **With-Profits Business** if he/she is appointed in respect of such business.
- 3.2. **SUP 4.3.1R** allows a **Firm** to appoint more than one **Actuarial Function Holder**, each in respect of one or more classes of business. Where this is the case, each **Actuarial Function Holder** must:
  - 3.2.1. follow this **APS** in respect of the class (or classes) of business in respect of which he/she has been appointed; and
  - 3.2.2. seek written confirmation from the **Governing Body** which specifies in respect of which classes of business he/she is appointed.
- 3.3. When accepting an appointment as an **Actuarial Function Holder**, a **Member** must ensure that he/she has the right to present a report to the **Firm’s Governing Body** in person, should he/she deem the report sufficiently important.
- 3.4. As **SUP 4.3.13R (1)** does not require the **Firm** to pro-actively supply the **Actuarial Function Holder** with information, in order to provide the advice on risk and the monitoring of exposures required by **SUP 4.3.13R (1)** and (2), the **Actuarial Function Holder** must:
  - 3.4.1. ensure that he/she has sufficient information and resources to enable the necessary investigations to be carried out, both at the time of the appointment and thereafter; and
  - 3.4.2. use his/her judgement to decide which risks need to be monitored, and the frequency with which they should be monitored and advise the **Firm** accordingly.

The information required, and the frequency of monitoring, will depend on the nature of the business carried out by the **Firm**.

- 3.5. Where there is more than one **Actuarial Function Holder** within a given **Firm**, it may not be possible for the requirements described in **SUP 4.3.13R (1)** and (2) above to be carried out separately by each such **Member**. This is particularly the case where they are appointed in respect of different classes of business within the same long-term insurance fund. In such a case, each **Actuarial Function Holder** must ensure, before accepting the appointment, that the **Firm** allocates to one of them, or to each of them acting collectively, the responsibility described in **SUP 4.3.13R(1)** and (2) in relation to the **Firm** as a whole.
- 3.6. For **With-Profits Business**, the **With-Profits Actuary** must advise the **Firm** on key aspects of discretion. The **Actuarial Function Holder** must liaise with the **With-Profits Actuary** to ensure

he/she is aware of such advice given by the **With-Profits Actuary** and of relevant decisions taken by the **Firm** insofar as they affect liabilities to policyholders.

- 3.7. The **Actuarial Function Holder** must ensure that the **Firm's** management are aware at all times of his/her interpretation of its:

3.7.1. obligations to treat its customers fairly; and

3.7.2. policyholders' reasonable expectations

which need to be taken into account in assessing the liabilities, other than where the matter is covered by the responsibilities of the **With-Profits Actuary**. This interpretation must have regard to the nature of the **Firm's** practices and business plans and its approach to the treatment of policyholders both individually and (where appropriate) collectively as a group vis-à-vis shareholders.

- 3.8. When a significant change is likely to take place in the **Firm's** business plans, practices or other circumstances, the **Actuarial Function Holder** must take all reasonable steps to ensure that the **Firm** appreciates the implications for fairness and the reasonable expectations of its policyholders which need to be taken into account in assessing the liabilities, other than where the matter is covered by the responsibilities of the **With-Profits Actuary**.
- 3.9. The **Actuarial Function Holder** must also satisfy himself/herself that systems of control are in place intended to ensure that the **Firm's** policyholders are not misled as to their expectations. If the **Actuarial Function Holder** believes that the systems of control may not be adequate, he/she must draw this to the **Firm's** attention and advise the **Governing Body**, unless sufficient steps are otherwise taken to meet his/her concerns.
- 3.10. If a **Firm** requires a **Member** to produce work which the **Member** believes conflicts with the requirements in the **FSA Handbook** and/or a **TAS**, the **Member** may do so provided that the work clearly and unambiguously states that the **Member** has done so under instructions and that the work does not conform with the requirements in the **FSA Handbook** and/or the **TAS(s)** as applicable. The adoption of such resulting technical provisions or resilience capital requirement will create a situation where the **Member** producing the work will be required to report the matter to the **FSA** in accordance with the **Regulations**.

#### 4. The With-Profits Actuary

- 4.1. The **With-Profits Actuary** must hold a **Life Actuary Practising Certificate**, with that certificate covering **With-Profits Business**.
- 4.2. **SUP 4.3.1R** allows a **Firm** to appoint more than one **With-Profits Actuary**, each in respect of one or more classes of business. However, because there can be conflicts of interest between different classes of business, a **Member** must, before accepting an appointment, have regard to the following:
- 4.2.1. where a **Firm** has more than one **With-Profits Fund**, it will normally be unacceptable for a **Member** to accept an appointment as a **With-Profits Actuary** for some but not all of the **With-Profits Funds** unless the:
- 4.2.1.1. **Principles and Practices of Financial Management** of the funds adequately describe the way in which the exercise of discretion impacts on the interactions between the different funds;
- 4.2.1.2. extent to which such interactions from the exercise of discretion impact on **With-Profits Policyholders** is unlikely to be significant; and

- 4.2.1.3. terms of reference of the appointment allow him/her to discuss freely with the other **With-Profits Actuaries** appointed by the **Firm** the operation of all of its **With-Profits Funds**, and to have access to their written advice to the **Firm**;
- and
- 4.2.2. a **Member** must not accept an appointment as a **With-Profits Actuary** in respect of only some of the classes of business in any one **With-Profits Fund**.
- 4.3. The **With-Profits Actuary** must seek to ensure:
  - 4.3.1. through appropriate wording in his/her terms of engagement or otherwise, that he/she will receive, on a timely basis, copies of all papers issued to members of the **Governing Body** or other significant bodies that are relevant to the management of the **With-Profits Fund**;
  - 4.3.2. through appropriate wording in his/her terms of engagement or otherwise that he/she will have the opportunity to comment on any material communications or reports issued or made available by the **Firm** to its policyholders generally, or to particular classes of policyholders (or their advisers) that relate to the **Firm's** exercise of discretion affecting its **With-Profits Business**; and
  - 4.3.3. that he/she should, as far as is reasonably possible, be made aware, in time to be able to comment on them before issue, of any such communications or reports which could significantly affect the readers' understanding of the **Firm's** past or future exercise of discretion affecting its **With-Profits Business**.
- 4.4. The **With-Profits Actuary** must draw the attention of the management of the **Firm**, at the appropriate level of seniority, to any circumstances in which he/she believes that a communication should be issued by the **Firm** to the **Firm's With-Profits Policyholders**, or a particular class of such policyholders.
- 4.5. The **With-Profits Actuary** must give advice to a **Firm** on the future exercise of discretion affecting its **With-Profits Business** whenever:
  - 4.5.1. the **Firm** requests it;
  - 4.5.2. he/she considers that, in any respect, a proposed exercise of discretion would be inconsistent with the **Firm's Principles and Practices of Financial Management**;
  - 4.5.3. he/she considers that the **Firm's Principles and Practices of Financial Management** have become inappropriate;
  - 4.5.4. the steps the **Firm** proposes to take in order to demonstrate its ability to meet its regulatory capital requirements raises particular issues relating to the exercise of discretion affecting those classes of the **With-Profits Business** of the **Firm** in respect of which he/she has been appointed; or
  - 4.5.5. he/she considers that the interests of the **With-Profit Policyholders** require it.
- 4.6. Where, in the **With-Profits Actuary's** opinion, there is uncertainty regarding the extent to which the **Governing Body** can exercise discretion when allocating surplus, he/she must state in his/her report or advice:
  - 4.6.1. the nature of the uncertainty;
  - 4.6.2. the assumptions he/she has made with regard to the uncertainty;
  - 4.6.3. the consequences were the uncertainty to be resolved differently;

- 4.6.4. if appropriate, that the **Firm**, if it has not already done so, seek legal advice with regards to the uncertainty;
- 4.6.5. the extent to which he/she has relied upon any legal advice concerning that uncertainty that the **Firm** has received; and
- 4.6.6. whether in his/her opinion there is any conflict between any legal advice concerning that uncertainty that the **Firm** has received, and his/her interpretation of the fair treatment of the **Firm's With-Profits Policyholders** having particular regard to the **Firm's Principles and Practices of Financial Management**.

## 5. The Appropriate Actuary

- 5.1. The **Appropriate Actuary** must hold a **Life Actuary Practising Certificate**, which must cover **With-Profits Business** if such business is written by the **Firm**.
- 5.2. When accepting an appointment as an **Appropriate Actuary**, a **Member** must ensure that he/she has:
  - 5.2.1. the right to present a report to the **Firm's Governing Body** in person, should he/she deem the report sufficiently important; and
  - 5.2.2. sufficient information and resources to enable the necessary investigations to be carried out. This applies both at the time of the appointment and thereafter.

## 6. The Reviewing Actuary

- 6.1. The **Reviewing Actuary** must hold a **Life Actuary Practising Certificate** relevant to the type of business written by the **Firm** in respect of which he/she has been asked to act as a **Reviewing Actuary**.
- 6.2. The **Reviewing Actuary** must carry out his/her duties in a manner agreed with the auditor of the entity being audited and must comply with the Actuaries' Code.
- 6.3. This **APS** applies both to cases where the **Reviewing Actuary** is employed by, or is a partner in, the audit firm and where this is not the case.
- 6.4. The auditor is responsible for determining the scope of the audit. However, the **Reviewing Actuary** must advise the auditor of the implications if the scope is narrower than one expected by the **Reviewing Actuary**. Any limitations in scope should be set out in the **Reviewing Actuary's** report to the auditor.
- 6.5. The **Reviewing Actuary** is required by **IPRU-INS 9.35 (1A)** or **IPRU-FSOC 5.11 (1A)** as appropriate to be independent of the **Firm**. The **Reviewing Actuary** must discuss the auditor's independence requirements with them.
- 6.6. When providing advice to the auditor, the **Reviewing Actuary** must:
  - 6.6.1. ensure that it is clear when he/she is acting in a formal capacity as the **Reviewing Actuary**;
  - 6.6.2. in respect of the items within scope, advise the auditor on the methods and assumptions used by the **Firm** and, in particular, on whether they comply with the requirements of **INSPRU 1.2** and, if relevant, **INSPRU 1.3** (which includes the requirements in respect of generally accepted actuarial practice); and

- 6.6.3. establish with the auditor the approach that the auditor will be taking to auditing items that are important inputs to the actuarial valuation such as assets, policy data, results of experience investigations and expense analysis.

## 7. Possible conflicts of interest

- 7.1. **Actuarial Function Holders, With-Profits Actuaries and Appropriate Actuaries** are reminded of their obligations under **SUP 4.5** and the Actuaries' Code in relation to objectivity and conflicts of interest.
- 7.2. Additionally, a **Member** must not perform conflicting roles in contravention of **SUP 4.3.12AR**. This would mean, for example, that a **Member** appointed to be a **With-Profits Actuary** under **SUP 4.3.1 (1) (b)** should not also be the Chief Financial Officer (even if not a member of the **Governing Body**) in a proprietary **Firm**. Furthermore, a **Member** must not perform a role for a parent of the **Firm** which, if it were performed for the **Firm**, would give rise to a conflict of interest in contravention of **SUP 4.3.12AR**.
- 7.3. Provided a **Member** is not a director of the **Firm** (or of any parent of the **Firm**), then the same individual may be both an **Actuarial Function Holder** and a **With-Profits Actuary** of the **Firm**.
- 7.4. Nevertheless, if that is the case there could be a risk of situations arising which are, or could appear to be, conflicts of interest. The reporting line of the **With-Profits Actuary** could also give rise to such a risk, for example, if it is to the **Actuarial Function Holder** or another director of the **Firm** or of any part of its group other than a subsidiary undertaking with conflicting responsibilities. If, in these circumstances, a **With-Profits Actuary** has any doubt about being free from unacceptable conflicts of interest, whether real or apparent, he/she should consult an independent **Member**.
- 7.5. However, it would not normally be necessary to consult where the:
- 7.5.1. matter is neutral for **With-Profits Policyholders** in aggregate; or
  - 7.5.2. sums involved are not significant in the context of the size of the **With-Profits Fund**.
- 7.6. There may be occasions when the **Governing Body** requests advice from the **With-Profits Actuary** which might conflict with that role. If this occurs, the procedures set out in the Actuaries' Code apply.

## 8. Relationship between the Actuarial Function Holder and the With-Profits Actuary

- 8.1. If the roles of **Actuarial Function Holder** and **With-Profits Actuary** are combined, a **Member** must ensure that the **Governing Body** is aware of the particular role in which the **Member** is acting when presenting advice to it.
- 8.2. Where the roles of **Actuarial Function Holder** and the **With-Profits Actuary** are undertaken by different actuaries, each **Member** must ensure that:
- 8.2.1. he/she is aware of the work carried out by and opinions of the other **Member**; and
  - 8.2.2. his/her terms of reference allow regular, direct contact with the other **Member**.
- 8.3. The **Actuarial Function Holder** must take account of the **Firm's** interpretation of its obligations to policyholders in respect of discretionary benefits on **With-Profits Business**. However, as this interpretation is only guided by the advice of the **With-Profits Actuary**, the **Actuarial Function Holder** must not assume that the advice of the **With-Profits Actuary** will automatically be accepted.

- 8.4. The **Actuarial Function Holder** must satisfy himself/herself directly that the valuation recommendations made in respect of discretionary payments are appropriate in light of any obligations implied by the **Principles and Practices of Financial Management**.
- 8.5. The **With-Profits Actuary** must ensure that he/she is fully aware of the implications for capital requirements of the **Firm** of any recommendations on the exercise of discretion in respect of **With-Profits Policies** which he/she makes or on which he/she expresses an opinion. The **With-Profits Actuary** should seek the relevant **Actuarial Function Holder's** opinion in this regard and to ensure that any actuarial models upon which he/she intends to base advice use assumptions consistent with those used by the **Firm** in its modelling (or that the implications of any differences are explained to the **Governing Body**).
- 8.6. Where the calculation of asset shares is not the direct responsibility of the **With-Profits Actuary**, that actuary must ensure that he/she is familiar with the process and that the process is in line with the **Firm's Principles and Practices of Financial Management**.
- 8.7. The **Actuarial Function Holder** and the **With-Profits Actuary** are entitled (under section 341 of the **Act**) "to require from the authorised person's officers such information and explanations as he reasonably considers necessary for the performance of his duties as auditor or actuary". Each of them must, using this power if necessary, require access to any items prepared by the other necessary to meet the requirements of this **APS**.

## **9. Relationship between the Actuarial Function Holder and the Reviewing Actuary**

- 9.1. When carrying out the **Actuarial Function Holder's** duties, it is inappropriate to rely on the checks or opinions of the **Reviewing Actuary**. The **Actuarial Function Holder** may seek the **Reviewing Actuary's** opinion in the course of carrying out the role, but it remains a professional obligation for the **Actuarial Function Holder** to be satisfied personally on all relevant points.



Term	Definition
Act	Financial Services and Markets Act 2000
Actuarial Function Holder	A Fellow of the Institute and Faculty of Actuaries appointed by (or by the FSA for) a Firm in accordance with SUP 4.3.1R or SUP 4.3.3R of the FSA Handbook to perform the role specified in SUP 4.3.1R (1) (a)
APER	The part of the FSA Handbook in High Level Standards which has the title Statements of Principle and Code of Practice for Approved Persons
Appropriate Actuary	A Fellow of the Institute and Faculty of Actuaries appointed by a Friendly Society in accordance with SUP 4.4.1R of the FSA Handbook
Approved Person	A person in relation to whom the FSA has given its approval under section 59 of the Act (Approval for particular arrangements) for the performance of a controlled function
APS	Actuarial Profession Standard
APS L2	APS L2: The Financial Services and Markets Act 2000 (Communications By Actuaries) Regulations 2003
BAS	The Board for Actuarial Standards
Firm	An insurance company or Friendly Society in respect of which the actuary is appointed
Friendly Society	An incorporated friendly society or a registered friendly society
FSA	Financial Services Authority (or its successor)
FSA Handbook	The FSA Handbook issued by the FSA
Governing Body	The board of directors or committee of management of a Firm
INSPRU	The Prudential Sourcebook for Insurers
IPRU-FSOC	The Prudential Sourcebook for Friendly Societies
IPRU-INS	The Interim Prudential Sourcebook for Insurers
Liability to a Policyholder	Means: in relation to a Firm carrying out contracts of insurance) any liability or obligation of that Firm to, or in respect of, a policyholder, including any liability or obligation arising: <p>(a) from the requirement to treat customers fairly under Principle 6, including with respect to policyholders' reasonable expectations; or</p> <p>(b) from a determination of liability by an</p>



	Ombudsman; or
	(c) from any requirement to pay compensation under the regulatory system
Life Actuary Practising Certificate	The two types of practising certificates issued by the Institute and Faculty of Actuaries for Members who act for a company which either (1) includes With-Profits Business (known as the Life Actuary Certificate (including with-profits), or (2) does not include With-Profits Business (known as the Life Actuary Certificate (not including with-profits)
Member	A Member of the Institute and Faculty of Actuaries
Principles and Practices of Financial Management	These are the Principles and Practices of Financial Management, containing with-profits principles and with-profits practices, which a Firm carrying on With-Profits Business must establish, maintain and record under the Conduct of Business Sourcebook (COBS 20.3) (Principles and Practices of Financial Management) issued by the FSA
Regulations	The Financial Services and Markets Act 2000 (Communications by Actuaries) Regulations 2003
Reviewing Actuary	An actuary independent of a Firm from whom IPRU-INS 9.35(1A) requires the Firm's auditor to take appropriate advice
Statements of Principle	Statements of Principle issued by the FSA under section 64(1) of the Act (Conduct: Statements and codes) with respect to the conduct of Approved Persons and set out in APER
SUP	The Supervision Manual published by the FSA
TASs	Technical Actuarial Standards issued by the BAS
With-Profits Actuary	A Fellow of the Institute and Faculty of Actuaries appointed by (or by the FSA for) a Firm in accordance with SUP 4.3.1R or SUP 4.3.3R to perform the role specified in SUP 4.3.1R (1) (b)
With-Profits Business	Any business of an insurer that may affect the amount or value of the assets comprising a With-Profits Fund
With-Profits Policyholder	A policyholder under a With-Profits Policy
With-Profits Policy	A contract falling within a class of long-term insurance business which is eligible to participate in any part of any established surplus
With-Profits Fund	Means (Except in INSPRU):  (a) a long-term insurance fund (or that part of such a fund) in which policyholders are eligible to

participate in any established surplus; and

(b) where it is an insurer's usual practice to restrict policyholders' participation in any established surplus to that arising from only a part of the fund (or part fund) falling within (a), that part (or that part of the part fund)

Means for the purposes of INSPRU, a long-term insurance fund in which policyholders are eligible to participate in any established surplus

## APS P1: DUTIES AND RESPONSIBILITIES OF MEMBERS UNDERTAKING WORK IN RELATION TO PENSION SCHEMES

<b>Author:</b>	Pensions APS Working Party of the Professional Regulation Executive Committee
<b>Status:</b>	Approved under the Standards Approval Process
<b>Version:</b>	2.0, effective 1 April 2012
<b>To be reviewed:</b>	No later than 1 April 2015
<b>Purpose:</b>	To set out the specific practice area ethical obligations, including <b>Practising Certificate</b> obligations, that apply in addition to the Actuaries' Code published by the <b>Actuarial Profession</b> for <b>Members</b> <sup>1</sup> , operating in the pensions area.
<b>Authority:</b>	The Institute and Faculty of Actuaries
<b>Target Audience:</b>	<b>Members</b> working for the <b>Trustees</b> or other governing body of a pension scheme, or working for decision-making bodies in relation to public sector or public service pension schemes.

Sections 1-5 inclusive are primarily directed at **Scheme Actuaries**, being an actuary appointed to advise the **Trustees** of a defined benefit pension scheme in accordance with section 47(1)(b) of the Pensions Act 1995. Section 6 extends the application of sections 1-5, in certain relevant respects, to other **Members** undertaking work in relation to pension schemes.

<sup>1</sup> **Members** of all categories, including Students, Affiliates, Associates and Fellows.

### General Professional Obligations:

All **Members** are reminded of the Status and Purpose preamble to the Actuaries' Code which states that the Code will be taken into account if a **Member's** conduct is called into question for the purposes of the Institute and Faculty of Actuaries' Disciplinary Scheme. Rule 1.6 of the Disciplinary Scheme states that misconduct:

"means any conduct by a Member...in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity or professional judgement which other Members or the public might reasonably expect of a Member having regard to...any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or...the Board for Actuarial Standards".

**Members** are required to comply with all applicable provisions of **APSS**.

In the event of any inconsistency between this **APS** and the Actuaries' Code, the Code prevails.

### Use of the words "must" and "should":

This **APS** uses the word "must" to mean a specific mandatory requirement.

In contrast, this **APS** uses the word "should" to indicate that, while the presumption is that **Members** comply with the provision in question, it is recognised that there will be some circumstances in which **Members** are able to justify non-compliance.

#### 1. Relevant knowledge and skill

- 1.1. A **Scheme Actuary** must be familiar with any relevant legislation and regulatory guidance including **Codes of Practice**.

#### 2. Practising certificates

- 2.1. A **Scheme Actuary** must have a current **Practising Certificate**.

#### 3. Obligations relating to appointment, replacement and absence

- 3.1. A **Scheme Actuary** must have a written agreement with the **Trustees** covering the information that he/she requires the **Trustees** to provide him/her with, or allow him/her access to, to do his/her job properly, and allowing him/her to share information with other advisers as appropriate.
- 3.2. The matters covered by this agreement may vary from scheme to scheme but the **Scheme Actuary** must have a justifiable reason for the exclusion of any of the matters listed in Appendix 1 to this **APS**. Such a reason might include a judgement that the matter is not sufficiently significant to justify amending an already-existing agreement.
- 3.3. The agreement must be reviewed periodically and should be updated to ensure that it continues to be fit for this purpose.
- 3.4. If an **Existing Actuary** is to be replaced by a **New Actuary**:

- 3.4.1. the **Existing Actuary** must provide the **New Actuary** with the information that the **Existing Actuary** considers to be relevant for the **New Actuary** to fulfil his/her responsibilities as **Scheme Actuary**;
  - 3.4.2. the information in 3.4.1 must include any information considered to be relevant relating to reports made to the **Regulator** under **Section 70** or similar reports to other regulatory authorities;
  - 3.4.3. if necessary, the **Existing Actuary** and **New Actuary** must discuss the information to be provided; and
  - 3.4.4. where the **New Actuary** considers that he/she requires more information for this purpose than the **Existing Actuary** originally provided, the **New Actuary** must ask the **Existing Actuary** for this additional information. Provided that the **New Actuary** agrees to any reasonable conditions imposed by the **Existing Actuary** for the release of information, the **Existing Actuary** must comply with any such reasonable request or explain why it is not possible to comply with the request.
- 3.5. A **Scheme Actuary** who resigns or is removed must ensure that the **Trustees** have been made aware of:
- 3.5.1. the need to appoint a replacement within a prescribed timescale; and
  - 3.5.2. any deadlines relevant to responsibilities of the **Scheme Actuary** that might pass before a **New Actuary** has had time to address them.
- 3.6. A **Scheme Actuary** must have appropriate arrangements to cover any period during which he/she is unable to fulfil his/her duties as a **Scheme Actuary**. The arrangements must take account of the length of the absence. Depending on the circumstances, it might be appropriate or necessary to resign the appointment. A **Scheme Actuary** should consider that:
- 3.6.1. being unable to fulfil his/her duties as a **Scheme Actuary** is not the same as being away from his/her normal place of work;
  - 3.6.2. a **Scheme Actuary** can be away from his/her normal place of work but still be able to fulfil his/her duties, although because of the need on occasions for the **Scheme Actuary** to be proactive rather than simply reacting to requests from the **Trustees** it would not normally be sufficient merely to be contactable; and
  - 3.6.3. on the other hand, there could be circumstances in which the **Scheme Actuary** is at his/her place of work but unable to fulfil his/her duties, for example, because of involvement in additional time-consuming matters.

#### 4. Other responsibilities

- 4.1. A **Scheme Actuary** should inform the **Trustees** on becoming aware of any significant matter which relates to his/her regulatory, contractual or other professional responsibility and/or might have an impact on the financing of the scheme, and which he/she considers might lead to the **Trustees** needing to request advice or further advice, either from the **Scheme Actuary** or another adviser.

- 4.2. An example of where the requirement in 4.1 would not arise is where the **Scheme Actuary** believes that another person (such as the **Trustees'** legal adviser) has appropriately (for example, in relation to level of authority and timescale) informed or will inform the **Trustees**.
- 4.3. A **Scheme Actuary** who has any material concerns about the way the **Trustees** are fulfilling their duties and responsibilities should share his/her concerns with the **Trustees** and take such consequential action as is appropriate in the circumstances. This includes concerns that:
- 4.3.1. a course of action is not appropriate; and/or
  - 4.3.2. the **Trustees** have failed or are failing to carry out an appropriate action; and/or
  - 4.3.3. the **Trustees** might be unaware of a duty or responsibility, or of relevant legislation or guidance relating to a duty or responsibility.
- 4.4. When giving any form of actuarial certification required by legislation, a **Scheme Actuary** must consider whether there are any matters which he/she believes the **Trustees** should bear in mind before taking any action associated with that certification. The **Scheme Actuary** must then draw the **Trustees'** attention to any such matters. These matters need not prevent the certification from being given, although if they are not appropriately addressed by the **Trustees**, the **Scheme Actuary** must have regard to paragraph 4.3. in deciding how to proceed. The certifications covered by this principle include, but are not limited to, those provided under:
- Regulation 12 of SI 1991/167;
  - Section 67C of the Pensions Act 1995; and
  - Section 12A of the Pension Schemes Act 1993.

## 5. Conflicts of Interest

- 5.1. A **Scheme Actuary** to a **Relevant Scheme** must not advise the **Employer** to 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, including, but not limited to, advice on actuarial factors.
- 5.2. Before and while undertaking work (other than work specifically prohibited by paragraph 5.1 above) for an **Employer** to a **Relevant Scheme**, the **Scheme Actuary** to that scheme must follow either the approach set out in 5.2.1 to 5.2.4 below or an alternative approach which could reasonably be expected to provide equivalent protection to the interests of the **Trustees**:
- 5.2.1. the **Scheme Actuary**, **Trustees** and **Employer** produce and maintain a written agreed plan setting out how conflicts of interest are reconciled, how it is intended they will continue to be reconciled and what will happen if they cannot continue to be reconciled;
  - 5.2.2. the plan allows the **Trustees** the option to continue with the **Scheme Actuary** appointment if the **Scheme Actuary** becomes unable to act for both parties;
  - 5.2.3. 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**; and

- 5.2.4. the **Scheme Actuary** reviews regularly, having regard to principle 3 of the Actuaries' Code and to this section 5, whether or not he/she is able to continue acting for both parties. In so doing the **Scheme Actuary** must consider all of the relevant circumstances, including whether advice proffered to the **Employer** may have an indirect impact on funding or benefits or whether it might otherwise give rise to a reasonable perception that the **Scheme Actuary's** ability to provide objective advice to the **Trustees** is compromised.
- 5.3. A **Scheme Actuary** to a **Relevant Scheme** who is aware that another person in his/her **Firm** is undertaking work for the **Employer** to that scheme must ensure that the **Trustees** are aware of any conflicts of interest which as a result arise or might potentially arise.

#### Transitional provision (section 5)

- 5.4. To the extent necessary to comply with paragraphs 5.1 to 5.3 above, any changes to engagement letters or similar contractual documentation must be implemented by the date six months following the coming into effect of this version of this **APS**.

#### 6. Members other than Scheme Actuaries, including students, undertaking work in relation to pension schemes

- 6.1. The principles set out in sections 1 and 4 also apply to any other **Member** who is involved in the provision of advice or other services to the **Trustees** at a level that involves direct contact with the **Trustees**. In the case of paragraph 4.1, a requirement to inform the **Trustees** of the need to take further advice does not arise where the **Member** is aware or has reasonable cause to believe that the **Scheme Actuary** or another person (such as the **Trustees'** legal adviser) has appropriately (for example, in relation to level of authority and timescale) informed or will inform the **Trustees**. In the case of paragraph 4.3, the **Member** may decide to raise the matter with the **Scheme Actuary** rather than directly with the **Trustees**.
- 6.2. To the extent to which they are practical and appropriate in the circumstances, the principles set out in section 1, paragraphs 3.1 to 3.4 and section 4 also apply to a **Member** who is in a similar role to a **Scheme Actuary**, or a **Member** within the scope of paragraph 6.1 who is working for a governing body of a pension scheme other than **Trustees**, or a **Member** working for a decision-making body in relation to public sector or public service pension schemes. Deviations from the provisions of paragraphs 3.1 to 3.4 (and Appendix 1) and section 4 should be consistent with the nature of the **Member's** appointment.
- 6.3. If paragraphs 6.1 and 6.2 would both apply (for example, where the decision-making body in relation to public sector or public service pension schemes is a body of **Trustees**), only paragraph 6.2 applies.
- 6.4. Section 5 also applies, as it does to a **Scheme Actuary**:-
- 6.4.1. to any other **Member** who provides, or is materially involved in providing, the **Trustees** of a **Relevant Scheme** with any significant advice 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, to the extent that they also provide significant advice to the **Employer** of that scheme;

6.4.2. to any other **Member** acting for the **Trustees** of a pension scheme, other than a **Relevant Scheme**, where:

- 6.4.2.1. the **Trustees** exercise a fiduciary responsibility in relation to the delivery of benefits under that scheme;
- 6.4.2.2. the **Trustees** have powers and/or rights over funding and/or the size of benefits;
- 6.4.2.3. there is an **Employer** in relation to that scheme; and
- 6.4.2.4. the behaviour of the **Employer** could affect the security or size of benefits under the scheme.

Section 5 should be read accordingly, subject to such changes as may be necessary to give effect to this provision.



## 7. Definitions

Term	Definition
Actuarial Profession	Institute and Faculty of Actuaries
APS	Actuarial Profession Standard
BAS	Board for Actuarial Standards
Codes of Practice	Codes of practice issued by the Regulator
Employer	Any entity which participates in a pension scheme or is associated with such an entity
Existing Actuary	The incumbent Scheme Actuary of a pension scheme
Firm	<p>A sole practitioner, partnership, limited liability partnership or other corporate entity engaged in the provision of actuarial services. It includes related or connected entities which are:</p> <ul style="list-style-type: none"> <li>(i) controlled by the Firm; or</li> <li>(ii) under common control, ownership or management; or</li> <li>(iii) part of a larger structure that is clearly aimed at profit or cost sharing; or</li> <li>(iv) otherwise affiliated or associated with the Firm through common policies, procedures, business strategies, the use of a common name or through the sharing of significant common professional resources.</li> </ul>
Member	Member of the Institute and Faculty of Actuaries
New Actuary	The incoming Scheme Actuary of a pension scheme
Practising Certificate	Practising certificate issued by the Institute and Faculty of Actuaries to act as a Scheme Actuary to pension schemes
Regulator	The Pensions Regulator
Relevant Scheme	A pension scheme in relation to which a Scheme Actuary is, or requires to be, appointed.
Scheme Actuary	An actuary appointed to advise the Trustees of a defined benefit pension scheme in accordance

Section 70

with section 47(1)(b) of the Pensions Act 1995

TASs

Section 70 of the Pensions Act 2004

Trustees

Technical Actuarial Standards issued by the BAS

The Trustees of a pension scheme, or, for pension schemes not established by a trust, the managers as defined in section 318(1) of the Pensions Act 2004

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## Appendix 1: Matters to be covered in written agreement with Trustees

### 1. Liaison with other advisers

- 1.1. The agreement with the **Trustees** should allow the **Scheme Actuary**:
  - 1.1.1. to liaise with other advisers to the **Trustees** in relation to matters which might be relevant either to the **Scheme Actuary's** statutory responsibilities or to other legislative or regulatory responsibilities which are placed on the other advisers in relation to the scheme;
  - 1.1.2. to ask any **Existing Actuary** for information in accordance with paragraph 3.4 of this **APS**; and
  - 1.1.3. in the event of his/her resignation or removal, to provide the **New Actuary** with the information referred to in paragraph 3.4 of this **APS**.

### 2. Information to be provided by Trustees

- 2.1. The **Scheme Actuary** should obtain the **Trustees'** written agreement that the **Trustees** will advise the **Scheme Actuary** of specified events which could, in the **Scheme Actuary's** opinion, be of material significance to the financing or solvency of the scheme. Appropriate timescales for notifying events should be included. The list should be reviewed by the **Scheme Actuary** as frequently as he/she considers necessary or appropriate.
- 2.2. Appendix 2 illustrates the types of events which, if material, a **Scheme Actuary** would normally require the **Trustees** to notify to a **Scheme Actuary**. However, a **Scheme Actuary** will need to consider:
  - 2.2.1. whether all the categories listed are relevant to a particular scheme;
  - 2.2.2. whether additional categories should be included; and
  - 2.2.3. the actual events within each category which should be specified.
- 2.3. In drawing up the list of events to be notified, the **Scheme Actuary** should be satisfied that the **Trustees** understand what the **Scheme Actuary** would consider to be material, and, if used, how words such as "unexpected", "significant" or "major" should be interpreted. In specifying timescales, phrases such as "as soon as possible" or "as soon as reasonably practicable" might be used.
- 2.4. The **Scheme Actuary** should also obtain the **Trustees'** written agreement that the **Trustees** will:
  - 2.4.1. provide the **Scheme Actuary** with copies of any future reports to the **Regulator** under **Section 70** which are either made by, or sent to, the **Trustees**;
  - 2.4.2. advise the **Scheme Actuary** if any order, notice, direction or statement (or similar) which is relevant to the financing or solvency of the scheme is issued by the **Regulator** (or has been issued and is still relevant at the date of the **Scheme Actuary's** appointment) of which the **Trustees** are aware, for example:

- an order issued under section 231(2) of the Pensions Act 2004;
  - a contribution notice under sections 38, 47 or 55 of the Pensions Act 2004;
  - a financial support direction under section 43 of the Pensions Act 2004;
  - a clearance statement under sections 42 or 46 of the Pensions Act 2004;
  - a restoration order under section 52 of the Pensions Act 2004; or
  - an approval notice in relation to an approved withdrawal arrangement under the Occupational Pension Schemes (Employer Debt) Regulations 2005;
- 2.4.3. allow the **Scheme Actuary**, on request, access at all reasonable times and in all reasonable circumstances to such information and explanation as may be required to carry out his/her duties as **Scheme Actuary**, including:
- 2.4.3.1. the scheme's books, accounts and supporting documentation;
  - 2.4.3.2. copies of the minutes of the **Trustees** and sub-committees of the **Trustees'** meetings;
  - 2.4.3.3. copies of the **Trustees'** resolutions;
  - 2.4.3.4. copies of any other documents recording decisions taken by the **Trustees** following actuarial advice from him/her or from a person advising the **Trustees**; and/or
  - 2.4.3.5. copies of all scheme constitution documentation.
- 2.5. The **Scheme Actuary** does not need to require the **Trustees** to provide him/her immediately with the information referred to in paragraph 2.4.3 of this appendix. However, there may be occasions when the **Scheme Actuary** will need to insist that specific information of the types listed is provided (or access to such information is allowed) without delay in order to assist him or her in assessing whether a report needs to be made to the **Regulator** under **Section 70**.

## Appendix 2

### Events which could affect the financing or solvency of a scheme

Appendix 2 illustrates the types of event which could affect the financing or solvency of a scheme and which, if material, a **Scheme Actuary** might typically require the **Trustees** to notify to him/her (see paragraphs 2.1 to 2.3 of Appendix 1 of this **APS**). The lists are not exhaustive.

#### 1. Changes affecting the status of the scheme

1.1. For example:

- cessation of future accruals
- closure to new members
- a decision to wind up or otherwise discontinue the scheme
- a determination to defer winding up.

#### 2. Changes to (or legal opinions on the interpretation of) the trust deed and rules or the benefits provided under them

2.1. For example, in relation to:

- the definition of pensionable pay
- contribution or benefit levels
- normal retirement date
- the degree of priority accorded to benefits in the event of the scheme winding up
- an exercise under which members may change the form of their benefits.

#### 3. Significant changes to the membership

3.1. For example, in relation to:

- the general remuneration levels of scheme members
- the numbers of active members, deferred pensioners or pensioners
- an exercise which could involve many members taking transfer values from the scheme.

#### 4. Events in relation to participating employers

4.1. For example:

- a change in the **Trustees'** view of the strength of a participating employer's covenant
- a relevant event (as defined in section 75(6A) of the Pensions Act 1995) in relation to a participating employer
- an employment-cessation event (as defined in Regulation 6ZA of SI 2005/678) in relation to a participating employer

- sales and purchases affecting the membership of the scheme.

## 5. Events in relation to investment matters

5.1. For example:

- a change in investment policy or investment management arrangements
- adverse investment performance relative to agreed objectives.

## 6. The exercise of a discretionary power

6.1. For example, the augmentation of a benefit, or the granting of a discretionary pension increase, where the cost is not met by additional contributions at the time on a basis agreed with the **Scheme Actuary**.

## 7. Events connected with the Regulator

7.1. For example:

- any event notified to the **Regulator** under section 69 of the Pensions Act 2004 by the **Trustees** (or any event of which the **Trustees** are aware has been notified to the **Regulator** under such section by a participating employer)
- an application for a refund of surplus to a participating employer.

## 8. Events in relation to financing

8.1. For example:

- non-payment of the employer's and/or employees' contributions stated in the most recent Schedule of Contributions
- a change of policy in relation to the payment of expenses
- a change in the arrangements for insuring death in service benefits or a change from insured to self-administered or vice versa
- a change to the scheme year for accounting purposes.

Appendix 4(b)

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## **APS P1: DUTIES AND RESPONSIBILITIES OF PENSIONS ACTUARIES MEMBERS UNDERTAKING WORK IN RELATION TO PENSION SCHEMES**

**Author:** Pensions APS Working Party of the Professional Regulation Executive Committee

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**Status:** Approved under the Standards Approval Process

**Version:** 42.0, effective 1 April 20142012

**To be reviewed:** No later than 1 April 20142015

**Purpose:** To set out the specific practice area ethical obligations, including **Practising Certificate** obligations, that apply in addition to the Actuaries' Code published by the **Actuarial Profession** for **Members**<sup>1</sup>, operating in the pensions area.

**Authority:** The Institute and Faculty of Actuaries

**Target Audience:** Actuaries**Members** working for the **Trustees** or other governing body of a pension scheme and actuaries, or working for decision-making bodies in relation to public sector or public service pension schemes.

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Sections 1-5 inclusive are primarily directed at **Scheme Actuaries**, being an actuary appointed to advise the **Trustees** of a defined benefit pension scheme in accordance with section 47(1)(b) of the Pensions Act 1995. Section 6 extends the application of sections 1-5, in certain relevant respects, to other **Members** undertaking work in relation to pension schemes.

<sup>1</sup> Members of all categories, including Students, Affiliates, Associates and Fellows.

**General Professional Obligations:**

All **Members** are reminded of the Status and Purpose preamble to the Actuaries' Code which states that the Code will be taken into account if a **Member's** conduct is called into question for the purposes of the Institute and Faculty of Actuaries' Disciplinary Scheme. Rule 1.6 of the Disciplinary Scheme states that misconduct:

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"means any conduct by a Member...in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity or professional judgement which other Members or the public might reasonably expect of a Member having regard to...any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or...the Board for Actuarial Standards ~~(BAS)~~";

**Members** are required to comply with all applicable provisions of **Actuarial Profession Standards** **APSs**.

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In the event of any inconsistency between this **APS** and the Actuaries' Code, the Code prevails.

**Use of the words "must" and "should":**

This **APS** uses the word "must" to mean a specific mandatory requirement.

In contrast, this **APS** uses the word "should" to indicate that, while the presumption is that **Members** comply with the provision in question, it is recognised that there will be some circumstances in which **Members** are able to justify non-compliance.

**1. Relevant knowledge and skill**

- 1.1. A **Scheme Actuary** must be familiar with any relevant legislation and regulatory guidance including **Codes of Practice**.

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**2. Practising certificates**

- 2.1. A **Scheme Actuary** must have a current **Practising Certificate**.

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**3. Obligations relating to appointment, replacement and absence**

- 3.1. A **Scheme Actuary** must have a written agreement with the **Trustees** covering the information that he/she requires the **Trustees** to provide him/her with, or allow him/her access to, to do his/her job properly, and allowing him/her to share information with other advisers as appropriate.
- 3.2. The matters covered by this agreement may vary from scheme to scheme but the **Scheme Actuary** must have a justifiable reason for the exclusion of any of the matters listed in Appendix 1 to this **APS**. Such a reason might include a judgement that the matter is not sufficiently significant to justify amending an already-existing agreement.

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#### Appendix 4(b)

3.3. The agreement must be reviewed periodically and should be updated to ensure that it continues to be fit for this purpose.

3.4. If an **Existing Actuary** is to be replaced by a **New Actuary**:

3.4.1. the **Existing Actuary** must provide the **New Actuary** with the information that the **Existing Actuary** considers to be relevant for the **New Actuary** to fulfil his/her responsibilities as **Scheme Actuary**;

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3.4.2. the information in 3.4.1 must include any information considered to be relevant relating to reports made to the **Regulator** under **Section 70** or similar reports to other regulatory authorities;

3.4.3. if necessary, the **Existing Actuary** and **New Actuary** must discuss the information to be provided; and

3.4.4. where the **New Actuary** considers that he/she requires more information for this purpose than the **Existing Actuary** originally provided, the **New Actuary** must ask the **Existing Actuary** for this additional information. Provided that the **New Actuary** agrees to any reasonable conditions imposed by the **Existing Actuary** for the release of information, the **Existing Actuary** must comply with any such reasonable request or explain why it is not possible to comply with the request.

3.5. A **Scheme Actuary** who resigns or is removed must ensure that the **Trustees** have been made aware of:

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3.5.1. the need to appoint a replacement within a prescribed timescale; and

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3.5.2. any deadlines relevant to responsibilities of the **Scheme Actuary** that might pass before a **New Actuary** has had time to address them.

3.6. A **Scheme Actuary** must have appropriate arrangements to cover any period during which he/she is unable to fulfil his/her duties as a **Scheme Actuary**. The arrangements must take account of the length of the absence. Depending on the circumstances, it might be appropriate or necessary to resign the appointment. A **Scheme Actuary** should consider that:

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3.6.1. being unable to fulfil his/her duties as a **Scheme Actuary** is not the same as being away from his/her normal place of work;

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3.6.2. a **Scheme Actuary** can be away from his/her normal place of work but still be able to fulfil his/her duties, although because of the need on occasions for the **Scheme Actuary** to be proactive rather than simply reacting to requests from the **Trustees** it would not normally be sufficient merely to be contactable; and

3.6.3. on the other hand, there could be circumstances in which the **Scheme Actuary** is at his/her place of work but unable to fulfil his/her duties, for example, because of involvement in additional time-consuming matters.

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#### 4. Other responsibilities

4.1. A **Scheme Actuary** should inform the **Trustees** on becoming aware of any significant matter which relates to his/her regulatory, contractual or other professional responsibility and/or might

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have an impact on the financing of the scheme, and which he/she considers might lead to the **Trustees** needing to request advice or further advice, either from the **Scheme Actuary** or another adviser.

- 4.2. An example of where the requirement in 4.1 would not arise is where the **Scheme Actuary** believes that another person (such as the **Trustees'** legal adviser) has appropriately (for example, in relation to level of authority and timescale) informed or will inform the **Trustees**.
- 4.3. A **Scheme Actuary** who has any material concerns about the way the **Trustees** are fulfilling their duties and responsibilities should share his/her concerns with the **Trustees** and take such consequential action as is appropriate in the circumstances. This includes concerns that:

- 4.3.1. a course of action is not appropriate; and/or
- 4.3.2. the **Trustees** have failed or are failing to carry out an appropriate action; and/or
- 4.3.3. the **Trustees** might be unaware of a duty or responsibility, or of relevant legislation or guidance relating to a duty or responsibility.

- 4.4. When giving any form of actuarial certification required by legislation, a **Scheme Actuary** must consider whether there are any matters which he/she believes the **Trustees** should bear in mind before taking any action associated with that certification. The **Scheme Actuary** must then draw the **Trustees'** attention to any such matters. These matters need not prevent the certification from being given, although if they are not appropriately addressed by the **Trustees**, the **Scheme Actuary** must have regard to paragraph 4.3. in deciding how to proceed. The certifications covered by this principle include, but are not limited to, those provided under:

- Regulation 12 of SI 1991/167;
- Section 67C of the Pensions Act 1995; and
- Section 12A of the Pension Schemes Act 1993.

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## ~~5. Pensions actuaries who are not acting as a Scheme Actuary~~

### ~~5. Conflicts of Interest~~

~~5.1. A **Scheme Actuary** to a **Relevant Scheme** must not advise the **Employer** to 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, including, but not limited to, advice on actuarial factors.~~

~~5.2. Before and while undertaking work (other than work specifically prohibited by paragraph 5.1—above) for an **Employer** to a **Relevant Scheme**, the **Scheme Actuary** to that scheme must follow either the approach set out in 5.2.1 to 5.2.4 below or an alternative approach which could reasonably be expected to provide equivalent protection to the interests of the **Trustees**:~~

~~5.2.1. the **Scheme Actuary**, **Trustees** and **Employer** produce and maintain a written agreed plan setting out how conflicts of interest are reconciled, how it is intended they will continue to be reconciled and what will happen if they cannot continue to be reconciled;~~

5.2.2. the plan allows the **Trustees** the option to continue with the **Scheme Actuary** appointment if the **Scheme Actuary** becomes unable to act for both parties:

5.2.3. 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**; and

5.2.4. the **Scheme Actuary** reviews regularly, having regard to principle 3 of the Actuaries' Code and to this section 5, whether or not he/she is able to continue acting for both parties. In so doing the **Scheme Actuary** must consider all of the relevant circumstances, including whether advice proffered to the **Employer** may have an indirect impact on funding or benefits or whether it might otherwise give rise to a reasonable perception that the **Scheme Actuary's** ability to provide objective advice to the **Trustees** is compromised.

5.3. A **Scheme Actuary** to a **Relevant Scheme** who is aware that another person in his/ her **Firm** is undertaking work for the **Employer** to that scheme must ensure that the **Trustees** are aware of any conflicts of interest which as a result arise or might potentially arise.

#### **Transitional provision (section 5)**

5.4. To the extent necessary to comply with paragraphs 5.1 to 5.3 above, any changes to engagement letters or similar contractual documentation must be implemented by the date six months following the coming into effect of this version of this **APS**.

### **6. Members other than Scheme Actuaries, including students, undertaking work in relation to pension schemes**

6.1. The principles set out in sections 1 and 4 also apply to any other **actuaryMember** who is involved in the provision of advice or other services to the **Trustees**, at a level that involves direct contact with the **Trustees**. In the case of paragraph 4.1, a requirement to inform the **Trustees** of the need to take further advice does not arise where the **actuaryMember** is aware or has reasonable cause to believe that the **Scheme Actuary**, or another person (such as the **Trustees'** legal adviser) has appropriately (for example, in relation to level of authority and timescale) informed or will inform the **Trustees**. In the case of paragraph 4.3, the **actuaryMember** may decide to raise the matter with the **Scheme Actuary**, rather than directly with the **Trustees**.

6.2. 5.2. To the extent to which they are practical and appropriate in the circumstances, the principles set out in section 1, paragraphs 3.1 to 3.4 and section 4 also apply to **an-actuarya Member** who is in a similar role to a **Scheme Actuary**, or **an-actuarya Member** within the scope of paragraph 56.1 who is working for a governing body of a pension scheme other than **Trustees**, or **an-actuarya Member** working for a decision-making body in relation to public sector or public service pension schemes. Deviations from the provisions of paragraphs 3.1 to 3.4 (and Appendix 1) and section 4 should be consistent with the nature of the **actuary'sMember's** appointment.

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~~6.3.~~ ~~5.3.~~ If paragraphs ~~56.~~1 and ~~56.~~2 would both apply (for example, where the decision-making body in relation to public sector or public service pension schemes is a body of **Trustees**), only paragraph ~~56.~~2 applies.

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6.4. Section 5 also applies, as it does to a **Scheme Actuary**:-

- 6.4.1. to any other **Member** who provides, or is materially involved in providing, the **Trustees** of a **Relevant Scheme** with any significant advice 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, to the extent that they also provide significant advice to the **Employer** of that scheme;
- 6.4.2. to any other **Member** acting for the **Trustees** of a pension scheme, other than a **Relevant Scheme**, where:-
  - 6.4.2.1. the **Trustees** exercise a fiduciary responsibility in relation to the delivery of benefits under that scheme;
  - 6.4.2.2. the **Trustees** have powers and/or rights over funding and/or the size of benefits;
  - 6.4.2.3. there is an **Employer** in relation to that scheme; and
  - 6.4.2.4. the behaviour of the **Employer** could affect the security or size of benefits under the scheme.

Section 5 should be read accordingly, subject to such changes as may be necessary to give effect to this provision.

## Appendix 4(b)

### 7.

#### Definitions

Term	Definition
Actuarial Profession	Institute and Faculty of Actuaries
APS	Actuarial Profession Standard
BAS	Board for Actuarial Standards
Codes of Practice	Codes of practice issued by the Regulator
<u>Employer</u>	<u>Any entity which participates in a pension scheme or is associated with such an entity</u>
<u>Existing Actuary</u>	<u>The incumbent Scheme Actuary of a pension scheme</u>
<u>Firm</u>	<u>A sole practitioner, partnership, limited liability partnership or other corporate entity engaged in the provision of actuarial services. It includes related or connected entities which are:</u> <ul style="list-style-type: none"> <li><u>(i) controlled by the Firm; or</u></li> <li><u>(ii) under common control, ownership or management; or</u></li> <li><u>(iii) part of a larger structure that is clearly aimed at profit or cost sharing; or</u></li> <li><u>(iv) otherwise affiliated or associated with the Firm through common policies, procedures, business strategies, the use of a common name or through the sharing of significant common professional resources.</u></li> </ul>
Member	Member of the Institute and Faculty of Actuaries
New Actuary	The incoming Scheme Actuary of a pension scheme
<del>Existing Actuary</del>	<del>The incumbent Scheme Actuary of a pension scheme</del>
Practising Certificate	Practising certificate issued by the Institute and Faculty of Actuaries to act as a Scheme Actuary to pension schemes
Regulator	The Pensions Regulator
<u>Relevant Scheme</u>	<u>A pension scheme in relation to which a Scheme Actuary is, or requires to be,</u>

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Appendix 4(b)

Scheme Actuary	<u>appointed.</u> An actuary appointed <u>under to advise the Trustees of a defined benefit pension scheme in accordance with</u> section 47(1)(b) of the Pensions Act 1995
Section 70	Section 70 of the Pensions Act 2004
TASs	Technical Actuarial Standards issued by the BAS
Trustees	The Trustees of a pension scheme, or, for pension schemes not established by a trust, the managers as defined in section 318(1) of the Pensions Act 2004

## Appendix 1: Matters to be covered in written agreement with Trustees

## 1. Liaison with other advisers

1.1. The agreement with the **Trustees** should allow the **Scheme Actuary**:

- 1.1.1. to liaise with other advisers to the **Trustees** in relation to matters which might be relevant either to the **Scheme Actuary's** statutory responsibilities or to other legislative or regulatory responsibilities which are placed on the other advisers in relation to the scheme;
- 1.1.2. to ask any **Existing Actuary** for information in accordance with paragraph 3.4 of this **APS**; and
- 1.1.3. in the event of his/her resignation or removal, to provide the **New Actuary** with the information referred to in paragraph 3.4 of this **APS**.

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## 2. Information to be provided by Trustees

2.1. The **Scheme Actuary** should obtain the **Trustees'** written agreement that the **Trustees** will advise the **Scheme Actuary** of specified events which could, in the **Scheme Actuary's** opinion, be of material significance to the financing or solvency of the scheme. Appropriate timescales for notifying events should be included. The list should be reviewed by the **Scheme Actuary** as frequently as he/she considers necessary or appropriate.2.2. Appendix 2 illustrates the types of events which, if material, a **Scheme Actuary** would normally require the **Trustees** to notify to a **Scheme Actuary**. However, a **Scheme Actuary** will need to consider:

- 2.2.1. whether all the categories listed are relevant to a particular scheme;
- 2.2.2. whether additional categories should be included; and
- 2.2.3. the actual events within each category which should be specified.

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2.3. In drawing up the list of events to be notified, the **Scheme Actuary** should be satisfied that the **Trustees** understand what the **Scheme Actuary** would consider to be material, and, if used, how words such as "unexpected", "significant" or "major" should be interpreted. In specifying timescales, phrases such as "as soon as possible" or "as soon as reasonably practicable" might be used.

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2.4. The **Scheme Actuary** should also obtain the **Trustees'** written agreement that the **Trustees** will:

- 2.4.1. provide the **Scheme Actuary** with copies of any future reports to the **Regulator** under **Section 70** which are either made by, or sent to, the **Trustees**;
- 2.4.2. advise the **Scheme Actuary** if any order, notice, direction or statement (or similar) which is relevant to the financing or solvency of the scheme is issued by the **Regulator** (or has been issued and is still relevant at the date of the **Scheme Actuary's** appointment) of which the **Trustees** are aware, for example:

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#### Appendix 4(b)

- an order issued under section 231(2) of the Pensions Act 2004;
- a contribution notice under sections 38, 47 or 55 of the Pensions Act 2004;
- a financial support direction under section 43 of the Pensions Act 2004;
- a clearance statement under sections 42 or 46 of the Pensions Act 2004;
- a restoration order under section 52 of the Pensions Act 2004; or
- an approval notice in relation to an approved withdrawal arrangement under the Occupational Pension Schemes (Employer Debt) Regulations 2005;

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2.4.3. allow the **Scheme Actuary**, on request, access at all reasonable times and in all reasonable circumstances to such information and explanation as may be required to carry out his/her duties as **Scheme Actuary**, including:

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2.4.3.1. the scheme's books, accounts and supporting documentation;

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2.4.3.2. copies of the minutes of the **Trustees** and sub-committees of the **Trustees'** meetings;

2.4.3.3. copies of the **Trustees'** resolutions;

2.4.3.4. copies of any other documents recording decisions taken by the **Trustees** following actuarial advice from him/her or from a person advising the **Trustees**; and/or

2.4.3.5. copies of all scheme constitution documentation.

2.5. The **Scheme Actuary** does not need to require the **Trustees** to provide him/her immediately with the information referred to in paragraph 2.4.3 of this appendix. However, there may be occasions when the **Scheme Actuary** will need to insist that specific information of the types listed is provided (or access to such information is allowed) without delay in order to assist him or her in assessing whether a report needs to be made to the **Regulator** under **Section 70**.

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## Appendix 2

### Events which could affect the financing or solvency of a scheme

Appendix 2 illustrates the types of event which could affect the financing or solvency of a scheme and which, if material, a **Scheme Actuary** might typically require the **Trustees** to notify to him/her (see paragraphs 2.1 to 2.3 of Appendix 1 of this **APS**). The lists are not exhaustive.

#### 1. Changes affecting the status of the scheme

##### 1.1. For example:

- cessation of future accruals
- closure to new members
- a decision to wind up or otherwise discontinue the scheme
- a determination to defer winding up.

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#### 2. Changes to (or legal opinions on the interpretation of) the trust deed and rules or the benefits provided under them

##### 2.1. For example, in relation to:

- the definition of pensionable pay
- contribution or benefit levels
- normal retirement date
- the degree of priority accorded to benefits in the event of the scheme winding up
- an exercise under which members may change the form of their benefits.

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#### 3. Significant changes to the membership

##### 3.1. For example, in relation to:

- the general remuneration levels of scheme members
- the numbers of active members, deferred pensioners or pensioners
- an exercise which could involve many members taking transfer values from the scheme.

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#### 4. Events in relation to participating employers

##### 4.1. For example:

- a change in the **Trustees'** view of the strength of a participating employer's covenant
- a relevant event (as defined in section 75(6A) of the Pensions Act 1995) in relation to a participating employer
- an employment-cessation event (as defined in Regulation 6ZA of SI 2005/678) in relation to a participating employer

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#### Appendix 4(b)

- sales and purchases affecting the membership of the scheme.

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#### 5. Events in relation to investment matters

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##### 5.1. For example:

- a change in investment policy or investment management arrangements
- adverse investment performance relative to agreed objectives.

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#### 6. The exercise of a discretionary power

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- 6.1. For example, the augmentation of a benefit, or the granting of a discretionary pension increase, where the cost is not met by additional contributions at the time on a basis agreed with the **Scheme Actuary**.

#### 7. Events connected with the Regulator

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##### 7.1. For example:

- any event notified to the **Regulator** under section 69 of the Pensions Act 2004 by the **Trustees** (or any event of which the **Trustees** are aware has been notified to the **Regulator** under such section by a participating employer)
- an application for a refund of surplus to a participating employer.

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#### 8. Events in relation to financing

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##### 8.1. For example:

- non-payment of the employer's and/or employees' contributions stated in the most recent Schedule of Contributions
- a change of policy in relation to the payment of expenses
- a change in the arrangements for insuring death in service benefits or a change from insured to self-administered or vice versa
- a change to the scheme year for accounting purposes.

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## **The Actuarial Profession**

making financial sense of the future

# **Conflicts of interest**

## A guide for actuaries

## Conflicts of Interest

### A guide for actuaries

#### Introduction

Throughout an actuary'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 a problem 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 has adequate safeguards in place to manage conflicts of interest effectively.

This guide is intended to help all actuaries, including those of you who may find yourselves experiencing such concerns. It:

1. contains questions for all actuaries to consider to help you assess and handle conflicts of interest appropriately (Section A);
2. sets out the Institute and Faculty of Actuaries' ("the Profession's")<sup>1</sup> expectations in respect of conflict management practices and an actuary's duties of confidentiality and disclosure (Sections B and C);
3. contains a section on managing conflicts between your different clients (referred to here as "client conflicts") (Section D);
4. contains a section on managing conflicts between you (or your employer) and your client (referred to here as "professional conflicts"). This includes any personal conflict which you may have arising from other appointments or from your personal life, including, but not limited to personal financial interests (Section E); and
5. contains questions for actuaries in the specific fields of pensions, general insurance and life insurance to consider to help you ensure you can assess and handle conflicts of interest confidently and constructively (Appendices).

Conflicts of interest are very often not black and white but involve various shades of grey. This means that handling conflicts involves professional judgement. Consequently, if you are unsure at any stage whether to raise a concern, the Profession would encourage you to seek guidance from appropriate sources. This guide therefore also sets out where you can go for advice on handling conflicts (Section F).

#### Purpose

This guide imposes no new obligations upon actuaries or their employers. Rather, the Profession hopes that the guide will be a useful tool for actuaries when they find themselves needing to assess whether a conflict exists and what to do about it in order to handle it professionally and appropriately.

Like the provisions of the Actuaries' Code, this guide is for all members of the Profession (i.e. Students, Affiliates, Associates, Honorary Fellows and Fellows), regardless of where they practise. For ease of reference, the term "actuary" is accordingly used in this Guide to refer to all members of the Profession.

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<sup>1</sup> [www.actuaries.org.uk](http://www.actuaries.org.uk)

## What is required of an actuary?

Actuaries are required by the Profession to “act honestly and with the highest standards of integrity”<sup>2</sup>. Additionally, they must “not allow bias, conflict of interest, or the undue influence of others to override their professional judgement”<sup>3</sup>. They are also required to “respect confidentiality unless disclosure is permitted by law and justified in the public interest”<sup>4</sup>.

The starting point in relation to conflicts of interest for actuaries is to be found at principle 3 of the Actuaries’ Code (“the Code”) - “Impartiality”. This says that:

*3.1 Members will ensure that their ability to provide objective advice to their clients is not, and cannot reasonably be seen to be, compromised.*

*3.2 A conflict of interests arises if a member’s duty to act in the best interests of any client conflicts with:*

- a) the member’s own interests; or*
- b) an interest of the member’s firm; or*
- c) the interests of other clients.*

*3.3 Members will take reasonable steps to ensure that they are aware of any relevant interest, including income, of their firm.*

*3.4 Members will disqualify themselves from acting where there is a conflict of interest that cannot be reconciled.*

*3.5 Members will document the steps they have taken to reconcile a conflict and will agree those steps with their clients if they would be ineffective without agreement.*

*3.6 Before accepting any assignment, members will 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.*

Additionally, members of the Profession will “...comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure that they are not placed in a position where they are unable to comply, and will challenge non-compliance by others.”<sup>5</sup>

These provisions of the Code set the context in which actuaries should approach all questions concerning actual or potential conflicts of interest and are the yardstick by which, in the event of a complaint, their actions will be judged.

Additionally, actuaries should be aware of the practice specific conflicts of interest provisions in the Actuarial Profession Standards: APS P1 [insert full name of standard following consultation

<sup>2</sup> The Actuaries’ Code, principle 1.

<sup>3</sup> The Actuaries’ Code, principle 3.

<sup>4</sup> The Actuaries’ Code, paragraph 1.2.

<sup>5</sup> The Actuaries’ Code, principle 4. Further guidance on speaking up in such circumstances can be found in the Profession’s publication “Whistleblowing: a guide for actuaries”  
<http://www.actuaries.org.uk/sites/all/files/documents/pdf/20110406-whistleblowing-guide-actuaries.pdf>

process] (for pensions actuaries)<sup>6</sup> and APS L1: Duties and responsibilities of life assurance actuaries<sup>7</sup>.

### A. Some practical considerations and questions

As set out above, ensuring that conflicts are (a) understood; (b) easily spotted; and (c) reconciled or eliminated, is the key to avoiding serious problems.

Against this background, here are some practical questions which all actuaries might ask themselves when assessing whether a conflict of interest exists or might exist. Further, targeted questions which are more specific to the pensions, general insurance and life insurance practice areas are contained in **Appendices A, B and C** to this guide.

The questions below and in the Appendices are intended to provide some examples of possible 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.

They are not intended to be exhaustive lists, nor are they all relevant to all situations. Some of the questions are more relevant to actuaries who work for professional services firms (e.g. consulting actuaries) and some are more relevant to, for example, employed actuaries in insurance companies and similar corporations.

### Questions

1. What advice might be sought by one client that might be detrimental to the other client?
2. What information might I receive from one client that, if disclosed to the other client, could be helpful to that client (e.g. they could take some action)?
3. Have I made appropriate disclosure of relevant potential or actual conflicts to all relevant parties?
4. How significant, commercially (or otherwise), to my firm (or me) is each client relationship?
5. Do any of my different roles within the firm give rise to conflicts?
6. Are there appropriate peer review or similar procedures in place that help me to ensure that my professional obligations are not compromised due to potential conflicts arising from commercial or other pressures (as referred to elsewhere in this guide)?
7. Is my remuneration directly linked to the results of my work?
8. Have I been put under pressure to produce a certain outcome from my work and, if so, how have I ensured that such pressure has not unduly influenced those outcomes?

<sup>6</sup> [insert hyperlink when live]

<sup>7</sup> [insert hyperlink when live]

9. Is there a trusted individual who I can talk to about conflicts of interest that might arise in my work as an actuary?

## B. What happens next?

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 section D below), then you should:

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

Equally, if you have requested consent from your client to act for another client where their interests are in conflict and that client has refused its consent, you should not continue to act for one or both of the parties to that engagement.

## C. Relevant law relating to conflicts of interest, applicable to all actuaries

There are two important legal issues relevant to all actuaries which may arise in the context of conflicts of interest: these are the duties of confidentiality and disclosure. These are two of the professional duties that actuaries, like other professionals, owe to their clients. These two duties, which may sometimes give rise to a conflict of interest, are considered in turn below. Sections D and E below set out how these duties may be managed.

### 1. Who is my client?

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”?

Your client can be either (a) an existing client, (b) a former client, or (c) a potential client. Before taking on any new client, you need to consider your duty of confidentiality to your existing/former clients and whether this would, in taking on a new client, give rise to a conflict of interest.

**Case study:** You currently act for Client A. Client B is a proposed new client. You need to consider whether taking on Client B creates a conflict of interest because of your duty of confidentiality to Client A. If it does, and the conflict cannot be reconciled, you will not be able to act for Client B, although you can, of course, continue to act for Client A, .

For some actuaries, working in-house, their “client” for these purposes may be, or include, their employer.



## 2. Confidentiality

What does a duty of confidentiality mean? This means that you, as an actuary, must keep the affairs of your clients and former clients confidential, except where disclosure is permitted or required by law.

There is a range of circumstances in which the disclosure of information, which would otherwise be confidential, is permitted by law. The most important of these for present purposes is where disclosure is made with the consent of the person to whom the information would otherwise be confidential. Disclosure may also be made in certain circumstances to the extent that disclosure is justified in the public interest. This might be likely to include, for example, disclosure for the purposes of reporting a serious impropriety to the relevant regulatory body. The effect is that the legal duty of confidentiality is waived and/or superseded by the public interest. It should be noted that confidentiality would not ordinarily attach to information which is already lawfully in the public domain.

You should ensure that information which is confidential to your client remains protected at all times. This obligation continues notwithstanding the termination of any agreement/client relationship.

In the context of conflicts of interest, the Courts have held<sup>8</sup> that confidential information is information which:

- is private or sensitive in nature;
- was originally communicated in confidence i.e.:
  - is 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.

## 3. Duty to disclose relevant information to your client

There are at least two duties of disclosure which may arise in this context. The first, with which we are concerned here, 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 Sections D and E below, is the duty to disclose the existence of a conflict, in the event that one arises.

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.

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

<sup>8</sup> In *Re a Firm of Solicitors* [1997] Ch1.

interest to your client. You need, therefore, to assess the impact of the possible consequences of the disclosure on your client. For example, if you think the information might reasonably be expected to affect your client's decision-making in relation to the engagement, then it is likely to be regarded as "relevant information".

This is the general position. There may, however, be circumstances in which you should nonetheless not disclose information which is relevant to your client because disclosure is prohibited by law e.g. the Proceeds of Crime Act 2002 prevents you tipping off your client about an investigation into their affairs because of suspected money laundering.

#### 4. Relationship between the duties of confidentiality and disclosure

Your duty of confidentiality to one client may in some circumstances conflict with your duty of disclosure to another, giving rise to a conflict of interests. As a general proposition, you should not breach the duty of confidentiality, but this may mean that you are unable to act for one or both clients, unless the conflict can be appropriately reconciled. In summary, you must:

- 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 that conflict, if this is possible and appropriate, or cease to act for one or both clients.

#### D. Managing client conflicts

The Code refers to the fact that actuaries may in certain circumstances continue to act, despite a conflict, if that conflict can be "reconciled". Reconciliation in this context should be understood to mean managing the conflict such that, within the scope of your engagement, the conflict is obviated through careful management, in the sense that it can have (and it is seen that it can have) no adverse effect on the work delivered to the client. This is likely to mean demarcating very clearly the extent of your role and any limitation on the extent and type of advice which you can provide.

**Case study:** You are Scheme Actuary to Scheme C and have also been advising another (unrelated) company (D) on the pensions aspects of various proposed corporate transactions. Company D decides to investigate the possibility of acquiring the sponsor of Scheme C, 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 Company D so that it does not include advice relating to the acquisition of Scheme C 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 - normally this would be the appointment to Company D.

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

It should be noted that, for very small firms or sole practitioners, whilst the principles still apply, the practical implementation of the guidance outlined below will be likely to require modification in some instances to reflect the scale of the organisation. For such smaller firms, the use of external peer review may often be the most useful tool to manage conflicts in order to ensure transparency and the objectivity of your work.

Effective conflicts management requires:

- appropriate systems and procedures; and
- the correct implementation of those procedures in individual cases.

## 1. Conflicts of interest policy and procedures

Organisations are encouraged to have processes in place to evaluate their management of conflict situations. This can be achieved by:

- *Conflicts committees*

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 may be tasked with:

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

- *Training*

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.

- *Remuneration*

Organisations should ensure that employees are not incentivised in a way that might encourage them to provide anything other than the most suitable and appropriate advice for the client.

- *Identification*

Organisations should have a process in place to allow them easily 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 could include:

- conflict checks and 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, in order to ascertain whether a potential or an actual conflict of interest exists. 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.

- conflicts register:

It is recommended that actual and potential conflicts of interest are logged and that all correspondence and decisions regarding the matter are recorded in writing.

In determining whether a conflict of interest exists, it may be important to take account of the purpose for which the proposed work will be used. This may include considering the interests of interested parties, in addition to those of your client - for example, policyholders, shareholders, or members of a pension scheme - will require the exercise of professional judgement according to the specific circumstances.

**Example:** You are a With-Profits Actuary. Your client is the company but your advice relates to the protection of policyholders' interests, which may conflict with the commercial interests of the company.

## Procedures

Actuaries and clients should be aware of the processes to be followed in the event that an actual or potential conflict of interest exists or arises during the course of an engagement. As a minimum, this would normally involve full written disclosure of the existence of the conflict to each of the parties involved. Conflicts procedures should address some or all of the following:

- *Client engagement letter*

It is good practice to highlight in a client engagement letter any actual or potential conflicts of interest that may exist at the start of a client relationship and to outline the process to be followed in the event that a potential or actual conflict of interest arises.

- *Seek to establish some form of agreed document/handling plan*

It is useful to establish some form of agreed document/handling plan (approved at the appropriate level) that sets out what conflicts might exist and how they should be managed. If this is done before the conflict arises, it can be easier to deal with the conflict when it does arise. 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 in order 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.

- *Separation of teams*

Where an organisation has engagements with two clients with competing interests, it may be possible to reconcile a conflict by ensuring that each party is advised by a different client team from within the organisation. This might involve establishing two separate teams, albeit in some cases, the more mechanical work for both clients might still be undertaken by a single team (i.e. what is sometimes referred to as the “Y model”). This approach must, however, be exercised with care as it may not always be an appropriate and effective means of managing a conflict.

- *Information barriers*

One option for managing internal conflicts of interest 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 and/or physical barriers which seek to ensure that information used by one part of the organisation is withheld from, or not used by, other parts of the organisation.

- *Peer review*

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

- *Ceasing to act*

Where there is a conflict of interest, either actual or potential, the individual(s) within an organisation should consider whether it is appropriate for them or it to continue to act for the client or 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.

## 2. Handling conflicts situations

If an actuary intends to act, then any potential or actual conflict of interest should normally be disclosed to each client concerned as soon as possible.

Where you determine that there is an actual or potential conflict of interest, you should consider<sup>9</sup>:

<sup>9</sup> These steps are examples only and are not exhaustive.

- *Explaining*

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

- *Obtaining written consent*

Your client should be notified in writing of a conflict of interest and, if appropriate, their written consent should be obtained as soon as possible to proceed with the instruction.

- *Assessing what is in your client's best interests*

You should normally only proceed with the instruction if to do so would not contravene any relevant regulatory requirement, if it is in your client's best interests to do so and if the benefits to your client of your continuing to act outweighs any risks inherent in continuing to act while there is a conflict of interest.

- *Recognising confidentiality agreements*

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

## **E. Managing professional conflicts**

Many of the points outlined above in relation to client conflicts of interest apply equally in relation to conflicts between actuaries (or their employer/ firm) and a client. As such, 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.

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 test for bias as set out by Lord Hope in *Porter v Magill* [2002], 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*".

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.

Employed actuaries can face particular issues relating to the conflict that can arise between your professional judgement and the commercial objectives of your own organisation (which, for this purpose, may also be your "client"). Pressure might be experienced, directly or indirectly, from your supervisor, manager, director or another person within your own organisation. Such conflicts of interest may mean that your objectivity may be questioned and therefore, whether employed or in a consultancy role, it is important that you:

- carefully consider on a regular basis whether there are any conflicts of interest in relation to the work that you do; and
- determine whether you are managing those conflicts in an appropriate way.

But, having gone through this thought process, what can you do, in practical terms, to manage any professional conflicts that you identify? There are no magic answers here, or a solution that works in all cases, but the following are some ideas that might help you to manage and reconcile professional conflicts of interest:

- *Make use of peer review*

Peer review (either internal or external) can be used to help 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.

For example, external review might be used in circumstances in which you have a concern that there is a real or apparent risk of something impairing, or being seen to impair, your professional objectivity.

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

**Example:** 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, who advises the auditors. 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*

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

- *Consult with others*

Consult with other members of the Profession 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 relevant confidentiality obligations. The Profession can offer useful assistance through its actuarial help-line service, details of which may be found at [insert details].

- *Introduce a gifts/hospitality policy*

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 which sets out the 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 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 a client. You should ask yourself why the gift was being provided and the circumstances in which it was given e.g. if it is a regular Christmas gift provided to all that client's advisers compared with it being given just before your firm is 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.

## F. Sources of guidance and advice

### The Profession's advice service

From [x date], the Profession has offered a confidential advice service, to assist members in dealing with professional ethical matters, including conflicts of interest. Members of the Profession can access this confidential service at [\[insert details\]](#).

### Further sources of advice

This guide is intended as a useful starting point for actuaries considering their obligations in relation to conflicts of interest. The following organisations and bodies offer additional guidance which you may find of assistance.

### Independent organisations

- Financial Services Authority  
020 7066 9200  
[www.fsa.gov.uk](http://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 at:  
<http://fsahandbook.info/FSA/html/handbook/SYSC/10/1>

- The Pensions Regulator  
0870606 3636  
[customersupport@thepensionsregulator.gov.uk](mailto:customersupport@thepensionsregulator.gov.uk)  
[www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

The Pensions Regulator (tPR) has issued guidance to trustees on conflicts of interest at:  
<http://www.thepensionsregulator.gov.uk/guidance/guidance-conflicts-of-interest.aspx>

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



The Profession [with the support of the tPR], has also issued a guide for trustees on the conflicts of interest a scheme actuary may face. This can be found at: []

## **G. Conclusion**

This guide is issued by the Profession for the use and benefit of actuaries and their employers. It sets out the Profession's view of good practice in relation to conflicts of interest and how to manage those conflicts. It is not intended to be the only standard of good practice for actuaries and their employers to follow. Demonstrating that you followed the steps set out in this guide will make it easier to account to the Profession for your actions but the key consideration is that, whatever means are employed, an actuary's obligations under the Actuaries' Code (and related Standards) are met.

This guide does not constitute legal advice, nor does it necessarily provide a defence to allegations of misconduct. While care has been taken to ensure that it is accurate, up to date and useful, the Profession will not accept any legal liability in relation to its contents.

The content of this guide 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 may be directed to:

Conflicts of Interest  
The Institute and Faculty of Actuaries  
Maclaurin House  
18 Dublin Street  
Edinburgh  
EH1 3PP

or

[conflicts@actuaries.org.uk](mailto:conflicts@actuaries.org.uk)

## Appendix A

### Questions for pensions actuaries

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 trust deed and rules or legislation) give rise to potential conflicts?
4. Is there an independent trustee on the Trustee board?
5. Does the employer use another firm of actuaries for all or some corporate advice (e.g. for advice where my firm may be conflicted, e.g. funding)?
6. Do the Trustees have an appointed investment adviser?
7. Have the Trustees actively considered the Pensions Regulator's conflicts guidance including setting up a conflicts register?
8. Does my firm advise the sponsoring companies in any material capacity?
9. In my view, could the Trustee board be at risk of being unduly influenced by company management in some circumstances?
10. In what areas requiring actuarial advice are the interests of Trustees and the company not aligned?
11. What conflicts within the Trustee board have the potential to impact on my ability (or perceived ability) to give unconstrained advice to the Trustee?
12. 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 with my client?
13. 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).

## Appendix B

### Questions for general insurance actuaries

1. Does any of my work in areas such as pricing, reserving and capital have any inherent conflicts across those different types of work and how am I managing these conflicts?
2. 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?
3. 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?
4. Does the Board have appropriate personnel that are able to judge whether my conclusions around, for example, reserving levels are appropriate?
5. Does the company rely entirely on my advice in relation to certain actuarial matters (such as setting reserves)?
6. 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?

## Appendix C

### Questions for life insurance actuaries

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. 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?

**The Actuarial Profession**

making financial sense of the future



## **Conflicts of interest and actuaries**

### A guide for pension scheme trustees

## Conflicts of interest and actuaries

### A guide for pension scheme trustees

#### Purpose of this guide

This guide is issued by the Actuarial Profession for the use and benefit of trustees and actuaries. It sets out the Profession's view of good practice in relation to conflicts of interest that might arise for Scheme Actuaries and how Scheme Actuaries should manage those conflicts.

#### Introduction

As a trustee, you will want to be confident that the advice you receive from your actuary (and from other advisers) is not affected by conflicts of interest. Indeed, in its guidance to trustees on conflicts of interest, the Pensions Regulator says that "*trustees should actively manage their relations with advisers to ensure that advisers are able to provide independent advice*".

The Actuarial Profession recognises this, and we are keen to:

- provide assurance to trustees by making you aware of the professional obligations with which actuaries must comply; and
- help you to manage and get the best out of your actuary by being aware of the conflicts of interest sometimes faced by actuaries.

#### Audience

This guide mainly considers actuaries who are appointed by trustees of funded defined benefit pension schemes to act as Scheme Actuaries under the requirements of the Pensions Act 1995. However, much of it also applies in other situations where trustees take advice from actuaries.

#### Legal requirements and regulatory guidance

Your actuary, like some of the other professional advisers you appoint, is required by law to notify you immediately of any conflict of interest to which he or she is subject in relation to your scheme. However, as the Pensions Regulator points out, disclosure of a conflict of interest will not itself manage the conflict.

The Pensions Regulator's guidance to trustees on conflicts of interest provides many useful suggestions and may be found at [www.thepensionsregulator.gov.uk/guidance/guidance-conflicts-of-interest.aspx](http://www.thepensionsregulator.gov.uk/guidance/guidance-conflicts-of-interest.aspx)

## What to expect of your actuary

Your actuary will wish to support the role played by trustees in providing scheme members and the wider public with greater confidence in pension schemes. This is one of the reasons why actuaries aspire, and are held by the Actuarial Profession, to high standards of professional conduct.

Actuaries are expected to observe five principles set out in the Actuaries' Code. One of these principles is:

**Impartiality:** *members will not allow bias, conflict of interest, or the undue influence of others to override their professional judgement.*

The Code amplifies this by, in effect, requiring actuaries to ensure that:

- advice to trustees is objective and cannot reasonably be seen to be compromised; and
- they do not provide advice where there is a conflict of interest that cannot be reconciled.

This means that there may be situations where an actuary will not be able to advise (or to continue to advise) you. And there may be other situations where an actuary can only advise (or continue to advise) you if certain steps are agreed with you.

The Actuarial Profession has also published specific actuarial ethical and conduct standards relating to pension schemes<sup>1</sup>, and with effect from [ ] these prohibit your Scheme Actuary from providing:

- certain types of advice to any of the employers connected with your scheme. This prohibition covers advice on scheme funding, actuarial factors, benefit changes and other matters which would directly affect scheme benefits; and
- any other advice to the employers unless a conflict management plan is first agreed between you, the employers and the actuary. The plan must set out how conflicts of interest are reconciled, how it is intended that they will continue to be reconciled and what will happen if they cannot continue to be reconciled. It must be maintained and must cover certain other points set out in professional standards.

Actuaries are expected to be continuously alert to conflicts of interest and to consider whether there are specific features of a scheme which might increase the likelihood of a conflict of interest arising. The Profession has published a list of questions to help actuaries identify and manage conflicts and the list is set out at Appendix A to this guide for reference.

The Code, along with other professional standards and information on the regulation of actuaries, may be found at [www.actuaries.org.uk/regulation/pages/regulation](http://www.actuaries.org.uk/regulation/pages/regulation)

<sup>1</sup> In particular, see APS P1: Duties and responsibilities of pensions actuaries [insert hyperlink]

## Examples of what this might mean in practice

Some examples of situations which could be faced by your Scheme Actuary are given below, together with the steps which are sometimes used to manage the conflicts of interest in these situations. Note that the steps are only examples and may not be necessary or appropriate in all similar situations.

### Example 1: Duties to trustees and to sponsoring employer

A group of trustees has appointed Alan as their Scheme Actuary. He has recently also been asked to provide services to the scheme's sponsoring employer. These services were to include providing information for publication in the employer's accounts and assisting the employer in agreeing the methodology to be used for an actuarial valuation.

Alan explained to the employer that he would not be able to advise it on the actuarial valuation methodology because the interests of the employer are likely to conflict with those of the trustees. The scheme's trustees also decided that Alan and his team should not provide any advice to the employer in relation to accounting because they were concerned that the accounting assumptions might affect other advice such as the assumptions to be used for funding or for scheme factors.

However, it was agreed that Alan can provide the results of calculations to the employer if the employer specifies the assumptions to be used, because this should not involve any conflict of interest.

These arrangements are set out in a conflict management plan.

### Example 2: Duties to trustees and to sponsoring employer

Brenda was in a similar situation to Alan in Example 1. Following discussion with the trustees, it was agreed that one of Brenda's colleagues, Colin, will provide the services which the sponsoring employer is seeking. The trustees and the employer have agreed a conflict management plan which sets out the extent to which Brenda and Colin are permitted to share information between themselves and with others in their organisation.

### Example 3: Duties to actuary's employer and to client

The trustees of the XYZ Pension Fund were encouraged by XYZ Corporation to appoint Debbie as their Scheme Actuary. Debbie's employer had just been awarded a large contract covering a variety of services to XYZ Corporation.

The trustees discussed this with Debbie, 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 her employer and XYZ. In the end the trustees decided to appoint a Scheme Actuary from another firm.



**Example 4: Duties to trustees of two schemes**

The trustees of two pension schemes with the same sponsoring employer have both appointed Eleanor as their Scheme Actuary. Both schemes are currently undergoing actuarial valuations. The employer has told Eleanor that it wishes to make significantly higher contributions to one scheme in order to bring the two schemes' funding positions into closer alignment prior to a possible scheme merger. The employer asked Eleanor not to reveal this information to the trustees of either scheme.

Eleanor explained to the employer that she will have to pass this information to the trustees because it could have a material impact on their decision-making or on members' interests. In the ensuing discussions with the trustees, it was also agreed that in order to reconcile any conflict of interest, Eleanor should step down as Scheme Actuary of one of the schemes.

**Conclusion**

This guide is not intended to be the only standard of good practice for actuaries and their employers to follow. The key consideration is that, whatever means are employed, an actuary's obligations under the Actuaries' Code (and related Standards) are met.

This guide does not constitute legal advice, nor does it necessarily provide a defence to allegations of misconduct. While care has been taken to ensure that it is accurate, up to date and useful, the Profession will not accept any legal liability in relation to its contents.

The content of this guide 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 may be directed to:

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**The Institute and Faculty of Actuaries**  
**Maclaurin House**  
**18 Dublin Street**  
**Edinburgh**  
**EH1 3PP**

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6. Do the Trustees have an appointed investment adviser?
7. Have the Trustees actively considered the Pensions Regulator's conflicts guidance including setting up a conflicts register?
8. Does my firm advise the sponsoring companies in any material capacity?
9. In your view, could the Trustee board be at risk of being unduly influenced by company management in some circumstances?
10. In what areas requiring actuarial advice are the interests of Trustees and the company not aligned?
11. What conflicts within the Trustee board have the potential to impact on my ability (or perceived ability) to give unconstrained advice to the Trustee?
12. 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 with my client?
13. 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).

## Proposals of the Working Party

The following table details the proposals made by the Working Party in respect of the policy decisions outlined at section 2 to this paper. The table also demonstrates the link between the proposals and the Financial Reporting Council's Actuarial Quality Framework.

Proposals	Contribution to actuarial quality drivers, using the FRC Actuarial Quality Framework
Prohibiting dual appointments for individual scheme actuaries in relation to advice on funding or benefits payable under the scheme. Mandatory conflict management procedures for scheme actuaries.	Will contribute to the working environment driver that procedures are in place for managing conflicts of interest and avoiding unreasonable pressures being placed on individuals.
Prohibiting dual appointments for individual scheme actuaries in relation to advice on funding or benefits payable under the scheme. Guide for trustees on conflicts of interest that actuaries face. Guide for actuaries on conflicts of interest	Will also contribute to the working environment driver in that it will ensure that commercial considerations do not encourage actions and decisions that have a negative effect on actuarial quality.
Prohibiting dual appointments for individual scheme actuaries in relation to advice on funding or benefits payable under the scheme. Mandatory conflict management procedures for scheme actuaries. Guide for trustees on conflicts of interest that actuaries face. Guide for actuaries on conflicts of interest Additional professional support.	Will contribute to the ethics and professionalism of actuaries by ensuring that actuaries exhibit objectivity, and are robust in identifying and resisting pressures to act against their professional judgment or against the legitimate interests of users or potential users of their work.
Guide for trustees on conflicts of interest that actuaries face. Guide for actuaries on conflicts of interest. Additional professional support.	Will contribute to the ethics and professionalism of actuaries by ensuring that actuaries have relevant training and guidance to help them address the ethical issues which are likely to arise in their work.
Guide for trustees on conflicts of interest that actuaries face.	Will contribute to the other factors outside the control of actuaries driver insofar as it promotes an approach to corporate governance within the entities being advised that recognises their responsibility for taking decisions and for reporting on the basis of actuarial information and advice.
Guide for trustees on conflicts of interest that actuaries face.	Will contribute to the other factors outside the control of actuaries driver in that it encourages stakeholders who support and recognise the use of actuarial expertise, where appropriate, thereby increasing the likelihood that governing bodies and management will comply with their obligations in

Proposals	Contribution to actuarial quality drivers, using the FRC Actuarial Quality Framework
	relation to actuarial matters.

## 1. Introduction to conflicts of interest consultation

The Actuarial Profession invites you to participate in this consultation on its new policy proposals on conflicts of interest, which, if approved, will come into effect from April 2012.

We would appreciate if you could take the time to complete this questionnaire. The closing date for responses is 10 December 2011.

You can claim up to 1 hour private study CPD time for reading the consultation paper and completing this questionnaire provided that the topic can be shown to be personally relevant and/or developmental. Please remember to record your learning outcome within your on-line CPD record.

If you wish to claim your time for CPD purposes, please enter your name at the beginning of the survey. The survey does allow you then to request that your name remain confidential. Any member who does not record their name will not be able to claim CPD as we would be unable to verify their response.

The questionnaire should in preference be completed online by following the link on the Profession's home page ([www.actuaries.org.uk](http://www.actuaries.org.uk)) or going directly to: [http://www.surveymonkey.com/s/actuaries\\_conflict\\_of\\_interest](http://www.surveymonkey.com/s/actuaries_conflict_of_interest)

Should you choose to complete this survey offline please return your completed questionnaires and any comments you have on this consultation paper to:

[Conflicts@actuaries.org.uk](mailto:Conflicts@actuaries.org.uk)

or by post to:

Conflicts of Interest Project  
The Actuarial Profession  
Maclaurin House  
18 Dublin Street  
EDINBURGH  
EH1 3PP

## 2. About you

### 1. About you

Name

Position held

Organisation

### 2. Do you want your name to remain confidential?

☐ Yes

☐ No

### 3. Do you want your comments to remain confidential?

☐ Yes

☐ No

### 4. Do these comments represent your own professional views or your organisation's views?

☐ Personal views

☐ Organisational views

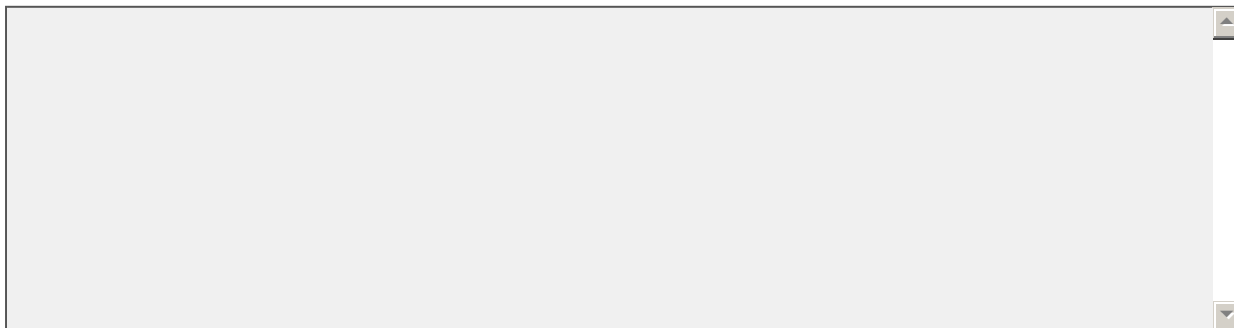
### 3. APS P1

**5. Do you consider that the proposed restriction, as set out in paragraph 5.1 of APS P1, is appropriate and proportionate?**

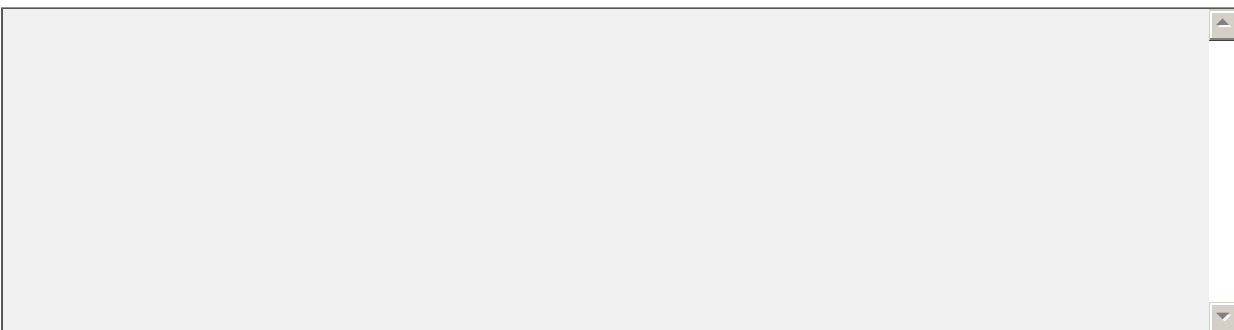
☐ Yes

☐ No

Comments

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**6. What practical implications of this restriction do you anticipate?**

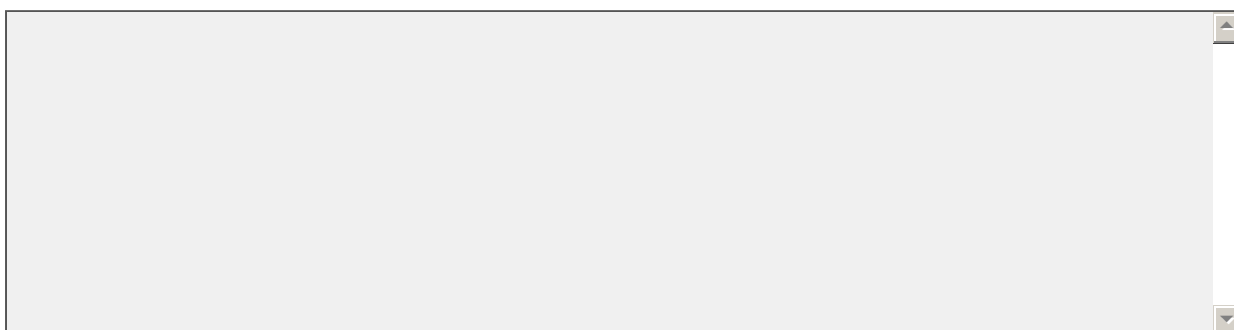
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**7. Are these implications likely to be more onerous in relation to certain types of firm, for example, small firms?**

☐ Yes

☐ No

Comments

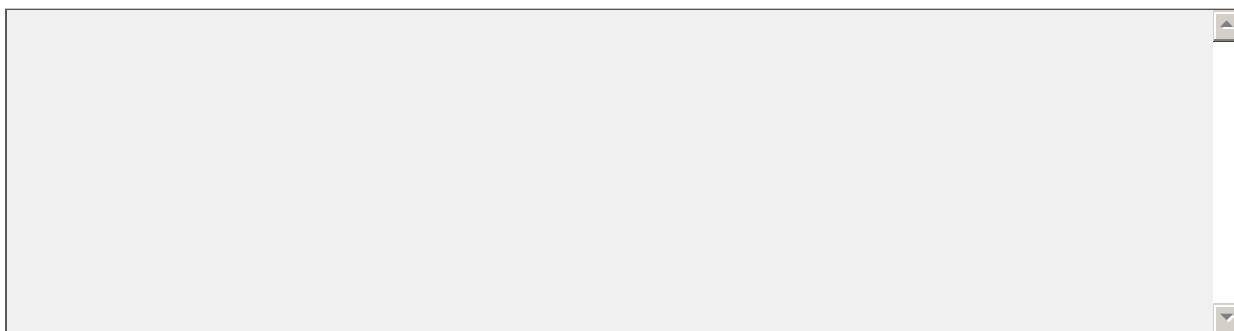
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**8. Do you have any particular views on the specific circumstances mentioned in paragraphs 2.2.5 to 2.2.8 of the consultation paper?**

☐ Yes

☐ No

Comments

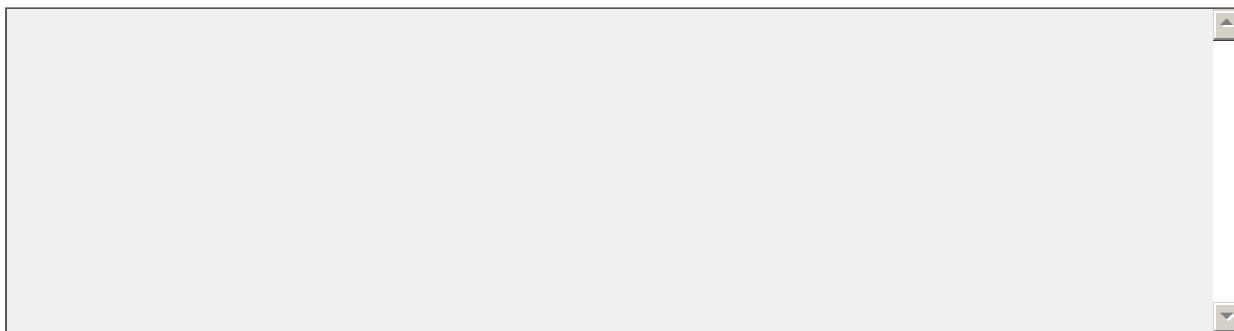


**9. Are the specific protections set out in paragraph 5.2 appropriate and proportionate?**

☐ Yes

☐ No

Comments

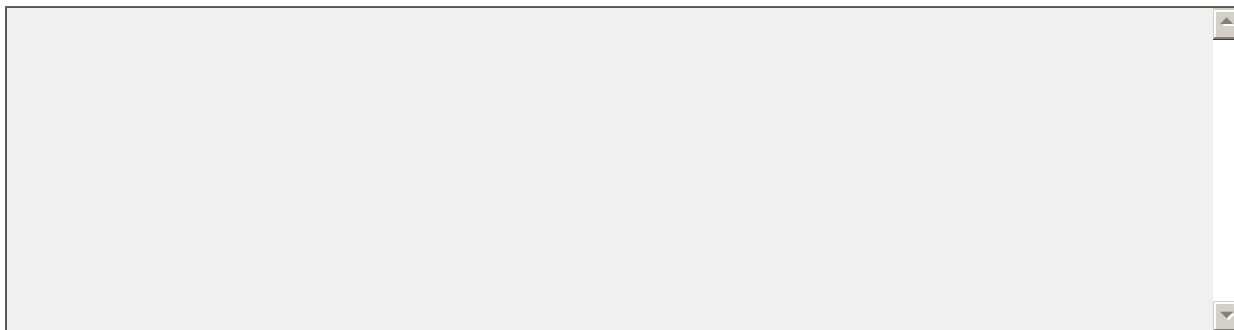


**10. Are there other specific requirements which you would like to be included in APS P1?**

☐ Yes

☐ No

Comments



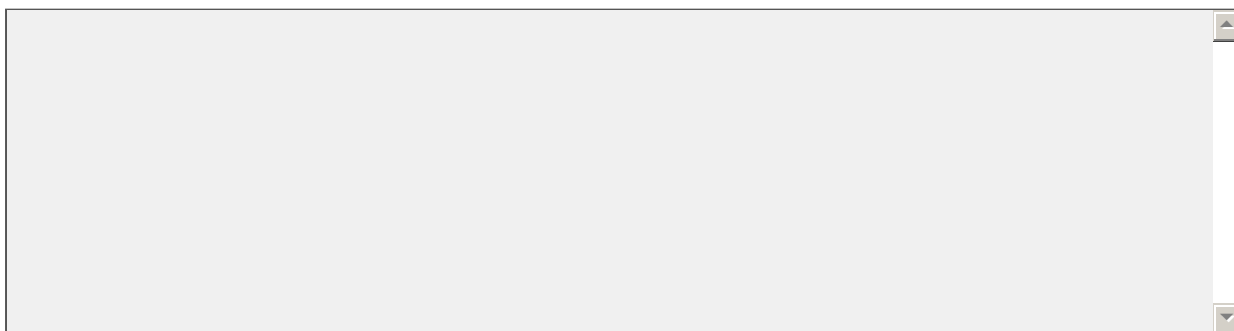


**11. Do you agree with the proposals to allow members to adopt an alternative approach provided that it offers equivalent protection and thereby achieves the intended outcome?**

☐ Yes

☐ No

Comments

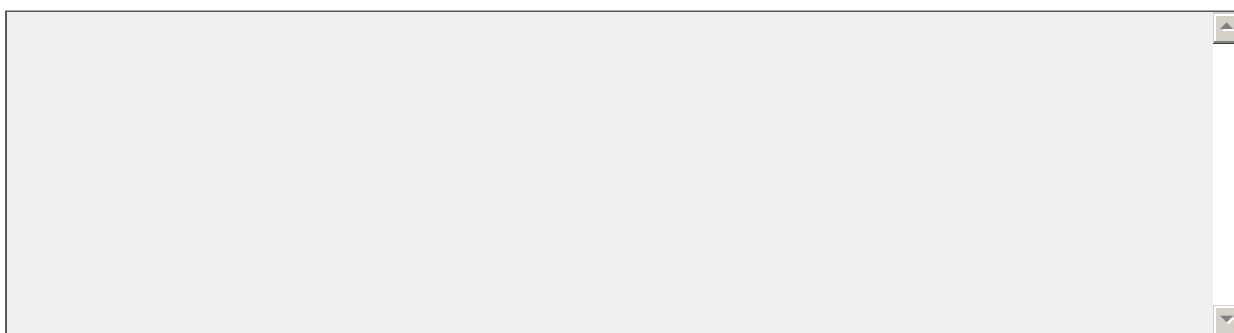


**12. Does paragraph 5.3 of APS P1, read in conjunction with the Actuaries' Code, offer sufficient and proportionate protection in relation to 'firm' conflicts, i.e. conflicts arising because of work undertaken by a member's colleagues?**

☐ Yes

☐ No

Comments

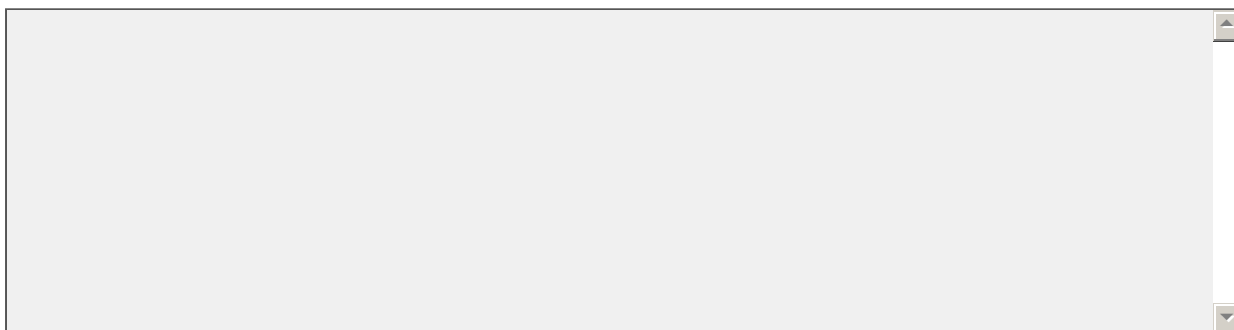


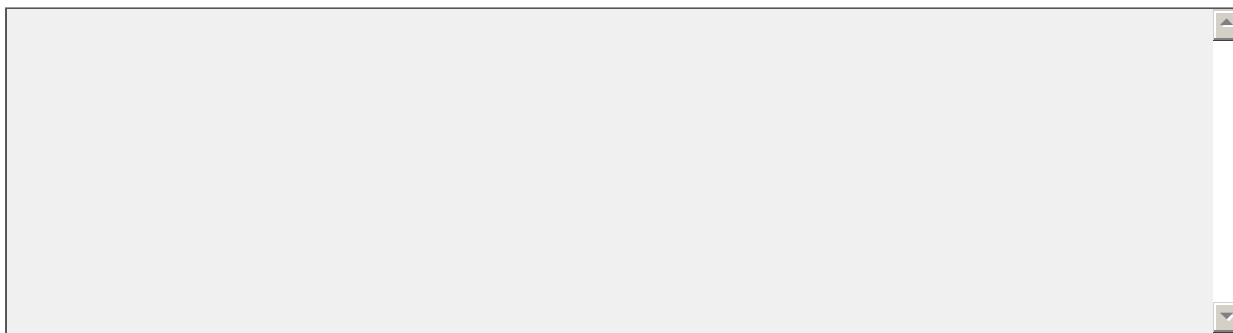
**13. As currently worded, the specific protections set out in paragraphs 5.1 and 5.2 would not apply to 'firm conflicts'. Do you agree with this approach?**

☐ Yes

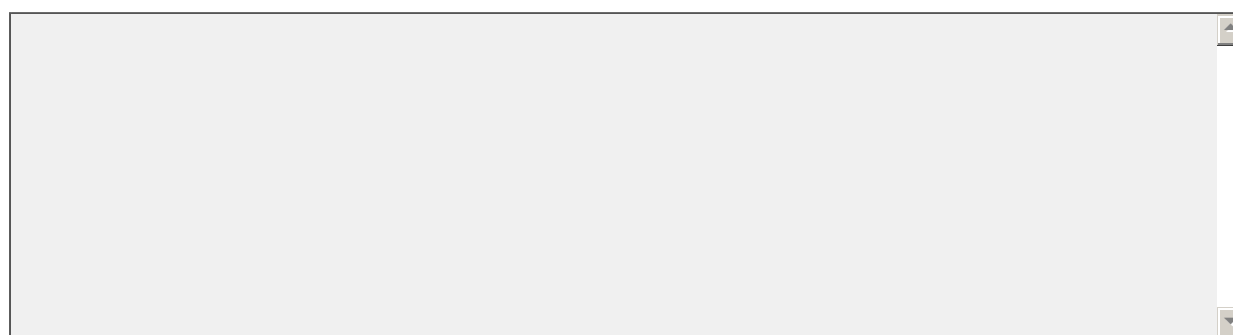
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Comments

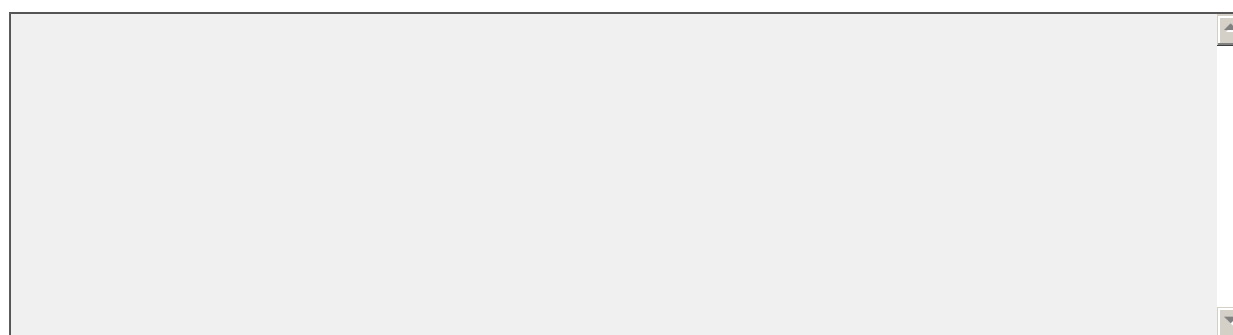


**14. What practical implications do you envisage as a result of the proposed changes?**A large, empty rectangular text box with a light gray background and a thin black border. It has a vertical scrollbar on the right side.**15. Is the proposed transitional period reasonable?**☐ Yes☐ No

Comments

A large, empty rectangular text box with a light gray background and a thin black border. It has a vertical scrollbar on the right side.**16. Do you agree in principle that the conflicts provisions should apply to members who are not themselves acting as Scheme Actuary but who are undertaking significant advice work for the same scheme trustees?**☐ Yes☐ No

Comments

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**17. Do you agree that the approach adopted by paragraph 6.4.1 appears proportionate in this respect?**

☐ Yes

☐ No

Comments

**18. Do you agree in principle that the conflicts provisions should apply to members who are not acting as Scheme Actuary but who are undertaking a role equivalent in relevant respects to that of Scheme Actuary in relation to different types of pension scheme including some non-UK schemes?**

☐ Yes

☐ No

Comments

**19. Does the draft provision correctly identify the relevant criteria in this respect, as set out at paragraphs 6.4.2.1 to 6.4.2.4 of APS P1?**

☐ Yes

☐ No

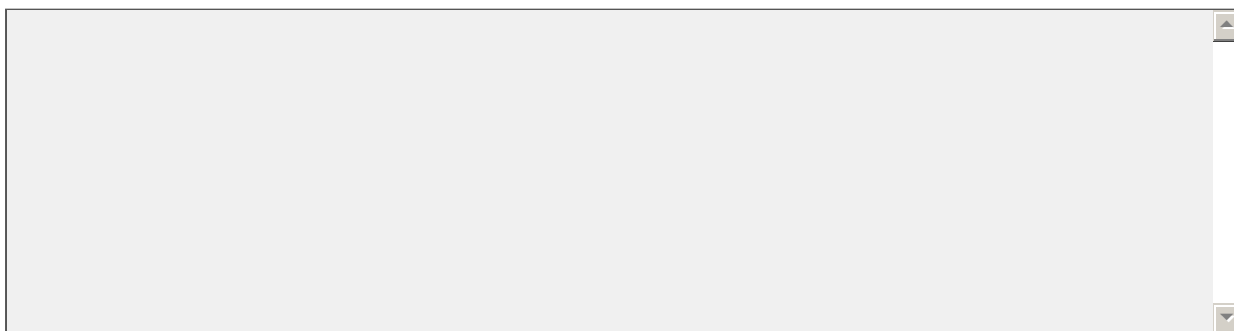
Comments

**20. Do you think that these criteria potentially include pension schemes which ought to be excluded? If so, please explain.**

☐ Yes

☐ No

Comments

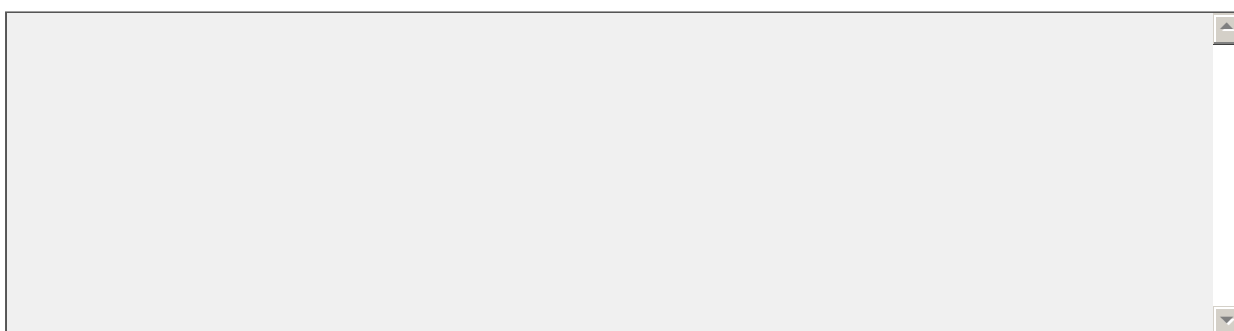


**21. Do you think that these criteria potentially exclude pension schemes which ought to be included? If so, please explain.**

☐ Yes

☐ No

Comments

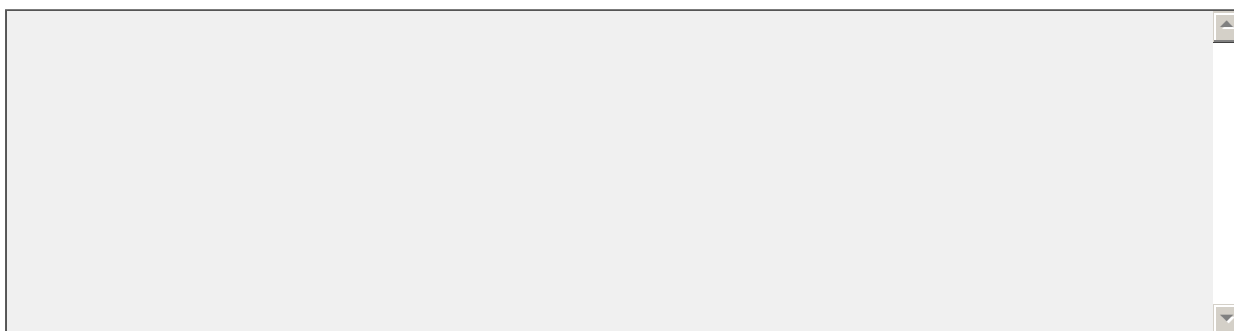


**22. Do you agree in principle that APS P1 should apply to all members, including students?**

☐ Yes

☐ No

Comments



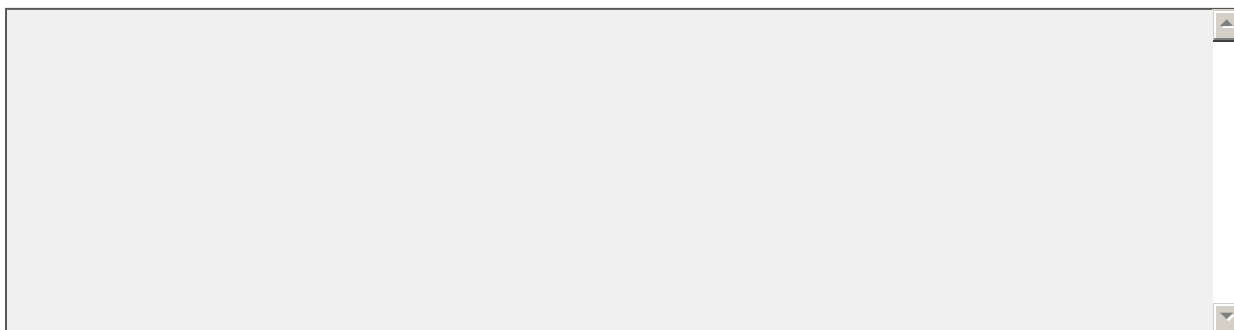
## 4. The Actuaries' Code

**23. The Working Party proposes to refer some specific drafting points (as detailed at paragraphs 2.3.2.1 and 2.3.2.2 of the consultation paper) for further consideration in the context of the forthcoming Code review. Do you have any comment on these points?**

☐ Yes

☐ No

Comments

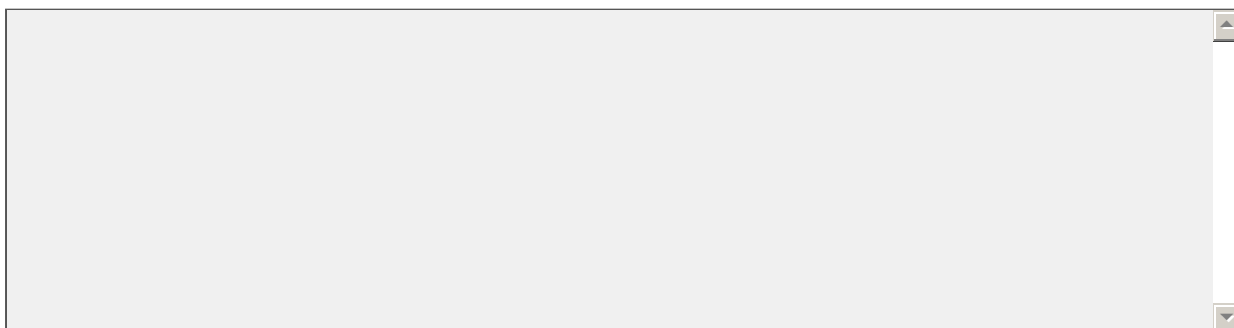


**24. Do you have any other comments or suggestions in relation to principle 3 of the Actuaries' Code?**

☐ Yes

☐ No

Comments



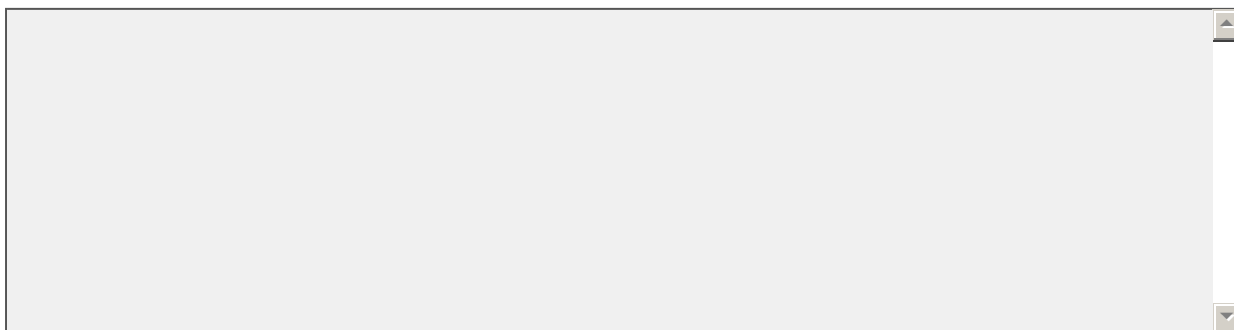
## 5. Guide for actuaries

**25. Peer review is mentioned in the guide as one important method by which to mitigate the possibility of a conflict arising. Is further guidance on the role of peer review desirable in this context?**

☐ Yes

☐ No

Comments

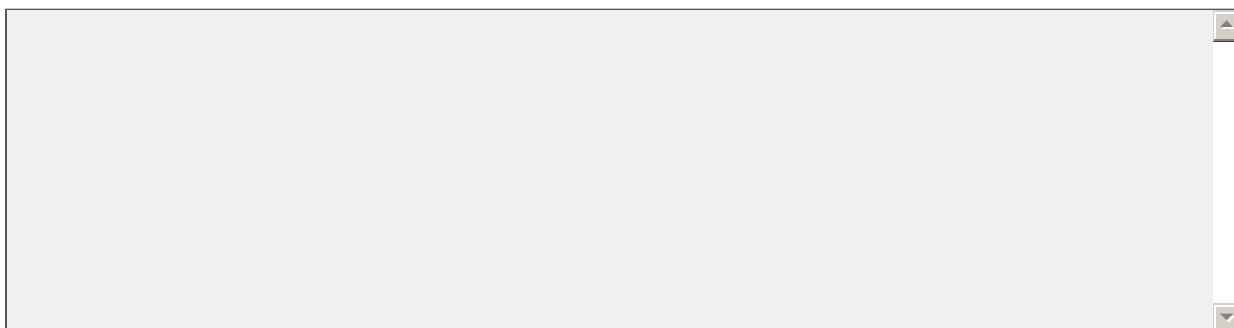
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**26. A number of practical examples are suggested. Would further examples be useful and, if so, in what area(s)?**

☐ Yes

☐ No

Examples

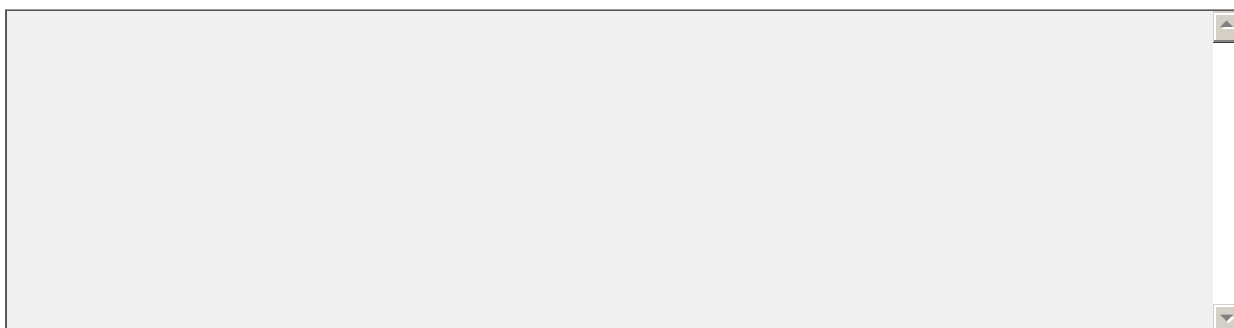
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**27. Do you have any other comments on the guide for actuaries?**

☐ Yes

☐ No

Comments

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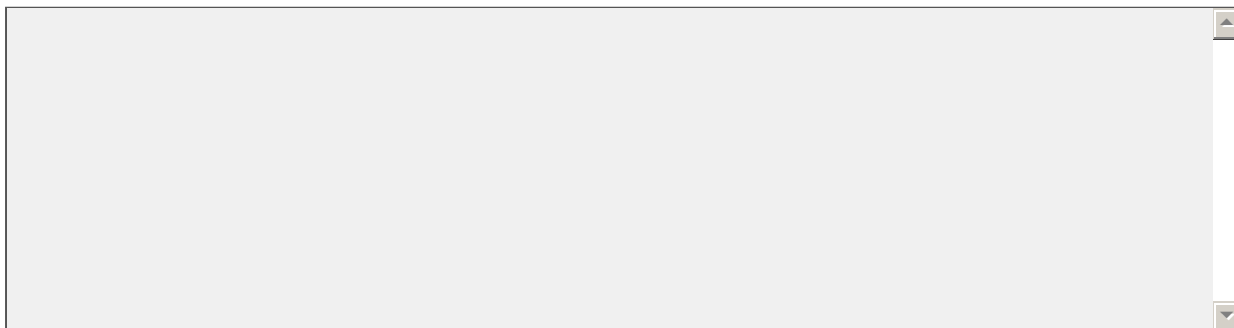
## 6. Guide for pension scheme trustees

### 28. Do you have any comments on the guide for trustees?

☐ Yes

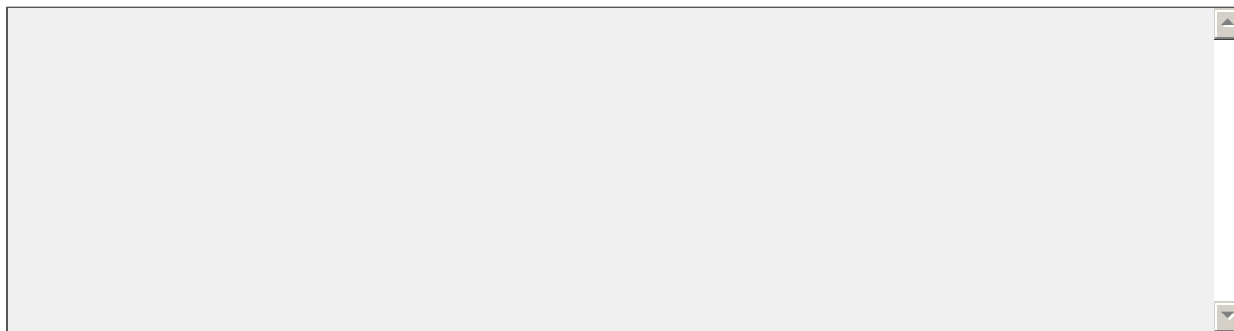
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Comments



## 7. Additional professional support

**29. What further resource material and/or training would you find helpful in relation to conflicts of interest?**





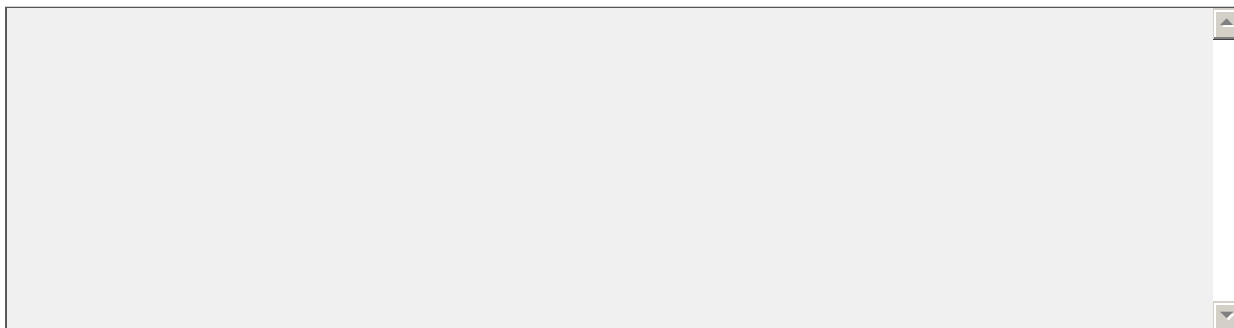
## 8. General

### 30. Do you have any comments on the practical impact of the proposals?

☐ Yes

☐ No

Comments

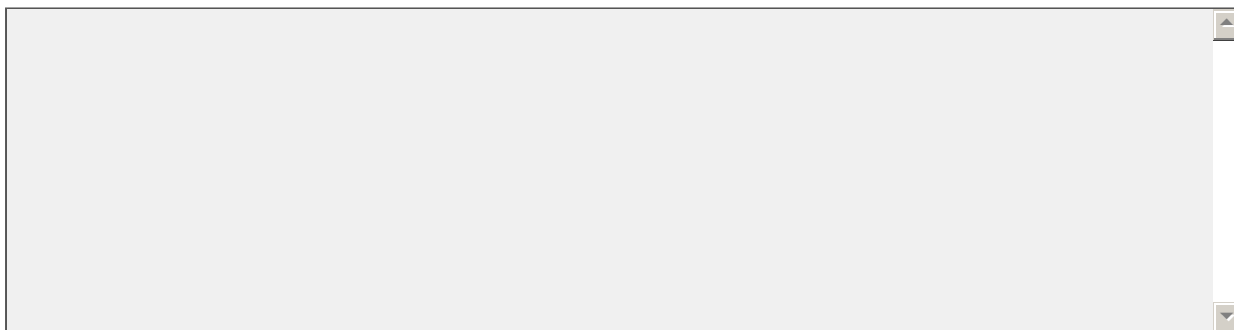
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### 31. Will those implications be different for specific types of firm - for example, small firms?

☐ Yes

☐ No

Comments

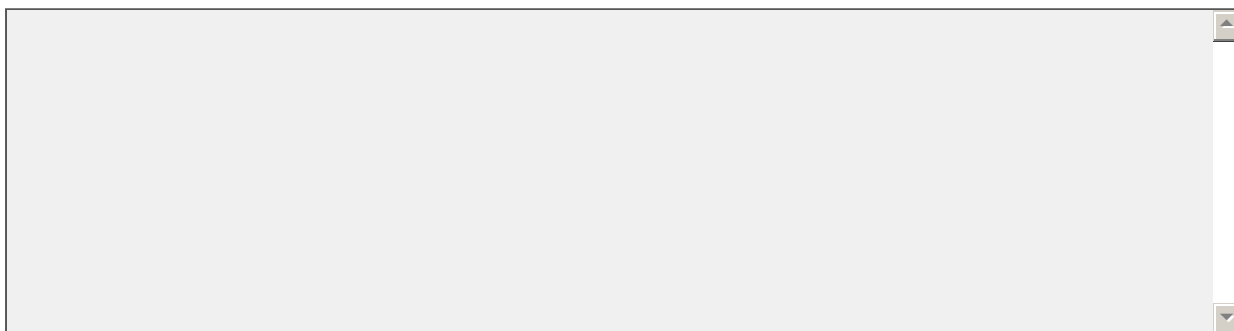
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### 32. Do you have any other comments on the overall package of measures proposed by the Working Party?

☐ Yes

☐ No

Comments

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Thank you for your participation in this questionnaire and remember to record your CPD time!