

The Actuarial Profession
making financial sense of the future

Whistleblowing event, Staple Inn, Wednesday 9 February 2011
Speaker: Tony Hewitt, Imperial College Business School



Professionalism: Should you speak up or report? How do you decide?

9 February 2011

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Tony Hewitt: Brief autobiographical details

- Tony is a member of PAC [Professionalism Awareness Committee]
- He helps run the part-time Actuarial Finance MSc at Imperial College Business School
 - **launched in 2006 for full-time actuarial trainees**
 - **combining on-the-job training with a Masters education.**
- He has practised as a consulting actuary for 35 years, particularly in the pensions, health and social security areas.
- His interests include professionalism, healthcare quality, enterprise risk management, DC pension reform and attracting high quality people into the Actuarial Profession.

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Protocol for discussing case studies + Disclaimer

- The case studies for discussion are deliberately hypothetical.
- In particular, the characters are designed to be entirely fictitious.
- The separate information on real-life case studies is provided not for discussion, but to help give the hypothetical case studies more credibility.
- Readers can also learn further lessons from these real-life situations.
- The presenter recommends that discussion of professionalism issues is based on the hypothetical case studies:
 - to avoid the risk of misrepresenting any aspect of the real-life case studies
 - to help focus discussion on professionalism issues, avoiding the detailed technical issues contained in the real-life case studies.

Disclaimer

- The real-life case studies are sourced from the public domain.
- The presenter has not verified any of the information in the real-life case studies and accepts no responsibility for any reliance placed by readers on that information.

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Today's agenda

- What is meant by Whistleblowing?
 - speaking up
 - reporting
- Some hypothetical Case Studies
- When and how should you whistleblow?
- How can whistleblowing protocols help?
 - Enhancing risk management
 - Building the public's confidence in Professions
 - Serving the public interest

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Know your Client!

Please indicate to which category you belong

1. Actuary involved with ethics committees or expert in risk management
2. Actuary not involved with ethics committees nor expert in risk management
3. Non-actuary involved with ethics committees or expert in risk management
4. Non-actuary not involved with ethics committees nor expert in risk management

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What is meant by whistleblowing?

- Two guides soon to be published:
 - A guide for actuaries
 - A guide for employers of actuaries
- These guides use “whistleblowing” to describe any act of speaking up or reporting to employers, clients, regulators or relevant authorities
- The terms “speaking up” and “reporting” are used in Compliance Principle 4 of the Actuaries’ Code

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Speaking up – defined in the Actuaries' Code

- Principle 4.1: speaking up
 - to the client [internal or external] or employer
 - if a course of action is [or ought to be] believed to be
 - unlawful, unethical or improper.
- The FRC expects actuaries to “speak up whenever they have reasonable concerns arising from actuarial work or the way it is used, and follow the issues through”.
- The FRC’s UK Corporate Governance Code requires public companies to have whistleblowing policies in place

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Reporting – defined in the Actuaries' Code

- Principle 4.2: reporting information
 - to relevant regulatory authority when obligation to do so
- Principle 4.3: reporting behaviour
 - to regulator or relevant authority [if legal protection available]
 - if there is reasonable cause to believe the behaviour is
 - unlawful, unethical or improper
- Principle 4.4: reporting any matter which **appears** to constitute **(a) misconduct or (b) a material breach of any relevant legal, regulatory or professional requirements**
 - to the Institute and Faculty of Actuaries
 - subject to taking all reasonable steps to obtain third party consent to disclosing information

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Interaction of Confidentiality Principle 1.2 with speaking up and reporting under Principle 4

- Confidentiality Principle 1.2:

“Members will respect confidentiality unless disclosure is

 1. permitted by law and
 2. justified in the public interest”
- Interaction with Principle 4:
 - speaking up to clients or employers under Principle 4.1
 - no confidentiality issue unless disclosure is contractually restricted to named individuals?
 - reporting under Principles 4.2, 4.3 or 4.4 – potential confidentiality issues which require the two conditions in Principle 1.2 to be met?

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What is meant by misconduct? Main definition

- Disciplinary Scheme Rule 1.6
 - Failure to comply with the standards of **behaviour, integrity, competence or professional judgement**
 - which other members or the public might reasonably expect of a member
 - having regard to the bye-laws... and/or to any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties
 -
 - and to all other relevant circumstances

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What is meant by misconduct? Whistleblowing definition

- Disciplinary Scheme Rule 1.9(a)
 - A member may be **liable for misconduct**
 - Where a **person (with whom he is connected) is guilty of conduct** which if committed by the member would have amounted to misconduct and either
 - any act, omission or behaviour by the member has **caused or contributed to such conduct**; or
 - following his becoming aware of any such conduct, the member **does not take such action** as other members might reasonably expect him to take in the circumstances
- Code: Members....will challenge non-compliance by others

Disciplinary Scheme Rule 1.10: An employer/partnership, its employees, its directors/partners are all “connected” (my layman’s non-lawyer summary)

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What does “observe the Code’s spirit” mean?

- The status section of the Actuaries’ Code explains
 - It is not a set of rules, and conduct that falls short of the Code will not inevitably constitute misconduct.
 - Equally, members will be expected to **observe the Code’s spirit** in their professional conduct.
- The Architect’s Code [published in September 2009] says
 - You are expected to be guided.....by the spirit of the Code as well as by its express terms
 - The fact that a course of conduct is not specifically referred to in the Code does not mean that it cannot form the basis of disciplinary proceedings
 - Each case is judged on its facts, and there may be circumstances in which unacceptable professional conduct.....is found even where there has been no clear breach of the express terms of the Code.

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What is meant by the public interest?

- As members of a chartered profession, actuaries have a core obligation to serve the public interest
- Principle 1.2 says “Members will respect confidentiality unless disclosure is justified in the public interest”
- Twin purpose of the Actuaries’ Code:
 - to serve the public interest
 - to build and promote confidence [trust] in the work of actuaries and in the Actuarial Profession

My view: TWO SIDES OF THE SAME COIN

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Reserving issue – putting at risk the benefits promised to customers or members

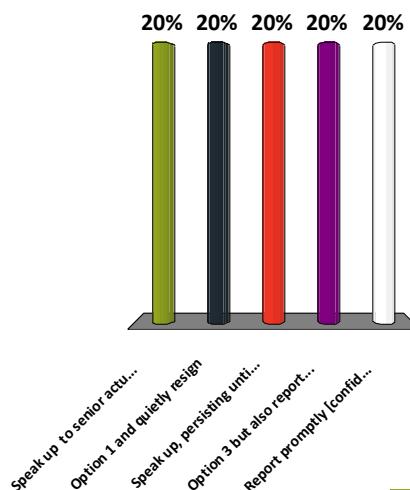
- You are an actuary – a trainee actuary seeks your help
- Senior management is forceful, feared, not trusted and there is a culture of blame and scapegoating
- The trainee works for senior management and has learnt that disclosed reserves may not be calculated properly:
 - A. Liabilities have been reduced by complicated reinsurance contracts whose effect is simply to defer loss recognition
 - B. Liabilities are understated because recognition of claims appears to be knowingly deferred by administrative delays
 - C. Technical provisions should be higher because Trustees received misleading asset and Employer Covenant data

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The trainee is fearful about taking further action. What should you [an experienced actuary] do?

1. Speak up to senior actuary colleagues but nothing more
2. Option 1 and quietly resign
3. Speak up, persisting until corrective action is taken, but nothing more
4. Option 3 but also reporting to the Regulator and the Profession
5. Report promptly [confidentially] to the Regulator, and to the Profession as required by Principle 4.4



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Real-life case studies relevant to the hypothetical “Reserving issue” case study

- A. Milan Vukelic/FSA case study – FSAM Tribunal judgement, covering the arguments made by lawyers representing Milan Vukelic and the FSA, and the conclusions of FSAM Tribunal, which sat in public on 1-9 December 2008 and 13 March 2009
- B. Independent Insurance case brought by the Serious Fraud Office – sentence given by Judge Geoffrey Rivlin on 24 October 2007
- C. Robert Maxwell plundering of pension assets and collapse of Maxwell businesses – Robert Maxwell Inquiry published by DTI Inspectors on 30 March 2001

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Communication issue – risk of mis-selling and failing to treat customers or members fairly

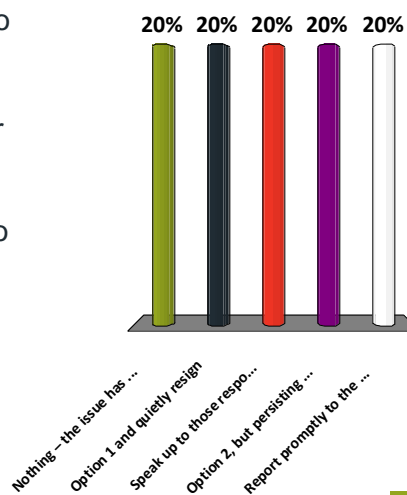
- You are an actuary – a trainee actuary seeks your help
- Senior management are trusted, show humility and champion a no-blame culture of learning from mistakes
- The trainee works for senior management and suspects that customers/members may not be treated fairly:
 - A. The in-house sales force appears to be using unethical methods to sell Payment Protection Insurance [PPI]
 - B. A Cash Fund is invested in assets with risk of capital loss
 - C. Open-market-annuity option [OMO] letters to Pension Scheme members appear to be unclear, inappropriate and misleading – the trainee suggests you, as Scheme Actuary, may be “associated” with these letters.

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The trainee trusts you will do the right thing. What should you [an experienced actuary] do?

1. Nothing – the issue has nothing to do with you
2. Option 1 and quietly resign
3. Speak up to those responsible for the issue, but nothing more
4. Option 2, but persisting until the issue is addressed, or reporting to Regulator and the Profession if no timely action is taken
5. Report promptly to the Regulator, and to the Profession as required by Principle 4.4



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Real-life case studies relevant to the hypothetical “Communication issue” case study

- A. FSA/Alliance & Leicester – Final Notice on 6 October 2008, breach of the FSA’s Principles for Businesses, including
 - Principle 6 (treat customers fairly)
 - Principle 7 (communication with clients)
- B. FSA/Standard Life – Final Notice on 20 January 2010, breach of the FSA’s Principles for Businesses, including
 - Principle 7 (communication with clients)
- C. Pension schemes with both Defined Benefit and Defined Contribution sections. If you are Scheme Actuary, ask how many members exercised their OMO in the last few years!

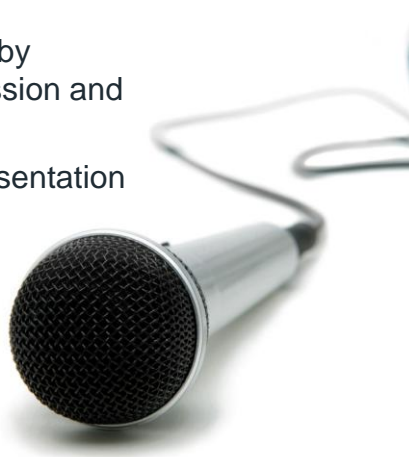
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Questions or comments?

Expressions of individual views by members of the Actuarial Profession and its staff are encouraged.

The views expressed in this presentation are those of the presenter.



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