

# Institute and Faculty of Actuaries

## Approval Report

<b>Subject</b>	To approve proposals on APS P1
<b>Regulation Board meeting</b>	1 July 2020
<b>Author</b>	IFoA Executive Team

### 1. Introduction

1.1 This paper provides an update to the Regulation Board on the review of the [Actuarial Professional Standard \(APS\) P1 : Duties and Responsibilities of members undertaking work in relation to pension schemes](#) (APS P1), carried out by the Pension Standards Committee ('the Committee'), and seeks approval of the draft APS P1 (Version 3.0) for consultation (Appendix 1).

### 2. Background

2.1 Members of the Board will recall that they approved the review of the APS P1 to be undertaken by the Committee at the end of May 2018. The Board also agreed in December 2018, that the APS should be as principled based as possible with any helpful further material contained in either an appendix or elsewhere, and agreed to extend certain provisions beyond Scheme Actuaries, to include those actuaries providing advice to corporate sponsors of a scheme. The Board however left it to the Committee to advise on the extent of the extension to the scope.

2.2 The APS was due for review initially in July 2016, however given that a significant aspect of the APS is the imposition of significant requirements upon Scheme Actuaries in relation to conflicts of interest, the Board agreed to postpone the review until after the publication of the revised Actuaries' Code.

2.3 The review of APS P1 is to take into account changes to the Actuaries' Code and any legislation/case-law, and ensure that the drafting is in line with other practice specific APSs, as well as a broader and more general review. In line with the Standards Review Framework, the IFoA's aim is to ensure that standards are clear, comprehensible and enforceable. This includes expressing requirements in a clear manner, using terms such as 'must' and 'should' to denote the status of provisions.

2.4 The Committee did produce a draft of a possible version 2.1 of APS P1 which could have introduced minor updating and other 'hygiene' changes at the same time as the new Code came into force, but it was decided that these changes could be deferred until a fuller review of the APS had been completed.

### 3. The Review

- 3.1 The current APS states that its purpose is to 'set out specific practice area ethical obligations, including Practising Certificate obligations, that apply in addition to the Actuaries' Code, for Members operating in the pensions area.'
- 3.2 The APS states, as its Target Audience, Members of all categories 'working for the Trustees or other governing body of a pension scheme, or for a decision-making body in relation to public sector or public service pension schemes'.

#### *Sections 1-5*

- 3.3 The APS itself mainly sets out specific requirements for Scheme Actuaries in the United Kingdom, appointed to advise the Trustees of a defined benefit pension scheme under Section 47(1)(b) of the Pensions Act 1995. In particular, it sets out under Sections 1-5:
- Practising Certificate requirements;
  - Obligations relating to appointment, replacement and absence;
  - Requirements for Scheme Actuaries to inform Trustees on relevant matters; and
  - Obligations around conflicts of interest.

#### *Section 6*

- 3.4 The APS then extends certain requirements contained under Sections 1-5 to other Members, by the application of Section 6.
- 3.5 Section 6.1 extends principles in Sections 1 and 4 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.
- 3.6 Section 6.2 extends principles in Section 1, paragraphs 3.1 to 3.4 and Section 4 to Members who are 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 a public sector or public service pension schemes', to the extent that they are 'practical and appropriate in the circumstances'.
- 3.7 Section 6.4 then also extends most of the principles in section 5 to other Members (whether or not from the same firm as the Scheme Actuary) who are involved (at a certain level) with the provision or review of client advice to the Trustees of a Scheme that is required to have a Scheme Actuary under the UK legislation.
- 3.8 Finally, Section 6.8 extends the principles of Section 5 and paragraphs 6.4 to 6.7 to 'a Member who is directly responsible for the provision or review of client advice to the Trustees of a Scheme', other than a scheme requiring a Scheme Actuary.
- 3.9 In summary, the APS attempts to apply certain requirements to Scheme Actuaries, those assisting the Scheme Actuary in giving advice to trustees of a Scheme that has a Scheme Actuary, and those in a similar role to that of a UK Scheme Actuary (or to another actuary supporting the Scheme Actuary) in another defined benefit scheme. It does not apply to Actuaries advising any other parties other than Trustees (or analogous Scheme governing bodies).

- 3.10 Therefore, although the scope of the APS sets out at the beginning that its purpose is to set out 'specific practice area ethical obligations... for Members operating in the pensions area', the content of the APS itself is mainly directed at UK Scheme Actuaries, with several of these obligations being extended to other Members under Section 6.
- 3.11 Section 6 of the APS is very complicated (with elements of duplication), and it is not always easy to interpret exactly what principles are intended to apply to whom. This could raise issues over its enforceability.

#### *Appendices*

- 3.12 Paragraph 3.2 of the current APS refers to a list in Appendix 1 of matters to be covered by a written agreement with the trustees. Appendix 1 then cross-refers to Appendix 2 of the APS, which illustrates the types of events which a Scheme Actuary would normally require the trustees to notify them.

#### *The Committee*

- 3.13 In undertaking the review of APS P1, the Committee sought to review and clarify the scope of the APS and considered whether to re-order it and re-present the content in a more easily followed manner.
- 3.14 The Committee considered the extent to which the principles covered in the APS ought to apply to non-trustee advisers, in particular to corporate and/or defined contribution advisers. They consulted with a Member of the Pensions Board and Members with experience working as corporate pension advisers, on what provisions of the APS could proportionately and appropriately cross-over to that line of work. The Board will recall that they previously agreed, in principle, that the Committee consider the extension of the provisions.

### **4. Proposed changes and draft APS P1**

- 4.1 The Committee propose that the current version of APS P1 is withdrawn and replaced by a new version, set out in the draft APS found at **Appendix 1**.
- 4.2 The new version of APS P1 aims to provide a more stream-lined and clearer standard for Members operating in the pensions area, clarifying Members' responsibilities. In addition, there is a small proposed extension in scope to those advising the employer, and clarification that 'in-house' advisers are also covered.
- 4.3 The revised APS sets out specific obligations for Scheme Actuaries and newly defined Equivalent Scheme Actuaries, Other Actuarial Advisers and Employer Advisers. Each paragraph clearly defines who exactly it applies to, with the definitions of each role contained under the definition Section (Section 7).
- 4.4 The requirements themselves largely mirror the current requirements in APS P1, but in a clearer, more stream-lined and easy to follow manner. However, some of the previous content/requirements have been removed as the Committee felt they did not add anything of sufficient substance or were overly prescriptive. A comparison document, showing the changes to the draft APS compared to the one currently in force is set out at **Appendix 2**.

- 4.5 The specific requirements for Scheme Actuaries in particular remain focussed on appointment, replacement and absence, speaking up/notifying the trustees of certain matters and conflicts of interest.
- 4.6 In order to provide absolute clarity as to who the revised APS applies to, there are three newly defined roles of (1) Equivalent Scheme Actuary, (2) Other Actuarial Adviser and (3) Employer Adviser.
- 4.7 The role of 'Equivalent Scheme Actuary' (ESA) has been created to reflect Members who are carrying out roles similar to that of a Scheme Actuary under the UK Pensions Act 1995, but are not defined as a Scheme Actuary. As those Members generally have very similar responsibilities to UK Scheme Actuaries, the revised APS extends certain relevant provisions to them.
- 4.8 'Other Actuarial Adviser' (OAA) has been created for the extension of certain provisions of the APS to Members who provide advice to the trustees, but are not Scheme Actuaries. As well as any colleagues who have a clear client-facing role supporting the Scheme Actuary, this includes Members who provide advice to trustees on behalf of a different firm to that of the appointed Scheme Actuaries or 'in-house' actuaries who advise the trustees.
- 4.9 Finally, the newly defined role of 'Employer adviser' is intended to cover Members of the IFoA who provide actuarial advice to the employer of a scheme, on behalf of the same firm as a Scheme Actuary (or Equivalent Scheme Actuary).
- 4.10 In Section 1, the revised APS repeats the current requirement that a Scheme Actuary must have a current practising certificate. This is the only place where this specific requirement for Scheme Actuaries is explicitly stated.
- 4.11 In Section 2, obligations relating to appointment, replacement and absence have been extended to cover ESAs. Members within these roles were already covered in the current APS as described in para 3.6 above, which extended certain provisions to Members in a similar role to a Scheme Actuary. The new changes however extend this to the whole of Section 2 after the Committee deliberated the considerations in this area also apply to ESAs.
- 4.12 Section 3 heading has been re-worded to reflect the central purpose of these requirements as being to speak up. The principles within this apply to both ESAs and OAAs. Previously, as described in para 3.5 and 3.6 above, this applied only to Scheme Actuaries but was extended via Section 6 to 'Members involved in the provision of advice or other services to the trustees' and Members in similar roles to that of a Scheme Actuary. The Committee recognised that the ethical dilemmas and situations described in this Section also arise in situations where a Member is also providing advice to the trustees of a scheme, separately, and at the same time, as advice is being provided by a Scheme Actuary or ESA. Furthermore, there will be instances where it is not necessary for the OAA to speak up, in addition to the appointed Scheme Actuary or ESA, who is already fulfilling the requirements of notifying the trustees.
- 4.13 The new changes remove the previous requirements (under the old Section 4.4) around the Scheme Actuary giving a form of actuarial certification required by legislation. The Committee have removed this as it served only as a detailed example/application of what is now covered in new Sections 3.1 and 3.2. Additionally, the examples previously quoted in the APS either no longer exist or are not significant enough to cover within the APS.

- 4.14 Section 4 has streamlined previous Sections 5 and 6 of the APS P1, creating one Section that contains the conflicts of interest obligations and removing duplication. This Section makes clear when each particular part applies to Scheme Actuaries, ESAs and/or OOAs. Section 4.2 extends a certain obligation to notify the trustees when they are aware that another person is undertaking work on behalf of their firm for the employer for a Scheme, to ESAs. It was previously quite ambiguous if it extended to Members in these roles or not.
- 4.15 Section 4.3 states that a Scheme Actuary, ESA and OAA would have a presumed irreconcilable conflict of interest, if they provided advice to an employer of a Scheme, for which they were acting for the trustees, in relation to the funding or a matter that had a direct bearing on the benefits payable. However, an additional ground for 'rebuttal' of the presumption, applicable only to OAAs, has been added at 4.4.5, to cater for the possibility that the OAA's role for the trustees is or has been in an area of work completely unrelated to funding or benefits, the intention being to provide more clarity as to how this provision (under 6.5 and 6.8 of the current APS) should be applied to Members in roles other than Scheme Actuaries. The previous APS also included an obligation to record any decision to depart from this presumption, however this has been removed as the Committee regarded it as superfluous. The Committee have also removed some of the unnecessary and prescriptive content of the previous Section 5.6, with the newly proposed Section 4.5.
- 4.16 Under the new Section 5, the APS states that if a Conflict Management Plan (CMP) is agreed, and imposes any requirements on an Employer Adviser, then they must comply with those requirements, and further provides that a Member cannot accept an invitation to become an Employer Adviser without first ensuring that the Scheme Actuary has had the opportunity to put a CMP in place. This change arises from a concern that the Committee had, following consultation with corporate pension advisers, that there was previously no explicit requirement for a Member in this role to comply with or co-operate with the establishment of the CMP.
- 4.17 The Committee considered Appendices 1 and 2 and concluded that these should be retained within the APS itself, given their value to Members when discussing what to include in agreements with trustees. There has been some minor re-wording of the appendices, with a part of appendix 1 being turned into a stand-alone, specific requirement in the APS at para 2.4.

## **5. FRC**

- 5.1 The Financial Reporting Council (FRC) have been provided regular updates on the review of APS P1 by way of our reports to them on our regulatory activity. They had not however previously had an opportunity to comment on the substance of the proposed changes.
- 5.2 The FRC were provided with the draft APS for their comments and input on 24 June. Given the short-timescales, we have requested if they are able to provide any high-level comments on it in advance of this meeting. A verbal update will be given to the Board if any feedback is provided by them in advance of the meeting on 1 July.
- 5.3 If feedback is received from the FRC which requires further changes to be made to the draft APS, it is proposed that these final changes, if relatively minor, are approved by the Chairs of the Committee and Regulation Board, as well as the General Counsel by email.

## **6. Society of Actuaries in Ireland and IFoA Pensions Board**

- 6.1 The Society of Actuaries in Ireland ('the Society'), by agreement with the Regulation Board, issued a [note](#) in 2013 to their members with some guidance on APS P1.
- 6.2 Further discussions took place between the Executive and the Society in 2016, in anticipation of the introduction of APS X1, around the applicability of APS P1 to IFoA Members advising Irish pension schemes (who under Irish legislation are required to be Fellows of the Society who hold current practising certificate issued by the Society). The Society accepted that actuaries advising the trustees of Irish pension Schemes came within the scope of Section 6 of the APS P1 but were of the view that there were no issues included within the APS which were not addressed in Irish regulation or the Society's Code of Professional Conduct or ASPs.
- 6.3 As APS P1 affects IFoA Members advising on Irish pension schemes, the Society requested an opportunity to consider the draft revised version before we issued any consultation on it. They wish to ensure that there were no unintended consequences for their Members and IFoA Members practising in Ireland.
- 6.4 Additionally, the IFoA Pensions Board has an interest in reviewing the draft before consultation.
- 6.5 We are awaiting any comments from them which may result in some minor changes to the APS before consultation. If changes are required, it is proposed that the same approach is taken as in paragraph 5.2 above.

## **7. Future Consultation**

- 7.1 Given the current uncertainty and impact upon resource that the COVID-19 outbreak has had on IFoA Members, it is recognised that a new consultation on a revised standard may not be appropriate at this time. The Board is therefore asked to provide a steer on whether it would be appropriate to delay any consultation on the revised APS P1.
- 7.2 The Executive will draft a consultation document following any comments from the Board and FRC, and after any necessary amendments by the Committee. It is proposed that the draft consultation paper will thereafter be shared with the Board by email.

## **8. Decision**

8.1 The Board is asked to provide:

8.1.1. Approval that the draft APS goes out to consultation, subject to comments from interested parties, such as the FRC; and

8.1.2. A steer on appropriate timescales for publishing a new consultation.

## **9. Appendices**

Appendix 1 – Draft APS P1

Appendix 2 – Comparison document with the current APS P1