



Institute
and Faculty
of Actuaries

Acting as Non-Executive Directors (NEDs):

A Guide for Members

by the Regulation Board

Professional considerations, practical hints, and
Frequently Asked Questions

2019

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1. INTRODUCTION

- 1.1 The range of situations in which IFoA Members act as NEDs is diverse and continually evolving. This document covers some of the more common challenges, situations and questions faced by our Members. It contains practical guidance and answers to frequently asked questions for IFoA Members appointed to non-executive director roles (NEDs) to assist Members in applying any regulatory requirements to the facts and circumstances of common situations faced within a NED role.
- 1.2 The Institute and Faculty of Actuaries (IFoA) is responsible for the regulation of the actuarial profession in the public interest. As part of its regulatory function, it also sets and maintains a framework of standards for its Members. Members of the IFoA must comply with those standards as a condition of membership.
- 1.3 Central to the IFoA's framework of standards is its overarching ethical code, known as the Actuaries' Code (the Code). The framework also contains Actuarial Profession Standards (APSs), which apply specific requirements to Members, building on the principles of the Code, as well as non-mandatory guidance designed to assist Members in meeting their professional obligations.
- 1.4 For Members carrying out technical actuarial work that is within UK Geographic Scope, there are also Technical Actuarial Standards (TASs) set by the UK's Financial Reporting Council (FRC) and enforced by the IFoA.
- 1.5 A comprehensive set of these regulatory requirements is on the [IFoA's website](#).
- 1.6 This document is non-mandatory guidance material; it imposes no obligation upon you over and above those embodied in the Code or the IFoA Standards Framework. It has been prepared by the Non-Executive Director Working Party and is issued by the Regulation Board of the IFoA. Its purpose is to support Members' understanding of the ethical and professional responsibilities in this area of work.
- 1.7 This document does not constitute legal advice. While care has been taken to ensure that it is accurate, up to date and useful, the IFoA will not accept any legal liability in relation to its content.
- 1.8 Please note, the term "you" is used throughout this document to refer to Members.

2. QUESTION, CHALLENGE AND ENQUIRE

- 2.1 NEDs should not be afraid to ask, or answer, questions that may seem obvious. If your experience enables you to identify an issue that colleagues have not spotted, or you can provide a different perspective in the debate, then offering that experience is a legitimate way to fulfil your role as a NED. The confidence and assurance provided by your broader knowledge of professional regulatory standards provides tools to support you in raising challenges and enhancing the quality of debate. The Actuaries' Code, a principles-based ethical conduct code, is the foundation of our regulatory framework and a basis for IFoA Members' professional ethics behaviours, including when acting as a NED. It provides assurance to Boards that they can trust our Members' professionalism, in complement to their Board responsibilities. The "Speaking Up" principle is consistent, for example, with a NED's responsibility to challenge management. You might therefore refer to this regulatory requirement to support the discharge of any responsibilities associated with your NED role.

3. ROLE CLARITY: TERMS OF ENGAGEMENT

- 3.1 When appointed to your role as a NED, ensure that you and all Board members are clear about the terms of your engagement and, in particular, your obligations under The Actuaries' Code relating to conflicts of interest (see the "Impartiality" principle and the relevant section in the Actuaries' Code non-mandatory guidance). Those professional actuarial requirements around conflicts of interest ought to be consistent with other conflicts requirements that apply to Boards and Board Members in terms of company law and governance practice. While your skill and experience as an actuary may be pertinent to your appointment, be clear about whether you can ever be asked to provide actuarial advice within the role. Having this discussion at the point of appointment will minimise the risk of confusion or of providing 'inadvertent advice' at a later stage. Excluding the provision of independent actuarial advice from your terms of engagement, does not, of course, preclude you from flagging to the Board a need to obtain such advice.
- 3.2 In the exceptional case where a Board wishes to be professionally advised by one of its members, the risk of conflict of interests and the necessary risk management steps to manage any conflict and to protect your independent status should be carefully considered, assessed and recorded. The scope of any such instruction must be clearly defined to allow you to do this. If you are instructed to provide actuarial advice, remember to consider whether this would require steps to be taken in order to comply with requirements of APSs and, if it is work within UK Geographical Scope, the TASs, and advise the Board accordingly.

4. ROLE CLARITY: ONGOING

- 4.1 In order to have confidence that the terms of your role remain clear to the Board, it is a good personal discipline to remind yourself on an ongoing basis of your primary function in your role and the hat you are wearing as a Board member. This will help to protect your independence, avoid ambiguity and manage the risk of conflict.
- 4.2 If you identify something that you perceive may be, or become, a grey area, flag this to Board members and consider adding clarity to the Board minutes, using words such as: "*As you know, I cannot give [actuarial] advice on the matter. In my experience, however, ...*"

5. CONFLICTS OF INTEREST

- 5.1 The Actuaries' Code (the "Impartiality" principle) and supporting Non-Mandatory Guidance provides detail of the regulatory requirements associated with conflicts of interest.
- 5.2 Active ongoing consideration of who can reasonably expect to rely on your input is crucial to manage conflicts of interest. In NED roles, the interests of diverse stakeholders must be balanced. Consideration and management of potential or perceived conflicts, where no actual conflict exists, is just as important as consideration of actual conflicts. At the outset of any appointment take the opportunity to address this openly. There is an increased risk that potential or perceived issues of conflict will arise if you offer direct professional actuarial advice to your Board acting as adviser to the Board on which you occupy a role as a decision maker. In such exceptional circumstances, action to ensure that the risk has been appropriately mitigated is essential before undertaking any instruction.
- 5.3 Remember that it is not always possible to manage an actual or perceived conflict of interest. Consideration of the issue may result in a professional obligation to decline the work. If you are able to clearly state in the terms of appointment that your role does not extend to providing actuarial advice, any risk will be substantially reduced.

- 5.4 Boards often keep a written record of any conflict consideration, migratory steps and the outcome on the Board conflicts register, where applicable.

6. INDUCTION, TRAINING AND PERSONAL DEVELOPMENT

- 6.1 On accepting an appointment as a NED, you should familiarise yourself with the most up-to-date reading on local laws and other regulatory compliance requirements relating to NEDs that are applicable to you (see The Actuaries' Code "Compliance" principle). Additionally, new NEDs are often offered an induction to understand his or her new company. Ask for this help if it is not automatically offered. NEDs are normally expected to have a direct input into the strategy of the company and a full induction will help to ensure that you understand the challenges and opportunities (both internal and external) that impact the business of the company.

7. MANAGING EXECUTIVE AND OTHER THIRD PARTY RELATIONSHIPS AS A NON-EXECUTIVE

- 7.1 The nature of the NED relationship with executive staff is very different to that of executive leadership. It is important to have confidence that you have all the information required for your NED role. The type of information needed to fulfil that duty is naturally different to what is required to provide actuarial advice. Therefore, as well as the time spent building relationships with fellow Board members, spend time getting to know your executive colleagues, and for them to get to know your skills and background so that they are able to anticipate and provide the information you will need (and vice versa). Boards use a variety of sources, such as external advisors and statutory auditors in addition to executive resource, to make decisions. Your Board's Terms of Reference should outline what resources are at your disposal. If not, ask.
- 7.2 A separate but related issue is your role in scrutinising the work of third parties, such as actuaries (executive and/or independently instructed), who provide advice to a Board. The challenge and enquiry aspects of your role as a NED are relevant here too. Your learning and knowledge of the professional regulatory framework assists this scrutinising role, by helping the Board to convey the nature of the ethical and technical standards applying to any work. You can also use professional principles as an aid to the enquiry process. For example, the Actuaries' Code principles of speaking up, integrity and/or communication can all be relied on to introduce these issues into Board discussion.

8. MANAGING BOARD MEMBER EXPECTATIONS

- 8.1 Manage your audience's expectations at all times by paying particular attention to their perspective and experience. Like all professionals, actuaries have a peer-to-peer shorthand language that may not be readily understood by a non-actuary. The diverse skills and backgrounds on your Board may mean that the implications of your input, which would be obvious to a fellow actuary, are not obvious to fellow Board members; similarly fellow Board members may not be instinctively aware of the information gaps that you as an actuary will identify. This is particularly pertinent, for example, where the actuarial discussion is in an area of actuarial practice of which you have no direct professional experience. Manage this risk by flagging to colleagues at Board meetings if a topic of particular relevance to your skills or area of expertise is tabled and/or by expressly identifying any particular information gaps (such as limited data). Where you feel that limited actuarial information impedes the Board's ability to decide an issue, raise the need to ask more questions and articulate what those questions might be.

9. ADJUSTING TO DIFFERENT PRESENTATION AND INFORMATION STYLES

- 9.1 It is usual for professionals to take time to adjust to different presentational and information styles when taking on a NED role. Factor in this period of adjustment. As one would expect, in order to take Board-level decisions, information provided to Boards is tailored to match their needs. The work of a NED may require Members to have due regard to the interests of a different set of stakeholder constituencies to those he or she may previously have worked with. Further, the NED is often a user¹ of actuarial services, making strategic Board decisions based on information which includes actuarial information. These factors distinguish NED work from the traditional context of an actuary providing professional actuarial advice to a defined client.

10. CLEAR RECORD OF DECISION MAKING

- 10.1 It is good practice to keep a clear written record of your collective decision-making processes. This improves your Board's overall effectiveness and can be used in future as part of 'lessons learned' reviews, as well as occasional audits. An additional advantage is that it can also assist in response to a challenge or query. It may also be of particular value where the matter is of some significance or import, when you are new to the Board, when particular weight is being placed on your point of view, or when you wish to record a dissenting view. This is often done by maintaining clear minutes, but other additional means of recording decision making can be used by agreement in Boards. You should feel free to offer suggestions for improvement to the Board and/or Company Secretary.

11. PROFESSIONAL SUPPORT SERVICE

- 11.1 If you would like the benefit of an experienced panel's views on matters, on a confidential basis, relating to the application of professional standards or ethical dilemmas, [contact us](#).

¹ See the Actuaries' Code Non Mandatory Guidance, as well as relevant actuarial and technical standards for explanation of the meaning of a "user". NEDs should consider who their user group is, appropriate to their NED role.

12. FREQUENTLY ASKED QUESTIONS

12.1 The following are some of the questions posed by Members who are NEDs. They are coupled with practical responses.

12.2 These scenarios are only examples and may not necessarily be appropriate in all similar situations. Members are expected to use their judgement to match their particular situation to these scenarios.

Q.1 The IFoA says that it supports development into new areas of work for members. Isn't it commercially disadvantageous to apply regulatory considerations to non-actuarial work?

A.1 No. The IFoA's regulatory framework, in particular the provisions of the Actuaries' Code, enhances the trust in, and therefore the value of input from, a regulated professional, both as an individual and by enhancing the reputation of the profession as a whole. Having a regulatory interest in issues such as integrity and competence is not only consistent with other regulated professions, but also a core part of maintaining that trust. The IFoA takes a reasonable and proportionate approach to regulation, keeping the balance under routine review.

Q.2 When working as a NED, is the Actuaries' Code the main focus for Members? Do APSs and TASs ever apply?

A.2 While the Actuaries' Code and disciplinary scheme are relevant at all times to Members of the IFoA, APSs and TASs are not generally directed to this area of work, provided you don't step outside the terms of your role as a NED or provide inadvertent advice (either intentionally or unintentionally). See below where this document deals with 'grey areas' where additional professional considerations may be triggered.

Q.3 How do you manage expectations when skills sets and experience are so diverse around the Boardroom?

A.3 There is no easy answer to this question, given the diverse skill sets and experience on Boards. A 'one size fits all' approach will not work and investing in Board relationships is key to establishing the most effective method to getting this right for your Board. It is usually beneficial, however, to check that there is a common understanding of the 'ground rules' and to regularly take time to consider the perspectives and experiences of your colleagues that come from different, non-actuarial, backgrounds.

Q.4 What do you do when you are asked to stray into actuarial opinion or advice in a NED capacity?

A.4 Where a Member is making judgements as a NED about business matters generally, the tips in this document on managing expectations and record keeping will assist.

NEDs acting collectively may be asked to approve executive proposals that contain actuarial advice, either from actuaries within the executive or from external consultants. In this situation, the actuary NED is a user and can play a useful role for the Board as a whole by asking well-informed questions even if he/she no longer has up to date practitioner level expertise in all the areas being considered. Remember to give thought at the outset as to who the stakeholder or interested parties are in each instance. It is, however, for the Board as a whole to consider whether the executive responses to such questions give them sufficient confidence to decide a matter. In some cases the Board may request a peer review or instruct additional actuarial advice in order to come to a decision.

The provision of independent actuarial advice to the Board by an IFoA NED would normally be beyond the remit of a NED (as defined in his or her terms of appointment). In the exceptional circumstances where such a situation arises, he or she may give advice (normally under separate terms of engagement), provided they could do so in line with the Actuaries' Code (e.g. that they are competent to advise in this area and there are no conflicts of interest due to their roles as a NED) and any relevant standards. If an actuary NED advises the Board then he or she cannot then play their usual role as a NED in deciding whether to accept their own advice. This should be made clear to the other Board members prior to such an arrangement.

Q.5 How far can you go when you are tempted to volunteer actuarial opinion in a NED capacity (for example in an audit committee environment)?

A.5 Differences of opinion can be awkward but such debate is not unreasonable or unprofessional. Active debate and scrutiny is essential to the NED role and professional experience is relevant and usually welcomed. Focus on identifying the information gaps and the questions that need to be answered.

The risk of providing inadvertent advice should not arise if there is clarity on the Board about your role from the outset. Managing expectations, minuting your professional experience and the 'hat' you are wearing will help to ensure that everyone is clear as to the nature of your input.

If, during your critique and debate, you consider that actuarial advice is required, refer to your terms of appointment and conflicts of interest responsibilities, in addition to any relevant standards such as APSX2 and TAS 100, before taking a view as to whether you have the capacity to provide that advice to the Board. However, for a variety of practical reasons, it is more likely that an IFoA NED will recommend to the Board that it instructs an independent actuarial opinion in these circumstances.

Q.6 APS X2 talks about 'actuarial work' in a broad sense. Is it ever relevant to consider whether I need to apply X2 and carry out a peer or independent work review?

A.6 Yes. [APS X2 Review of Actuarial Work](#) applies to all Members and is therefore a standard that Members with NED roles will have to consider from time to time. The APS X2 Guidance provides detailed explanation of this standard.

In general, however, it is very unlikely that APS X2 will require a work review or independent peer review to be applied to the work of a NED. Where it does arise, the wide definition of 'work review' allows for a spectrum of different types of review that might be appropriate and proportionate. Review by a non-actuary or general Board discussion may, for example, be part of the due diligence to help you form a concluded view after appropriate consideration, as to whether additional steps are necessary.

Q.7 TAS 100 talks about "technical actuarial work". Is it ever relevant to consider whether I need to apply TAS 100?

A.7 Yes. In general, TAS 100 will not often apply in the ordinary course of business of a NED, whose role is usually that of a user. The IFoA's [TAS 100 guidance](#) clarifies that work as a NED is not usually work within the definition of "Technical Actuarial Work" (see in particular appendix 1). If the role is not the usual type of NED work and does involve providing actuarial advice then it may be that it falls within the scope of TAS 100, if it is work that is within UK Geographic scope. If it is work outside UK Geographic scope then the Member should consider the requirements of APS X1.

Q.8 Is there an ideal balance between a full record of decision making in a meeting, and ‘off the record’ or ‘out of meeting’ discussions?

A.8 The correct balance is a decision for your Board, but company rules may have a bearing, so you should check with the Company Secretary to ensure that good governance rules are being followed. Your Board should regularly review the policy adopted relating to the completeness of minute and record keeping for decisions without compromising the NED’s ability to contribute informally, where appropriate. If an issue arises where you feel that a fuller record would be prudent, flag this with the Board.

Q.9 Is vicarious liability something I should worry about in NED work?

A.9 Vicarious liability as a concept is generally not recognised in professional disciplinary proceedings, which are by definition focused on personal conduct. As a non-executive, you should not be held liable for the personal conduct or actions of an employee in an IFoA disciplinary investigation.

Civil or criminal vicarious liability attaching to your work as a NED is however wholly distinct. You should seek independent legal advice for any personal exposure relating to an issue raised in this context.

As with all terms of appointment, any personal exposure will be mitigated by ensuring that you and your Board act at all times within your terms of reference.

Q.10 What should I do if the nature of my NED work is at odds with my regulatory requirements?

A.10 While it may be possible to minimise your civil litigation exposure via contract or insurance by ring fencing or passing on the risk, it is not possible to “contract-out” or insure against your professional regulatory responsibilities.

In the event that you perceive a conflict between your employment or contractual responsibilities and a professional regulatory obligation, seek support from the IFoA’s Professional Support Service and/or independent legal advice.

Q.11 As a fully regulated Fellow (non-Practising Certificate holder) of the IFoA who no longer carries out actuarial work, would I qualify for an exemption from the CPD requirements, if I continue to work part-time and hold a NED position?

A.11 As a fully regulated Fellow who does not hold a Practising Certificate you are a Category 2 member for CPD purposes.

It is possible for Category 2 members to receive an exemption from the full requirements of the CPD Scheme where they can show that their actuarial training and experience, and their membership of the IFoA, make no contribution to their paid work. Members who hold senior roles (including a NED role), in particular in the financial services sector, are therefore unlikely to qualify for a full exemption.

The public interest rationale for maintaining CPD is that in most circumstances it is difficult for the lay person (a member of the public) to disassociate membership of this profession, the skills and educational background of an actuary and his or her subsequent professional experience from the qualities that allow Members to obtain a NED role and more positively, they are entitled to associate membership of a highly regarded profession with high standards and professionalism, including in relation to ongoing competence.

Q.12 I don't rely on my actuarial qualifications at all in my role as a NED so I don't understand why I'm still expected to do CPD every year if I want to remain a member of the profession.

A.12 The IFoA takes the view that the public will expect that a Member of the IFoA will continue to meet the same high standards associated with the profession when doing non-technical work. This includes a commitment to lifelong learning and professionalism throughout your career, with CPD relevant to the role.

Q.13 I hold one appointment as a NED which involves attending four meetings each year. Each meeting lasts around two hours, with preparation and follow up time in addition to that. Do I have to meet the full requirement of CPD?

A.13 If you work for less than 20 hours during the CPD year you can apply for an exemption from the CPD requirements. Assuming a full exemption is granted you would not have to record any CPD; however, you would still have an obligation under the Actuaries' Code to maintain your competence as a Member. The CPD requirement is that CPD must be relevant to your role(s).

Q.14 I am currently a NED (unpaid) of a small charity; can I apply to be classified as retired? I am fully retired from my day job and hold no other senior positions for which I receive payment.

A.14 Yes, you can. Members who undertake only unpaid work, even if it relies upon their actuarial training and experience, in the widest interpretation, can apply to be classified as retired. As a retired member you are required to complete such CPD as you reasonably consider to be appropriate in the circumstances. However, the provisions of the Actuaries' Code would continue to apply.

15. FURTHER QUESTIONS AND INFORMATION

15.1 We would be pleased to receive any comments on this document. Comments should be sent to:

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