



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

<b>Author:</b>	The Pensions Standards Committee, in conjunction with the Conflicts of Interest Working Party of the Professional Regulation Executive Committee
<b>Status:</b>	Approved under the Standards Approval Process
<b>Version:</b>	2.0, effective 1 July 2013 (early adoption by <b>Members</b> is strongly encouraged, wherever practicable)
<b>To be reviewed:</b>	No later than 1 July 2016
<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 Institute and Faculty of Actuaries for <b>Members</b> <sup>1</sup> operating in the pensions area
<b>Authority:</b>	Institute and Faculty of Actuaries
<b>Target Audience:</b>	<p><b>Members</b> (of all categories, including Students, Affiliates, Associates and Fellows) working for the <b>Trustees</b> or other governing body of a pension scheme, or for decision-making bodies in relation to public sector or public service pensions schemes.</p> <p>Sections 1-5 inclusive are primarily directed at <b>Scheme Actuaries</b>, being an actuary appointed to advise the <b>Trustees</b> 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 <b>Members</b> undertaking work in relation to pension schemes.</p>

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<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...by the Financial Reporting Council (including by the former 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** has reason to believe 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 – Scheme Actuaries

- 5.1. **Scheme Actuaries** are reminded that principle 3 of the Actuaries' Code applies to the treatment of all conflicts of interest. They are reminded in particular of their obligations under principle 3.4 (requirement to disqualify themselves in the event of an irreconcilable conflict of interest).
- 5.2. Where either the **Scheme Actuary** to a **Relevant Scheme**, or, to his/her knowledge, another person, is undertaking work on behalf of the **Scheme Actuary's Firm** for the **Employer** to that **Scheme**, the **Scheme Actuary** must ensure that the **Trustees** are aware of this fact and of the potential for conflict(s) of interest to arise as a result.
- 5.3. Having regard to principle 3 of the Actuaries' Code, the **Scheme Actuary** should presume that the provision by him/her of **Client Advice** to 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**, would give rise to an irreconcilable conflict of interest.
- 5.4. In considering whether, exceptionally, it is appropriate to depart from the presumption set out in paragraph 5.3, the **Scheme Actuary** should have regard to all of the relevant circumstances, including, as applicable, the following:
  - 5.4.1. the public interest, including the public interest in safeguarding the interests of **Scheme** members;
  - 5.4.2. the extent of the **Trustees'** independence and expertise;

- 5.4.3. relevant legislation;
  - 5.4.4. where the **Scheme** rules require the provision of such **Client Advice** by the **Scheme Actuary** to the **Employer**, whether it is reasonably possible and appropriate to amend the **Scheme** rules;
  - 5.4.5. whether it is appropriate to resign one or more appointment(s), rather than depart from the presumption.
- 5.5. The **Scheme Actuary** must record any decision to depart from the presumption set out in paragraph 5.3 and the reasons for that decision, including the reasons for concluding that, in the particular circumstances, there is no irreconcilable conflict. It will be for the **Scheme Actuary** to justify any such departure if reasonably called upon to do so.
- 5.6. Where the work to which paragraph 5.2 refers constitutes **Client Advice** in relation to the **Relevant Scheme** in question, the **Scheme Actuary** to that **Scheme** must additionally ensure:
- 5.6.1. The agreement of a plan, in writing, with the **Trustees** and **Employer** for whom the work is undertaken, to be reviewed at appropriate intervals, describing all known conflicts of interest and setting out how they are to be addressed. The plan must set out any limitation on the extent of any **Client Advice** which may be provided to the **Employer** and on who may provide that advice.
  - 5.6.2. The plan takes account of everybody who, to the **Scheme Actuary's** knowledge, is involved in the provision or review on behalf of the **Scheme Actuary's Firm** of **Client Advice** in relation to the **Scheme** to either the **Trustees** or **Employer**.
  - 5.6.3. 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** by:
    - 5.6.3.1. the **Scheme Actuary**; or
    - 5.6.3.2. any other **Member** directly responsible for the provision or review of **Client Advice** to the **Trustees** of the **Scheme** in question.
  - 5.6.4. The terms of the plan are such that, if it becomes inappropriate for the **Scheme Actuary** to continue to provide **Client Advice** to both the **Trustees** and the **Employer**, the **Trustees** will have the option to continue with the appointment of the **Scheme Actuary**.
  - 5.6.5. That he/she is reasonably satisfied that the **Trustees**, in agreeing to the plan, are appropriately informed as to its implications and that they have as a minimum considered taking independent legal advice. **Scheme Actuaries** are also in this context reminded of their obligations in terms of paragraphs 4.1 to 4.3 of this **APS**, and principle 4.1 of the Actuaries' Code,

**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.

#### **Conflicts of Interest - Schemes requiring a Scheme Actuary**

- 6.4. The principles in paragraphs 5.1, 5.2 and 5.6 also apply to any **Member** who, although not acting on behalf of the **Scheme Actuary's Firm**, is directly responsible for the provision or review of **Client Advice** to the **Trustees** of a **Relevant Scheme**.
- 6.5. Having regard to principle 3 of the Actuaries' Code, any **Member** should presume that he/she would have an irreconcilable conflict of interest where:
  - 6.5.1. he/she is involved in the provision or review of **Client Advice** to both the **Trustees** and **Employer** of a **Relevant Scheme**; and
  - 6.5.2. that **Client Advice** in each case relates either to the funding of the **Scheme** or to any matter which has a direct bearing on the benefits payable under the **Scheme**; and
  - 6.5.3. that **Client Advice** in each case requires a material element of judgement by that **Member**.
- 6.6. In considering whether, exceptionally, it is appropriate to depart from the presumption set out in paragraph 6.5, the **Member** should have regard to all of the relevant circumstances, including, as applicable, those set out in sub-paragraphs 5.4.1 to 5.4.5.
- 6.7. The **Member** must record any decision to depart from the presumption set out in paragraph 6.5 and the reasons for that decision, including the reasons for concluding that, in the particular circumstances, there is no irreconcilable conflict. It will be for that **Member** to justify the basis for any such departure if reasonably called upon to do so.

#### **Conflicts of Interest - Schemes not requiring a Scheme Actuary**

- 6.8. This paragraph applies to a **Member** who is directly responsible for the provision or review of **Client Advice** to the **Trustees** of a **Scheme**, other than a **Relevant Scheme**. A **Member** to whom this paragraph applies must:

- 6.8.1. consider the extent to which the principles set out in section 5 and paragraphs 6.4 to 6.7 are relevant, as they are in relation to a **Relevant Scheme**, to them and to that **Scheme**;
- 6.8.2. to the extent that they are relevant, apply those principles as nearly as may be appropriate in the circumstances; and
- 6.8.3. ensure that such steps as are taken under this paragraph 6.8 are recorded.

## 7. Definitions

<b>Term</b>	<b>Definition</b>
APS	Actuarial Profession Standard.
Client Advice	Information or recommendation provided by a Member to a client, which includes a material element of judgement or analysis, upon which that client is entitled to rely.
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 or previous incumbent Scheme Actuary of a pension scheme.
Firm	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: <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.</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	A pension scheme of any sort.
Scheme Actuary	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 70	Section 70 of the Pensions Act 2004.
TASs	Technical Actuarial Standards issued by the Financial Reporting Council.



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**.

### 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.