



The Actuarial Profession

making financial sense of the future

Consultation paper

Conflicts of interest: new policy proposals

Conflicts of Interest Working Party

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Invitation from Sir Philip Mawer, Chairman of the Conflicts of Interest Working Party (Working Party) of the Professional Regulation Executive Committee (PREC)

I am writing to invite you to participate in this consultation about the Profession's new policy proposals on conflicts of interest, which, if approved, will come into effect from April 2012.

This is one of the key regulatory areas that the Working Party has been examining, as part of PREC's responsibility for ensuring, on behalf of the Profession, the effective regulation of the Profession's Members in the public interest.

The Working Party initially sought the views of interested parties, including users of actuarial advice and regulators, as well as actuaries themselves, in July 2010. An overwhelming response was received from members of the Actuarial Profession (over 300 replies), although relatively few responses from users were received.

A second, targeted round of discussions with users of actuarial advice and other regulators was undertaken, between March and July 2011, for the purpose specifically of obtaining a fuller account of the views of users and to provide the Profession with sound and rounded evidence on which to base its future policy on conflicts. The views expressed in this second round of consultation were broadly in the same direction as those expressed during the discussion paper phase. Nonetheless, additional specific issues were raised, all of which have been reflected in one way or another in the final proposals and/or in this consultation paper.

Appendix 2 to this consultation paper provides an analysis of the responses to the first phase of the consultation. It is clear that, while conflicts of interests are common in actuaries' everyday life, the perception amongst both actuaries and their clients or employers is that most conflicts are properly managed. So it may be that the Morris Review, and, more recently, the Professional Oversight Board's reports, along with the Financial Reporting Council's Actuarial Quality Framework, have, along with the efforts of the Profession and its members, already had a beneficial effect. There is nevertheless a clear desire for additional guidance, as well as a specific concern about pension scheme actuaries providing advice to employers.

This consultation paper sets out a package of specific proposals designed to address the call for further guidance and at the same time to respond, proportionately, to specific concerns regarding the position of pension scheme actuaries.

We invite you to comment on these proposals. We shall welcome the help of the public, other regulators and members of the Profession in creating a sound and informed base upon which we can develop future policy. We stand ready to engage in discussion with all of our stakeholders in finding the best way forward.

Our aim is to develop proposals which are fundamentally principles-based and which, in accordance with the better regulation principles, are clear and proportionate and properly targeted at addressing the issues and concerns which have been raised. I thank you in anticipation of your contribution to this important discussion.



Philip Mawer

October 2011

1. Executive summary

The Working Party proposes a package of measures designed to address the question of conflicts of interest. This proposed package comprises the following elements:-

- 1.1. **The Actuaries' Code, principle 3 ("Impartiality"):** The Working Party reaffirms the importance and overriding necessity of the "Impartiality" Principle, with which all actuaries (Fellows, Associates, Students, Affiliates and Honorary Fellows) are expected to comply. The text of this principle is set out at **Appendix 1** of this Consultation Paper. It is not intended to amend at this stage the wording of this principle, in particular, or the Code in general. To the extent that there are possible drafting amendments which might be made in relation to the Code, it is envisaged that these can most appropriately be considered in the context of the wider review of the entire Code, scheduled for 2012.
- 1.2. **New regulatory provision:** The Working Party proposes a targeted rather than blanket approach in addressing further specific regulatory provision at two areas in which a significant risk, both real and perceived, has been identified. These proposals, relating to the practice areas of pensions and life assurance respectively, comprise the following:
 - 1.2.1. New regulatory provision on the subject of conflicts of interest applicable to members undertaking certain types of pensions work. It is proposed to introduce these provisions by way of amendment of the existing Actuarial Profession Standard (APS) **APS P1**, "Duties and Responsibilities of Pensions Actuaries". The proposed amendments can be found at new section 5 and paragraph 6.4, read in conjunction with the definitions at section 7, of the version of APS P1 included at **Appendix 4**.
 - 1.2.2. A new standard for Life Assurance Actuaries (**APS L1**), including more robust conflicts of interest provisions, has been the subject of recent separate consultation. A copy of APS L1 is produced for reference at **Appendix 3** and it comes into effect on 1 October 2011.
- 1.3. The proposed provisions include, in particular, a specific prohibition on Scheme Actuaries advising the sponsoring employer in relation to the funding of the scheme, or in relation to any matter which has a direct bearing on the benefits payable under the scheme, including, but not limited to, advice on actuarial factors. By paragraph 6.4, this restriction would also be extended to members other than the Scheme Actuary to the extent that they are materially involved in providing trustees with certain types of significant advice and to members undertaking a role equivalent to that of Scheme Actuary in relation to other sorts of pension schemes, including, for example, public sector schemes. Additionally, and in relation to circumstances where the specific prohibition does not apply, further detail is provided as to the steps which must be taken in order to reconcile conflicts.
- 1.4. **New guidance:** In order to meet the strong demand for extra guidance, as demonstrated by the responses to the discussion paper, and to give actuaries greater confidence in how to avoid the pitfalls to which conflicts may give rise, the Working Party has produced two new sets of guidance:
 - 1.4.1. A guide for actuaries on conflicts of interest – included as **Appendix 5** to this consultation paper. This is intended to be substantial guidance for actuaries in all practice areas on identifying, assessing and managing conflicts of interest including the consideration of the materiality of conflicts and the handling of confidential information. It will be presented in the style of the Profession's recently published whistleblowing guides.
 - 1.4.2. A guide for pension scheme trustees on actuaries' approach to conflicts of interest – included as **Appendix 6** of this consultation paper.

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- 1.5. **Additional professional support:** The responses to the discussion paper called overwhelmingly for more detailed treatment of conflicts of interest in professionalism courses/business awareness modules, and, in general, more training and support from the Profession (including an actuarial helpline service for members) in relation to conflicts. The Profession will be taking all of these measures forward by the first quarter of 2012.
 - 1.6. **Structure of this consultation paper:** Section 2 sets out a more detailed analysis of these proposals, with a number of specific questions for respondents to the consultation. Section 3 sets out the policy and historical context for this consultation. Section 4 provides information about how to respond to this consultation and **Appendix 8** sets out the consultation questions themselves.
 - 1.7. **Responses:** these are invited, in the form of either general comments or completed questionnaires, by 10 December 2011. Members of the Profession are entitled to claim up to one hour private study CPD time for reading this consultation paper and completing the relevant 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.

2. Analysis of proposals

We focus for present purposes on the proposed changes to APS P1, read in conjunction with the Actuaries' Code, with some explanatory comment on the proposed guidance. APS L1 has been subject to a recent, separate consultation.

2.1. APS P1

- 2.2. On the basis of the evidence it has received, of the considerations advanced in the Morris Review and the POB's reports and of the conversations it has had with other relevant bodies¹, the Working Party is of the opinion that some specific additional regulatory provision on conflicts of interest is appropriate in relation to the duties and responsibilities of pensions actuaries. It is proposed to this end to amend APS P1 to introduce a new section 5, paragraph 6.4 and, in section 7, some new defined terminology. Full text for these proposals (in tracked and un-tracked text) is included at **Appendix 4**.

Paragraph 5.1

- 2.2.1. Paragraph 5.1, as proposed, is in the following terms;

*"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."*

- 2.2.2. Paragraph 5.1 is intended as a targeted and proportionate response to the problem – part founded in reality, part in perception (the latter being, however, no less powerful a consideration) - that a Scheme Actuary cannot simultaneously serve both the trustees and the sponsoring employer of a pension scheme.
- 2.2.3. The Working Party believes that an outright ban on a Scheme Actuary doing any work for an employer would not be justified by the evidence it has received; would impede sensible arrangements for scheme administration agreed between trustees and employers; and so would add to complication and cost.

¹ Including the Pensions Regulator and the National Association of Pension Funds.

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- 2.2.4. The Working Party has concluded that there is a potential for a conflict of interest (and very real perception of a conflict) in relation to a Scheme Actuary providing advice to the sponsoring employer on the funding of that scheme or on any matter having a direct bearing on the benefits payable under that scheme. Matters having a **direct** bearing on benefits payable would include (but are not necessarily limited to) advice to the employer on plan design, discretionary benefits and member factors for individual or groups for example, commutation factors and transfer values. There are other areas (e.g. investment strategy) in which there may be an indirect impact on benefits - advice to the employer on these matters is not specifically prohibited by paragraph 5.1 but that does not mean that it will necessarily be acceptable to provide such advice (see comments on paragraph 5.2 below). This is intended to achieve a proportionate and targeted approach, short of an outright ban on dual appointments, which will require the exercise of judgement on the part of members, and will not prevent the provision of advice which cannot reasonably be seen to have any close proximity to benefits payable under the scheme.
- 2.2.5. The Working Party will welcome views on this proposed restriction and whether it, as is intended, strikes the appropriate balance between ensuring transparency and public confidence, on the one hand, without on the other being disproportionate in its effect. The Working Party would like to hear views in particular on the practical implications of this provision. It is aware, for example, that, in certain circumstances, scheme rules may provide for a legal obligation on the Scheme Actuary to provide certain types of advice to the sponsoring employer: an obligation which it may conceivably not be possible to avoid without amending the rules. Views are invited as to the extent:
- to which this type of provision may be common;
 - to which it may give rise to practical difficulty in complying with the proposed prohibition; and,
 - if this is likely to be an issue, how it might best be resolved.
- 2.2.6. One possible way of dealing with this situation, considered by the Working Party, would be to allow Scheme Actuaries in appropriate circumstances to seek from the Profession a limited waiver of paragraph 5.1. This might be granted to the extent that the Profession was satisfied that this would not cause detriment, real or perceived, to the interests of the trustees. The obvious concern with such an approach would lie in the possible perceived dilution of the principle otherwise established by paragraph 5.1, as well as the potential resource implications which might be entailed in considering waiver applications. Again, it would be helpful to hear views as to whether the practical implications of 5.1 are likely to be more onerous in relation to certain types of scheme or firm.
- 2.2.7. A specific question which has been raised, following discussion in particular with the Financial Services Authority (FSA), is whether paragraph 5.1, as currently drafted, would adequately cover the situation in which a Scheme Actuary is appointed to undertake “stress testing” for banks or insurers of defined benefit pension liabilities, in line with the Trustee Funding Evaluation (TFE) regime (banks) and, potentially, under the Solvency II regime (for insurers).
- 2.2.8. A concern which has been expressed to the Working Party is that this situation would give rise to an unacceptable conflict of interest, which might not necessarily be addressed by paragraph 5.1. The Working Party’s provisional view is that it would prefer to adopt a principles-based approach, rather than legislate for specific circumstances. If the principle is correct, it will apply in these as any other circumstances. To the extent that paragraph 5.1 does not apply, the Scheme Actuary would nonetheless be required to apply the provisions of principle 5 of the Code

("Open Communication"), having regard also to paragraph 5.2 of APS P1 (on which see further below).

Questions:

- 1 Do you consider that the proposed restriction, as set out in paragraph 5.1, is appropriate and proportionate?
- 2 What practical implications of this restriction do you anticipate?
- 3 Are these implications likely to be more onerous in relation to certain types of firm, for example, small firms?
- 4 Do you have any particular views on the specific circumstances mentioned in paragraphs 2.2.5 to 2.2.8 above?

Paragraph 5.2

2.2.9. Paragraph 5.2, as drafted, applies to circumstances in which the Scheme Actuary is undertaking work for the sponsoring employer, other than work which is specifically prohibited by paragraph 5.1. Paragraph 5.2 should be read alongside principle 3 of the Actuaries' Code. Principle 3.1 of the Actuaries' Code states that:

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

2.2.10. Principle 3.4 of the Actuaries' Code expands upon this concept with the specific requirement that:

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

2.2.11. Paragraph 5.2 of APS P1 is intended to provide some further detail for Scheme Actuaries as to the steps which must be taken in order to reconcile a conflict of interest.

2.2.12. The effect of paragraph 5.2, as drafted, is to require a Scheme Actuary, before setting out on any work for the employer, to produce and maintain a written agreed plan between the Scheme Actuary, the trustees and the employer, agreeing how any conflicts are to be reconciled (i.e. obviated through careful management). The plan would, amongst other things, allow the trustees the option to continue with the Scheme Actuary appointment in the event that the Scheme Actuary cannot continue with both appointments. The Scheme Actuary would also be required to keep under review whether or not he or she can continue to act for both parties. Furthermore, paragraph 5.2 provides for the waiver of any duty of confidentiality which would otherwise be owed to the employer, so far as necessary to safeguard the trustees.

2.2.13. The emphasis in these provisions is to ensure that there is no detriment, or reasonable perception of detriment, to the trustees (and therefore the scheme members) arising from the Scheme Actuary being engaged additionally to work for the employer. The intent in these provisions is not to provide an exhaustive list of requirements, but rather to specify certain minimum requirements in order for a conflict to be reconciled. Consistent with an outcomes-focused approach, the Scheme Actuary would be at liberty to take an alternative approach, provided that it could reasonably be expected to provide equivalent protection to the interests of the trustees in relation to their duties as trustees.

Questions:

- 5 Are the specific protections set out in paragraph 5.2 appropriate and proportionate?
- 6 Are there other specific requirements which you would like to be included?
- 7 Do you agree with the proposal to allow members to adopt an alternative approach, provided that it offers equivalent protection and thereby achieves the intended outcome?

Paragraph 5.3

2.2.14. Paragraph 5.3, as drafted, addresses the position of the Scheme Actuary's firm, requiring that a Scheme Actuary discloses to the trustees any conflict of interest which might arise as a result of another person in his or her firm doing work for the employer. This is to the extent that the Scheme Actuary is aware of any such other work being undertaken. In accordance with principle 3.3 of the Actuaries' Code, actuaries are required to, "*take reasonable steps to ensure that they are aware of any relevant interest, including income, of their firm.*" To the extent that a conflict does arise, this will in turn fall within, and be subject to, principle 3 of the Code.

Questions:

- 8 Does paragraph 5.3, 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?
- 9 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?

Paragraph 5.4 (transitional provision)

2.2.15. The Working Party recognises that some time and resource commitment may be necessary to put in place the appropriate steps in order to comply with these provisions. For this reason, paragraph 5.4 proposes a transitional period of up to 6 months (i.e. until October 2012) in order for necessary changes to engagement letters and other contractual documentation to be put in place. Again, views are sought on the practical impact of the proposed provisions.

Questions:

- 10 What practical implications do you envisage as a result of the proposed changes?
- 11 Is the proposed transitional period reasonable?

Paragraph 6.4.1- Members other than Scheme Actuaries advising trustees

2.2.16. There seems no reason in principle why the provisions set out in section 5 should not also apply, for the same reasons, to members undertaking significant advice work for the same scheme trustees, albeit not in the capacity of Scheme Actuary.

2.2.17. Paragraph 6.4.1, as drafted, provides that the provisions of section 5 would apply additionally to any other actuary who provides, or is materially involved in providing, the trustees of a Relevant Scheme (defined as a pension scheme in relation to which a Scheme Actuary is or requires to be appointed) 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

- 2.2.18. The Working Party has however sought to take a proportionate approach, in applying section 5 to members falling within 6.4.1 only to the extent that they are providing **significant** advice to the Employer. Significant advice would be likely to include, for example, any advice which involves an exercise of professional judgement. It is likely to exclude undertaking straightforward calculations for the Employer on the basis of given data, which do not therefore require the exercise of judgement. The assessment as to what is and is not “significant” advice will require the exercise of judgement, taking account of all of the circumstances. To the extent that a member to which paragraph 6.4.1 applies is providing significant advice to the Employer, they will also be subject to the restriction in paragraph 5.1 and/or conditions in paragraph 5.2.
- 2.2.19. In effect, an exception is proposed for members in this category, to the extent that the advice which they are providing for Trustees and/or Employer is not “significant”. It is not proposed to extend this exception to Scheme Actuaries, because of the importance of the regulatory function which that statutory appointment entails.
- 2.2.20. “Members” includes all members of the Profession, i.e. Fellows, Associates, Affiliates, Students and Honorary Fellows (see also paragraph 2.2.21 below), regardless of their general practice area, e.g. it could include investment actuaries who provide significant advice related to the funding of the scheme.

Questions:

- 12 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?
- 13 Do you agree that the approach adopted by paragraph 6.4.1 appears proportionate in this respect?

Paragraph 6.4.2- other pension schemes

- 2.2.21. Again, as a matter of principle, there does not seem to be any reason why the approach adopted by section 5 should not also apply to pension schemes other than those which are required by law to appoint a Scheme Actuary. Paragraph 6.4.2, as drafted, is therefore intended to extend these provisions to members who are not Scheme Actuaries but who are acting in a role broadly equivalent to that of Scheme Actuary. The effect of paragraph 6.4.2 is to extend the application of section 5 to members advising in the context of any other type of scheme which satisfies four criteria. It is intended that these criteria would be satisfied by, for example, local authority schemes and any public sector scheme where there is scope for conflicts of interest to affect decisions on funding or benefits. They will also extend the scope of section 5 to some non-UK schemes. (It will be noted that the terms “trustees” and “Employer” used in the four criteria are for this purpose defined broadly.)
- 2.2.22. Views are sought as to whether this principle and the criteria (paragraphs 6.4.2.1-6.4.2.4) are appropriately positioned in targeting those members undertaking a role, potentially in a wide range of different pensions contexts, that is equivalent in relevant respects to the role of Scheme Actuary, and whether the wording achieves the objectives outlined above.

Questions:

- 14 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?
- 15 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?
- 16 Do you think that these criteria potentially include pension schemes which ought to be excluded? If so, please explain.
- 17 Do you think that these criteria potentially exclude pension schemes which ought to be included? If so, please explain.

APS P1- General

- 2.2.23. As a matter of principle, there does not seem to be any reason to limit the application of APS P1 only to qualified actuaries and, for this reason, it is proposed that the standard should be applicable to all members, including students. This is because experienced students can in practice carry a significant level of responsibility in relation to the operation of a pension scheme. To this end, and in the interests of clarity, it is proposed that the Standard should refer where appropriate to “Member” (as defined) rather than, as currently, “actuary”. New wording has been proposed on the first page of the Standard, to make clear its intended target audience. Views are sought as to whether this is the correct approach.

Questions:

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

2.3. The Actuaries’ Code

- 2.3.1. It is not currently proposed to make any amendment to the Actuaries’ Code. The Working Party notes that respondents to its previous consultations expressed their general satisfaction with the Code as an over-arching statement of the principles of good conduct.
- 2.3.2. The Working Party has, however, identified two specific issues which, it believes, should be considered further as part of a wider review of the Code scheduled for 2012²:
 - 2.3.2.1. the effect of the words, “*if they would be ineffective without agreement*” in paragraph 3.5 of the Code; and
 - 2.3.2.2. whether some key terms used in the Code – including “reconciling” in relation to a conflict and various references to “client” – should be further clarified, in the form of guidance to members, if not through amendment to the Code itself.
- 2.3.3. Subject to comments received during this consultation exercise, the Working Party proposes to draw these points to the attention of those responsible for conducting the Code review.

² The Working Party has also identified the subject of contingency fees as an issue to which the Profession will give consideration as a separate matter during the review of the Actuaries’ Code in 2012. This is because it bears upon matters which have a wider remit than the current conflicts of interest consultation.

Questions:

19 The Working Party proposes to refer some specific drafting points (as detailed at paragraphs 2.3.2.1 and 2.3.2.2 above) for further consideration in the context of the forthcoming Code review.

19.1 Do you have any comment on these points?

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

2.4. Guide for actuaries on conflicts of interest

2.4.1. The responses received by the Working Party to its discussion paper indicated a strong wish among actuaries for the provision of additional guidance (around which could be developed further appropriate training and CPD provision) on the handling of conflicts of interest. The guidance would not be mandatory but would illustrate and underpin the high level principles in the Code applying to all members.

2.4.2. Accordingly, the Working Party has prepared a draft guide for all actuaries on conflicts of interest, which can be found at **Appendix 5**. This is intended to constitute substantial guidance material on conflicts of interest for all members of the Profession. It contains descriptions of relevant regulatory provisions affecting actuaries; related legal matters; and practical advice on how to identify and manage potential conflicts of interest. It follows the style of the recently published whistleblowing guides, which have been well received, both within and beyond the Profession.

2.4.3. The Working Party is interested in receiving comments on the guide and, following the feedback on the new APS P1 draft and new APS L1, will also refer to those standards in the guide when the final text of the new APS P1 standard has been approved.

Questions:

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

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

22 Do you have any other comments on the guide for actuaries?

2.5. Guide for pension scheme trustees on actuaries' approach to conflicts of interests

2.5.1. The Working Party has also drafted a short guide aimed at the trustees of pension schemes, which seeks to set out for their benefit the professional obligations falling on actuaries and thus to help trustees consider any conflicts of interest faced by actuaries and to assist them in managing relations with their Scheme Actuary. The current draft of this guidance is at **Appendix 6**. The Pensions Regulator has helpfully provided its comments on the current draft and the Profession intends to work with the Pensions Regulator to finalise this document.

Questions:

23 Do you have any comments on the guide for trustees?

2.6. Additional Professional Support

- 2.6.1. One important message that the Working Party has taken from the responses to the discussion paper, and from subsequent discussions, is the very clear demand by members, and their external regulators, for additional CPD and training provision on this topic, and other professional issues. This therefore forms an important part of the package of measures being put forward by the Working Party. It is proposed that the existing provision is improved and we will be encouraging the Profession to work closely with employers and the main external regulators to prepare relevant material, including case studies, to complement the regulatory changes and guidance we have also proposed.
- 2.6.2. We would therefore welcome specific comment, and suggestions, on what additional resource material and/or training members would find useful in this respect.

Questions:

- 24 What further resource material and/or training would you find helpful in relation to conflicts of interest?

2.7. General

- 2.7.1. We would welcome general comments on the overall package of measures, including in relation to the practical implications of the proposals.

Questions:

- 25 Do you have any comments on the practical impact of the proposals?
- 26 Will those implications be different for specific types of firm, for example, small firms?
- 27 Do you have any other comments on the overall package of measures proposed by the Working Party?

3. Policy and historical context

In March 2005, the Morris Review identified conflicts of interest as a significant issue facing the Actuarial Profession, especially in relation to work on pensions. It recommended that:

- *“Pension fund trustees, the scheme sponsor and the Scheme Actuary should explicitly agree that they perceive no material conflicts of interest prior to the Scheme Actuary advising both the trustees and the scheme sponsors;*
- *If any of the three parties, i.e. anyone of the trustees, the Scheme Actuary or the scheme sponsor, deem at any point that a material conflict of interest has emerged, in relation to the same actuarial advisor advising both parties, then the trustees should have the option to retain the existing advisor and the sponsor should secure separate actuarial advice;*
- *The Profession, or another appropriate body, should develop guidance for actuaries on the issues that they should take into account when considering the materiality of potential conflicts”.*

In subsequent reports, the Professional Oversight Board (POB) urged the Profession to progress its work on conflicts of interest as a priority, applying the principles developed to conflicts across all practice areas. In its May 2009 report on the Profession, the POB considered arguments for a separation of advisory roles for trustees and sponsoring employers in pensions and recommended:

- *“As part of its development of an actuarial standard on conflicts of interest in pensions, the Profession should consider prohibiting actuaries from providing advice to separate parties, such as both trustees and sponsors, on the same or a closely related issue, unless there is a robust independent review of their work”.*

3.1. The Profession's Response

- 3.1.1. A better developed policy on conflicts of interest is a priority which the Profession fully accepts. The Profession therefore established its Conflicts of Interest Working Party, which was tasked with gathering the views of, and evidence from, interested parties, including users of actuarial advice and regulators, as well as actuaries themselves. Its purpose was to assist the Profession in understanding the extent of the problems conflicts of interest can cause and in determining what would be the most effective method of delivering further regulation, guidance or support on the subject to supplement the relevant provisions of the Code.
- 3.1.2. The review falls under the Profession's developmental theme of maintaining the high standards of its quality framework against the measures of actuarial quality developed by the FRC, as set out in the Profession's corporate plan.³

3.2. The Actuaries' Code

- 3.2.1. The Profession's initial response to the recommendations of the Morris Review was the inclusion in the Actuaries' Code – which came into force in October 2009 – of high level provisions, applying across all practice areas, emphasising members' commitment to impartiality and the avoidance of conflicts of interest.
- 3.2.2. The full text of the conflicts of interest provisions in the Code is reproduced at **Appendix 1**.
- 3.2.3. The Code provisions set out the high-level principles which apply to all members. They are, through the Profession's disciplinary scheme, binding in their effect.
- 3.2.4. The current regime (which is accessible to all, including the public, trustees and regulators) alerts members of the Profession to conflicts of interest and restricts them in acting for their clients if a conflict of interest arises. Additionally, many, if not all, actuarial firms have their own internal rules for avoiding or handling potential conflicts. Actuaries are also subject to requirements imposed by various external regulators (such as the FSA) which bear on the issue.
- 3.2.5. The Working Party published a discussion paper in June 2010. In response to this, it did not receive any evidence supporting an alteration in the high level principles set out in the Code, nor would the Working Party itself favour making any amendments to the Code ahead of the review of its provisions which the Profession intends should take place in 2012. The Working Party noted that respondents expressed general satisfaction with the Code as an overarching statement of the principles of good conduct for actuaries.
- 3.2.6. The Working Party has considered whether the generic principles in the Code need to be supplemented in any respect by further regulatory provisions relating to specific practice areas. In this way, it has again taken into account the responses it received to the discussion paper. With a few exceptions, these did not indicate widespread concern about the handling of conflicts of interest either among members of the Profession or among those users who accepted the invitation to comment on the issues in the discussion paper. The Working Party has subsequently sought to supplement that evidence by meeting with regulators and others representing the interests of users. Taken as a whole, the evidence it has received suggests that, for the most part, conflicts are identified and reconciled by actuaries successfully and that practice in this respect has moved on significantly since the early to mid – 2000s. In this sense, it would seem that the Morris Review and more recently, the POB reports along with the Financial Reporting Council's Actuarial Quality Framework and the efforts of the Profession and its members, have already had a beneficial effect.

³ See <http://www.actuaries.org.uk/about-us/pages/corporate-plan-201011>

3.2.7. The Working Party has considered, in the light of an assessment of the risks in each practice area, whether additional regulatory provisions to supplement the principles set out in the Code are desirable across each of the main practice areas. In a number of these areas, the Profession's own regulatory requirements are, of course, only one relevant regulatory control, with other requirements being imposed, for example, by the FSA (in respect of general and life insurance, and finance and investment) or by the Lloyd's Actuary (in respect of the Lloyd's insurance market).

3.2.8. The Working Party has concluded that, while there is a need for additional guidance for all actuaries on handling conflicts, there is no need for substantially new regulatory provisions outside the pensions practice area. However, in relation to life practice it notes that the Profession published on 1 September 2011 the successor to Guidance Notes (GNs) 39, 40, 41, 42 and 43 relating to the work of Actuarial Function Holders, With Profits Actuaries and others. This new Actuarial Profession Standard, APS L1, which can be found at **Appendix 3**, includes some more robust provisions in relation to conflicts of interest and has been the subject of a recent, separate consultation.

3.3. Conclusion

3.3.1. The Working Party believes that the overall package of measures being proposed, including enhanced training provision, represents a coherent, targeted and proportionate response to the recommendations in the Morris Review and subsequent reports. Specifically, and subject to the outcome of this consultation, the measures will provide the guidance for actuaries on the issues that they should take into account when considering the materiality of potential conflicts for which Morris called, and will also meet the two other specific recommendations in the Morris Review in respect of pension schemes. They will satisfy, in a proportionate way, the recommendations of the POB for the development of an APS or other materials on conflicts of interest in pensions, defining those areas in which a Scheme Actuary (and others) should not advise both trustees and employer and laying down the key principles which should underpin the handling of any conflict (or of the potential for conflict) in other matters.

4. How to Respond to this Consultation

The aim of this consultation is to gather views on the changes to the conflicts of interest policy and guidance recommended by the Working Party, as summarised at section 2 above. Once responses have been considered, a decision will be taken by PREC as to the extent to which the Working Party's recommendations ought to be implemented.

4.1. Questionnaire

4.1.1. A questionnaire is included at Appendix 8 to this paper and a link to an online version of the questionnaire can be found on the Actuarial Profession's website at <http://www.actuaries.org.uk/regulation/pages/consultation-and-discussion-papers> or by going directly to: http://www.surveymonkey.com/s/actuaries_conflict_of_interest

4.1.2. Members of the Profession are entitled to claim up to **one hour private study CPD time** for reading this consultation paper and completing the relevant 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.

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- 4.1.3. We would be pleased to receive any general comments on the recommendations in addition to the completed questionnaires. Please return your completed questionnaires and any comments you have on this consultation paper by email to Conflicts@actuaries.org.uk or by post to:

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

- 4.1.4. Please also indicate whether any of the information you supply in your response ought to be treated confidentially. Unless you so indicate, we may make responses to this paper available on our website at www.actuaries.org.uk
- 4.1.5. The deadline for submissions is **10 December 2011**.

4.2. Consultation meetings

- 4.2.1. Given the importance of this issue to the Profession, we are encouraging members and interested stakeholders to attend one or other of the following two consultation meetings to discuss and comment on these proposals:
- 4.2.1.1. the first will be held at Staple Inn, High Holborn, London, WC1V 7QJ from 17.00 hours on 24 October. Refreshments will be served from 16.30 hours; and
- 4.2.1.2. the second will be held at Maclaurin House, 18 Dublin Street, Edinburgh EH1 3PP from 17.00 hours on 31 October. Refreshments will be served from 16.30 hours.
- 4.2.2. Members are entitled to claim up to **one hour of CPD** for their participation in one of the consultation meetings. Please remember to sign the attendance sheet to verify your attendance and to record it in your on-line CPD record.
- 4.2.3. In order for us to gauge participant numbers, we should be grateful if you could please inform us via email to karen.cross@actuaries.org.uk if you are planning to attend either of these meetings.

Thank you for your time and interest.