



The Actuarial Profession

making financial sense of the future

Conflicts of interest

A guide for actuaries

**Professional Regulation
Executive Committee**

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Conflicts of Interest: A guide for actuaries

Purpose and target audience

This guide is issued by the Professional Regulation Executive Committee of the Institute and Faculty of Actuaries¹ for the use and benefit of actuaries and their employers. Like the provisions of the Actuaries' Code, this guide is for all members of the Institute and Faculty (Students, Affiliates, Associates, Honorary Fellows and Fellows), regardless of where they practise. For ease of reference, the terms "actuary" or "you" are used in this guide to refer to members.

Given the variety and number of issues which are covered, and given that it is designed to be useful for actuaries in all practice areas, this is, of necessity, a broad, high-level guide. You are encouraged to look at the general principles contained in the guide but you will also need to consider how those principles should be applied to your specific practice areas since the issues and application will vary between those areas.

This guide imposes no new obligations upon you or your employers. Instead, it builds on and elaborates on the provisions of the Actuaries' Code in relation to conflicts of interest and sets out the Institute and Faculty's view of good practice in relation to conflicts of interest and how to manage those conflicts. Demonstrating that you have followed the steps set out in this guide will make it easier for you to account to the Institute and Faculty for your actions but the key consideration is that, whatever means are employed, your obligations under the Actuaries' Code (and related standards) are met.

The Institute and Faculty hopes that the guide will be a useful tool for you when you find yourself needing to assess whether a conflict exists and what to do about it in order to handle it professionally and appropriately. Indeed, the guide has been designed to stimulate thought processes, rather than serving as a mandatory "rule book".

This guide does not constitute legal advice, nor does it necessarily provide a defence to allegations of misconduct. While care has been taken to ensure that it is accurate, up-to-date and useful, the Institute and Faculty will not accept any legal liability in relation to its contents.

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¹ www.actuaries.org.uk – referred to as the "Institute and Faculty" throughout this guide.

Introduction

Throughout your working life, the difficult issue of conflicts of interest will arise. Some conflicts are easy to recognise and resolve; others are much harder and it can be a problem to know what to do. You may be worried about whether you have properly identified the relevant issues, anxious that raising concerns about conflicts may affect your relationships at work or with your clients, or wonder whether you or your firm have adequate safeguards in place to manage conflicts of interest effectively.

This guide is intended to help you if you experience such concerns. It contains sections on:

1. identifying conflicts of interest (**Section 2**);
2. the Institute and Faculty's expectations in respect of conflict management practices and your duties of confidentiality and disclosure (**Section 3**);
3. managing conflicts between your different clients (referred to as "client conflicts") (**Section 4**); and
4. managing conflicts between you (or your employer) and your client (referred to as "professional conflicts"). This includes any personal conflict which may arise from other appointments or from your personal life, including, but not limited to, personal financial interests (**Section 5**).

It also contains questions for those of you who work in pensions, general insurance or life insurance to help you assess and handle conflicts of interest confidently and constructively (**Appendices**).

Conflicts of interest are very often not black and white, but involve various shades of grey. This means that handling conflicts involves professional judgement. Consequently, if you are unsure at any stage whether to raise a concern, the Institute and Faculty would encourage you to seek guidance from appropriate sources. This guide therefore also sets out where you can go for advice on handling conflicts (**Section 7**).

1. What is required of an actuary?

You are required to "*act honestly and with the highest standards of integrity.*"² You must "*not allow bias, conflict of interest, or the undue influence of others to override [your] professional judgement*".³ Furthermore, you are required to "*respect confidentiality unless disclosure is permitted by law and justified in the public interest.*"⁴

The starting point in relation to conflicts of interest for actuaries is principle 3 of the [Actuaries' Code](#)⁵ ("the Code") - "Impartiality". This says that:

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

² The Actuaries' Code, principle 1.

³ The Actuaries' Code, principle 3.

⁴ The Actuaries' Code, paragraph 1.2.

⁵ Currently subject to a planned review, the outcome of which is due to be reported by Q1 2013.

3.2 A conflict of interests arises if a member's duty to act in the best interests of any client conflicts with:

- a) the member's own interests; or*
- b) an interest of the member's firm; or*
- c) the interests of other clients.*

3.3 Members will take reasonable steps to ensure that they are aware of any relevant interest, including income, of their firm.

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

3.5 Members will document the steps they have taken to reconcile a conflict and will agree those steps with their clients if they would be ineffective without agreement.

3.6 Before accepting any assignment, members will consider carefully whether they should consult with any member who previously held such a position with the client, to establish whether there might be any professional reason why the assignment should be declined.

Additionally, you will “...comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure that [you] are not placed in a position where [you] are unable to comply, and will challenge non-compliance by others.”⁶

These provisions of the Code set the context in which you should approach all questions concerning actual or potential conflicts of interest and are the yardstick by which, in the event of a complaint, your actions will be judged.

Furthermore, you should be aware of the practice-specific conflicts of interest provisions in the Actuarial Profession Standards: APS P1 Duties and Responsibilities of Members Undertaking Work In Relation To Pension Schemes (“APS P1”) and APS L1: Duties and Responsibilities of Life Assurance Actuaries (“APS L1”).⁷

In relation to APS P1, you should be aware of the specific requirements imposed by that standard on Scheme Actuaries and others involved in pensions work in relation to the production of a conflict management plan, and of the specific restriction imposed in that standard on the types of advice which may be provided to trustees and employers.

In relation to APS L1, you should be aware of the specific requirements in Section 7 (“Possible Conflicts of Interest”) of that standard. With-Profits Actuaries and Actuarial Function Holders should also be aware of the rules on conflicts of interest in SUP 4.3 of the FSA Handbook.

⁶ The Actuaries’ Code, principle 4. Further guidance on speaking up in such circumstances can be found in the Profession’s publication “Whistleblowing: a guide for actuaries”:

<http://www.actuaries.org.uk/sites/all/files/documents/pdf/20110406-whistleblowing-guide-actuaries.pdf>

⁷ For both standards, please see: <http://www.actuaries.org.uk/regulation/pages/professional-standards-directory>

2. Identifying conflicts of interest: practical considerations and questions

As set out above, ensuring that conflicts are (a) understood; (b) easily identified; and (c) reconciled or eliminated, is the key to avoiding serious problems.

Regarding the identification of conflicts of interest, you may wish to consider taking a phased approach to this as follows:

- **identify** your interests in the particular scenario – who do you work for, who are your clients, do you have a personal interest in the matter?;
- **assess** whether your personal or professional interests (including the professional requirement to have regard to the public interest) create a conflict which might make it hard for you to continue to act without compromising your objectivity; and
- **evaluate** whether your interest is so remote or generic that it will not interfere with your ability to act impartially or be seen to be acting impartially.

Put differently, if you consider that you are not in a position to act without inhibition (or reasonably perceived inhibition) in the best interests of each of your client(s), you will have a conflict. This means, of course, that unless you are able to agree action to reconcile that conflict, you will be unable to proceed with the associated appointment or work.

2.1. What are some examples of conflicts of interest?

Whether a conflict exists in any given situation will of course depend on the specific circumstances, which might vary significantly between practice areas. You will need to take account of those specific circumstances, as well as any established market norms, in deciding whether a conflict exists. So, if you find yourself in a situation similar to that in one of the examples in the table below, you will need to consider those specific circumstances to assess whether a conflict actually exists or not.

The table sets out some practical examples of conflicts of interest that you might face, depending on your area of practice. This list is not exhaustive and new and unforeseen conflicts may develop as financial products become more complex, embracing more providers and options, or as greater or different economic pressures arise. However, it might give you some initial guidance as to whether or not you are facing a conflict of interest.

Area	Example	Example of Source of Conflict
Applicable to all actuaries	Client versus client or client versus former client	<ul style="list-style-type: none">• Duty owed to one client may impact on duty to another.• Confidential information gained from one client may benefit another client.• Knowledge gained from former, or existing, client may be of advantage to another client.
	Personal or professional values conflict with client objectives	<ul style="list-style-type: none">• The course of action proposed by the client is at odds with the values of the actuary or his/her obligations to the Institute and Faculty, or his/her employer.

Area	Example	Example of Source of Conflict
	Personal or family interest	<ul style="list-style-type: none"> Where the actuary's advice could personally affect the actuary or his/her family, financially or otherwise. For example, where the With-Profits Actuary is also a policyholder.
	Conflict between the best interests of a client and the interests of the actuary's firm	<ul style="list-style-type: none"> Advice given by an actuary to a client may be sound but unpalatable to the client and risk jeopardising the relationship between the client and the firm in other areas. Actuary's advice may bring in more fee income for the actuary's firm but is of questionable value to the client
Life⁸	Conflict between interests of policyholders and commercial interests of life office employing the actuary	<ul style="list-style-type: none"> Likely to be most acute in advising on management of with-profits business; for example, the level of investment risk taken in the fund and the use of the fund's assets to support business development.
	Conflict between solvency of life office and immediate management objectives	<ul style="list-style-type: none"> An actuary's duty to advise on risks to the long-term solvency of a firm may conflict with shorter-term commercial objectives; for example, to maintain dividends or to write new business.
Pensions⁹	Direct conflicts as adviser to trustees and adviser to company	<ul style="list-style-type: none"> Trustee interests are likely to be in increasing prudence and funding. Companies will often be interested in reducing prudence or reducing funding. When advising on whether or not to call for an actuarial valuation in response to a material change in circumstances. When advising on appropriate actuarial factors such as commutation or early-retirement factors.
	Conflicts arising due to client being conflicted	<ul style="list-style-type: none"> The finance director who is also a trustee (or a chair of trustees who reports in to the finance director) might ask for the Scheme Actuary's advice to the trustees to be favourable to the company. The trustees do not want to be "difficult" and

⁸ Life actuaries' attention is particularly drawn to APS L1 "Duties and Responsibilities of Life Assurance Actuaries".

⁹ Pensions actuaries' attention is particularly drawn to APS P1 Duties and Responsibilities of Members Undertaking Work In Relation To Pension Schemes.

Area	Example	Example of Source of Conflict
		upset the company.
	Direct conflicts between two connected or unconnected clients	<ul style="list-style-type: none"> The actuary is acting for two entirely separate clients who (possibly confidentially) become involved in a corporate transaction (either between each other or in connection with a third party). The actuary is a Scheme Actuary for more than one pension scheme of the same employer and there is a proposal to merge the pension schemes or the pension schemes are "competing" for limited funds from the employer (particularly difficult if the employer covenant becomes weak).
	Conflicts of interest with own employer	<ul style="list-style-type: none"> Scheme Actuary is directly employed by the company responsible for the pension scheme. Actuary advising own employer gives advice potentially benefitting his/her part of the business.
General Insurance	Conflict between commercial and professional interests	<ul style="list-style-type: none"> General insurance actuary is under pressure from management to hold down reserves
	Conflict arising from being a policyholder	<ul style="list-style-type: none"> Pricing actuary (for example, motor or household) is a policyholder of the insurance company for which he/she works.
	Conflict between providing accurate reserve calculations and personal gains	<ul style="list-style-type: none"> Methodology and assumptions on reserve calculations will affect profit and business value, which may in turn affect bonuses and long- term incentives.

2.2. Identifying a conflict: policies and procedures

You might also derive some assistance from the organisation you work for in identifying a conflict. Organisations are encouraged to have processes to identify any potential or actual conflicts of interest, both at the start of an instruction and during the course of carrying out the work. Such processes, especially for consultancy work, could include:

- conflict checks, perhaps using a live client engagement database: It is good practice to carry out a conflict check before accepting a piece of work, and on an ongoing basis while the work is being undertaken. If this is combined with the maintenance of a database of ongoing client engagements, the conflict-checking procedures can include a check as to whether or not each potential new engagement conflicts with any other ongoing client engagements.

- conflicts register: It is recommended that actual and potential conflicts are logged and that all correspondence and decisions regarding the matter are recorded.

The above may be particularly helpful in consultancy but the general principles will still be relevant if your client is your employer, although how best to apply them will depend on the nature of the work.

In determining whether a conflict of interest exists, it may be important to take account of the purpose of the proposed work. This may include considering the interests of the various parties, in addition to those of your client - for example, policyholders, shareholders, or members of a pension scheme - and will require the exercise of professional judgement according to the circumstances.

Example: You are a With-Profits Actuary. Your client is the life insurance company and your advice relates to how it may exercise discretion in managing the with-profits business, considering in particular the fair treatment of policyholders.

Ensuring that the management actions take appropriate account of policyholders' interests may conflict with the immediate commercial interests of the company but commercial considerations clearly must not influence your advice.

Your assessment of whether or not you have a conflict of interest may therefore depend on the extent to which, in addition to your responsibilities as a With-Profits Actuary, you have a direct responsibility to further those commercial interests.

2.3. Questions to help me identify and manage a conflict

Provided below and in the **Appendices** are some examples of questions that you might ask yourself if you are seeking to establish either:

- whether there are any conflicts of interest in your work, so that you can then seek to determine what action you need to take, if any, in order to reconcile or eliminate those conflicts; or
- what protection is in place to reconcile or eliminate those conflicts, so that, if necessary, additional protection mechanisms can be put in place.

In this context, "reconcile" means averting through careful management while "eliminate" means withdrawing from one or both of the client engagements.

These are not exhaustive lists, nor are they all relevant to all situations. Some of the questions are more relevant to actuaries who work for professional services firms (for example, consulting actuaries) and some are more relevant to employed actuaries in insurance and similar companies.

1. What advice might be sought by one client that might be detrimental to the other client?
2. What information might I receive from one client that, if disclosed to the other client, could be helpful to that client in that it might cause or enable them to take some action?
3. Have I made appropriate disclosure of relevant potential or actual conflicts to all relevant parties?

4. How significant, commercially (or otherwise), to my firm (or me) is each client relationship?
5. Do any of my different roles within the firm give rise to conflicts?
6. Are there appropriate peer review or similar procedures in place that help me to ensure that my professional obligations are not compromised owing to potential conflicts arising from commercial or other pressures (as referred to elsewhere in this guide)?
7. Is my remuneration linked to the results of my work and, if so, is it linked in a way which might reasonably give rise to an actual or a perceived conflict of interest?
8. Have I been put under pressure to produce a certain outcome and, if so, how have I ensured that such pressure has had undue influence?
9. Is there a trusted individual to whom I can talk about conflicts of interest that might arise in my work?

The “tabloid” test

Whilst acknowledging conflicts vary substantially due to the different facts and circumstances you may face, one question that you might like to ask yourself when considering whether or not you are facing a conflict of interest situation is: how would this look if it was reported on the front page of a national newspaper?

3. Relevant law and duties relating to conflicts of interest, applicable to all actuaries

Two important legal issues that may arise in the context of conflicts of interest are the professional duties of confidentiality and disclosure that you, like other professionals, owe to your clients¹⁰. They are considered in turn below, and Section 4 sets out how they may be managed.

3.1. Who is my client?

One of the most important questions you will need to ask before you assess whether you owe duties of confidentiality or disclosure is, “who is my client”?

Your client can be either (a) an existing, (b) a former, or (c) a potential client. Before taking on any new client, you need to consider whether your duty of confidentiality to your existing and former clients would give rise to a conflict of interest in doing so.

For some actuaries working in-house (e.g. for insurers or pension scheme sponsors), their “client” for these purposes may be, or include, their employer or former employer.

If you are working for a consulting firm, you should be particularly aware of the requirement in paragraph 3.3 of the Code to take reasonable steps to ensure that you are aware of any relevant interest, including income, of your firm. This requires you, for example, to take reasonable steps to ascertain whether your firm might be acting for two clients with conflicting interests, and this may involve sending out a ‘conflict check’ email to staff in your firm and/or to its conflict committee and/or a search of your conflicts database. The requirement is for reasonable and proportionate checks to be undertaken, as appropriate in the circumstances.

¹⁰ Those other duties include duties of loyalty, trust and not to profit from your position at your clients’ expense.

Additionally, there can be circumstances in which within one legal entity there are two separate bodies with divergent interests (for example, a finance committee and a remuneration committee), or one body with two different responsibilities (for example, the sponsoring employer of a pension scheme might also be the trustee or manager of that scheme). In such circumstances, you may have to think hard about whether you should consider yourself to have one client or two, with a “two clients” scenario carrying the potential for conflicts which would need to be handled in accordance with the Code (supported by this guidance).

3.2. Confidentiality

What does a duty of confidentiality mean? It means that you must keep the affairs of your clients and former clients confidential, except where disclosure is permitted or required by law.

There are a range of circumstances in which the disclosure of information, which would otherwise be confidential, is permitted by law. The most important for present purposes is where disclosure is made with the consent of the person to whom the information would otherwise be confidential. Disclosure may also be made in certain circumstances to the extent that disclosure is justified in the public interest or is a statutory requirement. This might include, for example, disclosure for the purposes of reporting a serious impropriety to the relevant regulatory body. The legal effect is that the duty of confidentiality is waived and/or superseded by the public interest. It should be noted that confidentiality would not ordinarily attach to information which is already lawfully in the public domain. As this is a difficult area, you might want to take legal advice on these issues.

You should ensure that information which is confidential to your client remains protected at all times. This obligation continues after the termination of any agreement/client relationship.

With regard to conflicts of interest, the courts have held¹¹ that in the context of a new engagement that is proposed for another client, “confidential information” is information which:

- is private or sensitive in nature;
- was originally communicated in confidence i.e.:
 - was not already lawfully in the public domain or readily available from another public source; and
 - has been shared in circumstances where the person giving the information could reasonably expect that it would not be shared with others;
- at the date of the proposed new engagement is still confidential; and
- is relevant to the subject matter of the proposed new engagement.

¹¹ In *Re a Firm of Solicitors* [1997] Ch1.

3.3. Duty to disclose relevant information to your client

There are at least two duties of disclosure which may arise in this context. The first, with which we are concerned here, is the primary duty to disclose to your client information which is relevant to their interests. The second, which is addressed in further detail at Section 4 below, is the duty to disclose the existence of a conflict, in the event that one arises.

You have a duty to disclose all information relevant to the matter in which you are engaged with your client because you have a duty to act in the best interests of your client. Your duty is limited to information of which you are aware or ought reasonably to be aware, but is not limited to information obtained while acting on your client's matter.

As to what is relevant "information"; this is information which is relevant to the specific matter in which you are engaged with your client, rather than information which might be of general interest to your client. You need, therefore, to assess the possible impact of the disclosure on your client. If you think the information might reasonably affect your client's decision on the engagement, then it is likely to be "relevant information".

This is the general position but there may be circumstances in which disclosure to your client is prohibited by law; for example, the *Proceeds of Crime Act 2002* prevents you tipping off your client about an investigation of suspected money laundering.

3.4. Relationship between the duties of confidentiality and disclosure

Your duty of confidentiality to one client may, in some circumstances, conflict with your duty of disclosure to another and you will then be in a position where you cannot satisfy both duties. In general, you should not breach the duty of confidentiality, but this will mean that you are unable to act for one or both clients, unless the conflict can be appropriately reconciled. One way of managing such a conflict may, if appropriate in the circumstances, be to ensure that engagement terms make it clear that you will keep your client's information confidential from other clients and your client accepts that he/she will not have other clients' information disclosed to him/her.

In summary, you must:

- keep your clients' affairs confidential, unless disclosure is permitted or required by law;
- disclose all relevant information to your client, regardless of the source of that information, unless there is a conflicting duty of confidentiality; and
- identify and disclose any conflict of interests which arises and either reconcile it, if this is possible and appropriate, or cease to act for one or both clients.

4. Managing client conflicts

The Code refers to the fact that you may in certain circumstances continue to act, despite a conflict, if that conflict can be "reconciled". "Reconciliation" should be understood to mean carefully managing the conflict such that, within the scope of your engagement, the conflict is averted, so that it can have (and it is seen that it can have) no adverse effect on the work for your client(s). This is likely to mean, as a minimum, defining very clearly your role and any limitation on the extent and type of advice which you can provide.

Case study: You are the Scheme Actuary to Scheme Merlin and have also been advising an (unrelated) company, Pendragon Co. on the pensions aspects of various proposed corporate transactions. Pendragon Co. decides to investigate the possibility of acquiring the sponsor of Scheme Merlin, thereby creating a conflict of interest between your two clients.

Depending upon the circumstances, it might be possible to reconcile the conflict by restricting your advisory role for Pendragon Co. so that it does not include advice relating to the acquisition of Scheme Merlin or by passing this advisory role (at least for the time being) to a colleague in your firm.

However, in other circumstances this might not be sufficient to reconcile the conflict and you (and perhaps also your firm) may need to resign permanently at least one of the appointments in accordance with paragraph 3.4 of the Code: normally this would be the appointment to Pendragon Co.

In this section, the Institute and Faculty sets out some good practice recommendations for actuaries in managing client conflicts of interest. These are not intended to be exhaustive.

It should be noted that, although the principles still apply to very small firms and sole practitioners, the implementation of the guidance below will need to reflect the scale of the organisation. For such smaller firms, where some of the outlined systems and procedures are not practicable, external peer review may be the best tool to manage conflicts in order to ensure transparency and the objectivity of your work.

Effective conflict management requires:

- appropriate systems and procedures;
- their correct implementation in individual cases; and
- the right attitude: you have to want to be aware of and to manage conflicts.

4.1. Processes and procedures

You and the recipients of your advice, where appropriate, should be aware of the processes to be followed when an actual or potential conflict of interest arises. As a minimum, this should help the parties to decide whether they are satisfied with your proposals for addressing conflicts. Additionally, conflicts arrangements may need to address some or all of the following, taking into account any established market norms for handling such conflicts:

- *Client engagement letter*

It is good practice to highlight in a client engagement letter or employment contract any actual or potential conflicts of interest that may exist at the start of that relationship and to outline the process to be followed if a potential or actual conflict of interest arises.

- *Agree a handling plan*

In some situations, it is useful to agree a handling plan (approved at the appropriate level) that sets out what conflicts might exist and how they should be managed. It can be easier to deal with the conflict if this has been done before the conflict arises.

This document might:

- be provided to your client at the start of the engagement;
- be appropriate to the size and complexity of your firm and the nature of the work undertaken by you or your firm;
- explain the extent to which information will remain confidential to your client;
- encourage effective communication between you and your client;
- set out effective systems and controls to ensure you are able to identify and assess potential and actual conflicts of interest;
- set out the steps that you will take if you believe you can continue to act for a client on the basis that you reasonably believe the conflict of interest can be reconciled; and
- set out the steps you will take if you cannot continue to act for a client because of a conflict of interest.

If you are a pensions actuary, you must also be aware of your obligations under sections 5 and 6 of APS P1, which require you to have a conflict-handling plan in most circumstances where the same firm is advising both the trustees and employer in relation to a scheme. Note the requirements of paragraph 6.8 if you are acting for a local government scheme, which can have many different and varied interests where there will be a potential for various types of conflict of interest to arise.

Additionally, for plans involving your firm acting for both the trustees and the employer, paragraph 5.6.5 of APS P1, in conjunction with principle 4.1 of the Code, requires you (where you are the Scheme Actuary) to be 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. To meet this requirement, it would normally be sufficient for you to advise the trustees to consider taking independent legal advice. It would not normally be necessary for you to check that the trustees had in fact done so, although you should not of course ignore information which comes to your attention which suggests that the trustees are not appropriately informed.

If it came to your attention that the trustees had in some way not approached the matter appropriately, this may, in those specific circumstances, mean that you should do something further under the provisions of paragraph 4.3 of APS P1.

- *Separation of teams*

Where an organisation has engagements with two clients with competing interests, it may be possible to reconcile a conflict by ensuring that the parties are advised by different client teams within the organisation, although in some cases, the more mechanical work might still be undertaken for both clients by a common team. (This is what is sometimes referred to as the “Y model”.)

In pensions work, it will be important to consider whether the role of those in the common team means that any or all of them are subject to the specific restrictions and requirements set out in sections 5 and 6 of APS P1. In particular, it would normally be appropriate for members of a common team to be included within a conflict-management plan, and in the case of advice on behalf of one firm to both the trustees and employer this is an explicit requirement of 5.6 of APS P1. In general, the “Y model” must be used with care, and it may not be an appropriate means of managing a conflict.

- *Information barriers*

One option for managing conflicts of interest internally is to establish and maintain arrangements which restrict the flow of sensitive information within the organisation i.e. an “information barrier” (also known as a “Chinese Wall”). Information barriers are administrative, electronic and/or physical barriers to ensure that information used by one part of the organisation is withheld from, or not used by, other parts of the organisation.

Information barriers have been the subject of significant debate in the courts over the last decade or so. Where they are used, firms need, for example, to consider and manage the risk of information passing inadvertently through support or other staff.

Case law is helpful in highlighting factors which may tend to point for or against the effectiveness of information barriers.¹² It emphasises the need for conflicts-handling procedures to be more than just written documents and for firms to ensure that they work in practice. There are warnings against the frequent turnover of junior personnel between teams and the sharing of information with many people. However, each case should be considered in light of its specific circumstances.

Case Study: You are a consulting actuary advising your client, Oliver, on his evaluation of a company which he is considering purchasing, Artful Dodger Co. This is your first assignment for Oliver.

You are then approached by another client, Fagin, whom you have advised on several previous occasions on similar transactions. Fagin wants you to act for him in relation to his evaluation of Artful Dodger Co. How you respond to Fagin should be influenced by several factors, including:

- your duty of confidentiality to Oliver (since it may well be inappropriate to disclose to Fagin that you are working for Oliver, even if only anonymously, in relation to Artful Dodger Co.);
- the ability of your firm to establish appropriate information barriers so that your firm can potentially act for both Oliver and Fagin in relation to Artful Dodger Co.; and

(continued next page)

¹² See, for example, *Bolkiah v KPMG* [1999] 2 WLR 215: A transaction-specific information barrier was held not to be effective. There must be an “institutional” information barrier which is an established part of the firm’s organisational structure. The Court noted that the two teams were from the same department and that there was a steady turnover of junior personnel. Firms may need to consider whether to put procedures in place to ensure that there is no turnover in the relevant teams until the conclusion of the litigation.

Young v Robson Rhodes, [1999] 3 All ER 524: An ad hoc information barrier was held to be permissible. Nonetheless, a well established barrier will carry more weight and it is necessary to show that such a barrier is actually effective. The key question is whether the barrier will actually work.

Marks & Spencer plc v Freshfields [2004] 3 All ER 773: The Court noted the importance of perception - an information barrier must be seen to work. It was held that the barrier did not work due to the very large number of people who had the relevant information. The Court was not confident that adequate arrangements had been implemented to protect confidential information.

Halewood International v Addleshaw Booth & Co, Unreported 5 November 1999: The Court insisted on physical separation between those who hold the information and those to whom it may be relevant.

- the terms of your engagement with Oliver.

Navigating this sort of situation, including determining whether it is appropriate for your firm to offer to act for both Oliver and Fagin, even with completely separate teams, may be best achieved through the use of a conflicts tracking team or database, or through a colleague who is not involved with the work of your firm for Oliver or Fagin.

- *Peer review*

Peer review may be an appropriate component of a conflict-reconciliation policy. It may, particularly if external, be considered good practice in ensuring the transparency and objectivity of your work.

Where your work for one client might be seen as potentially creating a conflict with work for another of your clients or for your firm, peer review of that work can form part of the process for checking that any conflicts have been appropriately managed.

However, for this to be effective the peer reviewer must himself or herself be sufficiently independent; depending on the circumstances, this might require the reviewer to be from a different firm. Consider the following example.

Example: The trustees of the Bennet Pension Fund were encouraged by Bennet Corporation to appoint Elizabeth as their Scheme Actuary. Elizabeth's employer, Darcy & Co, had just been awarded a large contract covering a variety of services to Bennet Corporation.

The trustees discussed this with Elizabeth, and they were both concerned that her ability to provide objective advice to the trustees could be seen to be compromised by the commercial relationship between Darcy & Co and Bennet Corporation. In the end, the trustees decided to appoint a Scheme Actuary from another firm.

However, if Elizabeth had already been the Scheme Actuary, an alternative way forward *might* have been for Elizabeth to continue in that role but with her significant trustee advice being subject to external peer review.

In pensions work, note that a peer reviewer would normally be expected to be covered by a conflicts-management plan agreed under paragraph 5.6 of APS P1. He/she would also be likely to be subject to the specific restriction imposed by paragraph 6.5 of APS P1 on the extent of any advice which he/she might provide to the employer.

- *Remuneration*

Organisations should not incentivise employees in a way that might be seen to encourage them to provide anything other than the most suitable and appropriate advice for the client.

- *Conflicts committees*

It is good practice to establish a conflicts committee, or to appoint an individual, to deal with any issues arising from actual or potential conflicts of interest. Such a committee or individual may be tasked with:

- overseeing conflicts of interest policies and handling plans;
 - arranging appropriate training;
 - monitoring high-risk conflict situations;
 - monitoring the effectiveness of procedures for managing clients' confidential information; and
 - providing guidance where necessary.
- *Training*

Regular training for employees ensures that they are aware of their duties of confidentiality and of disclosure and are able to identify and manage conflicts of interest.

- *Ceasing to act*

Where there is a conflict of interest, either actual or potential, you or your colleagues within an organisation should consider whether it is appropriate to continue to act for the client(s) involved and should, in any event, resign the appointment(s) if the conflict cannot be resolved to the client's or clients' satisfaction in accordance with the principles at paragraph 3.4 of the Code.

4.2. Handling conflict situations after they have arisen

If you intend to act for two or more clients with related interests, then any potential or actual conflict of interest should, where appropriate to do so, be disclosed to each of your clients as soon as possible.

Where you determine that there is an actual or potential conflict of interest, you should consider¹³:

- *Explaining*

The relevant issues and risks to your client should be explained such that you form a reasonable belief that your client understands them.

- *Assessing what is in your client's best interests*

You should normally only proceed with the instruction if to do so would not contravene any regulatory or legal requirements, if you believe it is in your client's best interests to do so and if the benefits to your client of your continuing to act outweigh any risk, perceived or real, continuing to act while there is a potential conflict of interest.

- *Recognising confidentiality agreements*

Where confidentiality agreements are in place, you must respect them and consider carefully if you need to withdraw from an engagement if you cannot reconcile the actual or potential conflict of interest.

¹³ These steps are examples only and are not exhaustive.

- *Reconciling a conflict*

Before putting in place an appropriate conflicts-handling plan, you need to consider and be satisfied whether a conflict is indeed reconcilable. In doing so, you should consider in particular principle 3 of the Code.

Pensions actuaries' attention is also drawn to the presumption at paragraphs 5.3 and 5.4 (Scheme Actuaries) and 6.5 and 6.6 (other pensions actuaries) of APS P1. A conflict to which these provisions apply is presumed to be irreconcilable.

This presumption (that such circumstances will give rise to an irreconcilable conflict of interest) may be departed from only in exceptional circumstances. The same principles have been extended also to apply to actuaries advising other (including public sector¹⁴) pension schemes, unless they can be considered not to be relevant to the particular situation.

- *Agreeing an appropriate plan*

If, having considered the Code and (if you are a pensions actuary or a life actuary), APS P1 or APS L1, you conclude that a (potential) conflict of interest can reasonably be reconciled, this should normally be effected through a conflicts management plan, as agreed with all parties.

5. Managing professional conflicts

Many of the points outlined above in relation to client conflicts of interest apply equally to conflicts between you (as an individual or as the organisation that employs you) and a client – your 'client' here being the person to whom your work is directed, which for much actuarial work would be your employer. In these situations, one of the best ways of handling and avoiding conflicts of interest is to ensure that you can explicitly identify a conflict and consider how to remove or decrease the likelihood that a conflict will cause problems.

A conflict can arise in a number of situations, not only by reason of personal financial interest. It may involve other relationships or interests. It may be helpful for you to apply the test for bias as set out by Lord Hope in *Porter v Magill* [2002] 2 AC 357, which states that:

"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the [Tribunal] was biased".

Relevant considerations may include, in addition to direct financial interests, personal appointments or memberships or, in some circumstances, religious or ethical values or beliefs which make it difficult for you to act, and to be seen to act, in your client's best interests.

Employed actuaries can face particular issues in a conflict between their professional judgement and the commercial objectives of their own organisation (which, for this purpose, may also be the "client"). Pressure might be experienced, directly or indirectly, from your supervisor, manager, director or another person within your own organisation. Such threats to your independence may include being asked to act in a way which contravenes the law, regulations or your duties under the Code, being asked to mislead regulators, auditors or accountants or preparing or being involved in preparing reports which misrepresent your organisation's true financial position.

¹⁴ Paragraph 6.8 of APS P1.

Conflicts of interest between your professional judgement and the commercial objectives of your own organisation may mean that your objectivity may be questioned, and therefore, whether acting as an employee or as a consultant, it is important that you:

- consider carefully and regularly whether there are any conflicts of interest in the work that you do; and
- determine whether you are managing those conflicts appropriately.

Example: You are one of a few actuaries performing a wide range of tasks for a medium sized non-life insurance company, Neverland. For the first time this year, your role now includes providing input to the claims reserves, prior to determination of Neverland's annual results.

While carrying out the underlying reserving work, you become aware that there is a direct conflict of interest due to the fact that, along with Neverland's other employees, your end-of-year bonus is significantly dependent on Neverland's performance.

This means that you are able to affect the level of your bonus through the sensitivity of the results to the assumptions that you select as part of the process to estimate the reserves. The declared profit is particularly sensitive to assumptions such as the loss ratio for the current accident year and the tail factor for a book of long-tail liability business.

To manage the conflict of interest, you might consider calling on independent external advice; for example, by using Hook & Smee, who are external consultants with appropriate expertise in the relevant area(s).

Alternatively, having discussed and disclosed the extent of the conflict of interest to Neverland's senior management, you might decide that an external review is not necessary (at least not every year), because you are satisfied that the following existing procedures provide a reasonable level of conflict management:

- internal procedures within the actuarial team to ensure there is appropriate and documented sign-off (at different grades of staff) of methodology, key assumptions and resulting reserve estimates;
- full documentation of your work, detailing for example the justification of key assumptions and the impact on results of changes in key assumptions;
- all work is done in accordance with relevant Technical Actuarial Standards; and
- reserving is included as part of the annual external audit and is also subject to occasional internal audit procedures (in fact, you decide to ask for this to be included in the internal audit plan this year).

But, having gone through this thought process, what can you do, in practice, to manage any professional conflicts that you identify? There are often no simple or perfect answers, or a solution that works in all cases, but the following are suggestions which might help you to manage and reconcile professional conflicts of interest:

- *Make use of peer review*

Peer review (either internal or external) can help to ensure that your advice is sufficiently objective. This might relate to specific aspects of your work or specific points in time, or as a matter of routine.

In particular, if you are giving advice in a situation where you have duties to policyholders whose interests might conflict with those of your employer, you may wish to use an external peer reviewer to ensure that he or she is not subject to the same potential conflict as you.

Aside from formal peer review, the actuary might have the benefit of independent investigations against which his or her own advice can be tested.

Example: Romeo, an Actuarial Function Holder in a life office will have the benefit of, and will want to pay particular attention to, challenge from and discussion with the Reviewing Actuary, Juliet, who advises the auditors. Romeo, must, though, have regard to paragraph 9.1 of APS L1 and not rely on Juliet's checks or opinions.

Likewise, a With-Profits Actuary will have the benefit of review by, discussion with and challenge from a With-Profits Committee or other independent adviser, although not all such advisers have actuarial expertise.

- *Rotate responsibility*

In some cases, it may be possible and appropriate to rotate responsibility across personnel for certain roles to help ensure continuing objectivity.

- *Consult others*

Consult other members of the Institute and Faculty or other professionals with regard to a particular conflict, to seek advice on how the conflict might be managed. This should, of course, be done without breaching any confidentiality obligations. The Institute and Faculty can offer useful assistance through its [Professional Support Service](http://www.actuaries.org.uk/regulation/pages/professional-support-service).¹⁵

- *Introduce a gifts/hospitality policy*

Employees should not knowingly receive gifts or hospitality which could lead to an actual or potential conflict of interest. Therefore, you might wish to consider introducing a gifts/hospitality policy with procedures to follow where gifts or hospitality are offered/accepted. The policy might set out:

- that the receipt of gifts/hospitality should be recorded;
- the consideration to be given to the timing of the gift and/or if it is related to any client-related projects being undertaken;
- that approval may need to be sought for higher value gifts; and
- the restrictions imposed by, and obligations you might have under, the *Bribery Act 2010*.

¹⁵ <http://www.actuaries.org.uk/regulation/pages/professional-support-service>

Example: You receive a gift from your client, Scrooge. You should ask yourself why the gift was being provided and the circumstances in which it was given; for example, was it:

- a regular Christmas gift provided to all of Scrooge's advisers? Or
- being given just before your firm was to sign off on an important piece of work?

As a general rule, you should always question the appropriateness of accepting gifts, having regard to all of the circumstances, the timing and nature of the gift and, in particular, the perception, in relation to your professional objectivity, to which acceptance might give rise.

6. What happens next?

If you have considered the questions above and determined that there is a conflict which cannot be reconciled to an acceptable level through the use of appropriate safeguards (for more on this, see Sections 4 and 5 above), then you should:

- not accept that specific engagement; or
- resign from one or more of the conflicting engagements.

Equally, if you have requested consent from your client to act or continue to act for another client where their interests are in conflict and that client has refused its consent, you will need to decline to act (or to cease to act) for one or both of the parties concerned. Failure to do so will mean that you are in breach of your obligations under paragraph 3.4 of the Code.

7. Sources of guidance and advice

7.1. The Professional Support Service

The Institute and Faculty offers a confidential [Professional Support Service](#)¹⁶, to assist members with professional ethical matters, including conflicts of interest.

7.2. Further sources of advice

This guide is intended as a useful starting point for you in considering your conflicts of interest obligations. The following organisations and bodies offer additional guidance which you may find of assistance.

7.3. Independent organisations

- Financial Services Authority
020 7066 9200
www.fsa.gov.uk

The FSA has set out rules and guidance on managing conflicts of interest in firms providing services to your client in the course of carrying out, amongst other things, regulated activities, which can be found in the [FSA Handbook](#)¹⁷.

¹⁶ <http://www.actuaries.org.uk/regulation/pages/professional-support-service>

- The Pensions Regulator
0845 600 0707
customersupport@thepensionsregulator.gov.uk
www.thepensionsregulator.gov.uk

The Pensions Regulator (tPR) has issued [guidance to trustees on conflicts of interest](#)¹⁸ which you may find useful.

This guidance sets out the standards trustees are required to meet and the requirement for actuaries to challenge non-compliant behaviour and consider whistleblowing to the tPR if their concerns are not addressed.

The Institute and Faculty, with input from tPR, has also issued a [Note for Pension Scheme Trustees](#)¹⁹ on the conflicts of interest a Scheme Actuary may face.

tPR has also issued guidance to [trustees on relations with their advisors](#)²⁰, including Scheme Actuaries, which also might be of relevance to pensions actuaries.

8. Do you have any comments?

The content of this guide will be kept under review and for that reason we would be pleased to receive any comments you may wish to offer on it. Any comments should be directed to:

Conflicts of Interest

The Institute and Faculty of Actuaries
Maclaurin House
18 Dublin Street
Edinburgh
EH1 3PP

or

conflicts@actuaries.org.uk

¹⁷ <http://fsahandbook.info/FSA/html/handbook/SYSC/10/1>

¹⁸ <http://www.thepensionsregulator.gov.uk/guidance/guidance-conflicts-of-interest.aspx>

¹⁹ http://www.actuaries.org.uk/regulation/pages/conflicts_of_interest

²⁰ <http://www.thepensionsregulator.gov.uk/guidance/guidance-relations-with-advisers.aspx#s1683>

Questions for Pensions, General Insurance and Life Insurance Actuaries

Further to the questions set out in Section 2 on identifying conflicts of interest, Appendices A, B and C contain some practical questions which are directed at pensions, general insurance and life actuaries to help actuaries identify and manage conflicts of interest.

Appendix A

Questions for pensions actuaries

A. Identifying conflicts

1. What conflicts are inherent to the trustee board?
2. Are relations between the trustees and the employer likely to be adversarial?
3. Do certain functions reserved to the Scheme Actuary (e.g. under trust deed and rules or legislation) give rise to potential conflicts?
4. In what areas requiring actuarial advice are the interests of trustees and the company not aligned?
5. Does my firm advise the sponsoring companies in any material capacity?
6. In my view, could the trustee board be at risk of being unduly influenced by company management in some circumstances?
7. What conflicts within the trustee board have the potential to impact on my ability (or perceived ability) to give unconstrained advice to the trustee?
8. Do I or my family have a stake (e.g. stocks/shares, employment or scheme membership) in the client I am advising or in another party with competing interests to those of my client?
9. Do I have more than one client in the same industry (e.g. one consideration may be whether there is potential for merger between two clients).

B. Managing conflicts

10. Is there an independent trustee on the trustee board?
11. If the trustees have an appointed investment adviser, what role might that adviser be playing which might be significant in the management of a potential conflict?
12. Have the trustees actively considered the Pensions Regulator's conflicts guidance including setting up a conflicts register?
13. Does the employer use another firm of actuaries for all or some corporate advice (e.g. for advice where my firm may be conflicted, e.g. funding)?

Appendix B

Questions for general insurance actuaries

A. Identifying conflicts

1. Does any of my work in areas such as pricing, reserving and capital give rise to any inherent conflicts across those different types of work and how am I managing these conflicts?
2. Am I in a position as pricing actuary or underwriter where competitive pressures will compromise my ability to comply fully with the Insurance TAS and/or the Code?
3. Are my rewards, or the manner in which I am rewarded, likely to give rise to a perception of conflict e.g. bonus or commission?
4. Do I or my firm provide an audit service as well as advice to the client?
5. Is there a conflict between the commercial interests of my client/employer and those of policyholders or others whose interests may ultimately depend on my advice?

B. Managing conflicts

6. If I am responsible for key judgements around reserving, pricing, capital work, catastrophe modelling etc, what element of peer review and checking exists in relation to my work?
7. If I am taking on new roles as a result of regulatory or other internal or external drivers (such as Solvency II), have I considered whether there are any particular conflicts in relation to those roles that I need to manage and, if so, how am I going to do that?
8. Does the Board have appropriate personnel who are able to judge whether my conclusions around, for example, reserving levels are appropriate?
9. Does the company rely entirely on my advice in relation to certain actuarial matters (such as setting reserves) or are there other advisers who might be involved in providing advice?
10. If the company solely relies on my advice in relation to actuarial matters, does that create any need to manage potential conflicts any differently to situations where there are personnel at the company who are able to form their own expert opinion on the results of my work?
11. Have I considered how I would manage potential conflicts arising from my having a duty to a different body in the organisation which contracted me to perform the work?
12. As an actuarial employee of a small Lloyd's syndicate, on what support can I call to bounce ideas and check approaches/decisions?

Appendix C

Questions for life insurance actuaries

A. Identifying conflicts

1. Do I or my firm provide advice to both the life office and to its With-Profits (WP) Committee (or other independent adviser on WP business)?
2. Do I act in the role of WP Actuary as well as providing other, commercial advice to my employer or client?
3. Do I or my firm provide an audit service as well as advice to the client?
4. Is there a conflict between the commercial interests of my client/employer and those of policyholders or others whose interests may ultimately depend on my advice?
5. Is there any conflict between the advice which I am giving or decisions which I am making and my own personal interests (e.g. remuneration)?
6. Am I in a position as pricing actuary or underwriter where competitive pressures will compromise my ability to comply fully with the Insurance TAS and/or the Code?
7. Are my rewards, or the manner in which I am rewarded, likely to give rise to a perception of conflict e.g. bonus or commission?

B. Managing conflicts

8. If acting as WP Actuary or Actuarial Function Holder, will I have appropriate access to independent external advice if I consider this to be necessary?
9. If I am responsible for key judgements around reserving, pricing, capital management, with profits surplus distribution etc, what element of peer review and checking exists in relation to my work?
10. If I am taking on new roles as a result of regulatory or other internal or external drivers (such as Solvency II), have I considered whether there are any particular conflicts in relation to those roles that I need to manage and, if so, how am I going to do that?
11. Does the company rely entirely on my advice in relation to certain actuarial matters (such as setting reserves) or are there other advisers who might be involved in providing advice?
12. If the company solely relies on my advice in relation to actuarial matters, does that create any need to manage potential conflicts any differently to situations where there are personnel at the company who are able to form their own expert opinion on the results of my work?
13. Have I considered how I would manage potential conflicts arising from my having a duty to a different body in the organisation which contracted me to perform the work?