

**The Actuarial Profession
Institute and Faculty of Actuaries**

Conflicts of Interest Consultation Meeting

Monday 31 October 2011

Maclaurin House, Edinburgh

The Chairman (Sir Philip Mawer): Welcome to everybody. Thank you very much for coming to this meeting. I was slightly alarmed that the number of people on the table was going to exceed the number of people in the body of the Kirk. Typically, for a meeting in a Kirk, of course we all fill up the back rows first!

Please feel able to participate fully in this conversation, which is to focus on the proposals that the Profession, through a Working Party which I have the privilege of chairing, has produced in relation to conflicts of interest.

I am going first, if I may, having thanked you for coming, to introduce the other members of the Working Party who are here with me. I will ask them in fact to introduce themselves.

Mr Charles Cowling: I am from JLT and I am a pensions actuary.

Mr Douglas Morrison: I am a With Profits actuary at Standard Life, so I have been trying to make sure the pensions actuaries do not get it all their own way, and that we do look out for any specific points on life practice as well.

Mr Graham Everness: I am a pensions actuary from Towers Watson.

The Chairman: I am Philip Mawer. I am Chairman of PREC and of the Working Party.

Mr Ben Kemp: Good afternoon. I am not an actuary. I am a solicitor and acting General Counsel at the Actuarial Profession.

Mr Alan Watson: I am not on the Working Party but I am Chairman of the Standards Review Committee so all these standards come via me. So I got roped in as a volunteer.

The Chairman: On the board, we have put an indication of the format of the consultation meeting that we propose. I am going to give a very brief introduction to the Working Party's proposals. We will then move through discussion of the different elements in the package that the Working Party has put forward.

Do not be alarmed by all the timings that you can see. We are in your hands as regards time. We will not let this meeting run for any longer than you want it to. The object of the exercise is to explain the proposals to you, to respond to any questions that you might have about them and, crucially, to hear your views on the proposals.

We will structure the discussion as we move on around the questions that are in the survey attached to the consultation paper at Appendix 8. It is also of course a survey that is on line, to which members have been invited to respond. In short, please feel free to ask questions as we go along. I will break up the conversation to focus on different elements in the package so that you can register your points in relation to those elements as we proceed.

It would be helpful of course if, in order to enable us to understand the background from which you are asking questions, you would say who you are and where you come from or in what context you practice as we proceed.

That is by way of an introduction to this evening, and now a brief introduction to the Working Party's proposals.

In short, the issue of conflicts of interest in relation to the work of actuaries has been around for a long time. It has proved a difficult issue over the years for the Profession. You will all know that it achieved particular focus in the context of the Morris Report in 2005, and of course it has been referred to in a number of subsequent reports by the Professional Oversight Board. I am delighted that Jon Thorne from the Board is here listening to today's consultation meeting, and other representatives of the Board were present at the similar consultation meeting a week ago in London. So, welcome, Jon, to you.

We have proceeded initially by producing a discussion paper trying to identify the key issues for the Working Party to address. We issued that to the Profession and to other interested parties outside the Profession. We received well over 300 responses from members of the Profession to that initial discussion paper, as well as additional responses from the Oversight Board and other key players, like the FSA, and so on, and some users of actuarial services.

We were disappointed, frankly, in the response we had at that stage from users of actuarial services. However, we then engaged in a series of bilateral meetings in order to try to pick up more of the user voice and so we met, for example, bodies like the National Association of Pension Funds, and of course we have spoken to the Actuarial Users Committee of the Financial Reporting Council about the proposals in order to get a balance of views both from members and from those outside the Profession who are using actuaries' advice.

The feedback that we had to the discussion paper suggested that (a) actuaries encounter conflicts a lot in their work; but, (b) for the most part, conflicts are well-managed and handled. That feedback was uniformly consistent from users of actuarial services as well as from actuaries themselves.

However, it was clear that there is still concern about a number of perceived risks in relation to conflicts, especially in terms of the work done by pensions actuaries. With a view to trying to address that, we have produced the proposals that are before you this evening.

Mr Arthur Zegleman: I work with Towers Watson. You say "this concern", despite the fact that immediately prior you said conflicts that were met were well-handled. My question is from who is this concern coming?

The Chairman: Some of the concern comes from users; some comes from external regulators; and some of it comes from actuaries themselves. What I said was that most of the conflicts, according to the responses that we have received, are well-handled. That implies that there is a minority that are not as well-handled as they might be. There is also an important issue, which the Working Party has had to face, in relation not only to the reality of how conflicts are handled, but also public perception of the possibility of conflict.

It may well be argued that the perception of the possibility of conflict is being heightened at the moment because of the pressure on direct benefit schemes, and so on.

That is the best clarification I can give in response to your question.

Faced with this, we had three options, really. One was to do nothing and recommend no change in current arrangements. The second was to impose, as a number urged, a ban on dual appointments, a complete ban, that is, on a person acting both as scheme actuary and offering any advice or services at all to a pension scheme funder, an employer. The third was to try to go for a targeted and proportionate approach.

That is what we have tried to do. We have tried to trim our proposals actually to meet and tackle the key areas of risk without being disproportionate in terms of introducing a complete ban on dual appointments.

We have come up with a package of proposals, and that is the other point that I want to emphasise in this introduction. It is not just one strand but a number of separate strands which interrelate to form a comprehensive package. They nestle under the overarching requirements of the Actuaries' Code, about which a little bit more later in our discussion.

We propose that the conflicts of interest provisions in the Code should be supplemented by specific provisions in relation to life actuaries (those have already been introduced through APS L1, which came into force at the beginning of this month, 1 October) and through amendments to APS P1, which are the pension provisions, which we will come on to discuss in a minute.

We also propose, in addition to those hard regulatory provisions, if you like, the production of guidance for actuaries and for pension scheme trustees, and of course the provision of additional professional support for actuaries. A strong emphasis, a strong message, from all the people we consulted was around a desire to have more in the way of help and guidance in terms of identifying conflicts, assessing what to do about them, and then managing them through to avoid any continuing problems.

So that is the broad shape of the package and the thinking that underlies the package in its broad terms. I am going to pause at that point to ask if there are any further questions - we have had one already - about the broad scope before we get into specific discussion about APS P1, which I think is where most interest is likely to focus.

APS P1: paragraph 5.1

The Chairman: No? Shall we move into APS P1? We will display the text of APS P1, specifically paragraph 5.1, which is the key provision which provides that a scheme actuary must not advise the employer to the scheme in relation to the funding of the scheme or any matter which has a direct bearing on the benefits payable under that scheme.

That is the critical provision in terms of this proposed APS P1 amendment. As I say, it reflects the Working Party's view that a targeted and proportionate response was appropriate rather than going for a complete ban. The aim was to deal with those areas where there is both the highest risk and perception of risk around the possibility of a conflict (in relation to issues to do with funding and factors underpinning the benefits payable by a scheme) without going as far as an outright ban on dual appointments.

I pause at that point to allow discussion, questions and comments on APS P1 and 5.1 of it in particular.

Mr Allan Martin: I am a pension scheme actuary but perhaps, more importantly, an independent trustee these days. The Actuarial Profession has historically, and in structure, regulated individuals, but here we have an issue of a scheme actuary, potentially an individual within a much larger organisation perhaps with a senior partner, chief executive, very experienced, potentially intimidating, promotion-determining individual.

I just wonder the extent to which regulation was considered at both the individual and the corporate level or firm entity level.

The Chairman: When you talk about the firm entity level, what is the focus of the concern that you have? I am not sure that I have fully understood it. Then I will invite colleagues to comment.

Mr Allan Martin: It is very much from the perception level that a scheme actuary, looking after the trustees', position would not be, under this proposal, in any way connected with the senior partner or chief executive who happens to be advising the conglomerate which owns this particular company.

So it is more the independence at company or organisational level rather than at individual actuary level.

Mr Graham Everness: This is 5.3. The answer is that it has certainly been considered. The Actuaries' Code obviously is overriding. It means if the scheme actuary felt he was in a position of conflict as a result of the fact that one of the senior colleagues, the promotion-determining senior colleague, advised the employer, then that may be, under the Actuaries' Code, an irreconcilable conflict, depending upon how it is actually handled.

In 5.3, which we will go on to later, there is a provision which does require consideration to be given by scheme actuaries where somebody else in their firm is advising the employer.

It has been touched upon but it was not considered appropriate to go to the same extent when that was the case as where one individual was involved in both.

Mr Charles Cowling: I think that is fair. I would go slightly further than that. I thought as a Working Party we did consider it in quite some detail. We looked at all the options of where the lines could be drawn in different ways. We did seriously debate should we prohibit at a firm level as well as at an individual level.

It comes back to Philip's comments about what we thought was proportionate in the circumstances. Yes, we did consider it in quite some detail.

The Chairman: If I might add a couple of factual points. The National Association of Pension Funds, for example, with whom we discussed this specifically, was pretty relaxed, on the basis that their perception was that firms handle these matters well. The key consideration from their point of view and from the position in which the Working Party ended up was that we must ensure transparency. Transparency is the key thing, in order to enable pension trustees then to make the appropriate arrangements for handling any potential conflict.

So putting the actuary, as 5.3 does, under an obligation to bring to the trustees' attention any conflict of which they are aware, or potential conflict of which they are aware, was viewed by the people we consulted as a proportionate response to the problem.

Mr Allan Martin: Just a corollary to that, other stakeholder - perhaps the Pensions Regulator - some of us here may already be getting those telephone calls from the regulator where we are grilled on trustee knowledge and understanding, conflicts of interest, and employer covenants, but at least we have lots of independence and transparency in employer covenants.

My fear is maybe in five years' time, if there is a scheme actuary and the company actuary within the one firm that we are just going to be five years behind where the regulator might perceive problems to be when somebody is debating who is winning this issue, and is that falling for the corporate or the trustees?

The Chairman: We have taken evidence and views from The Pensions Regulator in the course of our enquiries prior to the preparation of the consultation document. We did

not have advice from The Pensions Regulator of the strength that you are implying, which would have led to the conclusion that you were indicating.

That does not appear to be The Pension Regulator's position. They are not asking the Profession to prevent a firm from advising both parties. Some actuarial firms, including a number whose views we have collected in the course of our work, impose, as a matter of company or commercial policy, if you like, such a ban.

That was not urged on us by The Pensions Regulator. Who knows what the position will be in five years' time? But it is not the current perception, as we understand it, of the Regulator.

Mr Ben Kemp: I was very interested in the question. I may have misunderstood, but was there a suggestion in the question that almost the lack of more strong provision in relation to the corporate entity might in some way pose some sort of difficulty for the scheme actuary in terms of his or her relationship with the corporate entity and senior people within the corporate body?

Mr Allan Martin: I think it is possible that senior partners – not chief actuarial officers, they do understand conflicts – let us just call them "the boss" could prevail upon the junior, independent thinking actuary where the circumstances so dictate.

It was much more the element of sometimes it is not the realities that matter, it is the perceptions. If it is perceived the scheme actuary is secondary to the bigger corporate adviser, somebody senior within the firm, then that could be as damaging.

The Chairman: Do you want to comment on this at all? Charles or Graham?

Mr Charles Cowling: We did consider a number of those exact issues, and it comes back to what is proportionate in the circumstances and an issue of transparency in

ensuring that there is a certain reliance on a professional's integrity to highlight to trustees where these conflicts exist. 5.3 highlights it.

I would also mention there are one or two basic practical issues that we might do more to highlight. For example, if you have the same firm advising a corporate entity and the trustees, you have issues like house views on assumptions. To what extent does knowing where the other person is coming from because you are in the same overall entity actually affect how you therefore might advise and negotiate?

All of these things have been included in our discussions and in our thinking. One of the things that we might take from this is where you think we should give more guidance in terms of practical examples, CPD and so on, to actuaries to ensure that they follow not just the letter of APS P1 but actually the intention behind it.

The Chairman: A colleague from Towers Watson?

Mr Arthur Zegleman: Obviously, I am coming from a very different world from Alan in this one in a sense. I work for Towers Watson. Lots of us work for big organisations. Lots of people are advising corporates on lots of things. It just would not be practical if part of our conflict code was we are not allowed to advise on the whole range of stuff that we do.

I know that the Faculty and Institute are not interested in the commercial perspective, but from a purely commercial and professional perspective, it just would not work.

Regarding 5.1, I am not sure that I totally understand what I would be allowed to do as a scheme actuary and not allowed to do in the sense of the concept of advice. Can I give information to the employer? I am certainly guilty of that. I do not think that it conflicts me. If the employer asks: "What is the impact of changing the accrual rate

from a 60th to an 80th, I can answer that question. I feel I can answer that question but I do not think that it is advice in that sense.

You talk about individual factors. But lots of individual factors are agreed between the company and the trustee.

I am quite comfortable with the funding issue. I think on the funding issue you have to be entirely independent. But some of the other peripheral issues are key issues such as the issue about scheme design. I have always had difficulty with this concept that a scheme actuary is not allowed to talk about scheme design, and I can give lots of examples where I have operated on the basis of a non-conflicting piece of advice or piece of information to the employer, not advising him to do it.

Perceptions are important, but the reality is we have to have something here that we can actually deliver as a profession.

You can change perceptions, and can change perceptions and educate people both within and outside the Profession. I do not subscribe to this argument because there is a perception there you have to do something dramatic and drastic to it. I think we have to consider the whole thing on balance.

A really great example of that was the Myners's Code. Myners published his Code and then said something along the lines of actuarial and investment advice should be subject to separate contracts. Then for five years people were saying you cannot have the same firm giving actuarial investment advice, which is clearly not what was said, but it is a case where the perception was driving, I think, the wrong outcome.

I do think that we need to be quite careful about this. We are not at the trustees' guidance yet. A number of issues about some of the examples in the trustees' guidance can be misinterpreted.

The Chairman: We will value your help in getting the words in the guidance right. We are going to come on to discuss it. I will ask Graham just to talk in a moment about your first point which was a critical one, I think, and was certainly echoed in the consultation meeting in London, which was around the distinction between information, on the one hand, and advice on the other.

That is an issue which the Working Party will want to think further about in the light of the responses that we have had so far to the consultation paper.

I do not know, Graham, if you want to comment on that or just note it, as it were, for the moment.

Mr Graham Everness: We will certainly note it. We are going, one way or another, to clarify, whether in the guidance or in something else, to make sure that people understand what is meant by advice if we go ahead with it. That is accepted. That is an area that will need some clarification.

Not everyone will necessarily see it in the same way; people think differently. I see it primarily in terms of a having two clients issue as opposed to giving information, shall we say.

There were some people at the other meeting saying, "I cannot even be in the same room as the employer because he might get all sorts of bits of information from me." In no way is that the intention that you can never actually be in the same room as the employer and speak so the employer can hear anything if the employer is not a client.

What it is trying to get at here is you cannot really be serving two masters where their interests are in conflict, which is the general principle of the Actuaries' Code. But then what does it actually mean in relation to certain aspects of pension scheme advice?

The feeling was that when funding and factor/benefits in the broadest sense - we can talk about whether there ought to be any detailed exceptions in a minute - but generally on funding and benefits-related matters, there is far too much scope for conflict of interest for you actually to be serving both the trustees and the employer as people giving advice and as clients. That does not necessarily stop you providing information, which in a sense is almost being passed on.

Whether it is actually physically the case, it might be something that you give to the trustees and then it gets to the employer.

Mr Arthur Zegleman: You made the comment that there is a fundamental conflict between the employer and the trustee. In the world I live in that is not the case. I hear myself saying that the interests are aligned. There may be conflict in the process actually to get there. I cannot accept that there is a fundamental conflict between the trustee and the employer in providing benefits in a final salary pension plan. I just cannot accept that. If that is where you start from, I am never going to agree with the conclusions.

The Chairman: All I would comment on that is that of course one of the ways - and we are about to come on to 5.2 (in which the proposals envisage that these things can be handled) is by having an agreed written plan which the trustees and everybody are party to. So everybody knows the rules of the game. That of course would include clarity around what information could be passed on to the employer and what cannot, and so on, and so forth.

Mr Roger MacNicol: I am a pensions actuary. Picking up on Allan's point, where he raised the possibility of the scheme actuary being intimidated by his employer or a senior member within his employer, he was talking I think about the consultancy environment where it is very unlikely that a direct conflict of interest would exist between a consultancy as an entity and the pension scheme trustees.

Did the group, however, consider the different environment where the provider of services, the provider of the scheme actuary, the provider of the investment vehicle, was the same - namely, an insurance company - so that the scheme actuary was advising trustees but was being paid by the insurance company and the insurance company was providing the investment vehicle? In that circumstance, a direct conflict could arise. Was that considered at all?

Mr Charles Cowling: It was on the list of issues of potential conflicts. Whether we considered it in as much detail as some of the others, you are almost into the fundamental conflict between any consultant and their client that you are being paid ultimately by a client who wants to hear the advice that they want.

You could extract what you have just said to almost every single consultancy-type arrangement.

So, yes, it was on our list of potential conflicts. I do not think we concluded that there was anything more that we should do to address the particular conflict that you mentioned. "We are open to suggestions", I think, is how I would put it.

Mr Roger MacNicol: I simply felt that there was a potential difference there because the scheme actuary employed by a consultancy is unlikely at any point truly to be representing his employer and acting in the interests of his employer. He is going to be independent. That is not necessarily the case with an actuary employed by an insurance company. He will on occasion be representing his employer.

The Chairman: The critical factor in relation to the kind of situation which you describe, which applies to all actuaries, is the relevant provision in the Actuaries' Code. I am going to ask Ben Kemp to amplify that point.

Mr Ben Kemp: I suppose where we get to is that there is a specific prohibition, 5.1, in relation to a particular scenario. The view to date is that other scenarios, including the one you mention, subject to this consultation, do not merit that level of specific prohibition but all such situations must be considered within the over-arching provision of the Actuaries' Code, which says that members will ensure that their ability to provide objective advice to their clients is not and cannot reasonably be seen to be compromised.

What I am wondering is whether you are calling for some sort of equivalent provision in relation to that situation as 5.1 or actually what you are calling for is some thought in relation to guidance in relation to that sort of situation, whether that is another situation which we should be considering in regard to the overarching provision in the code.

Mr Graham Everness: You are right, that is an example of a conflict that could have been included and that in the guide and it was not. There probably are various examples. There is a long list.

In terms of APS P1, that is actually addressing only one type of conflict, and it is a client-on-client conflict. Pension scheme trustee and the employer is the same one. It is not even two trustee clients, for example. It is a very narrow application in terms of focusing only on one specific conflict area. The guide is much more generic and maybe there is a gap being identified there.

The Chairman: Roger, if you have a suggestion – I am not asking for it now – or if you have a specific illustrative example, a way of illustrating this, then it would be very helpful if you can send an e-mail, in which would enable us to make sure that we adjust and improve the draft guide, for example, to cover this kind of point.

Mr Roger MacNicol: I am sure I can very happily provide an illustration.

The Chairman: I hope the happiness in providing the illustration does not mean you are being constantly being beaten over the head working in an insurance company!

Mr Roger MacNicol: No, I have never worked as a scheme actuary for an insurance company.

The Chairman: Further points on APS P1 and 5.1, particularly the proposed amendment? What I have is a strong view from one person present that at the very least this needs clarifying considerably. And you are worried that it might go too far.

On the other hand, I have some indication that some people are not sure that it goes far enough. Was that the implication of your points?

Yes, I thought it was. And I have a specific proposal in relation to the insurance example.

Mr Ian Campbell: I am a pensions actuary. I am with Arthur on 5.1. It seems to me that in many pension schemes 5.1 is far too tight in what has happened in practice, where perhaps there has been conflict but it has been managed quite well.

There are lots of cases where there would be conflict which is not managed well. I just wonder if there is a form of words which are not quite so tight which deal with schemes where conflict is well managed. Was that thought through by the committee?

The Chairman: We tried to think through all sorts of scenarios. What we will do is take your question and we will certainly reflect on it in the light of all the other comments that we have got in these consultation meetings and through the consultation process as a whole.

We are trying to strike a balance here between ensuring protection where that is clearly justified and required indeed for the public, and in the public interest, and, on the other hand, producing a provision which is capable of easy application by actuaries who are dealing with live situations of varying sorts.

So any help we can get in seeing our way through this is gratefully received.

I am going to move off 5.1, only in the interests of time.

Mr Arthur Zegleman: One point is that what worries me is this particular reference to the benefits payable under the scheme, including but not limited to the actuarial factors. The benefits payable under the scheme, to the extent that they have been built up, are protected by legislation. There is a statutory duty on everyone in that.

Similarly, the actuarial factors, to the extent that they apply to the benefits built up in the scheme are subject to legislation, the preservation legislation, etc, etc.

The laws re the other factors are then defined by the trustee rules. That gives authority to whomever it gives authority to determine them. The interaction of that statement, the other legislation that manages the way pension schemes are operated, needs a little bit of thought.

I do not have a problem with funding. I do not have a problem with avoiding conflicts. It is the wording that slightly gets me there.

APS P1: paragraph 5.2

The Chairman: Right, that is very helpful. Thank you. Can we move on to 5.2?

Essentially, what 5.2 does is to amplify the scheme actuary's obligations under the specific provisions in the code.

In fact, the various provisions within it, the four points, are essentially the Morris recommendations. They encapsulate what Morris recommended. And in so doing, they provide a definitive response to that recommendation in the Morris Report.

We had no criticisms of that at the London meeting. People thought it was a good thing. I see nods. In that case, let us move on.

APS P1: paragraph 5.3

The Chairman: Paragraph 5.3 is the next thing we will move to, which is the point that we touched on earlier around potential conflicts of interest arising from the activities of other people in the same firm as the scheme actuary. Essentially, it is about transparency and disclosure. If the scheme actuary is aware of an actual conflict or a potential conflict, then he or she is under an obligation to ensure that the trustees are made aware of that.

Any comments on 5.3?

Mr Allan Martin: In the practical situation, some trustees, given what their trustee rules say, are very dependent on scheme actuaries' advice. There is a danger of that perception of a senior person to that scheme actuary influencing, and equally trustees can be intimidated, advisers can be intimidated. The fact of life is such things can occur and indeed very easily - not just perceived but do unfortunately occur. So I think that we need the structure right before getting down to the detail too much.

I would be an advocate of principles. I do think that there is a problem for trustees as well in a similar way.

The Chairman: We have tried to set out a principle, which is a principle of disclosure, essentially. The Working Party has certainly discussed the extent and range of conflicts within the trustee body which we believe to be more serious in many ways

than conflicts relating to an actuary. It is because of concerns around the conflicts within a trustee body that we have, in part, because of concerns, developed the guide for trustees, which I will explain more fully as we get on in this meeting.

So, your point about the tensions within the trustee body and the actuary's position in relation to them, is well taken.

On the point that you made about actuaries being subject to pressure themselves from other people more senior to them within the firm, this is an issue which might arise in a number of contexts, of course, not just in the context of pensions.

It is an issue which we are trying to tackle through a variety of different means. It is extremely difficult to get at. It is the reason why the Professional Oversight Board – and we fully accept this – keeps emphasising the importance of the working environment for actuaries as a key factor in determining actuarial performance and quality and behaviour, and it is a separate strand of activity within the Profession. One of the ways we are trying to get at it is by building a better relationship with firms.

We have some proposals for partnering with firms which we are in the process of developing. But, it is not easy to get at those pressures, is it? We hope that the principle we have enunciated is an important part of getting at the pressures.

Of course, it sits within the overall principle, the overarching principles, of the Actuaries' Code.

Do you want to make a point perhaps on the other side of the argument?

Mr Arthur Zegleman: I just want to understand what we are being asked to do here. I will give you an example. If I am a scheme actuary to a fund and my firm advises the

remuneration committee on the reward mechanism for one of the senior executives who happens to be a trustee of the fund, I can disclose that the firm advises the remuneration committee, but I am not sure what you mean by a conflict of interest that may result or might potentially arise.

In theory, if you are advising the chairman of the trustees, or the remuneration committee, what the chairman of the trustees might well get paid for his day job, potentially there is a conflict there between the firm's role there and the scheme actuary.

It would be clearer to me if this was a disclosure requirement of other work that your firm does rather than necessarily ensuring the trustees are aware of potential conflicts of interest from that. I am just not sure how I would satisfy that.

Mr Ben Kemp: It is a very helpful point. My own reaction is this. We will see what other members of the panel think. It is, just, as you say, a disclosure requirement in relation to other relationships, particularly, that you know other members of your firm have which could potentially give rise to a conflict. It is not asking you to speculate as to particular scenarios which might arise, which might give rise to particular conflict. It is about disclosing those relationships, I think.

The Chairman: Yes, and do not forget that a key consideration in the drafting of any standards, as in the drafting of any legal provision, is the concept of reasonableness. You cannot be expected to do something that you cannot reasonably be expected to do. Therefore, speculating about possible conflicts to the nth degree would not pass the test of reasonableness. That is simply one example of the importance of holding on to this notion that the test is always what the reasonable individual could be expected to do in situation (a) or (b).

Actuaries are brilliant people but they are not wizards. They are not soothsayers. They cannot predict the future, although in fact their little strapline suggests that they might be able to.

Mr Ben Kemp: So, at a very basic level, if you are being approached by trustees to be the scheme actuary, and you are aware that a colleague with whom you are connected professionally in your firm is providing corporate advice at some level to the employer, then I would have thought that is something you ought to disclose in terms of this provision.

Mr Arthur Zegleman: I am entirely happy with the disclosure. It is just the wording of it again. I thought it was pushing us further down.

Mr Ben Kemp: I take that point. Perhaps we can have a look at that. That is helpful, thank you.

APS P1: paragraph 5.4

The Chairman: Okay, shall we move on to 5.4? That is purely a transitional provision. We will take any comments anybody wants to make from a practical point of view, but we are just trying to make sure that we introduce this in a sensible way.

APS P1: Paragraph 6.4.1

The Chairman: Perhaps we could then move on, not having received any comments on that, to paragraph 6.4.1. Essentially, what paragraph 6.4 is doing is extending the application of section 5 of the draft standard to other people in positions akin to the scheme actuary who are giving similar advice of a significant nature in relation to the funding of a scheme.

Any comments on 6.4.1? What this is trying to do, in short, is to catch people who are in a situation akin; they are not formally the scheme actuary, but they are in a

situation akin to the scheme actuary in terms of the advice that they provide, while excluding people who are doing simple number crunching or whatever. That is, they are not providing advice at that level or of that character.

Mr Graham Everness: I think it is a bit more than that, actually, to be fair. I think 6.4.2 is often about akin to scheme actuary roles in non-relevant schemes. 6.4.1 is a bit wider in that the scheme actuary's No. 2, for example, if he is significantly involved in giving advice, would also be covered.

Mr Ben Kemp: Trying to be principled, if you are making this provision in relation to the scheme actuary of course it is of particular importance around that statutory role, but it could be rather undermined if there is somebody who is the deputy is in a position which would be infringing 5.1 if he were the scheme actuary.

APS P1: paragraph 6.4.2

The Chairman: Shall we move on to 6.4.2 since it has been mentioned? Paragraph 6.4.2 applies paragraph 5 to pension schemes other than those which are required to appoint a scheme actuary. It extends paragraph 5 to members advising in the context of any other type of scheme which satisfies four criteria.

The critical point there is what is good for the goose is good for the gander. We are trying to cover schemes essentially which are not formally ones where there is a requirement to appoint a scheme actuary, but where the essential purpose and features of the scheme are on all fours with a scheme actuary scheme. This is essentially a public sector provision.

Mr Graham Everness: Or it could be overseas schemes as well.

The Chairman: It could be overseas, non-UK schemes.

Mr Ben Kemp: What we are trying to do is to resist the probably impossible task of listing the types of scheme we might have in mind, and, again, to take a principled approach. We are interested particularly, I suppose, in any comments as to whether those principles are appropriately positioned. This was the subject of very careful debate among the Working Party.

The Chairman: It looks good enough from the nods that I am getting around the room.

Then the other point that we need to make in relation to APS P1 is that it would be applicable to all members of the Profession, including students, because students may have been students for a number of years and be quite experienced, doing work on pension schemes of quite a significant nature.

Okay? Nods of agreement to that.

Guides for actuaries and pension scheme trustees

The Chairman: Now I am going to deal rather more briefly with the guides for trustees and for actuaries.

Starting with the guide for actuaries, I mentioned in my introductory remarks the strong emphasis and demand that there had been for more guidance and help for members on identifying and assessing and resolving conflicts. Hence the two draft guides that we have produced and, in particular, the guide for actuaries, which is modelled on the successful guides that we have produced for whistle blowing, one of which was directed at actuaries and the other at employers of actuaries.

I am not expecting to get detailed comments on the draft guides tonight. But we are keen, if there are any features of them with which you are not happy or once you

have read through them where you think that things can be improved, we are keen to have feedback from you.

Roger mentioned a point which is potentially of application there in an earlier part of our discussion.

The guide for trustees we have developed in discussion with The Pensions Regulator. Why are we doing that; why on earth are we thinking at all about producing a guide for trustees? Well, first, because we are conscious of the point that Allan made earlier about the potentially conflicted position of trustees, and also because we are very keen that trustees should understand the context in which the actuary has to work and the expectations, professional and otherwise, that their actuary, the scheme actuary, is under.

We hope that production of the guide for trustees gives the scheme actuary a useful tool in terms of handling his or her relationship with the trustee body. So we welcome comments on the two drafts. I should start with the guide for actuaries and just see if anybody wants to offer any comments on that.

We can display the consultation questions which identify some particular points in relation to the guide for actuaries.

Ms Sarah Mathieson: I am Policy Manager at the Actuarial Profession, but I am a life actuary by background.

The comment I have about the guide is it talks about reconciling conflicts of interest, showing that they can be reconciled. There were a couple of other examples around policy and procedures. I felt it was not so much about whether something could be reconciled or you have the policies and procedures in the background doing what they

are meant to be doing, but actually what the perception is and how it is perceived by the outside world.

So it might be that the conflict of interest has been dealt with behind the scenes, but it is making sure that the perception, and how it will be perceived outside, is being picked up appropriately.

The Chairman: So, do you think that the guide could put more emphasis on not only ensuring that the conflict is avoided but demonstrating that it has been avoided?

Ms Sarah Mathieson: Yes, and how it would appear to a lay person looking in, and probably looking more at some of the case study examples. It is quite procedural in how the different parties have gone about reconciling a conflict and saying that they have done that. But it is more about how would that be perceived by the outside world?

They have gone through this procedure, but does it actually still look like there is still a conflict of interest?

The Chairman: Thank you. That is a helpful comment which we will take away. We welcome any comments on the specific case studies or examples that are in the guide. It is quite difficult to prepare them. Any thoughts anybody has about improving them will be very gratefully received.

Okay, any points on the guide for trustees that anybody wants to make? Allan, did you have any points as a trustee yourself?

Mr Allan Martin: Perhaps with one exception, i.e. those who trustees who are actuaries, I think all actuaries should probably recognise that in 99+ per cent of situations what the actuary recommends will happen.

The advice of the actuary in practice I think is really significant. The Actuarial Profession should not be under any illusions that what the actuary says generally gets done. My example for that is the Myners's principles. When the follow-up investigation on that was done for investment advice, trustees were recorded as saying, "If our investment consultants say jump off a cliff, we would jump off a cliff." I would say it is even stronger for the scheme actuary advice. Do not be under any illusions as to what is going to happen in practice.

The Chairman: Did you find the guide of potential value, the guide for trustees?

Mr Allan Martin: Yes.

The Chairman: Right, that is helpful. Jon you were indicating.

Mr Jon Thorne: I am with the Professional Oversight Board. You mentioned in terms of one of the questions on the guide the importance of peer review.

I am interested to know what the working group felt of the recommendation that we made back in May 2009 that would prohibit advice to separate parties, unless there is a robust independent review of their work, whether that was something you did look at as an option, and what conclusion you reached on it.

Mr Graham Everness: We did consider the point. I think that the comment this refers to in the guide is actually saying that is something to be thought about. We considered it and we decided that we would not make it a rule that under certain conditions you have to have an independent peer review. But in dealing with situations where there is a potential conflict of interest, and in reconciling them, one of the ways in which you might choose to reconcile a conflict of interest and demonstrate that it was reconciled, when perhaps that would not otherwise be the

case, would be to make sure that there was a greater degree of independence in the peer review than otherwise would have been the case.

That is what that is getting at. It does tie in with that comment. It is true to say that, in considering it, we did not say, "Yes, we will adopt that as a definite rule."

The Chairman: I think it is also fair to say, Jon, that the question of the Profession's approach to peer review is under wider consideration, not only in the context of the conflicts of interest exercise.

For example, in the pensions area, Graham is leading a group which is looking at the production of a new version of APS P2, and is looking at the issue of peer review from first principles in that context.

Last week I was involved with Ben and others in a meeting with the General Insurance Practice Executive Committee, which is similarly concerned about the approach to peer review for the general insurance sector.

In fact, one of the things that we are going to do as result of that is to try and encourage a dialogue between the general insurance, the pensions and life, and so on, people to see whether in fact there are common strands which we need to be developing, and to enable a sharing of thinking across the different sectoral areas in which the Profession operates.

So we are not just approaching the issue of peer review in this context. It is one of more general application, and relevance, if you like.

Do you want to follow up your query? Did I see you reach for the microphone?

Mr Jon Thorne: I think your further explanation there covered that point. Certainly, it is an area where we place great store on the view of users. You mentioned the actuarial user committee that we have.

Peer review is another area of particular concern for them. Their assumption was that it would be independent, whereas it is independent in a sense but the view was that it would be external to the firm, which obviously at present is generally not the case.

It is a related issue, as you say, and one that you are taking forward separately.

The Chairman: There is an issue, as you realise, a major question, around cost, addition to cost. If you require external peer review, you immediately are banging costs up for trustees and others. There is a question about how far you go. Again, it is about where to strike the balance and where the balance of advantage lies.

It is a topic which no doubt I am sure – I am confident – we will return to with the POB, and others, in the future.

The Actuaries' Code

If we have dealt with comments on the guide for trustees, may we move on to a brief word about The Actuaries' Code? We are not proposing any specific amendments to the Code at this point. In fact, in the responses to the consultation we had a very positive endorsement of the approach taken in the Code and, in particular, principle 3 of the five key principles that are articulated in the Code.

We did, however, in the Working Party identify two specific issues which we are planning to have addressed as part of a separate Code review which will take place next year.

We do not envisage that this will be a fundamental review of the Code. It is just going to be a light touch review in the light of experience of its working. By that point it will have been in force for three years. It will be the right moment to say, "How is it going? Are there areas lacking clarity in it, things that we could spell out better?" We are not looking to a fundamental reformulation of the Code at that point. However, we will take account in that Working Party Code review of those two points which are at the bottom of the screen that you can see.

Okay, that then brings me to mention the remaining element in the package which is additional professional guidance. There is a strong demand from members for more CPD and training provision.

I want to give you an assurance that we will address that as part of the wholesale revision of our professionalism training and CPD provisions, which is currently underway.

We have not got down to designing the precise CPD provision on conflicts yet because we want to be clear precisely what the proposals are that we are going to bring into effect, so that we can design the CPD provision appropriately. I just want to give you the assurance that there will be more training, and so on, and revised – and, I hope, considerably improved – training in this area as a result of this Working Party's activities.

Any comments on CPD and training?

Right, that brings us I think to where we go next. First of all, we have some final consultation questions. I should say that I think we have picked up your comments on the practical implications of the proposals as we have gone through.

In relation to the second question on the slide we have met representatives of smaller firms, and we have another meeting in the offing shortly with both the ACA Smaller Firms Group and also the new Smaller Firms Member Interest Group of the Actuarial Profession itself.

So I think all that remains for me to do is to invite any other comments or reflections that you might want to make on the package as a whole. I would then invite any members of the panel who have not spoken or wish to speak to add any final thoughts.

Any comments or questions?

No? Okay.

Anything from the panel?

Mr Alan Watson: I had better add my tuppence-worth on the principle to prove I can get the CPD that I was actually here. I am quite happy that the committee has come up with what I think is a workable solution, speaking as a pensions actuary. I think that they have steered a reasonable middle course. I am reliably informed that on page 3 of the trustees guidance, I am not the Alan, the scheme actuary!

The Chairman: It is good to have that clarification!

Thank you from us for your attendance this evening. We do value your input.

Just a word about the next steps. You will get and can claim CPD for your attendance at this meeting. Please make sure that you sign the form to show that you attended on your way out of the building, if you have not done so already.

The consultation period on the document closes on 10th December. Following that, we will be reflecting on the various points that have been made in the course of the consultation as a whole. We will be reviewing not only the comments that we get from members but from the POB and from other key interested parties.

We will be producing final recommendations in the New Year for probable implementation in the second quarter of 2012. That is the kind of timescale that we are aiming for. We will make very clear of course to members exactly where we end up and what is expected of them as we get towards that point.

Again, my thanks to you. It has been a genuine pleasure to be here in Maclaurin House and to have a good discussion among such a select and elite number.
