



Vanessa Leung
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Financial Reporting Council

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By email only: V.Leung@frc.org.uk

Dear Vanessa

IFoA Response to FRC proposals for new TAS 100 and Guidance

I write to set out the Institute and Faculty of Actuaries' (IFoA) response to the Financial Reporting Council's (FRC) publication of an Exposure Draft revised TAS 100 and associated guidance.

Please note that this response is provided by the IFoA in its unique capacity as a body with Royal Charter responsibilities for regulating the actuarial profession in the public interest and as the body responsible for enforcing the FRC's Technical Actuarial Standards (TASs).

The IFoA previously wrote¹ to the FRC to express its concerns about the TAS 100 and the risk it poses to the effectiveness of the actuarial regulation framework.

Those concerns have become even more acute with the anticipated statutory changes to the UK framework for actuarial regulation, with some of the potential negative public interest consequences even more likely if the current approach to the TAS 100 (as reinforced by the current proposals) remains in place.

In summary, the IFoA:

- Does not support the proposals
- Believes that the TAS 100 is (and was) misconceived as a concept and has led to negative consequences for the public interest
- Is concerned that these issues would be worsened if the TAS 100 were to apply in a statutory regulatory framework
- Considers that the TAS 100 would contradict the UK Governments principles for ARGAs in that it is not risk-based
- Considers that none of its specific concerns around the TAS 100 have been addressed in these proposals
- Believes that the appropriate action would be to withdraw the TAS 100 and leave that wider, general professional regulation of members to the IFoA, subject to the FRC's oversight (soon to be statutory oversight by ARGAs)

¹ A copy of the IFoA's letter is appended for ease of reference

Please note that this response does not address the specific questions in the consultation document as the IFoA's concerns remain more fundamental.

1. **Broader concerns about the proposed TAS 100**

(i) Regulatory arbitrage

The IFoA has previously set out concerns about the scope and requirements of the TAS 100 having the unintended negative public interest consequence of driving individuals outside of the scope of the UK actuarial regulatory system.

This includes the broad and open nature of the definition of 'Technical Actuarial Work' causing significant uncertainty about what is or is not in scope. One way in which individuals are able to seek that certainty is to resign their membership of the IFoA, thereby taking themselves outside of the scope of both the IFoA and FRC's standards. This was explained in more detail in the IFoA's response to the Call for Feedback on the TAS framework.

The FRC's proposal to produce guidance on scope does not resolve this fundamental issue.

The UK Government identified in its response to the consultation on future actuarial regulation that it "*agrees with some stakeholders' concerns that it would be contrary to the public interest to deter membership of the IFoA or the employment of IFoA members in both traditional and emerging areas of actuarial work by regulating only the work of IFoA members on a statutory basis*".

The IFoA believes that the TAS 100 directly contradicts this principle and, were it to be part of a statutory framework, would risk driving individuals outside of the scope of the regulatory framework (including the IFoA's ethical standards and professional disciplinary process).

(ii) Not in line with principles identified by Government

In the Government's response to the consultation on future actuarial regulation, there are a number of principles identified that will underpin the new regulator's (ARGA's) role. Those include 'avoidance of duplication and gold plating' and 'proportionality relative to risk'.

The IFoA has flagged that it believes much of TAS 100 to duplicate IFoA ethical regulation and those concerns have not been reflected in any changes to the TAS 100.

More significantly, the IFoA believes that the TAS 100, being very generic, not focused on particular work and not risk-based in its' scope, contradicts the approach set out by the Government that "*ARGA should, therefore, apply a proportionate risk-based approach in order to deploy its resources with the aim of ensuring the greatest regulatory impact*".

2. **Proposals outside of scope of FRC's actuarial regulation remit**

The IFoA previously flagged concerns about the TAS 100 including matters that overlap and duplicate aspects of the IFoA's professional regulation framework and that are not strictly matters relating to the technical aspects of actuarial work and advice but rather are professional ethical matters.

This is, we believe, an inevitable consequence of a standard that is generic, very high level and not related to any particular types of actuarial work (in contrast to the specific TASs).

The proposed changes to the TAS 100 do not address this issue. Indeed, the proposed changes, we believe, exacerbate the issue further.

For example, the proposed addition of a risk identification principle, which we believe is not a specifically technical actuarial matter but rather a broader professional issue. There is nothing inherently actuarial in risk identification.

Similarly, the principles relating to communication and judgement remain in the TAS 100 and are, quite clearly, not technical actuarial matters. They are matters that are already adequately, and appropriately, covered in the IFoA's professional ethical requirements under the Actuaries' Code.

The proposals for the FRC to introduce guidance are not, in themselves, objectionable. The IFoA is supportive of a framework that has clear, concise standards supported by guidance. However, the FRC's role in relation to the TASs is to set technical standards, it is not the wider education of the actuarial profession or the production of technical guidance – which is appropriately the role of the IFoA. It follows that any FRC guidance should relate to the requirements in the FRC's standards only.

We therefore believe that the proposed guidance on professional judgement and risk identification are inappropriate and, in principle, outside of the FRC's role.

3. Geographic scope

We note that it is proposed that concerns around the geographic scope of the TASs will be dealt with in guidance.

That does not (and could not) address the concerns, which would require amendment of the definition and consistency across the various FRC remits. However, we hope that this issue will still be addressed within the legislation that sets out the remit of ARGA's role in relation to actuarial matters.

Conclusions

As ever, the IFoA remains keen to engage with the FRC on these issues and to explore possible solutions.

Given its importance, a copy of this letter has also been shared with the Chair of the FRC's Regulatory Standards and Codes Committee as well as the FRC's Chairman and its CEO.

We would also like the IFoA's concerns, provided in its capacity as the professional body responsible for enforcing the TAS 100, to be acknowledged in the FRC's published response to this consultation.

Yours sincerely

A handwritten signature in black ink, appearing to read "Neil Buckley", with a long, sweeping underline that extends to the right.

Neil Buckley
Chair, Regulatory Board
Institute and Faculty of Actuaries

FAO Vanessa Leung
Director of Actuarial Policy
Financial Reporting Council

07 May 2021

Via email to: APT@frc.org.uk

Dear Vanessa

POST IMPLEMENTATION REVIEW OF THE TASs – CALL FOR FEEDBACK

I write to set out the response of the Institute and Faculty of Actuaries' (IFOA) to the FRC's Call for Feedback in relation to their post implementation review of the TASs.

We are very grateful for the opportunity to provide feedback.

This response is provided by the IFoA in its capacity as a body with Royal Charter responsibilities for regulating the actuarial profession in the public interest and as the body currently responsible for enforcing the FRC's TASs. It therefore focuses on issues relating to that role.

We understand that the FRC has also obtained direct input and feedback from our Members in relation to their experiences of the TAS framework, through discussions with our Practice Boards and Working Parties.

We have also had the benefit of the publication of the UK Government's White Paper setting out proposals for future arrangements for UK actuarial regulation¹ and have been able to take those into account in preparing this response. In particular, we have had regard to the proposed 'principles to underpin an effective risk – and cost – based regime for overseeing and regulating the actuarial profession'² ('the Principles').

For ease of reference those are:

- Proportionality of resource relative to risk
- Cost effectiveness, to ensure resource is used efficiently and the cost of regulation is not overly burdensome
- Confidentiality, to ensure that commercial sensitivity of actuarial activity is respected
- Avoidance of duplication or 'gold plating' to ensure that regulation does not replicate other activities
- Oversight and regulation in the public interest, to ensure appropriate focus

The response focuses on questions 5 and 6 of the Call for Feedback document.

We are content that this response is published and it is not confidential.

¹ <https://www.gov.uk/government/consultations/restoring-trust-in-audit-and-corporate-governance-proposals-on-reforms>

² Set out at section 11.2.15 (p201) of the 'Restoring trust in audit and corporate governance' White Paper, March 2021

A The TAS Framework

1. The IFoA is supportive of there being a set of mandatory technical standards that apply to specific areas of actuarial work, where there are particular risks to consumers and the public interest that justify specific requirements of a technical nature. This complements the IFoA's own framework of core professional, ethical standards, which apply to all members, including in situations where they are not carrying out actuarial work.
2. Therefore the IFoA is supportive of the FRC's framework of specific technical standards (currently comprising TASs 200, 300 and 400), which identify particular types of actuarial work and set out specific requirements when carrying those out. The IFoA also continues to support the FRC's principles-based approach to its standards framework.
3. However, there are some concerns about the TAS 100 (first introduced in 2016) and whether its scope and requirements are disproportionate, lead to duplication of regulation and may, for reasons expanded upon below, have the unintended consequence of driving individuals outside the scope of the UK actuarial regulatory system.
4. The IFoA believes that a more focused, risk-based TAS framework, which identifies particular areas of high-risk work and sets out appropriate requirements in specific TASs only, would be appropriate and more in line with the Principles. More specifically, it believes that the TAS 100 is duplicative and unnecessary and ought therefore to be removed.

B Scope of the TAS 100: definition of Technical Actuarial Work

5. One of the principal aspects of the TAS 100 that has been identified as problematic is the broad and open nature of the definition of Technical Actuarial Work³.
6. The nature of the definition means that it is not always clear whether work falls within the scope of TAS 100 or not. So there is a degree of uncertainty about whether the requirements apply to the work that Members are doing. This has come up frequently with Members involved in wider fields work and those appointed to roles that are not directly actuarial, such as Non-Executive Directors.
7. The IFoA has attempted to help Members with understanding this definition through guidance⁴ and its professional support service, but there remains a great deal of uncertainty over the scope of this standard.
8. This poses some issues from a regulatory perspective, where those subject to standards need to be reasonably able to understand what is required of them and to know whether a standard applies to them or not. This is important as the public will also expect that those subject to standards are absolutely clear on what is required of them.
9. The definition also appears to capture work that is often carried out by both actuaries and non-actuaries (the definition specifically indicates that the work may not be carried out by actuaries). This means that there can be a disincentive for organisations to appoint actuaries to those roles other than where they are 'reserved'⁵ and/or that members may decide to resign their membership and therefore take themselves entirely outside the scope of the actuarial regulatory regime. We have already seen examples of this in particular fields and expect that this would become even more of an issue if the scope of the TAS framework was extended

³ The definition provides: "Technical actuarial work is work performed for a user: 1) where the use of principles and/or techniques of actuarial science is central to the work and which involves the exercise of judgement; or 2) which the user may reasonably regard as technical actuarial work by virtue of the manner of its presentation. Technical actuarial work is not limited to work undertaken by an actuary."

⁴ Including 'Guidance on the application of Technical Actuarial Standard 100', published January 2018 and specific sections in 'Acting as Non-Executive Directors: a guide for members', 2019.

⁵ A limited number of UK actuarial roles are 'reserved' in legislation or regulations to be carried out by IFoA Members or members of other actuarial bodies.

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further, as we understand is being considered, into new, non-traditional areas where actuaries have started to work. From a public interest perspective, this is particularly concerning, as members of the public are not likely to be aware of the qualifications or status of the actuary involved in work that ultimately affects them as consumer.

10. The FRC's remit is to set 'technical' standards for UK actuarial work, while the IFoA sets ethical (non-technical) standards. However there are questions around whether all of the TAS 100 requirements are technical, in terms of relating to technical aspects of actuarial advice, or whether they are more related to ethical, professional conduct matters. This results in overlap and duplication with the IFoA's ethical standards framework, for example there are 'communication' principles in both the TAS 100 and the Actuaries' Code. There are also aspects of the TAS 100, such as judgment, which does not appear to relate strictly to technical actuarial matters and is a matter of ethical/professional conduct.
11. This points, in our view to the TAS 100 being duplicative and unnecessary and would suggest that the TAS 100 should be dropped and that, instead, the FRC's technical standards focus on the specific standards applying to specific identified work and roles, with some modification to those specific TASs to incorporate some aspects of the TAS 100, if necessary. This change would, in our view, be very much in line with the Principles.

C International Perspective and geographic scope

12. Another area where the IFoA has concerns, is in relation to the geographic scope of the TAS framework.
13. Currently there is a definition of 'Geographic Scope' of the TASs set out in the Framework for FRC Actuarial Standards document⁶.
14. There are concerns that the definition is insufficiently clear to give appropriate certainty to members in more complex geographic work situations about whether or not they are subject to the TAS framework. This has been reflected in questions to the IFoA's regulatory inbox and to its Professional Support Service.
15. This has been compounded by the introduction of the broadly defined TAS 100 scope, as there is a potentially much broader scope of Members and work that need to consider the geographic scope of the TASs. The previous TAS framework, which focused on specific work, was more clearly aligned with UK regulated actuarial work and, therefore, much clearer in its geographic scope.
16. A further issue in relation to the geographic scope of the TAS framework is its inconsistency with the geographic remit of other aspects of the FRC's role in actuarial regulation, in particular the geographic scope of its actuarial discipline scheme. Currently the geographic scope set out in the Actuarial Scheme is entirely different to the geographic scope definition set out for the TAS Framework⁷. In practice this has meant, for example, that some IFoA members based outside the UK have fallen within the scope of the FRC's disciplinary scheme while they are unlikely to be required to comply with the TASs.
17. As a result of the differing definitions of geographic scope, there has been some confusion amongst members as to whether they are within scope of the TAS framework or not. This uncertainty has, in some cases, led to Members based outside the UK resigning their membership with the IFoA to ensure that they are not unknowingly caught within the TAS Framework.

⁶ The definition provides: "*The intended geographic scope of the TASs is limited to technical actuarial work done in relation to the UK operations of entities, as well as to any overseas operations which report into the UK, within the context of UK law or regulation. This definition of scope applies regardless of the location or domicile of the person carrying out the work.*"

⁷ There is no geographic scope definition provided of the FRC's oversight function

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18. There are also some specific drafting aspects of the definition of geographic scope that have caused uncertainty and which have been shared separately with the FRC.
19. The IFoA believes that the current approach to setting out the geographic scope is not working and that a clearer, single definition of the geographic scope of the FRC's UK actuarial regulatory functions (including its oversight and disciplinary roles as well as its technical standards setting) would be more effective and help to resolve these issues.

We hope that this is helpful feedback and would be happy to meet with the FRC to discuss any aspect of it further.

Yours sincerely



Neil Buckley
Chair of Regulation Board
Institute and Faculty of Actuaries