



Institute
and Faculty
of Actuaries

GENERAL INSURANCE CASE STUDY 2013

Case Study: advising on commutations

In 2011, you were a GI actuary employed at Hamlet Insurance Company. One part of your role involved advising the company on commutations. Last year the company went into run-off and you were made redundant.

You are now working as a consultant. You are approached by Ophelia Insurance Company who wish to employ you as a consultant on commutations (that is to advise them in relation to insurance or reinsurance contracts with persons or entities, where, for various reasons, either or both parties wish to reach a financial settlement to cancel all or part of the obligations that remain under the relevant contracts). Your first piece of advice concerns advising on a commutation with Hamlet Insurance Company – and as luck would have it, on a commutation on which you used to work.

Case Study: Discussion Points and Suggested Answers

1. Can you accept the job with Ophelia Insurance Company?

In relation to the generic commutations appointment (as opposed to work in relation to specific commutations) unless there are any obvious conflicts, there does not seem to be any reason why you cannot agree to assist Ophelia in relation to the commutations – after all, it is something you have experience of at your former employer. However, before accepting the generic appointment, given that when you were at Ophelia you had worked on a commutation with Hamlet, it would clearly be advisable to ask them if they had any specific commutations in mind. If they replied by making reference to Hamlet, then you would need to think further (see below) before accepting the appointment.

2. Can you accept the particular engagement advising on the commutation with Hamlet Insurance Company?

Possibly: However, it is highly likely that you would determine that you should advise Ophelia that you will need to seek the consent of Hamlet before proceeding. You should, however, proceed cautiously recognising the clear potential for conflict. This may lead you to conclude that it is inappropriate and 'safer' in the circumstances not to be included in the matter.

There is a possibility that if you left Hamlet two years ago that you might not have any relevant information any more. If this is the case, it would seem unlikely that Hamlet would not grant consent if you asked them – which you probably should do even if you did leave Hamlet some time ago.

If you worked for a large professional services firm and came across an engagement such as this, for which you submitted a conflict check to their central team (and disclosed your prior employment with Hamlet), then a common response would be to require you to seek consent from Hamlet. Hamlet may even be pleased that you have been asked to work on the commutation with Ophelia, as they might take comfort from the fact that you know their business and therefore will take appropriate business factors into account when advising Ophelia on the commutation. Client consent cannot, however, of itself obviate your personal responsibility to be satisfied that it is appropriate to act, having regard to Principle 3 of the Actuaries' Code.

In any case, the most likely first step would be to disclose to Ophelia that you worked for Hamlet and that you have previously worked on a commutation between Ophelia and Hamlet. It would then be up to Ophelia to decide if they still wanted you to act, but assuming they did, you would then need to ask Ophelia if they are content for you to seek Hamlet's consent to you acting for Ophelia before proceeding any further. It is important that you seek Ophelia's agreement on this before approaching Hamlet, since it is possible that Ophelia may not wish to disclose to Hamlet that they are seeking professional advice in relation to commutations. If this were the case, and Ophelia did not wish you to approach Hamlet to seek their consent, then you may well have to decline to act for Ophelia.

Ultimately, the path you take depends on the extent of your knowledge about Hamlet and the particular commutation engagements you worked upon, as well as your ability to obtain consent from Hamlet to assist Ophelia on the commutation with Hamlet, and your assessment of the appropriateness of acting in all the relevant circumstances.

- 3. If you do accept the job with Ophelia Insurance Company, would it make any difference if you had not worked on Hamlet Insurance Company's commutation but someone else employed by Hamlet Insurance Company had worked on that commutation?**

Even if you did not work on the matter, if you did hear relevant information about Hamlet's commutations e.g. in the work corridor etc, it's difficult for you to 'unknow what you know'. In this case you would therefore probably proceed in a similar way to that described in relation to Q2 above. Additionally, even absent knowledge of this sort, you should be wary of the possible 'perceived conflict' which might arise because of your previous association with Hamlet.

- 4. Could you alleviate any conflict by using peer review as an option?**

This is a red herring. Peer review cannot, of itself, cure the latent personal conflict of interest problem that you might have in acting on this particular engagement.

- 5. What structures might you suggest putting in place to do any work for Ophelia in relation to Hamlet Insurance Company in the future?**

In the absence of consent from Hamlet, it is difficult to see what structures could be put in place that would allow you to act. For example, Information Barriers will not work, as you cannot cut yourself in two, and have one half not pass on confidential information to the other! If you worked in a firm with other GI actuarial consultants, then you could perhaps exclude yourself from the engagement and pass the engagement onto other colleagues, and establish appropriate Information Barriers between yourself and the team. Even in this scenario, however, consent from Hamlet would be advisable. Perhaps with the passage of time you may be able to act as your knowledge becomes less and less current and relevant, but this is an assessment which requires to be made on an ongoing basis, according to all of the circumstances.