



Institute
and Faculty
of Actuaries

Conflicts of interest

A guide for employers of actuaries



Regulation Board

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Purpose and target audience

The purpose of this guide is to help employers of actuaries understand the obligations that actuaries have as regards identifying and addressing conflicts of interest, as it may be necessary for employers to take these into account when considering their own organisation's approach to conflicts of interest.

This guide is issued by the Regulation Board of the Institute and Faculty of Actuaries¹ (IFoA) for employers of members of the IFoA² wherever they practise. For simplicity, "actuary" is used in it to refer to all members.

It is a broad, high-level guide and employers are likely to find that how its general principles are best applied depends on the type of organisation, the practice area and the particular issues arising. It imposes no new obligations on employers or their actuaries. Instead it builds on the relevant provisions of the Actuaries' Code³ and relevant Actuarial Profession Standards⁴ and the IFoA's main aim in publishing it is to ensure that actuaries meet their obligations under the Code and related standards.

To that end, the guide sets out the IFoA's view of good practice in identifying and managing conflicts of interest. Following the guide may make it easier if the need arises to account to the IFoA, or to the Financial Reporting Council (FRC), under their relevant disciplinary schemes.⁵

The IFoA hopes that the guide will help employers when they and their actuaries need to assess whether a conflict of interest exists and, if so, how to handle it professionally and appropriately. It is designed to stimulate thought and to set out examples of good practice, 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 IFoA will not accept any legal liability in relation to its contents.

October 2013

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¹ www.actuaries.org.uk

² i.e. Fellows, Associates, Students, Affiliates and Honorary Fellows.

³ www.actuaries.org.uk/regulation/pages/actuaries-code

⁴ www.actuaries.org.uk/regulation/pages/professional-standards-directory

⁵ www.actuaries.org.uk/regulation/pages/disciplinary-schemes-and-regulations and www.frc.org.uk/our-work/conduct/professional-discipline/schemes.aspx

Introduction

Actuaries regularly face potential conflicts of interest. Their reputations, and those of their employers, depend on everyone concerned having confidence that any conflicts will be handled appropriately. It is therefore important for actuaries to work in an environment in which they can raise concerns about conflicts of interest promptly and have their employers' support in managing them.

To help actuaries and their employers with this issue, the IFoA has published a 'toolkit' of standards and guidance, including this guide and:

- a guide for actuaries;
- technical standards with which pensions and life actuaries must comply;
- a note to help pension scheme trustees who work with actuaries;
- real, anonymised conflicts of interest case studies and queries received by the IFoA;
- Powerpoint presentations relating to pensions, general insurance and life conflicts of interest;
- mock case studies and suggested answer and discussion points for actuaries on conflicts of interest; and
- video presentations on conflict of interest issues in general insurance, life and pensions actuarial practice.

This guide explains the professional duties of actuaries and describes conflicts that they may face. It suggests practical measures for employers to ensure conflicts are dealt with appropriately and professionally. It should help employers to establish policies on conflicts of interest if they have not already done so and to supplement and support existing ones.

The IFoA would encourage organisations periodically to review their management of conflicts of interest and to provide regular training for their actuaries.

The guide will also assist in preparing to meet the broader standards of the IFoA's proposed Quality Assurance Scheme⁶ for organisations and employers of actuaries. At the time of publication of this guide, the proposed Scheme is the subject of consultation.

⁶ APS QI: Organisations and Employers of Actuaries



The guide is divided into the following sections:

1. Specific obligations placed upon actuaries with regard to conflicts of interest
2. What are conflicts of interest?
3. What conflicts do actuaries face?
4. Why should organisations consider having a conflicts of interest policy in place?
5. What might an effective internal conflicts of interest policy contain?
6. How might an organisation manage/mitigate a potential or actual conflict that arises before/during/after an instruction?
7. How can organisations ensure that their conflicts of interest policy is effective?

8. How can personal conflicts be managed?
9. Where can employers and actuaries find additional guidance?

Appendix 1: Specific conflicts provisions of the Actuaries' Code

Appendix 2: Specific provisions under APS P1/APS L1

Appendix 3: Example topics to include in an internal conflicts of interest policy

1. Specific obligations placed upon actuaries with regard to conflicts of interest

The IFoA places specific obligations upon actuaries as regards conflicts of interest which employers will need to be aware of if they are to assist actuaries to meet these obligations.

The Actuaries' Code ("the Code") sets out principles and standards to which actuaries must adhere. In particular, under principle 1, an actuary is required to "*act honestly and with the highest standards of integrity,*" with paragraph 1.2 then requiring actuaries to "*respect confidentiality, unless disclosure is permitted by law and justified in the public interest.*" Paragraph 2.1 also reminds an actuary to "*consider who their advice and/or services are being provided to (their clients). In many cases this may be their employer.*"

However, the principal starting point in relation to conflicts of interest for actuaries is principle 3 of the Code, "Impartiality", which is introduced as an actuary must "*not allow bias, conflict of interest, or the undue influence of others to override [his/her] professional judgement.*" The detailed Code provisions on conflicts of interest can be found at Appendix 1 to this guide.

Additionally, under principle 4 of the Code, actuaries "*will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure that they are not placed in a position where they are unable to*

comply, and will challenge non-compliance by others."

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

As mentioned earlier, actuaries practising in certain areas must follow the practice-specific conflicts of interest provisions in the Actuarial Profession Standards, including the following, to which we draw organisations' attention:

- 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").

Specific requirements imposed by those standards on individual actuaries are dealt with in Appendix 2 to this guide.

KEY POINT: actuaries are under a professional duty to comply with the conflicts of interest provisions in the Actuaries' Code and related Actuarial Profession Standards.

2. What are conflicts of interest?

Conflicts of interest can arise in a wide variety of situations. They are often not clear-cut and might not be immediately obvious.

Conflicts of interest can be divided into a number of categories. A conflict of interest might arise where an actuary's, client's or organisation's interests are, or may be seen to be, in conflict with the interests of another relevant party; those interests may be personal, financial or commercial.

Conflicts of interest can sometimes be resolved, or reconciled. The IFoA wishes to assist organisations to help actuaries in recognising conflicts, and reconciling them if possible whilst being supportive, for example, if a conflict between clients cannot be reconciled and the actuary has to withdraw from acting for one or both clients, or if an actuary's duty to his/her client conflicts with the interests of the actuary's employer.

Having robust policies and procedures in place will help ensure that conflicts are dealt with clearly and properly.

KEY POINT: conflicts of interest can be complicated and hard to spot. The support of the actuary's employing organisation to help identify and manage them including appropriate training to support these mechanisms is therefore, important.

3. What conflicts do actuaries face?

Potential conflicts of interest can arise in a number of ways; the methods by which an organisation could seek to avoid or deal with conflicts will differ depending upon the type of conflict faced by an actuary. Conflicts can be categorised as follows:

- **Client vs client** – such a conflict may arise where the duty owed to one client may impact upon the duty to another. For example, confidential information gained from a former or existing client may benefit another client to whom the organisation owes a duty of disclosure. Alternatively, the organisation may be instructed by two parties in the same transaction whose interests are not aligned.
- **Client vs personal** – an actuary may find him/herself in such a conflict where, for example, a client's actions are opposed to his/her principles; alternatively, the actuary's advice could personally affect the actuary or his/her family, putting him/her in a position where his/her actions may be to the detriment of one interest or the other.
- **Client vs employer** – such a conflict may arise when advice may be sound but unpalatable to the client and risk jeopardising the relationship between

the client and the organisation in other areas; alternatively, the actuary's advice may bring in more fee income for the organisation but be of questionable value to the client.⁷

- **Professional vs client, employer or personal** – these could arise in a number of factual situations. Some examples might include an actuary:
 - facing a conflict between his/her professional judgement and the commercial pressures imposed by his/her organisation;
 - being pressured by colleagues or superiors within the organisation to act in a certain way;
 - giving advice as an insurance actuary where they or their family hold policies which would be affected by that advice;
 - needing to blow the whistle under section 4 of the Code which may result in the actuary losing his/her job; or
 - being involved in work outside his/her organisation which could conflict with his/her professional role.

⁷ See, for example, the recent case involving accountants in *Financial Reporting Council v Deloitte*



Such conflicts may mean that the actuary's objectivity is questioned. These types of conflict can pose problems for both organisations and actuaries, as they often arise from the nature of an actuary's working environment.

Actuaries and organisations may be more familiar with how to deal with the first of these categories, being client conflicts, for example, by declining to act for two clients involved in opposing sides of one transaction. It is, however, important that actuaries also act appropriately and in line with their professional obligations when they encounter other types of conflict.

KEY POINT: conflicts of interest can arise for one or more of client, organisational, personal, and professional reasons. Some of these situations may be more familiar and easier to deal with but all should be borne in mind.



4. Why should organisations consider having a conflicts of interest policy?

Failing to recognise a conflict of interest carries with it a number of risks, to the reputation of an organisation and to its ability to service the needs of its clients appropriately, but also to the individual actuary if he/she has failed to fulfil his/her professional responsibilities properly under the provisions of the Code. An actuary who fails to deal appropriately with a conflict may be disciplined by the IFoA.

KEY POINT: conflicts policies can help to mitigate the risks associated with conflicts of interest which can protect the organisation, its actuaries and its clients.

Among the ways in which organisations may wish to deal with potential conflicts are:

- preparing an internal conflicts of interest policy to assist its employees to identify and deal with potential or actual conflicts; and/or
- considering how best to communicate with clients in relation to conflicts and how they have been/will be reconciled.

5. What might an effective internal conflicts of interest policy contain?

A sound and comprehensive internal conflicts of interest policy, which provides a clear process for the identification and resolution of actual and potential conflicts, should assist actuaries in deciding how to identify and deal with conflicts. This may mitigate the risk of such a situation occurring, and could be of assistance for all organisations which may face conflict situations. This is particularly important, however, for organisations which wish to be considered under the Quality Assurance Scheme for organisations⁸ and for pensions actuaries under APS P1.⁹

Appendix 3 to this guide contains a comprehensive skeleton conflicts of interest policy setting out a number of points an organisation may wish to consider including in its own conflicts of interest policy; this can be adapted and embellished depending upon the needs of a particular organisation. Training employees in respect of the existence and content of the policy may be helpful, along with encouraging them to discuss any potential conflicts to ensure that they are dealt with appropriately. Some guidance on certain of the points contained within the skeleton conflicts of interest policy is detailed opposite.

Can the organisation act in a particular matter?

At the outset, prior to an instruction being accepted, the actuary will need to consider whether there is any real or perceived conflict of interest which would prevent the organisation acting in a particular matter.

In doing so, the actuary should weigh up duties of confidentiality to one client against possible duties of disclosure to another.

- In a small organisation, this could be by a simple conflict check; for example, an e-mail to all staff asking if acting for a new client might cause a conflict.
- In larger or multi-national organisations, more sophisticated checks may be required. It may be appropriate to use a live client engagement database, which is updated regularly to detail on-going client engagements.
- Where such a database is available, the conflict checking procedures could include a check as to whether or not each potential new engagement conflicts with any other on-going client engagements.

The presence of such a conflicts database or conflict check will support, but of course

does not obviate, the responsibility of the individual actuary. For example, an actuary may, in a previous employment, have carried out a piece of work for a client of his former organisation. If his/her new organisation is then instructed by a client whose interests are opposed to the client for whom he/she worked previously, this could cause a real or perceived conflict of interest, as he/she may be deemed to have pre-existing knowledge which would put him/her in a conflict situation. In this scenario, it is the duty of the individual actuary to raise this; such potential personal conflicts are unlikely to be identified through a search on the conflicts database. Organisations may wish to consider how to encourage employees to raise issues of this sort.

Additionally, actuaries and their employers must be aware that their conflicts of interest obligations do not simply end once the initial analysis has been completed, and that the obligation to manage and assess conflicts of interest continues during the course of carrying out the particular engagement.

To facilitate compliance with paragraph 3.4 of the Code (“...members will disclose in writing to their client any steps they have taken, or propose to take, to reconcile any actual conflict or potential reasonably foreseeable conflict of interest”). It is recommended that actual and potential conflicts of interest are logged and that the correspondence and decisions regarding the matter are recorded.

If no irreconcilable conflicts are identified, what next?

It is good practice to set out within the client engagement letters and in other relevant initial correspondence how conflicts will be dealt with, should they arise. It might be appropriate to put in place a specific Conflicts Management Plan at the outset of an engagement or instruction; this is required for certain pensions work under APS P1. In addition to an internal policy, for the purposes of transparency, organisations may wish to provide clients with information on whether their instruction raises any conflicts of interest and how those have been reconciled. In a consultancy firm, where the client is external, this can be addressed in the engagement letter dealing with the instruction; in other organisations where the client may not be external, the organisation should consider how best to deal with this issue. The important point, however, is that there is effective and clear communication from the outset.

KEY POINT: effective conflict management requires appropriate systems and procedures, their correct implementation in individual cases and the right attitude: organisations and their actuaries need to be aware of and appropriately manage conflicts through the life of the engagement.

⁸ The guidance currently under consultation to organisations prepared in conjunction with APS Q1 envisages that organisations and other employers of actuaries should “put in place and maintain, where appropriate, a Conflicts Management Plan (CMP) agreed with the client(s) with a view to setting out clearly and in advance the extent to which, and by what means, any potential conflict may be managed...”.

⁹ Pensions actuaries have specific obligations under sections 5 and 6 of APS P1; those obligations are set out in Appendix 2 to this guide.

6. How might an organisation manage/mitigate a potential or actual conflict that arises before/during/after an instruction?

Section 4 of the guide for actuaries on conflicts of interest sets out some guidance to actuaries which the IFoA hopes that organisations might be willing to adopt in order to manage or mitigate actual or potential conflicts of interest which arise during an instruction. We summarise some key features of that guidance below.

Separation of teams

When an organisation has an engagement with two clients whose interests may compete, it may be possible to reconcile a conflict by ensuring that the parties are advised by different client teams within the organisation; in some cases, the background work could still be undertaken by one team (this approach 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 conflicts 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.

Individual actuaries would, in any event, be required to ensure that they satisfy the requirements of principle 3 of the Code.

Information barriers

Information barriers, or “Chinese walls” as they are sometimes known, present one option to assist with managing the flow of sensitive information within an organisation. They are administrative, electronic and/or physical barriers put in place 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, however, been the subject of a significant amount of court debate in recent years. Where information barriers are

in place, organisations will need 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. It emphasises the need for conflicts-handling procedures to be more than just written documents and for organisations 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.¹⁰

Peer review

Where an actuary's work for one client might be seen as potentially creating a conflict with work for another of their clients or for their organisation, peer review, either internally or externally, 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 organisation.

Remuneration policies

Organisations could consider remuneration policies that steer clear of incentivising 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.

KEY POINT: practical suggestions as to managing/mitigating conflicts may include separating teams, introducing information barriers, engaging in peer review and having appropriate remuneration policies in place.

¹⁰ See, for example, *Bolkiah v KPMG* [1999] 2 WLR 215, in which 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. Organisations may need to consider whether to put procedures in place to ensure that there is no significant turnover in the relevant teams until the conclusion of the engagement.

In *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.

In *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.

In *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.



7. How can organisations ensure that their conflicts of interest policy is effective?

An effective policy is one in which potential conflicts are whenever possible identified before they arise. The IFoA believes that this is most likely to be achieved by having comprehensive conflicts procedures supported by regular training.

Conflicts committees

Organisations may wish to consider establishing a conflicts committee or appointing an individual to deal with any issues arising from actual or potential conflicts. If deemed appropriate, such a Committee or individual could be tasked with:

- overseeing conflicts of interest policies and handling plans;
- arranging appropriate training for actuaries and others;
- monitoring conflict situations;
- monitoring the effectiveness of procedures for managing clients' confidential information; and
- providing guidance where necessary to employees who consider that a conflict or perceived conflict may have arisen or may arise.

Reviewing policy and engagement letters regularly

Organisations may wish to review regularly their conflict of interest policy and, if appropriate, the engagement letters sent to clients. Case law, for example in relation to information barriers, along with legislation and IFoA guidance, continues to evolve, which may have an impact on the steps employers put in place to manage conflicts.

KEY POINT: effective conflict of interest management involves robust conflicts procedures reinforced and supported by regular training and review of those procedures.

8. How can personal conflicts be managed?

There are a number of situations in which an actuary may be faced with a personal conflict, which could ultimately impact upon the actuary's client, his/her employer and/or other persons who may reasonably be expected to benefit from or otherwise use the work e.g. regulators, policyholders or beneficiaries. Such conflicts include both those with the actuary's (or his/her family's) interests as an individual and those with the actuary's obligations as a professional. Organisations may wish to consider how they would assist an actuary to deal with such a personal conflict, should one arise, for example:

- **Consult colleagues** - in cases where an actuary identifies that there could be a perceived conflict of interest, for whatever reason, he/she could be encouraged to discuss this with a colleague to ascertain whether his/her planned approach is acceptable and would stand up to scrutiny. Such discussions should be documented to demonstrate that the potential conflict of interest issue has been considered and reconciled. If the conflict is not reconciled, the decision to eliminate the conflict, which will often mean declining an instruction or ceasing to act for a particular client, should be recorded.
- **Rotate responsibility** - in some cases it may be appropriate for an organisation to rotate responsibility across roles. This may reduce any perception of an actuary becoming "too close" to a client or other interested party and lacking objectivity in his/her advice.
- **Consult others/peer review** - the views of others, for example, a peer reviewer or the Professional Support Service of the IFoA¹¹, could be requested by an actuary when a potential conflict of interest arises. This will facilitate an exchange of views and may provide clarity on, firstly, whether a conflict exists, and, secondly, how it should be dealt with.
- **Interest registers** - an organisation could maintain a register of its employees' interests in relation to each of its clients. If an employee has a financial interest in a client, for example a shareholding, this could be recorded and kept under review.
- **Gifts/hospitality policy** - recent legislation, in particular the Bribery Act 2010, has highlighted the need to ensure transparency when employees receive gifts from clients. It is important that the receipt of gifts does not lead to a perceived or actual conflict of interest. Employers may wish to consider

¹¹ <http://www.actuaries.org.uk/regulation/pages/professional-support-service-0>

introducing a gifts/hospitality policy with procedures for employees to follow where gifts or hospitality are offered/accepted. The policy might set out:

- the restrictions imposed by, and obligations actuaries might have, under the Bribery Act 2010;
 - that the receipt of gifts/hospitality should be recorded;
 - that actuaries should consider the timing of the gift, and whether it could lead to the perception of a conflict of interest; and
 - that approval may need to be sought for the acceptance of higher value gifts.
- **Remuneration policies** - conflicts (real or perceived) can arise where an actuary's remuneration is linked to corporate performance. In order to avoid such conflicts, a clear remuneration policy could be put in place, under which employees are not incentivised in a way that might be seen to encourage them to provide anything other than the most suitable and appropriate advice for the client. It may also be appropriate to implement an internal review of the remuneration structure, and/or convene an independent remuneration committee if one does not already exist.

- **Supportive working environment** - nearly all of the above suggestions are features of such an environment, which would also extend to supporting actuaries in dealing with employment-related pressures (other than the remuneration policies mentioned above), for example, pressure from senior colleagues to present "better" results/valuations or pressure to keep their jobs by acting in particular ways. Measures to alleviate such pressures might include internal whistleblowing policies and guidance on unreasonable behaviours.

KEY POINT: managing and mitigating actuaries' personal or professional conflicts of interest is best achieved by having a supportive working environment where actuaries feel free to consult with others about this issue, where training on conflicts is available and where appropriate conflict management procedures and policies are easy to find, easy to understand and, are regularly reviewed.

9. Where can employers and actuaries find additional guidance?

This guide is intended as a useful starting point for an employer in considering the conflicts of interest obligations falling on actuaries. The following organisations and bodies offer additional guidance which may be of assistance.

Independent organisations:

Financial Conduct Authority (“FCA”)

<http://www.fca.org.uk/>

The FCA has set out rules and guidance on managing conflicts of interest in organisations providing services to clients in the course of carrying out, amongst other things, regulated activities. This can be found in the FCA Handbook. The Handbook also sets out some guidance on With Profits Actuaries’ remuneration. The Handbook can be found here:

<http://fshandbook.info/FS/html/FCA/SUP>

Prudential Regulation Authority (“PRA”)

Likewise, the PRA has set out certain guidance for actuaries on managing conflicts of interest at banks, insurers and designated investment firms. This is found in the PRA Handbook which is available here: www.bankofengland.co.uk/pr/policy/handbook.aspx

The Pensions Regulator (“tPR”)

customersupport@thepensionsregulator.gov.uk

www.thepensionsregulator.gov.uk

tPR has issued guidance to Trustees on conflicts of interest which organisations may find useful.

This guidance sets out best practices for Trustees and covers actuaries challenging non-compliant behaviour and considering whistleblowing to tPR if their concerns are not addressed. tPR has also issued guidance to Trustees on relations with their advisors, including Scheme Actuaries, which also might be of relevance to pensions actuaries.

Lloyd's

Lloyd's has issued guidance to actuaries on the Lloyd's Valuation of Liabilities Rules which provide guidance and clarification as regards preparing Statements of Actuarial Opinion on syndicate technical provisions for solvency.

www.lloyds.com/the-market/operating-at-lloyds/resources/lloyds_valuation_of_liabilities

The IFoA

In addition to the Code and the Actuarial Profession Standards APS P1 and APS L1, the IFoA has prepared a toolkit which can be found on the IFoA's website in the Conflicts of interest section, including:

- a note for pension scheme trustees on the conflicts of interest a Scheme Actuary may face (prepared with input from tPR);
- a guide for actuaries on conflicts of interest;
- Powerpoint presentations relating to pensions, general insurance and life conflicts of interest;
- mock case studies and suggested answer and discussion points for actuaries on conflicts of interest;
- real life anonymised questions and answers on conflicts issues;
- video presentations on conflict of interest issues in general insurance, life and pensions actuarial practice.

The guidance can be found here:

www.actuaries.org.uk/regulation/pages/conflicts_of_interest

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

Institute and Faculty of Actuaries

Level 2, Exchange Crescent, 7 Conference Square, Edinburgh EH3 8RA

or

conflicts@actuaries.org.uk

Appendix 1

Specific conflicts provision of the Actuaries' Code

Actuaries' Code principle 3: "Impartiality"

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.*

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

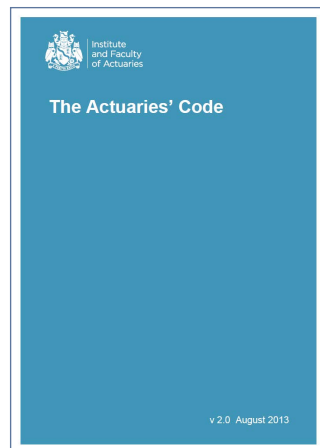
- a) the member's own interests; or*
- b) an interest of the member's firm; or*
- c) the interests of other clients.*

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

3.4 *Unless they decide not to act, members will disclose in writing to their client any steps they have taken, or propose to take, to reconcile any actual conflict or potential reasonably foreseeable conflict of interest.*

3.5 *Members will not act where there is a conflict of interest that has not been reconciled.*

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.*



The Code can be found at:
www.actuaries.org.uk/research-and-resources/documents/actuaries-code-v-20

Appendix 2

Specific provisions under APS P1/APS L1

Specific provisions under APS P1

Actuarial Profession Standard P1 (APS P1): Duties and Responsibilities of Members Undertaking Work in Relation to Pension Schemes sets out certain responsibilities incumbent upon actuaries working for the Trustees or other governing body of a pension scheme, or for decision-making bodies in relation to public sector or public service pension schemes. If your organisation undertakes work in such an area, it is important that you are aware of an actuary's responsibilities under this APS.

Section 5 of APS P1 sets out requirements for Scheme Actuaries working in this field in relation to conflicts of interest. In summary, paragraph 5.2 sets out a broad (but principles-based) duty of disclosure to the Trustees of a pension scheme, to ensure transparency when the Scheme Actuary or any colleague (of whom he/she is aware) is also undertaking any work at all for the sponsoring employer to the scheme. Paragraph 5.3 provides specifically that, ordinarily, there would be an irreconcilable conflict if a Scheme Actuary were also to provide advice to the sponsoring employer of a pension scheme if that advice either relates to the funding of the scheme or directly impacts upon benefits that are payable under the scheme. However, paragraphs 5.4 and 5.5 allow for the possibility that, in

exceptional circumstances, this presumption of an irreconcilable conflict may be able to be rebutted. Paragraph 5.4 sets out the type of circumstances the Scheme Actuary should have in mind when considering whether the presumption is capable of being rebutted and paragraph 5.5 requires the Scheme Actuary to record any decision to do so.

Paragraph 5.6 then contains a more prescriptive requirement as to the documentation which should be provided to the Trustees and Employer where the Scheme Actuary's organisation provides "Client Advice" (as defined) to both parties in relation to the pension scheme. It states as follows:

5.6 Where the work to which paragraph 5.2 refers constitutes Client Advice in relation to the Relevant Scheme in question, the Scheme Actuary to that Scheme must additionally ensure:

5.6.1 The agreement of a plan, in writing, with the Trustees and Employer for whom the work is undertaken, to be reviewed at appropriate intervals, describing all known conflicts of interest and setting out how they are to be addressed. The plan must set out any limitation on the extent of any Client Advice which may be provided to the Employer and on who may provide that advice.

Paragraphs 5.6.2 – 5.6.5 then set out certain requirements as to the content, nature and communication of the plan described in paragraph 5.6.1.

APS P1, at paragraphs 6.4 – 6.7 also places obligations upon actuaries who, although not acting as the appointed Scheme Actuary, are directly responsible for the provision or review of client advice to the Trustees of a pension scheme. In broad terms, these extend to such actuaries the requirements of section 5 of APS P1, although there are some differences in the precise application.

Paragraph 6.8 of APS P1 similarly makes provision in relation to pension schemes (such as overseas, unregistered or local government schemes) that do not require a Scheme Actuary, but for which an actuary is directly responsible for the provision or review of client advice to the Trustees or managers of that scheme. In such a situation, an actuary must consider the principles set out in sections 5 and 6 of APS P1 when determining how best to proceed, and apply them where appropriate.

Specific provisions under APS L1

Actuarial Profession Standard L1 (APS L1): Duties and Responsibilities of Life Assurance Actuaries sets out the requirements for actuaries carrying out the statutory roles of Actuarial Function Holder, With-Profits Actuary, Reviewing Actuary and Appointed Actuary for firms transacting long term insurance business, and the relationships between them and the members who support those role holders.

APS L1, at section 7, sets out how actuaries should deal with potential conflicts of interest, in line with the Supervision Manual published by the FCA and the Code. If your organisation employs actuaries working in this area, they should be aware of those specific provisions and ensure compliance with them.

Appendix 3

Examples of topics to include in internal conflicts of interest policy

The purpose of this skeleton internal conflicts of interest policy is to provide guidance for organisations upon principles which could be contained within their own internal conflicts of interest policy. This policy is designed to assist organisations to set up procedures in order to identify, prevent and/or mitigate conflicts of interest. Employers may also wish to consider taking external legal advice on conflicts-related matters.

Given that this is designed to be useful for employers of actuaries in all practice areas, it is, of necessity, a high level guide. Employers will want to tailor their own policy to suit the particular needs of their own organisation.

1. How to identify conflicts of interest.

The organisation's process should allow actuaries to identify easily any potential or actual conflicts of interest, both at the start of an instruction and during the course of carrying out the work. Possible procedures could include:

- Conflict check
- Conflicts register
- Conflicts committee
- Gifts/hospitality register.

2. When to proceed or refuse an instruction or to withdraw from an instruction.

Although actuaries will be aware of the nature of conflicts and their duties under the Code, each organisation may have specific criteria in place which will determine whether an instruction should be accepted or declined, or indeed withdrawn from. It would be helpful if such criteria were detailed in the conflicts of interest policy.

3. How to disclose potential conflicts of interest when proceeding with an instruction.

The organisation's procedure on the disclosure of conflicts of interests to clients should be explained within the conflicts of interest policy. Actual conflicts should always be disclosed to clients; the extent to which it is appropriate to disclose potential conflicts should be considered on a case by case basis. Potential guidance to include in the policy in this area includes the following:

- how to ensure clients understand any conflict or potential conflict; and
- how to obtain consent from clients to continue to act when a reconcilable conflict has been identified.



4. Confidentiality and conflicts of interest

The existence of confidentiality agreements should form part of the policy – where confidentiality agreements are in place, employees will need to consider whether it is appropriate to notify the client of an actual or potential conflict of interest as soon as it arises. The policy could provide guidance on how to reconcile the opposing interests of clients where a confidentiality agreement is in existence.

The policy could include:

- guidance on how to deal with clients' confidential information when dealing with potential conflicts of interest;
- guidance which makes it clear that the duty of confidentiality continues despite the termination of any engagement; and
- how to deal with a conflict between an employee's duty of confidentiality to his/her client and duty of disclosure to another client, including when to withdraw from acting where confidentiality to a client cannot be assured.

5. Procedures and processes to deal with conflicts of interest

Organisations may wish to consider giving guidance on how conflicts of interest could be managed. In the event that the conflict is irreconcilable, the policy could also provide assistance upon how to communicate that effectively to the potential client. Suggested ways of dealing with a conflict of interest are as follows:

- Client engagement letters – it is good practice to highlight in a client engagement letter any actual or potential conflicts of interest that may exist at the start of a client relationship and to outline the process to be followed in the event that a potential or actual conflict of interest might arise;
- Conflicts Management Plans where appropriate;
- separation of teams;
- information barriers; and
- ceasing to act.



6. Monitoring on-going potential conflicts of interest

The policy could set out steps organisations could put in place to monitor on-going potential conflict of interest issues. Suggested methods of conflict management include:

- establishing conflicts committees;
- provide regular training on conflicts; and
- logging actual and potential conflicts of interest matters and recording correspondence and decisions.

7. Who to turn to for advice

Advice can be sought from a number of sources, depending upon the nature of the work undertaken and the potential conflict. The source of advice could be internal to the organisation, or external.

- **Internal advice:** In the first instance, actuaries could be encouraged to seek advice on conflicts of interest from:
 - senior colleagues;
 - the organisation’s conflicts committee;
 - the organisation’s professional ethics committee.
- **External advice:** If further advice is required, depending upon the nature of the query, advice could be obtained from:
 - the Professional Support Service of the IFoA;
 - the Financial Conduct Authority
 - the Pensions Regulator.



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