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Conflicts of Interest Project
The Actuarial Profession
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Dear Sirs

Conflicts of Interest: New Policy Proposals

The Association of Consulting Actuaries (ACA) welcomes the opportunity to respond to the Exposure Draft issued by the Working Party in October 2011.

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and all actuarial advice given is subject to the Actuaries' Code. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of private sector defined benefit pension schemes.

The ACA is the representative body for UK consulting actuaries, whilst the Institute and Faculty of Actuaries is the professional body.

Before turning to the specific questions we would like to congratulate the Working Party in providing this document and seeking not only the views of actuaries but also users. Whilst the document in our opinion gets the balance right between principle and prescription and also as regards those elements of work which a Scheme Actuary should be banned from undertaking particularly in regard to advices to the sponsor, we do question the need for such prescription. Many of our members have stated quite forcibly that the Actuaries' Code fully addresses conflicts and that further prescription is unnecessary and could by its very prescription imply that aspects which are not specifically addressed do not have the potential for conflict. Nevertheless the ACA are fully aware that many interested parties outside the profession are keen for codification of many aspects including conflicts.

Because the ACA represents a big broad church of firms from small consulting practices to large multinational employee benefit firms there is a wide range of opinions. For example at one extreme there is a belief that no prescription was necessary and Scheme Actuaries should be free to advise both trustees and employees. They would argue for deletion of 5.1 from APS P1 and sole reliance on 5.2. At the other extreme a few would call for a complete ban on dual appointments and a complete separation of advice and support teams.

Finally one aspect which is not covered in the APS P1 is any mention of the member's requirement to act in the Public Interest under the Royal Charter. It may be felt that this is covered under the Code of Conduct but one can see areas, such as inducement exercises, in the pensions context, which arguably do not act in the public interest.

Turning to the questions posed we provide our responses in the attached appendix. In formulating these, we have taken into account the discussions at the ACA Sessional meeting in London as well as the regional meetings in Birmingham, Manchester and Edinburgh.

As always we are more than happy to answer any questions you have on our submission and/or to undertake further work on this subject.

Yours faithfully

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Appendix

ACA response to Consultation Paper, Conflicts of Interest: new policy proposals

1. *Do you consider that the proposed restriction, as set out in paragraph 5.1, is appropriate and proportionate?*

   Whilst we do on balance support the wording in paragraph 5.1 there are some of our members who believe 5.1 should be deleted in its entirety and reliance on 5.2 to be sufficient. Equally there were some of our members who suggested that 5.1 be restricted to funding matters. For example, where employers have freedom to amend future service benefits, it is not clear why there would be a conflict in the scheme actuary advising the employer on future benefit design.

2. *What practical implications of this restriction do you anticipate?*

   The practical implications fall into 2 parts. First there is the impact on clients who are accustomed to working with one adviser, the Scheme Actuary, be it in relation to trustee or sponsor matters. They believe that the detailed knowledge of the Scheme Actuary can only enhance the advices provided to the sponsor. They do not perceive there to be a conflict and where such arises are more than happy to address these under a protocol at the time. It has to be said that 'not untypically' the client is himself or herself conflicted being Chair of Trustees and Finance Director.

   Second there is the impact on firms which have not had to seek separate appointments and may indeed be working on tripartite appointments. These firms will need time to realign their business model and seek fresh agreements / appointments. This impact is likely to weigh more heavily on the smallest firms, who do not have the resources to offer a second actuary to advise the employer. While such firms may co-operate with each other in this context, we consider that many clients, faced with having to appoint another firm to provide the employer advice, may take the opportunity to look more widely for that advice. Indeed one consequence might be that schemes become more likely to appoint Scheme Actuaries from firms that have the resources to advise both trustees and employer.

3. *Are these implications likely to be more onerous in relation to certain types of firm, for example, small firms?*

   Our impression is that as for the second point under 2, namely the practical implications on firms, these are most likely to impact smaller firms, for the reasons stated above. As far as clients preferring to continue to work under a 5.2 framework (extended to include all aspects of work) these are not particularly aligned with size of firm, save that larger firms are more likely to have sought separation of appointments than smaller firms.

4. *Do you have any particular views on the specific circumstances mentioned in paragraphs 2.2.5 to 2.2.8 above?*

   No. However we do recognise that Trust Deeds do occasionally direct the actuary (Scheme Actuary) to provide advices to the employer. We suggest that where these arise a practical solution be proposed by the actuary and "signed off" by the trustees with legal advice where necessary.

5. *Are the specific protections set out in paragraph 5.2 appropriate and proportionate?*

   Yes we believe they are appropriate and indeed would suggest that these are probably sufficient were 5.1 to be deleted.

6. *Are there other specific requirements which you would like to be included?*

   5.2 does address the position in relation to trustees, employers and the Scheme Actuary. However it has wider application generally and were it to be worded in relation to "actuary" and "parties 1, 2 etc" then it would provide a mechanism for addressing conflicts more widely. We recognise however that this would then be better incorporated directly into the Code rather than APS P1.

7. *Do you agree with the proposal to allow members to adopt an alternative approach, provided that it offers equivalent protection and thereby achieves the intended outcome?*

   Yes we support this, although would expect its use to be infrequent.

8. *Does paragraph 5.3, read in conjunction with the Actuaries' Code, offer sufficient and proportionate protection in relation to "firm" conflicts, i.e. conflicts arising because of work undertaken by a member's colleagues?*

   This is potentially not straightforward. Equally it does reinforce the need for effective information barriers to be put in place. As an example if a Scheme Actuary were inspecting client profitability and stumbled across time entries by other members of the firm of which he had not investigated, does he have the obligation to seek out what it was in respect of and advise the trustees, merely advise the trustees that someone in his firm is doing work for the employer but he does not know what it is in respect of, or what? There needs to be a practical as well as a robust approach to this. Finally why is there no corresponding obligation on an actuary appointed by the employer who becomes aware that the Scheme Actuary is undertaking work of which the employer is unaware?

9. *As currently worded, the specific protections set out in paragraphs 5.1 and 5.2 would not apply to "firm conflicts". Do you agree with this approach?*

   Many of us agree, although we recognise this is an approach taken in some legal and auditing firms. However, the smaller firms are put at a disadvantage by an environment that allows firm conflicts but not individual conflicts, as explained in our answer to question 2.

10. *What practical implications do you envisage as a result of the proposed changes?*

    The practical implications arise where the Scheme Actuary has been accustomed to advising both parties under a 5.2 arrangement. This will require to be readdressed to comply with 5.1. This would equally extend to other members who have been giving significant advices. These matters will need to be discussed with trustees and employers and in many instances fresh agreements and appointments sought. This and the subsequent disruption to the firm will take time to resolve.

11. *Is the proposed transitional period reasonable?*

    We believe 6 months is reasonable, given that effectively firms will have had 12 months from the publication of the consultation document. However, some projects do involve long timescales, so there may be an argument for allowing completion of work that was already in train when the consultation document was published.

12. *Do you agree in principle that the conflicts provisions should apply to members who are not themselves acting as Scheme Actuary but who are undertaking significant advice work for the same scheme trustees?*

    Yes, provided this is in relation to significant advice only. If it extends to work in general then this would conflict with the Y model used by many firms to support scheme actuaries and employer actuaries. Were there to be complete separation of support teams we believe costs would rise without apparent benefit to the client(s).

    We would also appreciate further clarification on the position of actuaries who are acting as investment actuaries (but not as scheme actuary). These advices may include information about the funding consequences of certain changes to the investment strategy.

13. *Do you agree that the approach adopted by paragraph 6.4.1 appears proportionate in this respect?*

    Yes.

14. *Do you agree in principle that the conflicts provisions should apply to members who are not acting as Scheme Actuary but who are undertaking a role equivalent in relevant respects to that of Scheme Actuary in relation to different types of pension scheme including some non-UK schemes?*

    Yes, we believe that there should be consistent treatment of all schemes and different treatment arising from a different legal structure is not justified. Nevertheless we need to be careful that such a ban on dual appointments for non-UK schemes does not have the effect of their removal to an overseas body with less principled requirements and loss of revenue to members of the profession.

15. *Does the draft provision correctly identify the relevant criteria in this respect, as set out at paragraphs 6.4.2.1 to 6.4.2.4?*

    Yes.

16. *Do you think that these criteria potentially include pension schemes which ought to be excluded? If so, please explain.*

    No.

17. *Do you think that these criteria potentially exclude pension schemes which ought to be included? If so, please explain*

    No.

18. *Do you agree in principle that APS P1 should apply to all members, including students?*

Yes, provided that we correctly separate "advices" and "calculations". We do not support the application to all members for all work including students and calculations.

19. *The Working Party proposes to refer some specific drafting points (as detailed at paragraphs 2.3.2.1 and 2.3.2.2 above) for further consideration in the context of the forthcoming Code review.*

    19.1 Do you have any comment on these points?
    19.2 Do you have any other comments or suggestions in relation to principle 3 of the Actuaries Code?

We are not entirely content with the existing words and in particular what is to be gained by not agreeing these steps. We therefore suggest “Members will document the steps they have taken to reconcile a conflict and will confirm to the client the steps they have taken and the reasons for so doing.”

20. *Peer review is mentioned in the guide as one important tool with which to mitigate the possibility of a conflict arising. Is further guidance on the role of peer review desirable in this context?*

We do not believe further guidance is necessary as all actuaries ought to be thinking about conflicts in undertaking peer reviews.

21. *A number of practical examples are suggested. Would further examples be useful and, if so, in what area(s)?*

We are happy with the balance between text and examples. We would however suggest this be amplified by further examples to be included in future professionalism courses.

22. *Do you have any other comments on the guide for actuaries?*

No, we believe the guide will provide useful guidance to actuaries.

23. *Do you have any comments on the guide for trustees?*

The only aspect here is that it needs to be perfectly clear that this document provides information as how actuaries address conflicts. It is not a guide as to how trustees should manage their conflicts, the guidance is however useful.

24. *What further resource material and/or training would you find helpful in relation to conflicts of interest?*

We note that the Profession is always requested to provide additional guidance and we are not always clear whether this is to give additional support or if it means some members are just lazy and not prepared to do the necessary reading and research.

There is a practical point which applies to matters wider than just conflicts and which needs to be clarified. Where the profession runs seminars or provides training that covers a subject such as conflicts then the material produced for those seminars or training cannot be regarded as part of the guidance / prescription. Such can only come to form part following appropriate communication to all actuaries and after proper consultation.

25. Do you have any comments on the practical impact of the proposals?

We believe the proposals can only assist actuaries in managing conflicts which is to the good. It will also assist trustees and employers to understand the issues and perhaps deal with some of their own conflicts.

26. Will those implications be different for specific types of firm, for example, small firms?

No, although the impact will we judge be greater on smaller firms who are less able to immediately separate trustee and employer appointments, particularly where they have to relinquish the latter.

27. Do you have any other comments on the overall package of measures proposed by the Working Party?

No, although as said above to congratulate the Working party on producing the document.

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