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Conflicts of Interest Consultation Package Presentation to the ACA:
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Conflicts of Interest

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Outline of presentation

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- Introduction
- Background and approach
- APS P1
- Guides for actuaries and trustees
- Actuaries' Code and additional professional guidance
- Questions

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Background and approach to current consultation

Background and approach

- Long standing issue
- Morris Review
- Extensive feedback through discussion paper and pre-consultation meetings with interested stakeholders
- Working Party has sought to provide a proportionate and targeted approach to the issue and perceived risks

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Elements of the package

Elements

- The Actuaries' Code – overarching requirements
- Supplemented by APS L1 and APS P1
- Guidance – for actuaries and for pension scheme trustees
- Additional professional support

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APS P1

Paragraph 5.1

*"A **Scheme Actuary** to a **Relevant Scheme** must not advise the **Employer** to that scheme in relation to the funding of that scheme or in relation to any matter which has a direct bearing on the benefits payable under that scheme, including, but not limited to, advice on actuarial factors."*

- Targeted and proportionate response to the problem that a Scheme Actuary cannot serve both the trustees and the sponsoring employer
- Outright ban not justified

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APS P1

Paragraph 5.2

*"5.2. Before and while undertaking work (other than work specifically prohibited by paragraph 5.1. above) for an **Employer** to a **Relevant Scheme**, the **Scheme Actuary** to that scheme must follow either the approach set out in 5.2.1 to 5.2.4 below or an alternative approach which could reasonably be expected to provide equivalent protection to the interests of the **Trustees**:*

*5.2.1 the **Scheme Actuary**, **Trustees** and **Employer** produce and maintain a written agreed plan setting out how conflicts of interest are reconciled, how it is intended they will continue to be reconciled and what will happen if they cannot continue to be reconciled;*

*5.2.2 the plan allows the **Trustees** the option to continue with the **Scheme Actuary** appointment if the **Scheme Actuary** becomes unable to act for both parties;*

*5.2.3 so far as necessary to safeguard the interests of the **Trustees**, the plan provides for the waiver of any duty of confidentiality which would otherwise be owed to the **Employer**; and*

*5.2.4 the **Scheme Actuary** reviews regularly, having regard to principle 3 of the Actuaries' Code and to this section 5, whether or not he/she is able to continue acting for both parties. In so doing the **Scheme Actuary** must consider all of the relevant circumstances, including whether advice proffered to the **Employer** may have an indirect impact on funding or benefits or whether it might otherwise give rise to a reasonable perception that the **Scheme Actuary's** ability to provide objective advice to the **Trustees** is compromised."*

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APS P1

Paragraph 5.2

- To provide further detail for Scheme Actuaries regarding the steps to take to reconcile a conflict (Code paragraph 3.5)
- To ensure that there is no detriment (or a reasonable perception of a detriment) to the trustees arising from the Scheme Actuary being engaged to work for the employer

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APS P1

Paragraph 5.3

*"A **Scheme Actuary** to a **Relevant Scheme** who is aware that another person in his/ her **Firm** is undertaking work for the **Employer** to that scheme must ensure that the **Trustees** are aware of any conflicts of interest which as a result arise or might potentially arise."*

- Scheme Actuaries to advise the trustees of any conflict which might arise as a result of another person in his/her firm doing work for the employer
- So long as the Scheme Actuary is aware of such other work

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APS P1

Paragraph 5.4

"To the extent necessary to comply with paragraphs 5.1 to 5.3 above, any changes to engagement letters or similar contractual documentation must be implemented by the date six months following the coming into effect of this version of this ***APS.****"*

- Recognises the proposed changes will have time and resource implications

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APS P1

Paragraph 6.4.1

*"6.4 Section 5 also applies, as it does to a **Scheme Actuary**;-*

*6.4.1. to any other **Member** who provides, or is materially involved in providing, the **Trustees** of a **Relevant Scheme** with any significant advice in relation to the funding of that scheme, or in relation to any matter which has a direct bearing on the benefits payable under that scheme, to the extent that they also provide significant advice to the **Employer** of that scheme;"*

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APS P1

Paragraph 6.4.1

- No reason why principles of Section 5 should not also apply to members undertaking significant advice work for the same scheme trustees but who are not in the Scheme Actuary role
- Limited to the provision of “significant” advice

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APS P1

Paragraph 6.4.2

*"6.4 Section 5 also applies, as it does to a **Scheme Actuary**;-*

*6.4.2. to any other Member acting for the **Trustees** of a pension scheme, other than a **Relevant Scheme**, where;-*

*6.4.2.1. the **Trustees** exercise a fiduciary responsibility in relation to the delivery of benefits under that scheme;*

*6.4.2.2. the **Trustees** have powers and/or rights over funding and/or the size of benefits;*

*6.4.2.3. there is an **Employer** in relation to that scheme; and*

*6.4.2.4. the behaviour of the **Employer** could affect the security or size of benefits under the scheme."*

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APS P1

Paragraph 6.4.2

- No reason why Section 5 should not also apply to pension schemes other than those which are required to appoint a Scheme Actuary
- Extends section 5 to members advising in the context of any other type of scheme which satisfies 4 criteria
- Could apply to non-UK schemes

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APS P1

APS P1 – General

- Does not seem any reason to limit the application of APS P1 only to qualified actuaries
- Proposed that APS P1 should be applicable to all members, including students

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Guide for actuaries and guide for pension scheme trustees

Questions

- 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?
- A number of practical examples are suggested. Would further examples be useful and, if so, in what area(s)?
- Do you have any other comments on the guide for actuaries?
- Do you have any comments on the guide for trustees?

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Actuaries' Code

Considerations

- No current proposed amendments to the Actuaries' Code
- 2 specific issues identified by the Working Party to be considered further during a Code review in 2012:
  - the effect of the words, "if they would be ineffective without agreement" in paragraph 3.5 of the Code; and
  - whether some key terms used in the Code – including "reconciling" in relation to a conflict and various references to "client" – should be further clarified i.e. in guidance or via amendment to the Code itself.

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Additional professional guidance

Considerations

- Strong demand from members for additional CPD and training provision on conflicts

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Comments

- Over to you!



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