



Institute
and Faculty
of Actuaries

Conflicts of interest

Additional UK resources for Members

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1. Introduction

- 1.1. The information in this document is intended to be a useful tool for Members of the Institute and Faculty of Actuaries ('the IFoA') working in the United Kingdom (UK) or for those working outside of the UK but under or with reference to UK laws.
- 1.2. It is supplemental to and should be read in conjunction with our non-mandatory guidance "Conflicts of interest: A Guide for Members".¹
- 1.3. This document is non-mandatory; it imposes no new obligations upon Members. Rather, we hope that this will be a useful support tool for our Members. This document does not constitute legal advice. 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 content.

2. Relevant UK law and duties relating to conflicts of interest

2.1 Duty to disclose relevant information to your client

- 2.1.1 In the context of conflicts of interest, important legal issues may arise in relation to professional duties around confidentiality and disclosure that you owe to your client or a user of your work.
- 2.1.2 The general position is that you have a duty to disclose all information relevant to the matter in which you are engaged with your client, because you have a duty to act in the best interests of your client.
- 2.1.3 However, there may be circumstances in which disclosure to your client is prohibited by law. For example, the Proceeds of Crime Act 2002 prevents you tipping off your client about an investigation of suspected money laundering.

2.2 Managing client conflicts - Information barriers

- 2.2.1 Information barriers are the physical or electronic separation of individuals or groups of individuals within the same company that prevents confidential information passing between them. They have been subject to much

scrutiny by the courts and case law can be helpful in highlighting factors for or against the effectiveness of these.

- 2.2.2 The case law emphasises the need for conflicts management procedures to be more than just documents and for firms to ensure that they work in practice.

- 2.2.3 See, for example, *Young v Robson Rhodes*²: 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.

- 2.2.4 *Marks & Spencer plc v Freshfields*³: The Court noted the importance of perception - an information barrier must be seen to work. It was held that the barrier in the case 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.

2.3 Managing professional conflicts

- 2.3.1 A conflict can arise in a number of situations, not only by reason of personal financial interest. It may involve other relationships or interests.

- 2.3.2 It may be helpful for you to consider the test for bias as set out by Lord Hope in *Porter v Magill* [2002] 2 AC 357, which states that:

"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the [Tribunal] was biased".

- 2.3.3 Gifts and hospitality: Employees should not knowingly receive gifts or hospitality which could lead to an actual or potential conflict of interest. Members should consider the Bribery Act 2010, which imposes a number of obligations and restrictions.

¹ *Conflicts of interest: A Guide for Members*

² *Young v Robson Rhodes*, [1999] 3 All ER 524

³ *Marks & Spencer plc v Freshfields* [2004] 3 All ER 773

2.4 Further sources of guidance and advice

2.4.1 The following organisations offer additional guidance which you may find of assistance.

Financial Conduct Authority (FCA)

+44(0)300 500 8082

www.fca.org.uk

The FCA has set out rules and guidance on managing conflicts of interest, which can be found in the FCA Handbook.⁴

The Pensions Regulator

+44(0)345 600 0707

customersupport@tpr.gov.uk

www.thepensionsregulator.gov.uk

The Pensions Regulator (tPR) has issued guidance to trustees on conflicts of interest, which you may find useful⁵. This guidance sets out the standards trustees are required to meet and the requirement for actuaries to challenge non-compliant behaviour and consider

whistleblowing to tPR if their concerns are not addressed.

tPR has also issued guidance to trustees on relations with their advisors⁶, including Scheme Actuaries, which also might be of relevance to pensions actuaries.

IFoA

We offer a confidential Professional Support Service, to assist our Members with professional ethical matters, including speaking up. The service is free to all Members.⁷

⁴ FCA Handbook

⁵www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/conflicts-of-interest

⁶ www.thepensionsregulator.gov.uk/en/document-library/regulatory-guidance/relations-with-advisers

⁷ [IFoA Professional Support Service](#)



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