

Professional Oversight Board

Aldwych House, 71-91 Aldwych, London WC2B 4HN

Telephone: 020 7492 2341 Fax: 020 7492 2359

www.frc.org.uk/pob

Andrew Chamberlain FIA
Chairman of the Professional Affairs Board
The Actuarial Profession
Staple Inn Hall
High Holborn
London WC1V 7QJ

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Dear Mr Chamberlain

Actuaries' Code

Thank you for sending us a copy of the Profession's exposure drafts for a new Actuaries' Code and supporting standards, which have been considered by the Professional Oversight Board.

Our role is to oversee the way in which the Profession exercises regulation of its members acting in their professional capacity. Through our recommendations, we aim to promote the competence, integrity and transparency of the actuarial profession as well as high quality actuarial practice - to the benefit of those who rely on actuarial advice or who are affected by it. The Profession is committed to either implementing our recommendations or giving reasons in writing for not doing so, on the basis that those reasons will be published.

The Profession's fundamental review of its ethical standards and its proposal to adopt a principles-based approach applicable to all sectors are clearly a very important development, which we welcomed in our report in December 2006. We urged the Profession to undertake this review as a matter of urgency with a view to implementation in early 2008.

The Profession has responded by developing specific proposals. However, as you will see from the contents of this letter and our detailed observations attached, we do not consider that these are adequate.

Our main concerns are: the failure adequately to safeguard an actuary's independence and objectivity; the excessive and overriding emphasis which appears to be given to the 'best interests' of the actuary's immediate client, rather than the interests of third parties and the public interest; the excessive caveats and qualifications which undermine the clarity of the principles; and the lack of a clear explanation or rationale to help actuaries interpret and apply the Code and standards.

Independence and objectivity

Independence and objectivity are fundamental qualities for members of a profession, and we note with concern a recent disciplinary tribunal finding which cites as mitigation for serious professional misconduct the lack of explicit guidance or information to actuaries on the management of conflicts of interest.

In our view it is simplistic for the Code to establish a 'principle' that, for example, actuaries 'take reasonable steps' to avoid conflicts of interest. The actuary will frequently have conflicts: in the pensions field acting for the sponsor and scheme, from the source of his or her remuneration, and as both adviser on scheme strategies and as scheme valuer; in insurance there will be conflicts between the shareholders' and policyholders' interests and again the source of the actuary's income and career advancement may be an inherent conflict.

I also refer below to the Code's over-emphasis on the immediate needs of actuaries' employers or clients, and the over-accommodating use of caveats and qualifications.

In the Board's view, the Code should have as an unequivocal principle the need for objectivity and independence of mind. The Board does not regard the fact that these do not begin with the letter 'C' as a good reason for not stating them as such, and we have reservations about the restrictive use of the letter 'C' in any event.

Furthermore, the proposed general standard on conflicts of interest needs to reflect the proposed principles for dealing with conflicts in pensions, which are the subject of a separate consultation. The Profession should be clear whether or not it is acceptable for a pensions actuary to work for both the trustees and an employer, and if so in what circumstances and with what safeguards, but this should also be apparent from the Code.

Similarly, we do not believe that the general standard adequately considers the threats and safeguards for individual actuaries within a firm in dealing with a common transaction.

Overriding emphasis on the perceived needs of the immediate client

We agree that an ethical code should inform actuaries of their professional duties to their immediate clients and any third parties who are entitled to rely on their work. Actuaries' clients are entitled to rely on members of the Profession to serve them faithfully, with consideration, courage, actuarial competence and expertise, skill and care, objectivity, integrity, discretion, confidence and trust.

However, the first principle emphasises the 'best interests' of the client, while other principles appear to be contingent on the client's agreement or subordinated to the client's perceived interests. This undermines the principle that professional consideration of the needs of third parties (such as policyholders) and the public interest may require actuaries to act otherwise than in accordance with the immediate wishes of their clients. Actuaries may need to perform their work (or advise or ask their clients to act) in a certain way, to refuse to comply with certain requests, to cease (or decline) to act for their clients, or to report their concerns or make disclosures to others, if to do otherwise would be contrary to the public interest or might bring the profession into disrepute.

It is also important to ensure that the contractual and other working arrangements of actuaries (whether as employees or external advisers) support, and permit compliance with, these professional obligations through appropriate terms of engagement with their clients and their employer.

Excessive caveats and qualifications

Specific examples of these are attached, but we believe the adoption of principles requires a more coherent approach, which is less defensive of the interests of individual actuaries and their employers.

We appreciate that there is a tension between the Profession's desire to inspire and guide its members to the highest professional standards, and its understandable reluctance to impose unnecessary burdens, or expose them to legal liability if something goes wrong.

Principles are a way of describing behaviours to which all actuaries should adhere, while leaving specific requirements to 'mandatory provisions' in standards. But the principles as presented are cautious and qualified, in some cases more so than the supporting standards. There are too many excuses for non-compliance. The result is a compromise, and the requirements appear weak and confused, particularly in dealing with circumstances – such as conflicts of interest – where there is a threat to an actuary's objectivity and professionalism.

Lack of a clear explanation or rationale

Finally, apart from the proposal to introduce the principles (and discussion of how they should be labelled and organised), the documentation does not present the substantive findings of the review; nor does it explain how the substantive review of the content is reflected in the exposure drafts.

As the Profession's existing code (the Professional Conduct Standards) largely recognises, as members of a profession, actuaries should in our view have a professional obligation, according to their individual and collective consciences, to maintain the highest standards of conduct and fair dealing at all times, and to be alert and have regard to the current and potential needs and legitimate concerns of others and of the public interest in their professional dealings.

We accept that there is some mention and amplification of these matters within specific standards but these are isolated and fragmented. There is no overall explanation or rationale offered for the choice and formulation of the principles, the structure of the Code, or how the Code and the supporting standards address the ethical threats and safeguards facing actuaries. In summary, our concerns about the July 2007 draft of the Code have not been allayed by the inclusion of the standards.

In view of our concerns and the importance of this matter, we wish to discuss these matters with you at the earliest opportunity. Perhaps you or your secretary could contact Christina Trickett, c.trickett@frc-pob.org.uk on 020-7492 2341 to arrange a meeting.

In keeping with our commitment to transparency on significant issues such as this, and in view of your ongoing consultation we will publish a copy of this letter on our website.

Yours sincerely



Paul George

Director, Professional Oversight Board

020-7492 2340

p.george@frc-pob.org.uk

ACTUARIES' CODE - OVERSIGHT BOARD COMMENTS

Summary

In our December 2006 report, we welcomed the Profession's commitment to a fundamental review of the Professional Conduct Standards and to a principles-based approach, and urged the Profession to undertake its review as a matter of urgency with a view to implementation in early 2008. We reiterated our support for this in our letter of 26 July 2007, but expressed doubts about the formulation of the draft Actuaries' Code.

One of our concerns was that the Profession had not been sufficiently clear, in drafting the Code, about its aims and objectives beyond the purely presentational aspect of improving the form and structure of the Code.

We understand that the Profession has developed the Code and the supporting standards on the basis of a review of:

- material in its existing ethical code, the Professional Conduct Standards;
- material in the ethical codes of other professions;
- material in international actuarial codes, which it is required to implement through its ethical rules .

However, the description of the Profession's thinking in the consultation document appears to be primarily presentational, and there is no information about the substantive issues which have been considered as part of the Profession's fundamental review.

In terms of priority, we would probably place the principles in the following order:

1. The public interest (Common Good)
2. Skill and care (Competence)
3. Professional conduct (Conduct and Compliance)
4. Objectivity (Conflicts)
5. Engagements (Commencing Appointments)
6. Trust (Confidentiality)
7. Communication

However, in the absence of a clear rationale, we are not sure that all of these principles are appropriate, or are appropriately described, and the list lacks a clear structure or hierarchy. Qualities such as objectivity are largely ignored.

The public interest

We note the controversy within the profession about the proposed requirement for actuaries to have due regard to the public interest. A similar concern was raised in relation to the strategic outcome set by the FRC for users of actuaries' services to be able to rely on actuaries and their firms to have regard to the public interest.

Our view is that it is not possible to fully define the public interest and that there will always be a need for residual consideration of what the public interest requires in a particular situation. Regard for the public interest as well as for private interests is a burden as well as a privilege of being a member of a profession.

We do not agree with those commentators who fear that such a requirement will force actuaries to stop and consider every step they take in effect from first principles. The public interest can be usefully contrasted with the private interests which might inappropriately influence an actuary's judgment, but there is still a clear public interest in protecting legitimate private interests. In many cases the public interest will simply mean an actuary faithfully providing high quality advice to his or her client, but the wider reliance and professional responsibility that is placed on actuaries means that they need to be alert to other third party and public interest considerations.

Regard for the public interest is primarily a matter of individual and collective conscience, which are matters to which actuaries are already directed in the Professional Conduct Standards, and should not be regarded as objectionable.

We nevertheless agree with those who have criticised the adoption in an isolated standard of an apparently vague public interest requirement out of context and without further elaboration, since it suggests that other principles do not reflect the public interest. We consider that the Profession should make clear that regard for the public interest should underlie compliance with all the principles in the Code.

The environment in which actuaries work

There is limited consideration in the Code of the environment in which actuaries work. In particular, there is little or no consideration of the role of firms, and the threats and safeguards which arise in practice.

Drafting

The drafting of the Code and the standards is generally cautious and they contain unnecessary qualifications and exceptions which might help found unintended excuses for non-compliance. The drafting also makes the principles appear narrow and unduly concerned with the private interests of actuaries and their immediate clients, rather than with seeking to uphold the highest standards of professional conduct – for the benefit of those who rely on or are affected by their work.

THE CONSULTATION DOCUMENT AND THE CODE ITSELF (ED1)

The consultation document and the introduction to the Code are brief. This is not in itself a criticism, but the Code needs sufficient introduction for respondents to understand what the Profession's substantive aims and objectives are in formulating its ethical principles, beyond the purely presentational aspect of how they are described in the new structure, in order for them to offer informed comments.

As a result, respondents might have unanswered questions about:

1. Where the principles have come from and why they have been chosen.
2. The definitions used, in the absence of a glossary, for such matters as 'client', 'professional duties', 'professional judgement' and 'speaking up'.
3. How to resolve tensions between principles, such as between 'Conduct' and 'Common Good'. Is there any structure, precedence or hierarchy?
4. What has happened to provisions in the old PCS, such as:
 - a. the reliance that was placed in the PCS on the conscience of each individual member and on the collective conscience of all members to maintain the highest standards of conduct. The new 'Conduct' principle, subordinated as it is to the interests of the actuary's clients, seems to suggest a more commercial approach.
 - b. the role of the senior actuary in an actuary's firm – the Profession had drafted an IAN (information and assistance note) on this role which we suggested might be picked up at the same time as the Code – this seems to be dealt with only in the preamble (a senior professional colleague), and in a vague way so that it is not clear what his or her responsibilities are, or indeed the status of the advice to maintain a record of the consultation.
5. What is to happen to provisions in existing ethical standards.

The consultation mentions doubts that have been expressed as to whether 'Confidentiality' and 'Commencing Appointments' should be recognised as principles. This appears to be right in the case of 'Commencing Appointments'. 'Confidentiality' is a principle in ethical codes for accountants, but the main substantive requirement described in the 'Confidentiality' principle is presumably covered by the 'Conduct' and 'Compliance' standards. The 'Confidentiality' standard itself merely describes a circumstance in which an actuary might ask for confidentiality to be waived, which could have been picked up under 'Common Good'.

The description of 'Common Good' is also somewhat forced as is the composite nature of the 'Competence' principle, covering as it does both care and competence.

Some principles are desirable characteristics of an actuary: 'Competence', 'Compliance' and (when appropriate) 'Confidentiality'. Others are descriptions of a process, or as in the case of 'Conflicts', something actuaries should 'take reasonable steps' to avoid.

Our earlier comment on the covering note was:

The statement that the principles are not set down as precise rules, coupled with the suggestion that the eight Cs should merely 'guide' actuaries and other members, added to the Board's concern. Context is clearly important, but principles need to have some substance in themselves.

There is a tension between the Profession's desire to inspire and guide its members to the highest professional standards (although the Code does not expressly say so), and its understandable reluctance to impose unnecessary burdens, or legal liabilities if something goes wrong. There might have been a case for setting up the principles as standards to which all actuaries aspire, while leaving the 'mandatory provisions' to the standards. But the principles as described are cautious and qualified, rather than aspirational, and in some cases do not even go as far as the supporting standards. The result appears to be a compromise, which makes the principles appear weak and confused.

The standards are somewhat clearer about their own enforceability, but add to the confusion we expressed earlier about the enforceability of the principles:

- In paragraph 2 of the preamble to the Code – *the principles are not set down as precise rules and thus each member will need to apply his or her professional judgment considering the context in which they are operating at any given time;*
- In paragraph 3 – *the principles are supported by Actuarial Profession Standards, which lay down additional requirements;*
- In paragraph 4 – *members who disregard the principles or operate outside their reasonable interpretation may be guilty of misconduct ... members who depart from the principles must be ready to justify themselves and they are recommended to discuss the departure with a senior professional colleague in advance;*
- In the first paragraph of each standard – *this standard ... sets out the mandatory approach to conduct in any circumstance where a member gives professional advice or services;*
- In the non-compliance paragraph of each standard – *failure to comply with the Code or this Standard may result in a member becoming liable to disciplinary action.*

'CONDUCT' (ED2)

Summary

As the first principle in the list, one might expect this to be the most important or to introduce the others. But the specific reference to the interests of clients (not defined except to associate an actuary still further with the interests of his or her employer) rather than other stakeholders suggests a more narrow purpose. Many would regard the public interest as more important. There is an apparent conflict between the two principles which is not resolved, even by the weak guidance in 4.3 to use judgment or seek guidance as to the appropriate course of action.

Our earlier comment on this principle was:

Conduct - a list of desirable characteristics appears weak compared with the existing PCS obligation for actuaries to meet the highest standards of conduct. And the reference to 'the best interests of their clients at all times' is unqualified, apparently creating an override under which actuaries (and presumably other members?) might ignore all other duties, such as the public interest, or the third party interests of investors, policyholders and members.

The reference to best interests of their clients remains unqualified, albeit the words 'at all times' have been removed. If the client is to be mentioned at all in this context, it needs to be defined to include all parties with a legitimate interest, or replaced with a less misleading word.

Detailed comments on the standard

3.1 This appears to be a weakening of the existing PCS requirement to maintain the highest (rather than just high) standards of professional conduct.

3.3 Conduct in relation to personal relationships might still bring the profession into disrepute. So saying that the Code is not intended to impinge on these could create a hostage to fortune. (See also the proposed restriction in 1.2.)

3.4 The status of a member to speak for the Profession has no obvious link to the principle or the rest of this standard.

4.1 Narrow consideration of the best interests of the client might not result in best advice, if these are not in the best interests of the public interest or of other stakeholders who cannot sue but have a legitimate interest.

4.2 The qualifications that (i) a member will 'normally' assume that compliance with legal requirements is in the best interests of an entity, and (ii) it will 'often' be in its interests to treat third parties fairly, suggest that actuaries will contemplate breaches by their clients of the law. This appears to be very weak indeed.

5.1 Advertising and (representations made as part of) business solicitation may be misleading as well as false.

'COMMON GOOD' (ED3)

Summary

Most people would call the associated principle 'public interest', although one might have expected all the principles to reflect this. Creation of a specific public interest principle seems to create a tension with other principles such as the 'Conduct' principle, which are then implicitly interpreted as not reflecting the public interest.

Our earlier comment on this principle was:

Common Good – this seems to be portrayed as a matter of professional etiquette, whereas it should surely be stressing the actuary's public interest duties.

The standard does not elaborate on what is meant by having regard to the public interest (or indeed the 'wider public interest') at 3.1 and 3.3, other than the curious qualification at 3.5 and 3.6 that it does not mean paying more tax. Such matters should be obvious, and 3.1 in particular should not, by saying 'this does not impose an overriding obligation', be creating an unnecessary tension between the public interest and professional conduct. The impression given is defensive and confused.

Detailed comments on the standard

3.3/3.4 Merely drawing a matter to the attention of a client is weak, as is merely to 'consider whether any whistle-blowing obligations arise'. If the actuary's concerns are ignored, he or she should surely consider whether to continue to act. The actuary should also be encouraged to blow the whistle when this is permitted but not mandatory. Anything less makes the actuary vulnerable to bullying. Courage is specifically mentioned in other codes such as the Auditors' Code.

4.1 Is this intended to be a reference to the principle's requirement for consideration of members and non-members alike? In many ways the condition that criticism is properly reasoned and believed to be justified is more important than the two mandatory requirements that follow.

4.2 What 'context' is this mandatory provision talking about? The statement 'certain terms may be considered offensive if untrue but not if true' is unnecessary.

4.5 Is it expected that members will show consideration 'for' others or 'to' others?

5.1 What is a member's duty to the Profession in this context? Is it clear what is meant by 'impugns its integrity'? The ambit of 'unnecessarily' may be too wide, since it would appear to capture matters that are appropriate or desirable, but not strictly necessary.

5.2 Why is the Profession only concerned with criticism of itself? What about other conduct which might bring the actuarial profession into disrepute?

'COMPETENCE' (ED4)

Summary

This is a composite principle covering both competence and care. However, we note that these two concepts are often combined in other ethical codes.

Our earlier comment on this principle was:

Competence – even with the repeated reference to 'objectivity', this seems to be no more than a factual statement, which creates no obligation to maintain an appropriate level of competence, for example through CPD, or any prohibition on accepting work for which an actuary is not competent. How does this obligation apply to members who are not actuaries?

3.1(c) in the standard is an unnecessary refinement, and offers too easy an excuse – 'I could do it quicker' or 'I could give better value-for-money' - for incompetence. If you are not competent to act in a particular capacity, you should not act.

The priority for actuaries who provide actuarial advice outside traditional areas should be to ensure that they are competent for the work they are asked to do, which is why particular emphasis should be paid to the terms of engagement and explaining what the client can expect from an actuary in the particular circumstances.

Detailed comments on the standard

5.1 The standard should not confine itself to minimum CPD requirements, and could usefully describe the objective of attaining or retaining competence.

6.1 The reference to the need for users to have 'absolute confidence' in the actuary sets an improbably high standard and potentially undermines references to 'confidence' alone in other standards.

'COMPLIANCE' (ED5)

Summary

This is a composite principle covering a number of obligations.

Our earlier comment on this principle was:

Compliance – this seems to add little to underlying obligations, and does not make clear what principles apply in order to encourage whistle-blowing. Where for example is the PCS obligation to report misconduct to the Profession?

The standard makes some of this clear, but still does not encourage actuaries to consider whistle-blowing except when there is a mandatory obligation to do so. We understand that the new expression 'speaking up' is the preferred description used by the Institute of Business Ethics, but it is not defined and there is no elaboration in the standard.

Speak up to whom? An actuary might seek to rely on having 'spoken up' to the wrong person.

What if the client is doing something wrong? Professional people including some actuaries have specific obligations in relation to illegal acts.

Detailed comments on the standard

3.3 The last sentence is over-elaborate and defensive.

3.4 Is it really necessary to refer to the BAS having adopted various Guidance Notes from the Profession?

4.2 The duty to report should include material breaches or other misconduct.

4.3-4.7 It may be right for the actuary to seek legal advice, but the general approach described is cautious and over-engineered, with too many excuses for non-reporting. References to confidentiality duplicate the provisions in other standards (and suffer from the same drawback that a waiver of confidentiality may simply be refused). Contacting the actuary whose conduct is causing concern may also amount to 'tipping off' in the context of criminal matters such as money laundering.

'CONFLICTS OF INTEREST' (ED6)

Summary

Conflicts of interest was a major theme of the Morris Review, and we note with concern a recent disciplinary tribunal finding which cites as mitigation for serious professional misconduct the lack of explicit guidance or information to actuaries on the management of conflicts of interest. Conflicts are not themselves a desirable characteristic of actuaries – quite the opposite. Objectivity or independence would be a better description in this context.

Our earlier comment on this principle was:

Conflicts – the obligation to take all 'reasonable steps' to avoid creation of conflicts looks weak, as does the circular obligation to manage these (which envisages that these steps will fail) in a 'professional manner'.

The principle and the standard fail to recognise (except very tenuously by the description of when it is impossible to establish an acceptable conflict management plan) that there may be conflicts which are unacceptable.

Conflicts of interest are also not defined, and there are no examples given.

3.1 is consequently very weak, given that all a conflict management plan seems to require is that the actuary should make appropriate disclosure. Surely conflict management should not simply be about use and disclosure of information?

Conflicts are not necessarily financial. There could be a family relationship, there could be reputational concerns, or economic dependence.

A big threat to auditor independence is bullying. Given the margin of appreciation for actuaries, one might expect this to be a much bigger threat. The Code does not deal with the position of an actuary as an employee in this context. There is nothing about how to deal with intimidation, or the threat of losing a client.

Detailed comments on the standard

4.2 What about fiduciary duties to third parties?

Several of the principles in the specific pensions standard could usefully be incorporated into the general standard.

The standard should be clear that actuaries cannot act for both sides to a transaction.

'CONFIDENTIALITY' (ED7)

Summary

Our earlier comment on this principle was:

This gives confidentiality extra prominence compared with other aspects of integrity, but does not make clear how confidentiality should be respected, or when, for example in the public interest, it should be overridden.

The supporting standard partly answers the second point by telling the actuary at 3.3 to ask to be released from confidentiality obligations when public interest issues arise. But this appears to be asking for the key when you have already been locked up. Actuaries should surely be encouraged to explain that this may happen when they are first appointed, which is why an engagement letter is so important. Guidance is also required on what to do if the client refuses to release the actuary from duties of confidentiality.

The consultation has mentioned doubts raised by some respondents as to whether this should really be a principle, or whether it can be subsumed within another principle such as Conduct or Compliance. These doubts are supported by the drafting of the supporting standard, since the only mandatory provision is a requirement for the actuary to ask to be released from a duty of confidentiality.

Confidentiality is a principle in other codes, for example for accountants. This reflects the position particularly of auditors who have rights to obtain what may be very sensitive commercial information from their clients. It is therefore vital that their clients should be reassured that their accountants can be relied on to keep this information confidential.

Actuaries appointed to perform specified roles under FSA rules have similar rights, so one might expect a similar need. However, there are some distinguishing features. First, actuaries are appointed as individuals, and are frequently employees of the client. Second, a particular difficulty for actuaries is having to balance the interests of different groups, and ensuring that potential new customers are not misled. Too much emphasis on confidentiality raises concerns that actuaries will be complicit in concealing relevant facts from third parties.

Detailed comments on the standard

If the Profession is determined to have a principle that begins with 'C' it might be preferable to use the word 'Confidence' rather than the narrower 'Confidentiality', so as to pick up other aspects of trust which are regarded as important, as well as duties of confidence.

'COMMENCING APPOINTMENTS' (ED8)

Summary

Our earlier comment on this principle was:

Commencing appointments – while falling within the generic 'take reasonable steps to act appropriately' principle, it is unlikely that this would be construed widely enough to capture the separate principles such as competence, compliance, conflicts, administrative capability and perhaps common good which arguably apply in respect of a transfer of appointment. Why do the principles not apply to the resigning actuary as well?

The standard answers some of these points, for example by placing an obligation on the resigning actuary.

This is one of the principles that respondents doubted was a real principle at all. We share these doubts, although there are clearly some obligations that need to be picked up somewhere.

A surprising feature about this standard is that although it appears to assume the actuary will have agreed a letter or at least terms of engagement, it does not say so or require one. One might have expected this principle to set out matters that should be included in such terms.

The Profession may have been reluctant to mention a letter of engagement because of the need to reflect the position of an employee, who might not expect to receive a letter of engagement for each piece of work. Such concern would be exaggerated; it is generally good management practice for employees as well as advisers to have a clear understanding of their role and objectives. Employees who are appointed as actuaries to perform a regulated or any other professional role should have clear terms of engagement.

Detailed comments on the standard

3.1 Checking that there are no problems with the rest of the Code is weak and justifies our concern that this principle is merely parasitic on other principles.

4.1 This is also very limited. One might expect the actuary to take a broader view.

4.4(a) The question of when it is impracticable (often confused with 'impractical') to contact the previous actuary leaves too much to the discretion of the actuary concerned. For example, what if the previous actuary is away on holiday? How long should the actuary wait?

4.4(b) Similarly, how can the actuary be confident without asking that there are no issues even for a close associate?

5.2 The amplification that a member should not act in a way that inappropriately inhibits a free and open market arguably itself needs explanation.

'COMMUNICATION' (ED9)

Summary

Our earlier comment on this principle was:

Communication – it is unclear how this obligation would be interpreted. While it seems to suggest that poor or ineffective communication might be a breach, will a tribunal really treat such a subjective matter as involving misconduct? Contrast the FSA principle that communications must be clear, fair and not misleading.

The standard adds some substance, but does not really address the ethical issues.

Some of the matters in this standard, such as the effectiveness of the communication do not appear to be purely ethical. The main point is that communications should be accurate, complete and not misleading, but the standard and the principle are less than clear on these points.

Detailed comments on the standard

3.6 recognises that actuaries can be tempted to mislead or conceal information by using over-complicated language. On the other hand, the same obligation should surely apply to oversimplified language which can also be used to mislead. Indeed plainer language might be used here. Deliberate concealment is mentioned, but what about recklessness?

GENERAL POINTS ON THE DRAFTING OF THE STANDARDS

Several features of the standards are common, and are best dealt with together.

Mandatory provisions (also known as 'main sections')

There is some inconsistency in the language of the various provisions in the standards which are designated as mandatory. This makes them difficult to follow, and to contrast and compare. In particular, there seems to be a distinction between the matters:

- Actuaries are said to do in respect of each of the principles;
- A member 'is expected' to do: ED2 (Conduct) 3.1, 4.1;
- 'The need to uphold the reputation of the Profession requires' a member to do: ED2 (Conduct) 3.2;
- A member 'shall' or 'shall not' do: ED 2 (Conduct) 5.1; ED5 (Compliance) 3.1, 3.2;
- A member 'will' or 'will not' do: ED3 (Common Good) 3.3, 4.3; ED4 (Competence) 4.1, 5.1; ED5 (Compliance) 4.1; ED7 (Confidentiality) 3.3; ED8 (Conflicts of interest) 4.3, 4.5, 5.1; ED9 (Communication) 3.6, 4.1, 4.5, 5.1;
- A member 'must' or 'must not' do: ED3 (Common Good) 3.4; ED4 (Competence) 3.1, 3.3, 4.2; ED5 (Compliance) 3.1; ED5 (Compliance) 4.2; ED6 (Conflicts of interest) 3.1, 3.2, 3.3, 4.1, 4.2, 4.3, 5.1, 5.2; ED8 (Commencing appointments) 4.1, 5.1; ED9 (Communication) 3.1;
- A member 'should not' do: ED3 (Common Good) 4.2;
- A member 'has a duty' to: ED3 (Common Good) 5.1;
- A member's conduct 'should' be: ED9 (Communication) 3.1.

These formulations are confusing, not least because similar formulations such as 'must', 'should', 'is expected', 'will' or 'will not' are used in the paragraphs which are described as 'for amplification'. And the status of the principles themselves remains unclear.

Many of the obligations are auxiliary (eg requiring the actuary to consider the desirability of something) rather than substantive (eg requiring the actuary to actually do something). This appears weak, and can cause difficulty with enforcement if an action which plainly should have been taken has not.

Amplification provisions

The amplification provisions are also confusing. Some examples of amplification or qualification are provided within a mandatory provision (also described as a 'main section'?) whereas other similarly phrased qualifications are described as for amplification. Are actuaries to regard the qualifications in the main provisions as mandatory and the qualifications in the amplification sections as matters that can be ignored? It is not clear that the classification of these has been fully thought through.

A more straightforward approach might be to adopt a simpler structure of principles, rules (named as such), and explanatory notes. The label amplification suggests enlargement of the obligation rather than mere explanation.

It is not clear from the standards themselves or from any supporting document how these provisions have been distinguished.

Minor matters

The use of the pronoun 'they', 'them', or 'their' in substitution for 'a member' is a minor, but nevertheless irritating, distraction.

1.1 This standard paragraph repeats provisions in the Actuaries' Code itself.

1.2 The earnest introductory expression 'Please note that' in this standard paragraph is perhaps unnecessary.

The final standard paragraph on non-compliance at the end of each standard introduces what is (at least in the context of the Code) a new concept of meeting 'the standards of behaviour, integrity, competence or professional judgement which other members or the public might reasonably expect of a member'. It is not clear if 'competence' in this context means the same as the principle of that name. And does this sentence introduce new principles 'behaviour', 'integrity' and 'professional judgement'? If so, what do they involve?

The numbering of this final standard paragraph is variable which can be confusing.

Indeed numbering generally is confusing, since all the principles begin with C. This will have the beneficial effect of forcing actuaries to name the principles rather than use shorthand such as principle 6. But this makes the numbering of the standards themselves confusing. It might be better to have the application and enforcement paragraphs in the preamble to the Code itself.