

THE SOCIETY OF ACTUARIES IN IRELAND
ACTUARIAL STANDARD OF PRACTICE ASP PEN-13
CONFLICTS OF INTERESTS – PENSIONS ACTUARIES

Classification

Mandatory

MEMBERS ARE REMINDED THAT THEY MUST ALWAYS COMPLY WITH THE CODE OF PROFESSIONAL CONDUCT AND THAT ACTUARIAL STANDARDS OF PRACTICE IMPOSE ADDITIONAL REQUIREMENTS UNDER SPECIFIC CIRCUMSTANCES.

Legislation or Authority

Council of the Society of Actuaries in Ireland

Application

This *ASP* applies to any actuary (which term shall, for the purposes of the *ASP*, be construed as including part-qualified actuaries) who concurrently holds *Appointments* to provide advice or services to both the trustees and a *Sponsoring Employer* of the same defined benefit pension scheme in relation to the financing of the liabilities of the scheme, and for the purposes of the *ASP* this is deemed to include, but is not limited to, associated advice on investment objectives and asset strategies and the management of investment/financial risk within the scheme.

The *ASP* also applies to any actuary who holds one such *Appointment* while another actuary within the same firm concurrently holds a separate *Appointment* from the other party involved.

Version	Effective From
1.0	01.04.2010
1.1	01.11.2010
1.2	01.03.2011
1.3	01.11.2012

Definitions

In this *ASP*:

- “advice” and “services” shall be construed in accordance with the Application above;
- words in italics shall be construed in accordance with the following definitions:

“*Appointment*” -

- (a) An actuary is deemed to “hold an *Appointment*” if
 - (i) the actuary has been individually appointed or engaged (whether in writing or otherwise) by the trustees or a *Sponsoring Employer* of a defined benefit pension scheme constituted under Irish law to provide advice or services in relation to that scheme,

or

- (ii) a firm that employs the actuary or in which the actuary has a proprietary interest has been so appointed or engaged and the actuary has primary responsibility within that firm for advice or services provided to the trustees or the said *Sponsoring Employer*;

(b) “*Appointment*” and “accept an *Appointment*” shall be construed accordingly.

“*ASP*” means Actuarial Standard of Practice.

“*Conflict of Interests*” has the meaning set out in paragraph 4.1 of this *ASP*.

“*Dual Appointment*” has the meaning set out in paragraph 1.1 of this *ASP*.

“*Code*” means the *Society*’s Code of Professional Conduct.

“*Protocol*” means a protocol for managing conflicts of interests, as required under and described in section 3 or section 5 (as applicable) of this *ASP*.

“*Scheme Actuary*” means a person who is appointed by the trustees of a defined benefit pension scheme as an “actuary” as defined under the Pensions Act, 1990 (as amended).

“*Society*” means the Society of Actuaries in Ireland.

“*Sponsoring Employer*”, in relation to a pension scheme, means an employer whose employees, or former employees, are included in the scheme. Where more than one *Sponsoring Employer* is party to an *Appointment*, the provisions of this *ASP* shall be construed as relating to all *Sponsoring Employers* that are party to the *Appointment*.

1. Introduction

- 1.1 For the purposes of this *ASP*, a *Dual Appointment* exists if an actuary is concurrently appointed to provide advice or services to both the trustees and a *Sponsoring Employer* of the same defined benefit pension scheme constituted under Irish law.
- 1.2 Where a *Dual Appointment* exists, the trustees and the *Sponsoring Employer* may have conflicting objectives and this may impact on the advice or services that the actuary provides. An actuary who holds a *Dual Appointment* has a responsibility to recognise this fact and to manage any resulting issues in a professional manner.
- 1.3 This *ASP* does not prohibit *Dual Appointments*. In fact, in many cases, a *Dual Appointment* may be the most suitable arrangement for all the parties involved. However, an actuary who holds a *Dual Appointment* must take particular care to ensure that his or her duty of care to each of his or her clients is maintained. In some situations, it may be necessary for the actuary to suspend or cease one or both of the underlying *Appointments*.
- 1.4 This *ASP* sets out **principles** to which an actuary must adhere in carrying out work under *Dual Appointments*, including, in the case of work carried out under a *Scheme Actuary* appointment, any work carried out beyond that which, by law or regulation, must be carried out only by a *Scheme Actuary*. It also sets out certain **actions** that an actuary must take in relation to *Dual Appointments*.

- 1.5 Two or more actuaries within the same firm may be appointed to separately provide advice or services to the trustees and a *Sponsoring Employer* respectively of the same defined benefit pension scheme. If it is likely that the actuaries will be required to advise the trustees and *Sponsoring Employer* respectively on the same or substantially similar matters, then:
- 1.5.1 In carrying out their work under the *Appointments*, they must adhere to the principles of this *ASP* to the extent that such principles may reasonably be considered to be relevant to the *Appointments*; and
- 1.5.2 They must comply with the specific provisions of this *ASP* that apply to *Appointments* within the same firm.
- 1.6 This *ASP* does not attempt to address in specific terms every situation and issue that an actuary might encounter in connection with an *Appointment* or *Dual Appointment*. Actuaries must always perform their work under such appointments in a professional manner and in compliance with the *Code*. Furthermore, the contents of this *ASP* do not diminish the responsibilities and obligations of any member of the *Society* under the *Code*.

2. Principles

- 2.1 Where an actuary holds a *Dual Appointment*, the following principles apply in addition to any principles and requirements set out in the *Code*:
- 2.1.1 The actuary must act with the highest standards of integrity in his or her dealings with the trustees and the *Sponsoring Employer* concerned.
- 2.1.2 The actuary must not allow the advice or services that he or she provides to either the trustees or the *Sponsoring Employer* to favour the interests of the other party without the first party's knowledge. In addition, the fact that the advice favours one party must be stated in the advice in accordance with paragraph 6.1(b).
- 2.1.3 To ensure that the trustees and the *Sponsoring Employer* are clear as to how any conflicts of interests that arise will be dealt with and how any information may be shared or withheld in particular circumstances, the actuary must put in place a *Protocol* for managing conflicts of interests at the commencement of the *Dual Appointment*.
- 2.1.4 The actuary must abide by the terms of the *Protocol* in his or her subsequent actions.
- 2.1.5 If there is a conflict of interests between the trustees and the *Sponsoring Employer* such that the actuary cannot act in accordance with an agreed *Protocol*, the actuary must disqualify himself or herself from acting under the *Dual Appointment*.
- 2.1.6 The actuary must communicate effectively with both the trustees and the *Sponsoring Employer*, while respecting any confidentiality agreements and/or restrictions on sharing of information that may be agreed between the parties under the *Protocol* or otherwise, and must ensure that communications are accurate and are not misleading.

- 2.2 Where two actuaries within the same firm are appointed to separately provide advice or services to the trustees and a *Sponsoring Employer* respectively of the same defined benefit pension scheme and it is likely that the actuaries will be required to advise the trustees and *Sponsoring Employer* respectively on the same or substantially similar matters, they must also adhere to the principles in section 2.1 above to the extent that they are relevant to the *Appointments*. In addition:
- 2.2.1 The actuaries concerned must ensure that the independence of their advice or services is no less than would apply if actuaries from separate firms had been appointed unless the trustees and the *Sponsoring Employer* agree otherwise in relation to a particular matter or matters.
- 2.2.2 Each of the actuaries concerned must not access or share information regarding his or her colleague's client without appropriate approval.

3. ***Dual Appointment - Protocol***

- 3.1 Before commencing work under a *Dual Appointment*, the actuary must put in place a written protocol for managing conflicts of interests ("*Protocol*") that informs the trustees and the *Sponsoring Employer* about:
- (a) how the actuary will take into account, in the advice and/or services that he or she provides, any inherent conflict between the trustees' and the *Sponsoring Employer's* objectives;
 - (b) the steps that the actuary will take if a situation arises in which the actuary can no longer carry out duties under the *Dual Appointment* in accordance with the *Protocol*;
 - (c) the extent to which information will remain confidential to either the trustees or the *Sponsoring Employer* or will or may be disclosed by the actuary to either party without assertion that a breach of confidentiality has occurred;
 - (d) the fact that, if the actuary can no longer perform duties under the *Dual Appointment* in accordance with the *Protocol*, the *Dual Appointment* may be modified (in which case, the *Protocol* may also be modified) or suspended or ceased (in which case, the *Protocol* will cease to apply);
 - (e) the fact that, notwithstanding anything in the *Protocol*, if, in the actuary's opinion, the confidential nature of information provided to the actuary by one party constrains the actuary from acting in a professional manner in respect of the other party's interests, the actuary may suspend or cease one of the *Appointments* that form the *Dual Appointment* (in which case, the *Protocol* will cease to apply).

Other information may also be included in the *Protocol* by agreement between the parties.

- 3.2 The actuary must discuss the *Protocol* with the trustees and the *Sponsoring Employer* and confirm that they are in agreement with it. If the trustees and/or the *Sponsoring Employer* omit to sign the *Protocol* but, on the basis of discussions held, the actuary is satisfied that they are in agreement with it, he or she must advise the trustees and *Sponsoring Employer* that he or she shall deem the *Protocol* to be effective unless and until any changes thereto are agreed between all three parties.
- 3.3 The actuary must not agree to a *Protocol* that would require him or her to act in a manner that was contrary to the principles set out in this *ASP* or in the *Code*.
- 3.4 If a *Dual Appointment* is modified, the actuary must consider whether the *Protocol* remains appropriate and adequate and if it is not, he or she must take appropriate action, consistent with that described at 3.1 and 3.2.
- 3.5 An actuary must review his or her *Dual Appointments* at least once every three years and consider whether, in his or her opinion, the *Dual Appointments* and the associated *Protocols* are operating in a satisfactory manner. If necessary, the actuary must act to ensure that the *Dual Appointment* and associated *Protocols* remain appropriate.

4. *Dual Appointment - Conflict of Interests*

- 4.1 For the purposes of this *ASP*, a *Conflict of Interests* exists where an actuary holds a *Dual Appointment* and:
- (a) the actuary is aware or ought reasonably to be aware that circumstances have changed such that the actuary can no longer perform work under the *Dual Appointment* without breaching the terms of the *Protocol*; or
 - (b) in the actuary's opinion, the confidential nature of information provided to the actuary by one party under the *Dual Appointment* constrains the actuary from acting in a professional manner in respect of the other party's interests.
- 4.2 If a *Conflict of Interests* arises, the actuary must either:
- (a) inform the trustees or the *Sponsoring Employer* (as applicable) that he or she cannot comply with the request that gave rise to or made evident the *Conflict of Interests*;
- or
- (b) inform the trustees and *Sponsoring Employer* that he or she can no longer act in accordance with the *Protocol* and either:
 - (i) modify the *Dual Appointment* and/or the *Protocol*, to reflect the changed conditions, such that the *Conflict of Interests* is eliminated
- or
- (ii) suspend or cease one or both of the *Appointments* that form the *Dual Appointment*.

It might not be possible to modify the *Dual Appointment* and the *Protocol* in a manner that is acceptable to both the trustees and the *Sponsoring Employer*, in which event the actuary must act in accordance with 4.2(a) (i.e. advise that he or she cannot comply with the request that gave rise to or made evident the *Conflict of Interests*) or 4.2(b)(ii) (i.e. suspend or cease one or both of the *Appointments*).

In some circumstances, it may be necessary to cease both of the *Appointments* that are affected by a *Conflict of Interests*.

- 4.3 Where a *Dual Appointment* and/or *Protocol* is/are modified, or an *Appointment* is suspended or ceased, due to the emergence of a *Conflict of Interests*, the actuary must notify the trustees and the *Sponsoring Employer* in writing of this fact and, as and where applicable, confirm that, in his or her opinion, it is appropriate for him or her to continue to provide advice or services under the *Dual Appointment* or the continuing *Appointment*.
- 4.4 If a *Protocol* is amended, the actuary must not provide advice or services under the new *Protocol* until he or she has discussed it with the trustees and the *Sponsoring Employer* and confirmed that they are in agreement with it. If the trustees and/or the *Sponsoring Employer* omit to sign the new *Protocol* but, on the basis of discussions held, the actuary is satisfied that they are in agreement with it, he or she must advise the trustees and *Sponsoring Employer* that he or she shall deem the new *Protocol* to be effective unless and until any changes thereto are agreed between all three parties.

5. *Appointments within the same firm*

- 5.1 Before accepting an *Appointment* to provide advice or services to the trustees/*Sponsoring Employer* of a defined benefit pension scheme, an actuary must endeavour to establish whether another actuary within his firm has been or is expected to be similarly appointed by the *Sponsoring Employer*/trustees, as applicable.
- 5.2 Where two or more actuaries within the same firm are appointed to separately provide advice or services to the trustees and a *Sponsoring Employer* respectively of the same defined benefit pension scheme and it is likely that the actuaries will be required to advise the trustees and *Sponsoring Employer* respectively on the same or substantially similar matters:
- (a) The actuaries must have regard to paragraph 1.5 of this *ASP*.
 - (b) Before commencing work under the *Appointments*, the actuaries must jointly put in place a written protocol for managing conflicts of interests (*Protocol*) that informs the trustees and the *Sponsoring Employer* of:
 - (i) the fact that the trustees and the *Sponsoring Employer* will receive separate advice and/or separate services from two or more actuaries employed by the same firm;
 - (ii) the steps that the actuaries will take if a situation arises in which one or more of the actuaries can no longer carry out duties under an *Appointment* in accordance with the *Protocol*;

- (iii) the extent to which information will remain confidential to either the trustees or the *Sponsoring Employer* or will or may be disclosed by the actuary to either party without assertion that a breach of confidentiality has occurred;
- (iv) the fact that, if one or both of the actuaries can no longer perform duties under the *Appointments* in accordance with the *Protocol*, one or both of the *Appointments* may be modified (in which case, the *Protocol* may also be modified) or suspended or ceased (in which case, the *Protocol* will cease to apply).

Other information may also be included in the *Protocol* by agreement between the parties.

- (c) Except as otherwise agreed as part of the *Protocol*, the actuaries must not share or access information (other than the *Protocol*) that relates to work carried out under the separate *Appointments*.
- (d) Each of the actuaries must be satisfied regarding his or her ability to act independently and in accordance with the terms of his or her *Appointment* to either the trustees or the *Sponsoring Employer*, as applicable.
- (e) Similar requirements as outlined in paragraphs 3.2 to 3.5 will apply to *Protocols* under this section 5, i.e. the requirement to discuss the *Protocol* with the trustees and the *Sponsoring Employer*, not to agree to a *Protocol* that would be contrary to this ASP or the *Code*, to take appropriate action, where necessary, if the *Appointment* is modified and to review the *Protocol* at least once every three years.

5.3 Where an actuary takes over an *Appointment* that was held by another actuary within the same firm other than for the purpose of addressing a *Conflict of Interests*, the actuary who takes over the *Appointment* may adopt the existing associated *Protocol* (if any), provided that he or she is satisfied that the *Protocol* continues to be appropriate.

6. Context of advice

- 6.1 If an actuary provides advice under a *Dual Appointment* or where another actuary within the same firm has been appointed to provide advice in relation to the same defined benefit pension scheme:
- (a) Any advice of a substantive nature must include the name of the intended recipient and specify whether the advice is directed to the trustees or the *Sponsoring Employer* or both; and
 - (b) If any advice of a substantive nature favours the interests of the trustees or the *Sponsoring Employer*, or is aimed at achieving a balanced compromise between the interests of the parties rather than fully meeting the interests of one of the parties, that fact must be stated in the advice and paragraph 2.1.2 applies

7. Transitional arrangements

- 7.1 Notwithstanding paragraphs 3.1 and 5.2, an actuary may continue to perform work relating to *Appointments* that were in existence at 1st November 2012 and that were not subject to version 1.2 of this *ASP*, provided that any *Protocols* required under this version 1.3 of the *ASP* relating to such *Appointments* are put in place no later than 1st May 2013 or, if earlier, before any substantive advice or services are provided under the *Appointments*. However, early adoption of the *ASP*, wherever possible, is recommended.
- 7.2 If, at or after commencement of this *ASP* and before a *Protocol* is put in place, an actuary holds a *Dual Appointment* and is aware or ought reasonably to be aware that there is an irreconcilable conflict between the trustees' and *Sponsoring Employer's* objectives, the actuary must address the issue in a manner that is consistent with the provisions of section 4.

END

EXPLANATORY NOTE

ACTUARIAL STANDARD OF PRACTICE PEN-13, VERSION 1.3

This Explanatory Note does not form part of the ASP.

All members of the Society are expected to carry out their professional activities in accordance with the Society's Code of Professional Conduct and must therefore have due regard *inter alia* to the provisions of the Code relating to conflicts of interests.

ASP Pen-13 was introduced to further strengthen professional requirements in this area. To date, the focus of ASP Pen-13 has been on work performed by Scheme Actuaries.

Mindful of the increasing complexities involved in managing the financing of defined benefit pension schemes, Council now considers it appropriate to extend the application of ASP Pen-13 to other actuaries (which for this purpose is deemed to include part-qualified actuaries) working in this area.

Under Version 1.3, conflict management protocols must be put in place where:

- an actuary is appointed to provide advice or services to both the trustees and a sponsoring employer of the same defined benefit pension scheme, or two or more actuaries within the same firm are appointed to separately provide advice or services to the trustees and a sponsoring employer respectively and it is likely that the advice or services will cover the same or substantially similar matters; and
- such advice or services relate to the financing of the liabilities of the scheme including, but not limited to, associated advice on investment objectives and asset strategies and the management of investment/financial risk within the scheme.

It should be noted that not all advice on investment matters falls within the scope of the ASP. For example, advice on investment manager selection, and on individual stock selection in the context of a pre-determined investment strategy, would not normally fall within scope. Actuaries are expected to exercise professional judgement in determining whether particular work is within scope and, in case of doubt, are expected to apply the spirit as well as the letter of the ASP.