



ASSOCIATION OF CONSULTING ACTUARIES

Association of Consulting Actuaries Limited · Second Floor (203) · 40 Gracechurch Street · London · EC3V 0BT
Tel: +44 (0)20 3102 6761 · Email: acahelp@aca.org.uk · Web: www.aca.org.uk

16 January 2018

The Actuaries' Code Consultation
The Institute and Faculty of Actuaries
Level 2 Exchange Crescent
7 Conference Square
Edinburgh
EH3 8RA

Dear Sirs

Proposed changes to the Actuaries' Code

I am writing on behalf of the Association of Consulting Actuaries in response to the above consultation issued in October 2017.

In general, we welcome the changes to the Code, which we believe make it more principles-based and clearer. However, we are concerned about the implications of introducing the Guide. We feel strongly that the Code should be sufficiently clear as a standalone document to enable Members to judge how to behave appropriately without reference to any other document. This would be consistent with a principles-based approach to the Code. To achieve this, the Code would need to be expanded slightly to make its requirements sufficiently clear as a standalone document, for example, to briefly define "work" and "actuarial role".

Our comments on the specific questions raised in the consultation are set out in the Appendix.

We hope that you find these of assistance and would be happy to discuss them further if that is helpful. Please contact me on 0117 937 8730 (jenny.richards@bbs-actuaries.co.uk).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jenny Richards', written in a cursive style.

Jenny Richards

Chairman, Professional Affairs Committee
On behalf of the Association of Consulting Actuaries Limited

Sent by e-mail to: code@actuaries.org.uk

Proposed changes to the Actuaries Code

1. Personal information

Name: Jenny Richards

Position: Chairman of the ACA Professional Affairs Committee

2. Region

UK

3. Are you a Member of the IFoA?

Yes

4. If yes, which category of membership do you hold?

Fellow

5. If you are an actuary, what is your main practice area? (Answer one option only)

Pensions

6. Do you want your name to remain confidential?

No

7. Do you want your comments to remain confidential?

No

8. About your organisation (if applicable)

Name: Association of Consulting Actuaries

9. Type of organisation (Answer one option only)

Other, Representative Body

10. How many IFoA Members (if any) does your organisation employ?

101+ Members

11. Do you want the name of your organisation to remain confidential?

No

12. Do these comments represent your own personal views or your organisation's views?

Organisation's views

The Code

13. Overall, do you agree that the revised Code is an improvement on the current Code?

Yes

14. Overall, do you agree that the revised Code enables Members to judge how to behave appropriately?

Yes

But (if the Guide is removed) only if the Code is expanded slightly to make its requirements sufficiently clear as a standalone document. For example, to briefly define "work" and "actuarial role".

15. Overall, do you consider that the revised Code is relevant and appropriate for Members working in non-traditional areas of practice?

The ACA has no comment on this question.

16. Overall, do you agree that the revised Code is relevant and appropriate for Members working outside of the UK?

Yes

However, in an international context it can be challenging to interpret.

For example, in many countries it is absolutely normal business practice, well known to the authorities, that "facilitating payments" are made to intermediaries. Whether these are perceived as (unethical) "bribes" or simply (commercial) "commissions" is an age old question. Whilst this is an issue with the current Code, we are disappointed that there is no attempt to deal with it in the new one. We acknowledge that it is not an easy issue to deal with, but as the profession continues its international expansion into different cultures it is increasingly going to be an issue worthy of further thought and a positioning statement may be helpful.

Structure and language of the Code

17. Do you agree that the proposal for a high-level, principles based Code supplemented by detailed guidance is appropriate?

No.

We agree with the high level principles-based code, welcome the review and agree that it is an improvement. However, we do not agree that the Code should require a detailed Guide to accompany it. The implication that the profession requires this level of guidance to interpret the Code undermines the idea that the Code is principles-based. In addition, the status of the Guide for disciplinary cases is ambiguous: we consider it highly probable that, if introduced, the Guide would implicitly become an extension to the Code, which again undermines the idea of its being principles based.

18. Do you agree that the proposed structure (use of high-level principles supplemented by 'amplifications') is the most appropriate for the Code?

Yes

19. Do you agree that the use of the words 'must' and 'should' are appropriate and proportionate to each of the provisions to which they relate?

No; whilst their use is appropriate in most instances, this is not always the case. Please see further comment under the specific questions where we consider the usage to be inappropriate.

20. Do you consider that the overall language of the Code is appropriate?

Yes

Scope

21. Do you agree that the Code's scope section sets out clearly when the revised Code applies?

Yes

However, this does rely on the Guide, and if the Guide were removed (or its status downgraded) it might be preferable for "actuarial role" to be defined in the Code.

22. Do you agree that the scope of the Code is appropriate?

Yes, with the exception of its application to social media. Please see our response under this section for further detail.

Also, we would suggest the following change:

Nothing in the Code ~~is intended to~~ **shall** require Members to act in breach of legal requirements. Where relevant legal requirements conflict with the Code, Members must comply with those legal requirements.

Integrity

23. Overall, do you agree that the revised Integrity principle and amplifications are an improvement?

Yes.

However, whilst accepting that the existing requirement 1.3 is inherent to the principle of integrity, we are concerned that 'perception' issues may arise from removing it. We would therefore prefer it to be retained as an 'amplification'.

24. Do you think that Members' obligations under the Integrity principle are clearly set out in the revised Code?

No

In 1.1, we are concerned that "respect" can mean different things in different cultures, and the scope therefore becomes potentially very wide; Members might therefore inadvertently fall foul of this requirement. This suggests a 'should' rather than a 'must' requirement.

Competence and Care

25. Overall, do you agree that the revised Competence and Care principle and its amplifications are an improvement?

No

In relation to the removal of the old 2.1 (the requirement to consider who the advice is being provided to), we consider this to be a fundamental part of the current Code without a clear enough justification being given for its removal.

26. Do you think that Members' obligations under the revised Competence and Care principle are clearly set out in the revised Code?

No,

We consider that there one amplification where additional wording needs to be added to ensure that the scope of Members' obligations is not wider than is intended. Suggested wording is provided below:

2.3 Members *must* ensure advice is appropriate to the Member's understanding of the user's needs. We note that this is not a new constraint under the revised Code but, as this is a full review of the document, we would like consideration of whether the current wording places an obligation that is potentially outside the realms of the Member's capability.

27. Do you agree that it is useful to have an explicit reference to the IFoA's CPD scheme in the Code?

Yes; however there are quite a few repeats of the IFoA CPD Scheme in the Guide which seem to be unnecessary.

We further note that there is a specific requirement to continue to develop, and not just comply with the CPD Scheme. As the Code applies to retired Members, for whom the CPD Scheme does not require further development, this might be interpreted as expanding the requirement on these Members, albeit probably unintentionally. It is our opinion that reference to the CPD Scheme should be sufficient without additional clarification in the Code/Guide which risks unintended inconsistency creeping in.

Impartiality

28. Overall, do you agree that the revised Impartiality principle and its amplifications are an improvement?

Yes

We consider it to be more succinct.

29. Do you think that Members' obligations under the revised Impartiality principle are clearly set out in the revised Code?

Yes

However, we suggest that more guidance be provided on Conflicts of Interest principles 3.1 and 3.2. In particular, under 3.1 we consider that additional guidance is required to clarify how this Principle should be approached by a junior Member.

Compliance

30. Overall, do you agree that the revised Compliance principle and its amplifications are an improvement?

Yes

31. Do you think that Members' obligations under the Compliance principle are clearly set out in the revised Code?

Yes

32. Do you agree that it is helpful and appropriate to include as an amplification the existing requirement for Members to disclose to the IFoA any conviction, adverse finding, judgement or disqualification described in the Disciplinary Scheme of the IFoA?

Yes

Speaking Up

33. Do you consider that the inclusion of a stand alone Speaking Up principle is an improvement?

Yes

34. Do you think that Members' obligations under the Speaking Up principle are clearly set out in the revised Code?

No

In 5.1, it would be helpful in our view to include in the text that "others" is not limited to actuaries. This is explained in 7.19 of the Guide. For example:

"Members should challenge others (including clients, employers or other professionals) in their work with them and where they are aware of, ~~on~~ their non-compliance with relevant, legal, regulatory and professional requirements".

35. Do you agree with the proposed materiality test in relation to the duty to report matters to relevant regulators or other authorities?

Yes,

However, the use of "appears" in amplification 5.2 doesn't make allowance for any stepping back or for establishing the facts about misconduct (although we note that para. 7.21 of the Guide explains the considerations around a material breach). We would recommend an extension to the term 'appears' to make it clear to whom it appears, for example 'appears to the Member'.

5.3 This amplification is confusing and cannot be understood without reference to the Guide:

"In addition to complying with any legal requirements to report matters to relevant regulators or other authorities, members should also report to those bodies any behaviour that they have reasonable cause to believe is unethical or unlawful, and carries significant risk of materially affecting outcomes."

Paragraph 7.3 of the Guide helps to clarify the meaning. Perhaps the wording in the Code should be split into two points:

~~"In addition to~~ Members should complying with any legal requirements to report unlawful or non-compliant regulatory activity ~~matters~~ to relevant regulators or other authorities.

In addition, Members should ~~also~~ report to whichever relevant regulators or authorities any behaviour that they have reasonable cause to believe is unethical ~~or unlawful~~ {removed because if unlawful it will be captured above} and carries significant risk of materially affecting outcomes. "

36. Do you agree with the proposed amplification requiring Members to take reasonable steps to ensure users are aware of any substantial issues with a piece of work?

Yes

However, it may not be the member who was involved in the piece of work who becomes aware of an issue. For example, an error might not be uncovered for, say, 5 years. The team responsible for the original work might no longer have any involvement to enable them to become aware of the issue with the responsibility for addressing it falling on current staff. Depending on the issue and its impact, it could be members who are unconnected with the original work who need to alert users. The wording should therefore be expanded to cover this eventuality.

Communication

37. Do you consider that the revised Communication principle is an improvement?

Yes

The revised principle is a slightly easier read than the previous version. However, it includes essentially the same content.

38. Do you think that Members' obligations under the Communication principle are clearly set out in the revised Code?

Yes

As above, they are easily understood.

However, we strongly believe that this Principle and all of its amplifications should only apply to "work". Any improper use of, for example, social media outside of a work context, would seem to be caught by other aspects of the Code (e.g. Integrity, Compliance and Speaking Up would seem to catch all the examples of inappropriate behaviour given in the Social Media section of the Guide). Allowing the scope of this particular Principle to be expanded to include areas outside of "work" will bring unintended impositions on Members that aren't necessary to ensure that Members present themselves professionally and correctly, which is the point of the Code.

39. Do you agree with the proposed amplification requiring Members to notify users of any adverse impact where they feel that the user has misunderstood or misinterpreted their advice?

Yes

However we would prefer the wording to be consistent with that contained within TAS100.

40. Do you have any other comments or suggestions in relation to the revised Code?

No

The Guide

The following questions are in relation to your/your organisation's views on the proposed Guide:

41. Do you agree with the proposal to introduce a Guide to accompany the Code?

No.

We are strongly of the view that the proposed Guide is a backwards step. Its introduction moves the Code away from being principles based. It is overly long to read and interpret, which realistically precludes its use as an everyday guide on how Members should conduct themselves. The material contained within it is more appropriately the beginning of a collated FAQ document that members can dip in and out of but which should not form part of their Code of Conduct guidance.

The Code should be sufficiently clear as a standalone document so that Members are able to judge how to behave appropriately without reference to any other document.

42. Overall, do you consider that the Guide is relevant and helpful for Members working in non-traditional areas of practice?

The ACA has no comment on this question.

43. Overall, do you consider that the Guide is relevant and helpful for Members working outside of the UK?

The ACA has no comment on this question.

Do you have any suggestions for any additional topics that should be included in the Guide?

No

44. Do you think it would be helpful to have any further guidance (in addition to the Guide) and/or training opportunities in relation to the Code?

No,

45. Do you have any other comments or suggestions in relation to the Guide?

As mentioned above, we believe that the Guide should be positioned as a FAQ type document that Members can access if they are looking to obtain further guidance, and which can be expanded and added to as questions get asked and thinking evolves. It should be made clear that Members subject to disciplinary proceedings will not be assessed against compliance with the Guide.

We would add that there are specific aspects of the proposed Guide that we disagree with and that we have not commented upon because of our overall opposition to the inclusion of the Guide as currently proposed.

General

46. Do you anticipate that there would be any practical or resource implications caused by the introduction of these proposals?

No

47. Do you have any other comments or suggestions in relation to the proposals?

No

About the Association of Consulting Actuaries (ACA)

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.

Disclaimer

This document is intended to provide general information and guidance only. It does not constitute legal or business advice and should not be relied upon as such. Responding to or acting upon information or guidance in this document does not constitute or imply any client /advisor relationship between the Association of Consulting Actuaries and/or the Association of Consulting Actuaries Limited and any party, nor does the Association accept any liability to any person or organisation relating to the use of such information or guidance.