Society of Actuaries in Ireland

Information and Assistance Note PEN-2:

Review of the Institute & Faculty of Actuaries Actuarial Profession Standard APS P1: Duties and Responsibilities of Members undertaking work in relation to Pension Schemes.

Issued by the Society of Actuaries in Ireland on 24 January 2023

Disclaimer

This Information and Assistance Note ("Note") is intended to draw to the attention of those members of the Society of Actuaries in Ireland ("Society") who are also members of the Institute & Faculty of Actuaries (IFoA) that they might need to take some actions to ensure ongoing compliance with the IFoA's APS P1, following a recent update.

This Note highlights some aspects of the updated APS P1. However, other aspects might be equally or more relevant for specific work. This Note is not intended to be an exhaustive description of APS P1 or recent changes to APS P1 and it does not constitute legal advice.

The Society does not accept responsibility or liability for any loss to any person or body as a result of any decision or action taken on foot of information, opinions or suggestions set out in this Note.

Background

1. The Institute & Faculty of Actuaries (IFoA) reviewed its Actuarial Profession Standard APS P1 following a consultation, and v3.0 came into effect on 1 April 2022. It applies to IFoA Members of any category (including Fellows, Associates, Students and Affiliates) operating in the pensions area in any location and therefore applies to those members of the Society who are also members of the IFoA.

2. The application of IFoA standards does not normally require further direction from the Society of Actuaries in Ireland ("Society") however, in the case of APS P1, there are a number of areas where practice in the UK and Ireland may differ and so the standard may require careful interpretation in an Irish context. This IAN has been prepared to assist members in identifying potential areas of difference and actions which they may need to take to ensure compliance with APS P1.

3. The APS includes a new definition:
   "Equivalent Scheme Actuary (ESA)
   A Member who is carrying out a role similar to that of a Scheme Actuary appointed under the UK Pensions Act 1995 (but for a Scheme that is not a Relevant Scheme), …."

   A person acting as a Scheme Actuary for the purposes of (Irish) Pensions Act 1990 clearly falls within this definition.

4. The Society of Actuaries in Ireland ("Society") issued an email to all its pensions actuary members on this subject on 31 March 2022. The APS was also referenced in the Society's May 2022 Pensions Committee Newsletter. It was noted that v3.0 is quite different from v2.0, particularly in relation to conflicts of interest (where Scheme Actuaries advise both the trustees and the sponsoring employer) and the obligations placed on employer advisers. Members of the Society who were also IFoA members were reminded that they should review the APS and ensure compliance with its requirements.

5. The Society's Pensions Committee ("Committee") established a working group to identify issues that might need consideration by Scheme Actuaries who are also IFoA members. The working group reviewed the relevant sections of the APS, covering three areas:
   - Obligations relating to appointment, replacement and absence
   - Speaking Up
   - Conflicts of Interest

   These are discussed below, along with recommendations from the Committee.

Appointment

6. Section 2.2 requires the ESA to have *"a written agreement with the Trustees setting out the information that they require the Trustees to provide them with, or allow them access to, to do their job properly"*. Whilst wording to this effect is probably included in most recent client contracts with consultants, the contract would typically be with the actuary's employer, and might not cover sharing information with other advisors. Appendix 1 to the APS sets out the "Matters to be covered in written agreement with Trustees" although it notes that not all may be relevant for an ESA. This list is probably more extensive and detailed than the typical agreement in place in Ireland.

   The Committee recommends that ESAs review the agreement with Trustees to ensure all relevant issues are addressed. Section 2.4 imposes a requirement to review the written agreement periodically and ensure it continues to be fit for purpose.

7. Sections 2.5, 2.6 and 2.7 set out requirements that apply when a Scheme Actuary is replaced, resigns or is absent for a period. These are framed in the context of a UK Scheme Actuary, who has ongoing responsibilities under the UK Pensions Act, whereas the statutory requirements in Ireland refer only to specific duties – valuations, AFCs, funding proposal etc. It may not therefore be necessary to cover these in the agreement with the Trustees. However, the requirements are reasonable and the Committee recommends that ESAs have regard to them when the relevant situation arises.

Speaking Up

8. Section 3 addresses *"Other Professional Responsibilities, including Speaking Up".* This is not new but has been slightly revised from v2.0. The application has been extended to ESAs.

9. "Speaking Up" in this context means the ESA should inform the Trustees and, if appropriate, any third party adviser or service provider to the Trustees, and take appropriate action. It covers speaking up to the Trustees and, if appropriate, their advisers. It does not cover whistle blowing to the regulator or any other party. Two areas are covered. The ESA must speak up:

   (i) On becoming aware of any significant matter that

   a. could have an impact on the security of members' benefits or the financing of the scheme, or

   b. might lead to the Trustees needing to request advice from an adviser.

   (ii) If they have any material concerns about

   a. the way the Trustees are fulfilling their duties and responsibilities, or

   b. actions being taken by any of the Trustees' third party advisers or service providers.

   In both cases, "b" is quite broad and may fall outside areas which an Irish Scheme Actuary would previously have had any obligation to consider.

10. A specific application of the above is detailed in APS P1 v3.0. Where an ESA is giving a legally-required certification, the ESA must draw the Trustees' attention to any matters which they believe the Trustees should bear in mind before taking any action associated with that certification. Arguably, this is not an obvious interpretation of the APS and care would need to be taken if such a situation arose.

11. The Committee recommends that ESAs have regard to the potential additional requirements imposed by this Section, including (but not necessarily limited to) those outlined above.

Conflicts of Interest

12. Section 4 covers *Conflicts of Interest* and Section 5 deals with *Conflict Management Plan - Employer Adviser.*

13. Section 4.2 sets out a requirement on an ESA to notify the Trustees if the ESA is *"undertaking work for the Employer"* or if the ESA is aware "*to the best of their reasonably held knowledge"* that another person in their firm is so doing.

14. Section 4.3 states that *"An [ESA] should presume that the provision or review by them of Advice to the Employer of a Scheme (for which they are acting for the Trustees), in relation to the funding of that Scheme or to any matter which has a direct bearing on the benefits payable under that Scheme, would give rise to an irreconcilable conflict of interest."* This would appear to rule out the practice of an individual acting as Scheme Actuary and employer adviser, unless the advice to the employer is clearly unrelated to "*funding ... or to any matter which has a direct bearing on the benefits payable."*

15. The actuary will need to consider whether it is appropriate for them to prepare accounting disclosures, for example, or do any other work, for the employer. Note that there is no reference to two actuaries from the same firm acting "on opposite sides" [subject to notification of the parties under Section 4.2] and indeed this is a common practice in the UK and Ireland, subject where applicable to the requirements of the Society's ASP PEN-13, Conflicts of Interest – Pensions Actuaries. It may, however, be onerous for a small defined benefit scheme to be required to use two different actuaries if the work done for the employer relates solely to the provision of numbers for the company accounts.

16. There may be schemes whose Trust Deed and Rules require the actuary appointed by the Trustees to advise the employer, or the employer and Trustees, on, for example, the required employer contribution rate. Actuaries who provide advice in relation to such schemes will need to consider if this is acceptable under APS P1 or if it would be appropriate to ask for the scheme documents to be amended.

17. In certain situations, the trustees, employer and their advisors may be working to a common goal, e.g. buy-out. It might be considered desirable that one actuary could advise both parties in this situation, but the actuaries would need to satisfy themselves that the APS provides the flexibility to adequately address this situation.

18. v3.0 introduces a defined term **Conflict Management Plan** (CMP) which is

    A written plan that is agreed between the Trustees, Employer and Scheme Actuary, Equivalent Scheme Actuary or Other Actuarial Adviser, which describes all identifiable conflicts of interest relating to work on behalf of that Member's Firm and sets out how they are to be addressed.

    There was similar wording in v2.0, but this has been expanded to refer explicitly to the ESA and Other Actuarial Adviser.

    Section 4.2 makes specific reference to the need for the CMP to set out any limitations on the advice that may be provided by the ESA to the employer, and to provide for *"a waiver of any duty of confidentiality which would otherwise be owed to the Employer, to the extent necessary to safeguard the interests of the Trustees"*.

    This is similar to the Conflicts of Interest protocol required under ASP PEN-13 v1.3, although APS P1 v3.0 is more definitive in relation to confidentiality, which under ASP PEN-13 v1.3 may be covered in the protocol itself.

19. Section 5 notes that if the CMP imposes requirements on the Employer Adviser (who is not a party to the CMP or explicitly involved in its preparation), the Employer Adviser must comply with those requirements. Section 5 also notes that a member of the IFoA who is approached to be an Employer Adviser to a Scheme, and who is aware "*to the best of their reasonably held belief*" that another member from the same firm is advising the Trustees, has a responsibility to ensure that there is a CMP in place before providing advice in relation to the Scheme.