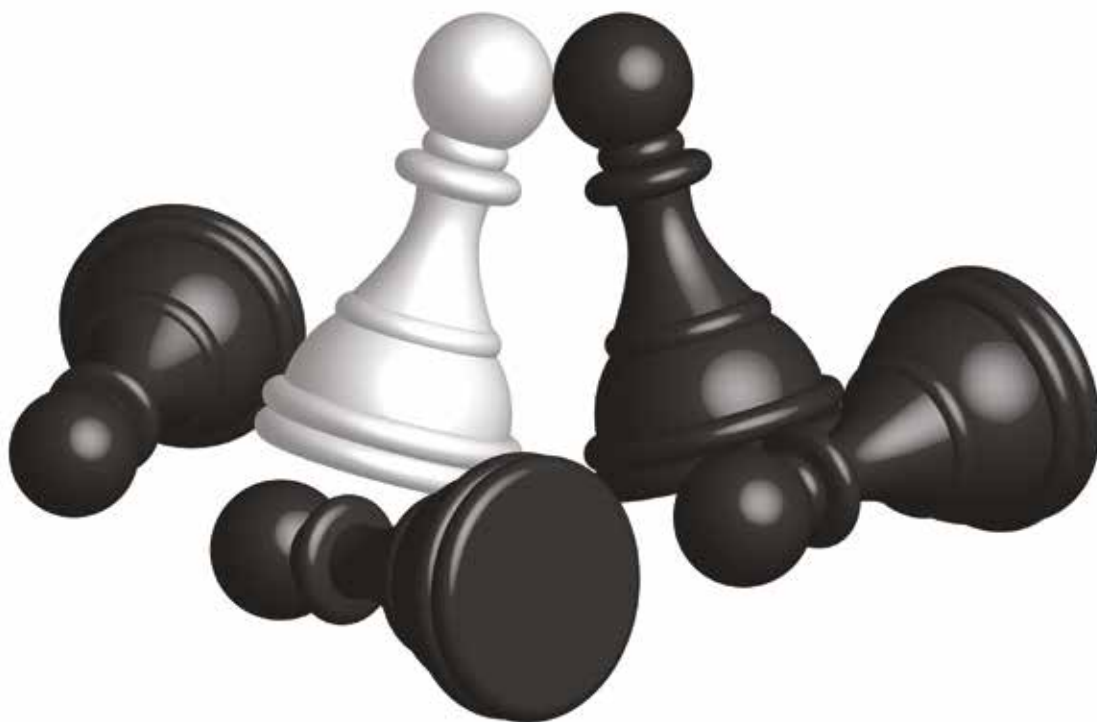


Conflicts of Interest, Conflicts of Duty and the Professional or Director



What is the difference between conflicts of interest and conflicts of duty; and how does today's modern actuary determine appropriate behaviour?

As a professional and a company director, the issue of conflicts of interest is something that is at the forefront of my mind. It's something that all professionals and directors must grapple with from time to time, and the good news is that the Institute now has a range of tools that can help us deal with these sometimes tricky issues.

I have always thought I understood what a conflict of interest was, but it wasn't until I undertook the Company Director's course three years ago that I properly understood conflicts of interest and the difference between conflicts of interest and conflicts of duty. I found the following useful description¹ of the difference between a conflict of interest and of duty:

Conflict of Interest

- Definitions from The Free Dictionary and Business Ethics show that a conflict of interest is any situation that **puts a person or business in a position to abuse their professional power for personal or business gain**. A person does not need to complete this abuse of power for the conflict to exist - only the potential for abuse needs to be present.

Conflict of Duty

- As explained by the *American University Law Review* and the *Journal of Philosophy, Science and Law*, a conflict of duty is a conflict between two different legal or ethical duties. In a conflict of duty, **a person cannot fulfill the duties he has to one or more parties because the interests of the parties have conflict**.

Although conflicts of interest and conflicts of duty are different, sometimes both types of conflict may be present. For example, an actuary may have multiple clients who all need tasks completed (conflict of duty) and then decide to charge the clients they dislike higher fees (conflict of interest).

Conflicts of duty usually involve those who represent or provide services to someone else (e.g. lawyers, politicians, actuaries). This is where some of the confusion about the two terms occurs – people like lawyers and politicians are known to have power and, therefore, people can mistakenly translate conflicts for those individuals as conflicts of interest rather than conflicts of duty.

What I discovered during discussions at the Company Director's course was that whilst conflicts of interest can be managed, conflicts of duty cannot.



With a conflict of interest the conflict must be declared, then can sometimes be managed such that situations where the conflict may arise are avoided (for example a professional director absenting themselves from discussions and decisions around a matter where they are conflicted).

If the conflict of interest is strong enough, it may not be able to be managed. Even if it can be managed, often the perception of a conflict is the issue, so the conflict must be removed, even if the people involved are acting ethically and all involved trust that they will not abuse their power. Perception is reality when it comes to conflicts.

Conflicts of duty are different. Typically the only way to avoid a conflict of duty is to limit the number of individuals a person serves or represents, since this limits the number of potentially conflicting obligations a person has to other parties. This is why an advertising firm will only work for one client in each industry, why a director will not choose to sit on the board of two competitors and why a super fund trustee may not want to sit on the board of two public offer super funds which are competing for the same members.

CONFLICTS OF INTEREST IN CONSULTING

It is more difficult for consultants who work for multiple clients in the same industry – for example an actuarial consulting firm. The reality for actuarial consulting is that there are so few suppliers that almost every actuarial firm will be working for multiple clients in the same industry – including direct competitors – and will be doing the same type of work for them. In fact some of the ‘sales pitch’ such firms use to a prospective client is that they have done this sort of work for others in the industry so know what is standard practice and can broadly assess what this client is doing against what the rest of the industry does.

It’s obvious that this is a difficult path for consultants to walk as there are conflicts here. In some types of work like valuation there is probably less cause for concern about conflicts, as the information is not too sensitive. However when the information is more sensitive, such as pricing, there is more scope for conflicts.

There are a few things that can be done to mitigate conflicts in this situation – such as erecting Chinese walls within the organisation (frankly I have never thought that this works very well in practice), or not having the same team do the exact same job for direct competitors. In some cases if the client is large enough a consulting firm will agree to only do that sort of work for them – an exclusive arrangement.

In the case of consulting I think the issue boils down to trust and confidentiality. Strict confidentiality agreements, well understood and enforced throughout the consulting firm, mean that the consultant can promise to keep the client’s information confidential. But it all hinges on trust. Does the client trust their consultant as a professional to behave ethically? Actuaries are a highly trusted profession so this trust has been given by clients for many years.

It’s important to manage perception issues up front and have discussions with a client about potential conflicts early. As one consultant said to me “By the time you get to the actual conflict of interest, it’s too late.”

CONFLICTS OF INTEREST IN SUPERANNUATION

Much has been written and discussed in recent years. The Super System Review final report in July 2010² made a series of recommendations in relation to trustee governance and conflicts, including that a trustee only be able to sit on multiple public offer

boards if they could justify to APRA why there was no conflict, that equal representation on trustee boards would not be mandatory and super boards would be required to have independent directors, that a conflicts policy be required for all trustees, and that a fund’s rules could no longer specify using particular service providers. It was recommended that APRA be given statutory powers to carry out the above changes, and that they develop a prudential standard that sets out particular examples of conflicts of interest and conflicts of duty to illustrate behaviour that would not be allowed.

Three years later, APRA has been given statutory powers but only one of the above recommendations – the development of a conflicts policy – has been implemented (in SPS 521, see below). From 1 July APRA’s Prudential Standards came into effect. Two are of particular relevance to actuaries:

- *SPS 520 Fit and Proper*. Appointed actuaries under SIS will be ‘responsible persons’.
- *SPS 521 Conflicts of Interest* which requires all RSEs (Responsible Superannuation Entities) to have a conflicts management framework that is approved by the Board. They must also identify all relevant duties and relevant interests and develop registers of relevant duties and relevant interests. This means that actuaries as ‘responsible persons’ must have their duties and interests listed on the register.

WHAT HAS THE INSTITUTE DONE?


1. Information Note

In July the Actuaries Institute Superannuation Practice Committee (SPC) released an Information Note *Conflicts of Interest in Superannuation*. You can find it on the web under Information and Knowledge/Professional Matters/Professional Standards or at this link: <http://www.actuaries.asn.au/Library/Standards/SuperannuationEmployeeBenefits/2013/SPCINConflictsOfInterest.pdf>. The note has several examples of conflicts of interest and outlines the actuary’s duties, and ways in which conflicts could be managed. I commend all actuarial consultants, no matter what area you practice, to read this note. Comments and feedback are being sought by the SPC.

2. Practice Risk Management eLearning Resource

We will soon be releasing our first eLearning course which deals with managing risks in your actuarial practice. The course covers over 25 topics, including managing conflicts of interest.

The course addresses not only conflicts between the duty owed to one client and the duty owed to another client or third party, but also conflicts between the client’s wishes and your professional obligations. It reviews the Code obligations (including examples), deals with conflict checking procedures and includes a case study for you to decide whether there’s a conflict of interest to test your understanding.

As always I’d like to hear from you what your experience has been with conflicts, or how you manage them in your work. 

¹ http://www.ehow.com/about_6661652_conflict-duty-versus-conflict-interest.html I paraphrase a bit of the material on this web page, changing some of the examples to be more relevant to actuaries

² http://www.supersystemreview.gov.au/content/downloads/final_report/part_two/part_2_chapter_2.pdf