



Institute
and Faculty
of Actuaries

Acting as Non-Executive Directors:

Case Studies

by Regulation Board

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0. INTRODUCTION

- 0.1 The range of situations in which Institute and Faculty of Actuaries (IFoA) Members act as Non-Executive Directors (NEDs) are diverse and continually evolving. This document covers some of the more common challenges, situations and questions faced by our Members. It contains practical support to IFoA Members acting as NEDs in the form of illustrative case studies.
- 0.2 The Institute and Faculty of Actuaries (IFoA) is responsible for the regulation of the actuarial profession in the public interest. As part of its regulatory function, it also sets and maintains a framework of standards for its Members. Members of the IFoA must comply with those standards as a condition of membership.
- 0.3 Central to the IFoA's framework of standards is its overarching ethical code, known as the Actuaries' Code (the Code). The framework also contains Actuarial Profession Standards (APSS), which apply specific requirements to Members, building on the principles of the Code, as well as non-mandatory guidance designed to assist Members in meeting their professional obligations.
- 0.4 For Members carrying out UK work, there are also Technical Actuarial Standards (TASs) set by the UK's Financial Reporting Council (FRC) and enforced by the IFoA.
- 0.5 A comprehensive set of these regulatory requirements is on the [IFoA's website](#).
- 0.6 This document is non-mandatory guidance material; it imposes no obligation upon you over and above those embodied in the Code or the IFoA Standards Framework. It has been prepared by the NED Working Party and is issued by the Regulation Board of the IFoA. Its purpose is to support Members' understanding of the ethical and professional responsibilities in this area of work.
- 0.7 This document does not constitute legal advice. While care has been taken to ensure that it is accurate, up to date and useful, the IFoA will not accept any legal liability in relation to its content.

1. CASE STUDY 1: PARAMETERS OF APPOINTMENT

Private and confidential

Ms. Black

22 Princess Street

Edinburgh

EHZ X2Y

13 November 2017

Re: Appointment as NED for PlusX Assurance Co.

Dear Ms Black

Further to our telephone conversation on 10 November, I am delighted to confirm your appointment as NED of PlusX Assurance Co. Your appointment is for a three year term commencing on 4 December 2017 and, subject to possible re-appointment, terminating on 30 November 2020.

As part of your role you will sit as a member of our Risk Committee. Given your actuarial background and experience you are expected to play a full and active role on the committee, especially in challenging management. In all other respects your obligations as a Board member are as specified in the attached schedule.

I very much look forward to welcoming you onto our Board and to working with you.

Yours sincerely

Stewart Thomson

Chairman

- 1.1 Ms Black decides to write a polite letter to the Chairman explaining the limits of her appointment including the following paragraphs:

"In your letter dated 13 November you state that you expect my 'actuarial background and experience to play a full and active role' on the committee, the Board and in challenging management. I would very much hope that I can use my experience (including actuarial experience) to make a positive contribution to the Board, but I would like to point out that participating in these Board discussions and decision making will not (in most cases) constitute my giving formal actuarial advice.

I would like it to be understood by the members of the Board that, although I am an actuary, and my conduct is subject to the Actuaries' Code, I will generally not give actuarial advice to the Board, and what I say is not subject to the actuarial standards which would govern formal actuarial advice.

This situation is logical and parallels can be drawn with other professions that might sit on a Board. For example, if a lawyer sits on the Board then their contribution to the discussion would not be regarded as legal advice and not be a substitute for seeking a legal opinion.

I trust that this explanation and conclusion is satisfactory, and I would be grateful if you could table this letter in the next Board meeting so that other Board members and management are aware of the situation."

- 1.2 Ms Black requests that this letter be read into the minutes of the first Board meeting she attends, so that her colleagues are fully aware of the terms of her appointment. She argues that this will make clear that actuarial advice will only ever be given by exception and if actuarial advice is given Ms Black's capacity as an actuary will be clear. Ms Black will then have confidence that, in conjunction with the other practical tips in this document, the input she provides is as a NED.
- 1.3 See the Actuaries' Code and Non Mandatory Guidance, effective May 2019.
- 1.4 Notes on issues raised:
- a. Does the appointment letter create an expectation that Ms Black will give actuarial advice?
 - b. If Ms Black engages in actuarial work the relevant standards will apply. For example, actuarial work is defined in APSX2 standards as; 'work undertaken by a member in their capacity as a person with actuarial skills on which the intended recipient of that work is entitled to rely. This may include carrying out calculations, modelling or the rendering of advice, recommendations, findings, or opinions.' What additional steps must she then take?
 - c. The Risk Committee may want to consider in detail the actuarial content to inform its decision making. Ms Black will be expected to engage with the material brought before the Committee and provide a perspective informed by her professional background. What steps should she take to manage Board member expectations of her input?
 - d. Assuming Ms Black's appointment as a NED is in part due to her actuarial background, and the attendant skills and experience she will bring to the role, how can she bring the qualities the company are looking for, while protecting herself from undue expectation that she will provide detailed actuarial advice? For example, what open questions can she ask to discharge her duty to challenge as a NED on actuarial issues, without giving inadvertent actuarial advice?
 - e. Does the course of action proposed address all of these concerns?

2. CASE STUDY 2: TAKEOVERS

- 2.1 Sundip is a Fellow of the IFoA. He recently became a NED on the Board of NewTech, a medium sized fin-tech company which made its initial public offering on the Main Market of the London Stock Exchange two years ago.
- 2.2 Yesterday morning the Chair of the Board of NewTech received a call from the Chair of Insure Co. informing him that Insure Co. is considering making a takeover offer for NewTech. The Chair of NewTech called a special meeting of the Board to discuss the content of the call. Insure Co. has the following intentions for NewTech
- 2.3 NewTech will be maintained as a subsidiary of Insure Co. NewTech's administrative functions will be amalgamated with Insure Co.; all human resource, accounts and marketing functions will be centralised to reduce operating costs. There will be job losses. Insure Co. is offering a statement of intention that all technical roles will be protected and any technical jobs lost will be replaced with equivalent roles within Insure Co.
- 2.4 Approximately three months ago Sundip did consultancy work for a third company that was considering a merger with Insure Co. The merger and acquisition did not go ahead as Sundip's due diligence revealed unacceptable liabilities, including reserves carried at the low end of the actuarial range and significant litigation exposure.
- 2.5 The Chair of Insure Co. claims the company has significant capital reserves and does not mention the pending litigation.
- 2.6 Also, Sundip holds a sizeable share portfolio inherited from his uncle, a large proportion of which is shares in Insure Co., which Sundip has been intending to sell.
- 2.7 Notes on issues raised:
 - a. Sundip's shareholding means he has an interest in the proposed takeover. He must declare this; he is bound both by the Code principles of integrity and impartiality and by company law to declare his interest in the transaction before he takes part in any discussions or decision making. How can he use the Code as a tool to raise this with colleagues?
 - b. As a NED Sundip's duty is to the company, stakeholders and shareholders of NewTech. He has information that would be beneficial to the Board in deciding whether to recommend the takeover. What are the regulatory considerations?
 - c. Sundip suspects the Chair is misrepresenting Insure Co.'s financial position. Which principles in the Code can he rely on to support him in raising this issue?
 - d. The takeover will strengthen Insure Co.'s position in the market and increase the share price; Sundip stands to benefit financially if the takeover goes ahead. What pragmatic risk management steps should Sundip take?
 - e. Although Sundip has a primary duty to NewTech's shareholders, he is also likely to be under a contractual duty of confidentiality arising out of his merger and acquisition work. Informing NewTech would be a breach of contract but by keeping quiet he would appear to be breaching his duty to act in the best interest of the Board. Sundip is facing a potential conflict of interest. Should he declare that he is conflicted in the takeover and opt out of discussions and decisions regarding it or are there any steps he could take to manage this conflict?
 - f. The Code contains a duty to 'speak up'. If Sundip believes the Chair of Insure Co. is misrepresenting the company's position he may be duty bound to raise with the FCA and/or seek support from the IFoA, particularly if the misrepresentation could have a material effect on outcomes. What actions are appropriate here?
- 2.8 See the [Companies Act 2006](#) as illustrative of directors' duties in a local jurisdiction, the [Actuaries' Code](#), [IFoA guidance on conflicts of interest](#) effective May 2019, and [Financial Conduct Authority](#) as it relates to the UK.

3. CASE STUDY 3: INSIDE INFORMATION

- 3.1 Sarah is a member of the IFoA and a NED of a very successful video games company, Catapult. Since its inception ten years ago, Catapult has been led by Louisa as CEO and is now a public company. Louisa is seen as the creative force behind Catapult and the key to its extraordinary success. She is an extremely popular CEO and when she was seriously ill 18 months ago there was a significant fluctuation in share price. Shares have since recovered.
- 3.2 Louisa is also Sarah's niece, and approximately 15% of shares in the company are held by Louisa's father (Sarah's brother, Jim), the initial investor in her video games company. Jim has invested heavily in his only child's ambitions, and Sarah knows his retirement plans are based significantly on Catapult's success.
- 3.3 Louisa has just announced her pregnancy to the Board and her intention to step down as CEO after the birth of her child and become a full-time mother. Succession has not yet been decided and the information is not yet public. Louisa will make a public announcement once her successor is agreed. Louisa does not want her father to know her plans in the meantime.
- 3.4 Notes on issues raised:
- a. Sarah's duty is to the shareholders of Catapult as a whole, regardless of her relationship with any particular investor.
 - b. Sarah has potentially price-sensitive information; the release of information about Louisa's plans may cause a fall in share prices.
 - c. Jim stands to lose money on his investment when Louisa's plans become public.
 - d. The information about Louisa's plans may be insider information for the purposes of the Financial Services and Markets Act. If Sarah reveals Louisa's plans to Jim this may constitute market abuse.
 - e. Sarah could potentially be in breach of the Actuaries' Code principles of impartiality, integrity and possibly compliance if she delays the public announcement and/or tells Jim before the public announcement. How can Sarah use the Actuaries' Code and/or the Professional Support Service to assist and support her in bringing the issues to the Board in an appropriate manner?
 - f. How relevant are the terms and scope of Sarah's appointment?
- 3.5 See the Companies Act 2006 as illustrative of directors' duties in a local jurisdiction, the Actuaries' Code, IFoA guidance on conflicts of interest effective May 2019, and Financial Conduct Authority as it relates to the UK.

4. CASE STUDY 4: A JUDGEMENT CALL

- 4.1 You are an independent NED on the Board of a proprietary life assurance company with a large with-profits fund and also sit on the With-Profits Committee.
- 4.2 The assets of the with-profits fund are actively managed in-house by an asset management company, which is connected to the company's shareholder fund.
- 4.3 You have been concerned for some time that the investment performance of the with-profits fund has been poor compared with other companies. You raised the issue a year ago, suggesting that the investment management of the with-profits fund should be put out to tender. You also suggested that given the recent underperformance against indices, policyholders might be better off moving to a passive investment approach with lower investment management fees than those currently being charged by the in-house investment manager for active management.
- 4.4 In response to your concerns a year ago, the investment managers gave a presentation to the With-Profits Committee and the Board. They explained that there had been recent changes to the teams managing their poorest performing sectors and they were confident that performance would improve. They also argued that the fees charged to the with-profits fund were competitive for active management and noted that the company was a strong promoter of the benefits of asset management in the market.
- 4.5 While you were not entirely convinced by the arguments made, there was strong support from management and your fellow Board members for continuing with the in-house investment manager. Although it was not explicitly stated as the reason for staying with the in-house manager, you believe that a significant factor in the decision was the damage that would be done to both the financial performance of the asset management subsidiary (due to the loss of fees) and its reputation (if the company did not have the confidence to invest its own assets with the managers).
- 4.6 It is now a year on and there has been another year of underperformance. You suggest to both the Group CEO and Board Chairman that the decision to stay with the in-house manager should be reconsidered but they argue that the Board spent a long time debating the issue a year ago and it is too soon to re-open the debate.
- 4.7 Notes on issues raised:
- Raising the issue, challenging and discussing the best route forward with the Board at the first opportunity will help to ensure that you make an informed and balanced judgement call. Do any of the practical hints and tips assist in making this judgement call?
 - Whichever course you decide to take as a member of the IFoA you must consider your responsibilities under the Actuaries' Code. Which principle is most relevant?
 - Under the speaking up principle you have a duty to speak up if you believe a course of action is unethical. Members are duty bound to report to the relevant regulator conduct that is unethical and carries significant risk of materially affecting outcomes. What additional considerations might apply?
 - What open questions can be asked, to avoid the perception of inadvertent advice, but allow you to properly challenge actuarial information put to the Board?
 - The duties to act with integrity and to communicate appropriately are also relevant. How could you rely on these principles to assist Board debate and effectively discharge your NED role?
- 4.8 See the Actuaries' Code effective May 2019

5. FURTHER QUESTIONS AND INFORMATION

5.1 We would be pleased to receive any comments on this document. Comments should be sent to:

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