



## **INFORMATION NOTE 012: MARKET CONDUCT AND PROFESSIONAL CONDUCT**

### **Classification**

This document is classified as an Information Note (**IN**). An IN is an educational document that provides information on current or emerging practices in relation to a practice area. It is not intended to prescribe requirements or provide formal actuarial guidance. It serves to familiarise Members with approaches that might be taken and to demonstrate how the actuarial profession might approach the topic. An IN does not impose any obligation on any Member to promote or apply the practices described. It is not a definitive statement as to what constitutes generally accepted practice in the area under discussion and the language used is not directive.

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## Scope

This IN is of relevance to all members of ASSA (**Member/Members**). It is of particular relevance to those Members who are involved in any stage of the product lifecycle in fields of retirement funding, insurance, investment, banking and healthcare solutions. This includes Members involved in the management of legacy products.

The product lifecycle includes design/development, pricing, marketing/distribution strategy, review and sign-off. Members should also consider how advisors or intermediaries are remunerated, ongoing charges, and administration.

Information given within this IN covers the ways Members approach market conduct issues, especially within the provision of Financial Services. This extends to all sub-sectors, including:

- Banking
- Collective investment schemes
- Investment and asset arrangements
- Liability or third-party compensation claims
- Long-term (life) insurance
- Medical schemes
- Micro-insurance
- Pension funds
- Reinsurance arrangements
- Short-term (general) insurance

Note that conduct in each of these areas is subject to their own combination of legislation, regulatory oversight, ombud or other challenge procedures, conduct authorities, etc. Members working in non-traditional fields, perhaps outside the Financial Services Sector, should consider how the principles covered here might impact on their specific (broader) areas of work.

## Overview

Market conduct and professional conduct are two distinct concepts that relate to different aspects of behaviour and ethics.

Market conduct refers to the behaviour and practices of organisations or individuals within a marketplace or industry. It focuses on ensuring fair and ethical practices in the marketplace and promoting healthy competition. Market conduct regulations are typically put in place to protect consumers and maintain a level playing field for businesses.

Professional conduct relates to the behaviour and ethics expected of Members. It outlines the standards, principles, and responsibilities that Members should uphold in their work. Professional conduct focuses on maintaining integrity, competence, and ethical behaviour in the different areas of actuarial practice. Professional conduct extends to the influence that Members have on the market conduct of their employers.



Although distinct in nature, both market conduct and professional conduct issues may arise in a particular situation. For example, where the Member provides advice and is involved in the sales and servicing processes of the employer, both market conduct and professional conduct would be relevant.

In summary, market conduct primarily focuses on fair practices within a marketplace or industry, while professional conduct emphasises ethical behaviour and adherence to standards within ASSA. Both aspects contribute to maintaining trust, fairness, and integrity in different contexts.

The following sections consider these concepts in more detail.

## What is Market Conduct?

Market conduct is overseen by regulatory authorities. Those accused of misconduct will need to answer to the relevant statutory bodies governing the sector/sub-sector in which the alleged misconduct took place.

Market conduct is measured against relevant legislation, along with the regulations imposed by the statutory regulatory bodies.

Market conduct outcomes are closely related to the FSCA's Treating Customers Fairly (TCF) outcomes which are reproduced below:

1. Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture;
2. Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly;
3. Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale;
4. Where consumers receive advice, the advice is suitable and takes account of their circumstances;
5. Consumers are provided with products that perform as firms have led them to expect, and the associated service is both of an acceptable standard and as they have been led to expect; and
6. Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

Market conduct refers to the conduct of institutions (insurers, asset managers, banks, pension funds, etc.) in the market place, as well as those involved in direct interaction with customers. It is measured relative to the following benchmarks:

- Actual terms and conditions of specific products;
- The existing laws and associated regulations; and
- Reasonable expectations of customers.

Members play a critical role in influencing the market conduct of institutions, by nature of our Code of Professional Conduct and requirements. However, the Member may find their influence limited by the structure and operation of the institutions in which they play a role.



If Members are engaged in direct interaction with customers, Market Conduct would be relevant.

Market conduct is typically a company issue, but professional conduct is a personal issue.

Market conduct is measured in terms of how the users of the service/product are treated, for example:

- In the damages space it might be how the different parties are treated and affected by the case;
- Credit Life practices and fair pricing, in particular where cover is mandatory;
- Members of retirement funds are provided with information which is easy and simple to understand (which can be used to make choices) in all stages of their participation in the retirement fund (ie at the start of membership, during on-going membership or at termination of the membership);
- Members who work with retirement funds balance contribution rates that ensure financial sustainability for the scheme against affordability constraints of members of the scheme;
- In the light of unsustainable medical claims inflation, Members consider limiting/removing medical scheme benefit options to balance access to healthcare against affordability constraints of members of the scheme; or
- The different underwriting criteria applied to members joining a retirement fund or medical scheme as part of an employer group, as opposed to those joining individually.

Market conduct can be harder to define to the extent that it is (currently) less codified than professional conduct.

Market conduct requires that all parties to a transaction are treated fairly, for example a person claiming from the Road Accident Fund (RAF), the RAF itself, in a corporate environment the competitors, the end customer etc.

Legislation such as the Financial Advisory and Intermediary Services Act (FAIS), and regulation related to Treating Customers Fairly (TCF), have begun to codify how to treat customers. This process will continue with the proposed Conduct of Financial Institutions (COFI) bill. However, principles based regulations can never cover every possible situation and there will always be room for interpretation.

Key areas considered under market conduct:

- Fair pricing: Ensuring that prices are set reasonably and not manipulated to exploit consumers or competitors;
- Truthful documentation and marketing: Prohibiting false or misleading information that could confuse or deceive consumers or misrepresent products or services;
- Product quality: Requiring businesses to provide products or services that meet certain standards; and
- Anti-competitive behaviour: Preventing activities such as collusion, price fixing, or abuse of dominant market positions that can harm competition.



## What is Professional Conduct?

Professional conduct is overseen by the professional body (or bodies) of which the individual is a member. Any Members accused of professional misconduct will need to answer in their personal capacity to ASSA and be subject to a disciplinary process in terms of ASSA's constitution.

Professional conduct is measured against ASSA's Code of Conduct, along with the relevant standards and guidance notes issued by ASSA.

Professional conduct is in some ways broader than market conduct – it covers all aspects of what we do as actuaries (and Members of ASSA).

Professional conduct relates to an individual Member's behaviour as a professional, including how the Member applies and adheres to the standards and guidance articulated by ASSA.

Poor market conduct in which the Member was an active participant, or where the Member failed to apply professional standards in attempting to combat market misconduct, or where the behaviour of the Member in support of the misconduct is seen to bring the profession and ASSA into disrepute, can be seen as professional misconduct and may attract sanction from a professional tribunal. This is in addition to any sanction from judicial and regulatory authorities.

Professional conduct extends to the public interest responsibilities of ASSA, including how Members conduct themselves in matters that might influence corporate and social attitudes. The fact that it is raised as a market conduct issue does not preclude that matter being treated as a professional conduct issue as well, and vice versa.

ASSA's professional guidance tries to codify professional standards that would lead to better market conduct outcomes e.g. the APNs which cover life insurance premium reviews.

As Members we set the standards for ASSA and aim to set the bar high and make it client centric. However, institutions are not bound by the standards of ASSA and may be more influenced by commercial aspects.

Key areas considered under professional conduct as set out in ASSA's Code of Professional Conduct:

- Ethical guidelines: Members are expected to adhere to the Code of Conduct that outlines acceptable behaviour;
- Competence: Professionals should possess the necessary knowledge, skills, and qualifications to perform their duties competently;
- Professional relationships: Maintaining respectful and appropriate relationships with clients, colleagues, and other stakeholders; and
- Continuing professional development: Members are required to engage in lifelong learning and stay up-to-date with the latest advancements and best practices.



## What issues are faced by Members that are relevant to market and professional conduct?

In normal day-to-day activities the Member can find themselves dealing with a number of different (and sometimes conflicting) roles:

- Business owner;
- Board member;
- Executive;
- Analyst (employee);
- Employee filling a statutory professional role;
- Responsible for sales and servicing processes (direct interaction with customers);
- Independent (professional) advisor;
- Independent expert witness;
- Participant in interest group or publicly visible body;
- Customer; or
- Member of the public.

The Member is expected to conduct themselves professionally in all these roles, with particular attention to where their standing as a Member is likely to be material in how the opinions expressed are seen. This implies that Members ensure that their opinions should be suitably qualified and have sufficient foundation for the purposes for which those opinions were expressed. Within that, there are additional and specific obligations placed on Members when they act in a professional capacity, e.g. in giving advice or providing expert witness.

In addition to their professional responsibilities, Members are subject to legal and commercial obligations, including acting to protect the interests of their employers and their clients. This extends to confidentiality of business strategy, protection of data and protection of intellectual property. Breaching this confidence is justifiable only in limited and specific circumstances, and the responsible Member needs to apply their mind carefully before taking any decision to respond to market conduct concerns. Further consideration is given to this in Section 0.

Support from ASSA is generally available for any areas where a Member is in doubt about the appropriate next steps. It is important that issues relating to market conduct may be seen as a particular area of concern, and that appropriate support remains available to deal with potential market conduct issues faced by Members.

Members who are concerned about misconduct on the part of an employer or client may face obstacles in their path to discharging professional and other obligations. These obstacles can include:

- Employer or client restricting the information / data made available to the Member (outside data absolutely required by statute);
- Employer or client threatening reprisal against the Member, most commonly in areas of threatened contract termination or poor performance reviews;
- The risk of legal action to attempt to recover redress for any harm said to be as a result of the actions of the Member; or



- The Member seeking professional help and guidance may struggle to find suitably independent actuaries to provide that help, especially in small markets.

## Conclusion: Some practical thoughts on Member responses

As suggested previously, Members may face many conflicting requirements when market conduct issues arise. In addition to their professional responsibilities there are responsibilities to regulatory authorities, and responsibilities to their employers and clients. Members may find these responsibilities to be in conflict with each other. Raising these issues may bring them into the public arena, potentially causing damage to companies and individuals (whether justified or not).

There are options available to help Members resolve these conflicts. Steps to take can include:

- Consult ASSA's Code of Professional Conduct, Standards of Actuarial Practice, Actuarial Practice Notes and this and other Information Notes;
- Consult relevant legislation and regulation;
- Contact the Actuarial Society of South Africa for assistance in difficult situations, or seek help from an experienced colleague;
- Contact relevant regulatory authorities, especially confidential lines where concerns can be raised; or
- Contact the Market Conduct Committee for guidance on whether an issue might constitute a breach of Market Conduct requirements.

Members are asked to raise examples of possible market conduct issues with the Market Conduct Committee for discussion and debate. Over time a list of possible examples will be extended and updated, and this should be used to give further insight into issues and how they might be addressed