



THE ACTUARY'S PUBLIC INTEREST OBLIGATION

EXPLANATORY NOTE

By the ASSA Public Interest Task Force 2020

1. Background

The International Actuarial Association's (IAA) Principles of Professionalism document PG1 (2017) contains references to the actuary having a responsibility to the public. Similarly the Actuarial Society of South Africa's (ASSA) Code of Professional Conduct (2012) states that "a member shall act honestly, with integrity, competence and due care, and in a manner that fulfils the profession's responsibility to the public."

In a presentation at the IAA Colloquium of 2019, and the accompanying paper, Simon Louw (2019) suggests that this "public interest duty be removed from the [ASSA] Code [of Professional Conduct]". This proposal was made partly due to an apparent lack of clarity of what the term 'public interest' means.

The latest version of the Institute and Faculty of Actuaries' (IFoA) Actuaries Code (2019a) does not place an obligation to act in the public interest on the individual member. Instead this obligation rests on the profession while an individual member is deemed to meet this through compliance with the Actuaries Code and guidance notes issued by the profession.

In the light of this the ASSA Council proposed that a task force be set up to consider the matter and bring recommendations to Council of appropriate action in this regard. The task force's recommendation is to retain the existing Code of Professional Conduct and to issue a non-mandatory explanatory note to members to guide them in their interpretation of the 'public interest'.

This document is the recommended non-mandatory explanatory note to members of ASSA.

2. Current usage in other actuarial associations

No single, clear, widely-accepted definition of the 'public interest' exists and this note does not attempt to provide one. Instead, it attempts to explore the various meanings it might have and how this might be used in practise. Firstly, we highlight some key usages of this and related terms by other actuarial associations.

The IAA (2017, 2018) refers mostly to a "responsibility to the public". According to the IAA this manifests as "the overriding interest of the individual professional in the public well-being" and the "protection of the public from unsound practices" (2017). In principle, the IAA considers that this responsibility of individual members is met by them "upholding the values and standards of the profession, fulfilling statutory roles, avoiding conduct which could bring the profession into disrepute and supporting

the professional organization that provides public interface with the profession” (*Ibid.*).

The IFoA (2019a) refer to the “public interest” rather than a “responsibility to the public” but the term is not defined. There is no longer an explicit requirement on this in their Actuaries’ Code for individual members but rather for the profession as a whole. However, it is still referenced in the preamble to the Actuaries’ Code, and in their Royal Charter. The public interest obligation of members is clarified in the accompanying guidance (2019b), namely that members do not have a specific public interest obligation, but are deemed to meet the public interest through compliance with the Actuaries Code and guidance issued by the profession.

The Actuaries Institute of Australia have recently completely re-written their code of conduct to be more principles based, like the IFoA. Their new code does not include the public interest, other than in the opening purpose. However, it is still contained in their constitution alongside the “benefit and protection of the public” (2018).

The Deutsche Aktuarvereinigung e. V. have nothing in their mission statement or disciplinary code regarding the public interest. It is mentioned once in their code of conduct, without defining it, where it is included as a negative obligation, namely a duty to avoid conduct “which is contrary to the public interest” (2019).

3. ASSA usage

ASSA uses the term ‘public interest’ in a number of places without explicitly defining it. In this section, we explore how it might be interpreted.

In describing its purpose, ASSA (n.d.) states:

The Actuarial Society serves the public interest through regulating and supporting the actuarial profession in South Africa.

We do this through:

- Providing world class education to actuarial students to ensure that those qualifying have achieved high levels of knowledge, competence and professionalism. South African actuarial education is widely acknowledged as being amongst the best in the world.
- Establishing and monitoring standards of professional practice for actuaries.
- Maintaining a rigorous disciplinary process to hold actuaries not upholding professional standards accountable
- Advancing actuarial skill and knowledge in all current fields of actuarial practice while supporting actuaries who bring their skills into wider fields
- Engaging decision makers as an impartial profession focused on the public good on all areas of policy where actuaries can contribute.
- Being an objective voice in making understanding of complex actuarially related issues accessible to the wider public
- Looking for opportunities for South African actuaries to practice both locally and internationally

The above does not define the 'public interest', but does set out the ways in which ASSA considers its public interest obligation to be fulfilled.

The Code of Professional Conduct (2012) contains the following provisions regarding the public interest:

- 2.b. A member shall act honestly, with integrity, competence and due care, and in a manner that fulfils the profession's responsibility to the public.
9. A member must act honestly, with integrity, competence and due care, and in a manner that fulfils the profession's responsibility to the public and upholds the reputation of the actuarial profession.
23. The Society serves the public interest through its actuarial education and continuing professional development programmes, and by developing and enforcing standards. The Society also serves the public interest by engaging with regulators and in public debate. Members are encouraged to motivate improvements in regulation and participate in relevant policy debates, especially through the structures of the Society.
24. Members are encouraged to consider the public interest when rendering actuarial services, but provided that members meet the requirements of the applicable Law, the Constitution of the Society and any applicable Standards of Practice and the Code, they will be deemed by the Actuarial Society to have met the expectations of the profession with respect to the public interest.

4. Discussion

Conceptions of public service or the public interest range from narrow to broad, and no single, clear, widely-accepted definition exists.

A narrow view would be that, as professionals, actuaries have certain special responsibilities to their clients, whom may be considered 'the public'. In particular, actuaries have a duty of care to their clients and may not act for their own self-interest at the expense of their clients. In the narrow view of the public interest, the exercising of these special responsibilities to the client is deemed to be acting in the public interest and there are no special responsibilities towards stakeholders beyond the specific client legal requirements.

As the benefits or beneficiaries of the service move wider than the particular client, the view broadens. For example, contributing to public debate or to the development of society would also be considered to be acting in the public interest. A very broad view of public interest activities encompasses the goal of human flourishing.

The public interest could also be seen in terms of positive and negative protections for the public. The negative protections relate to curbing abuse by those with knowledge or power over those without. It is to avoid harm. The positive protections relate to using one's knowledge and skill to protect the vulnerable. It is to do good.

Biomedical ethics can provide some considerations in suggesting that 'do no harm', 'do good' and 'justice' be factored into decision making (Tom Beauchamp & James Childress (1979)).

The wide range of possible views as indicated above makes a single definition of 'acting in the public interest' impractical since value judgments (e.g. what is good and what is bad) and what constitutes 'the public' are drawn into the question.

A particular challenge with regard to the public interest is the area of conflicts of interest. ASSA defines conflict of interest in the Code of Professional Conduct as follows:

Conflict of interest arises, inter alia, when a member has an actual or potential interest that may influence the objective performance of the member's obligations to any specific client, or prevent the member from rendering an unbiased and fair service to any specific client, or prevent the member from acting in the best interests of any specific client. (ASSA, 2012, para. 16)

'Interest' here could refer to an economic gain, or avoidance of some loss, or even attitudes, biases, or allegiance to something else. Many potential conflict situations can arise when one extends this beyond just the actuary/client relationship. For example, the actuary may not have a conflict between the outcome for themselves and their client but could have a concern for a potential impact on wider and coincidentally related party. Or there may be conflicts between different 'publics' or segments of the public. In some situations it may not be possible to effectively manage these conflicts.

In summary, the public interest is complex. In some cases, it is easier to see whether something is or is not in the public interest. Where matters are less clear, and different perspectives need to be balanced, the issues are more complex and difficult to resolve.

5. Considerations for members

Minimum requirements

From the above, we see that individual members act in the public interest in the normal course of work by at least adhering to the following principles, amongst others:

- acting honestly, with integrity, competence and due care;
- following the Code of Professional Conduct and all applicable Standards of Practice;
- abiding by the Law;
- maintaining Continuing Professional Development.

Other public interest activities

Additionally, members voluntarily may act in the public interest more directly as set out in the non-exhaustive examples below. In so doing so they should be mindful that their opinion of what benefits the public may not be universally accepted and

that identification and declaration of real and potentially perceived conflicts of interests is important.

- contributing to the activities of ASSA in general, and especially those aspects that seek to enhance the profession's contribution to the public interest;
- contributing to public debate on matters concerning the public at large, always bearing in mind the professional conduct required by ASSA;
- assisting with the proper functioning of key public institutions;
- whistle-blowing.

Some questions to consider

As noted above, the definition of what is considered in the 'public interest' is wide and does not have consensus. If a member is considering whether a course of action may or may not be in the public interest, it may be useful to consider some of the following questions.

- What may the possible wider consequences of one's actions or advice be? For example, who is benefitting? Who is being harmed, if at all? What are the likely immediate versus long-term consequences?
- Is there is risk of a perception that a conflict may arise between acting for my principal and acting in the interests of a wider 'public'? If, so can the risk be mitigated in some way?
- In some cases where the public benefit/harm is not clear, could it be considered that the provision of professional service in itself is in the public interest?
- If all courses of action in a particular case do not have a clear optimal outcome for all parties and 'publics' is it possible to find an overall optimal balance? (e.g. can the principle of Pareto Optimality from economics provide a guide?)

Documentation

Where a member is faced with challenges in considering acting in the 'public interest' it is recommended that members clearly document their thinking and decisions.

The framework proposed by Megan Butler, Taryn Reddy and Roseanne da Silva (2015) could assist members in this respect. The steps are as follows (*Ibid.*):

1. Specify the problem: recognise the ethical issue
2. Develop the solution: gather information
3. Understand the environment: consult legislation, guidance and regulation
4. Develop the solution: evaluate possible options
5. Develop the solution: make a decision
6. Monitor the solution: future decision-making

6. Conclusion

It should be clear from the above that there is space for varying views and opinions regarding obligations to the public interest, and that there is no single right answer. Members are encouraged to be mindful of this plurality. Members should think for themselves regarding these matters, and are encouraged to document their thinking and decisions. Members are reminded that they may consult a senior actuary or the ASSA President (amongst others) if they are in doubt about the appropriate course of action.

References

- Actuarial Society of South Africa. (2012). Code of Professional Conduct.
- Actuarial Society of South Africa. (n.d.). What Do We Do?
<https://www.actuarialsociety.org.za/about/>
- Actuaries Institute of Australia. (2018). Constitution.
<https://actuaries.asn.au/Library/Standards/Professionalism/2018/ConstitutionassessedbymembersAugust2018.pdf>
- Actuaries Institute of Australia. (2020). Code of Conduct.
<https://actuaries.logicaldoc.cloud/download-ticket?ticketId=d80acea7-876d-40d6-a929-99adea3e6304>
- Beauchamp, T.L., & Childress, J.F. (1979). Principles of Biomedical Ethics. New York: Oxford University Press.
- Butler, M.B.J, Reddy, T.L., & da Silva, R. (2015). The process of ethical decision-making in South African retirement funds. South African Actuarial Journal, 15, 171-208.
- Deutsche Aktuarvereinigung e. V.. (2019). Code of Conduct for Actuaries.
https://aktuar.de/Dateien_extern/DAV/2019-04-25-DAV-Code-of-Conduct.pdf
- Institute and Faculty of Actuaries. (2019a). The Actuaries' Code.
- Institute and Faculty of Actuaries. (2019b). The Actuaries' Code: Guidance to support the principles and amplifications in the Actuaries' Code.
- International Actuarial Association. (2017). PG1 - Principles of Professionalism.
https://www.actuaries.org/ABOUT/Documents/PG1_Principles_Professionalism.pdf
- International Actuarial Association. (2018). Internal Regulations.
<https://www.actuaries.org/IAA/Documents/ABOUT/Governance/Regulations.pdf>
- Louw, S. (2019). The Actuary's Duty to the Public Interest. Paper presented at IAA Colloquium. <https://www.colloquium2019.org.za/wp-content/uploads/2019/04/Simon-Louw-Actuaries-Duty-IAA.pdf>
- Lowther, M., Doyle, P., Dutkiewicz, C., Els, W., Malan, J., Missankov, I., ... Wanliss, L. (2005). Report of the Public Interest Task Group of the Actuarial Society of South Africa.