



Institute
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Our complex and interlinked world

The challenge of professionalism in a cross-disciplinary
and international environment

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What is professionalism?

❖ Hard to define but commonly associated with the following:-

- Trust
- Accountability
- Status
- Expertise
- Values
- Protected / reserved roles
- Public Interest

❖ The idea perhaps that professional people have some kind of heightened duty to their clients / the public because of the broader importance of the profession to society at large.



The professions: from gentlemen's clubs to the brink of collapse?

- ❖ The professions are under threat, because:-
 - Society is better informed and more prepared to challenge (and litigate!)
 - They are seen to be anti-competitive
 - They restrict the free market
 - Reduction in reserved roles
 - External competition in non reserved areas
 - Crises e.g. the banking crisis: undermine confidence in professional advisors
 - Internationalisation – to which local or parochial regulatory frameworks are ill adapted
 - Digitilisation
 - Greater accessibility of information – ‘de-mystifies’ the professions to some extent
 - Tired and outdated business models which don’t lend themselves to innovation
 - Over regulation
 - Under regulation
 - Lack of market differentiation between regulated and non-regulated individuals or entities: dilution of the professional “brand”
 - Political short termism and the cyclical nature of the regulatory agenda

What distinguishes professionals in 2016?

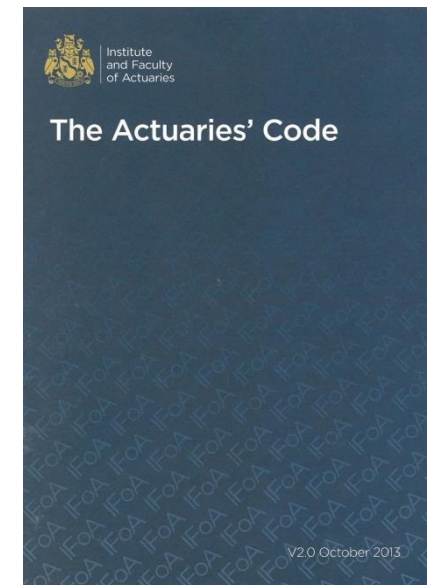
- ❖ Hypothesis: beyond technical competence (hardly unique to professionals), the answer must lie in relevant professional values and ethics, and the skill set (judgement and insight) to apply them.
- ❖ Professional people have specific responsibilities:-
 - To act in the best interest of their clients, and to identify and act upon any conflict which inhibits their ability to do so.
 - To speak up, to their clients, regulators or others, in certain situations, beyond the requirements of the general law.
 - Subject to accountability and enforcement regimes in relation to both the technical and professional aspects of their roles and their conduct more widely.



Professional responsibility to act in the best interests of one's clients

- ❖ “Members will not allow bias, conflict of interest, or the undue influence of others to override their professional judgement”
- ❖ “Members will ensure that their ability to provide objective advice to their clients is not, and cannot reasonably be seen to be, compromised”
- ❖ “Members will not act where there is a conflict of interest that has not been reconciled”

(Actuaries' Code, Principle 3, Impartiality)



Conflicts of Interest: Case Study

- ❖ IFoA Standard P1 addresses the specific conflicts which might be encountered by the Scheme Actuary to a UK defined benefit pension scheme.

“Having regard to principle 3 of the Actuaries’ Code, the Scheme Actuary should presume that the provision by him/her of client advice to the employer to that scheme, in relation to the funding of that scheme, or in relation to any matter which has a direct bearing on the benefits payable under that scheme, would give rise to an irreconcilable conflict of interest.”

(Section 5.3, Standard P1)

- ❖ Contrast the position for solicitors in England: “you can never act where there is a conflict, or a significant risk of conflict, between you and your client.”



Conflicts of Interest: Case Study (cont'd)

- ❖ *“If there is a conflict, or a significant risk of a conflict, between two or more current clients, you must not act for all or both of them unless the matter falls within the scope of the limited exceptions set out at outcomes 3.6 or 3.7. In deciding whether to act in these limited circumstances, the overriding consideration will be the best interests of each of the clients concerned and, in particular, whether the benefits to the clients of you acting for all or both of the clients outweigh the risks”*

(Solicitors Regulation Authority (SRA), Code of Conduct Chapter 3: Conflicts of Interests)



The professional responsibility to “speak up”

- ❖ “Members will speak up to their clients or to their employers, or both, if they believe, or have reasonable cause to believe, that a course of action is unlawful, unethical or improper”.
- ❖ Reporting themselves or other professionals:

“Members will promptly report any matter for consideration under the Institute and Faculty of Actuaries’ Disciplinary Scheme which appears to constitute misconduct or a material breach of any relevant legal, regulatory or professional requirements ...”

(Actuaries’ Code, principle 4, Compliance)



The professional responsibility to “speak up” (cont’d)

- ❖ *“In rendering actuarial services, all members must comply with any whistleblowing requirements of the regulatory authorities and relevant legislation.”*
- ❖ *“Any member who believes that another member may have contravened any of the provisions of the Code must discuss the matter with the other member with a view to obtaining clarity. If the matter cannot be resolved, or if either member does not consider such a discussion to be appropriate or constructive, the concerned member must seek appropriate guidance. If such discussions provide or confirm prima facie evidence of the contravention of the Code, the member who initiated the discussion must report such contravention to the Society.”*

(Actuarial Society of South Africa, Code of Professional Conduct, Rules 21 and 22)

“Speaking up” (cont’d)

❖ Compare the position for barristers in England:

- “You owe a duty to the court to act with independence in the interests of justice. This duty overrides any inconsistent obligations which you may have (other than obligations under the criminal law)....
- You must not knowingly or recklessly mislead or attempt to mislead the court;
- You must take reasonable steps to avoid wasting the court’s times ...;
- Your duty to act in the best interests of each client is subject to your duty to the court.
- Your duty to the court does not require you to act in breach of your duty to keep the affairs of each client confidential.”

(UK Bar Standards Board, Conduct Rules)



Professional accountability

- ❖ ... “Misconduct means any conduct by a member, whether committed in the United Kingdom or elsewhere, in the course of carrying out professional duties or otherwise, constituting failure by that member to comply with the standards of behaviour, integrity, competence or professional judgement which other members or the public might reasonably expect ...”

(IFoA Disciplinary Scheme)

- ❖ “An actuary who commits a material violation of the provisions of the Code shall be subject to the profession’s counseling and discipline procedure”.

(American Academy of Actuaries, Code of Professional Conduct)

- ❖ “There are certain standards of conduct to be expected of competent and reputable solicitors. Departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct”

(Per Lord President Emslie in Sharp V Council of the Law Society, 1984 SC 129)

Professionals and Professionalism: the future?

❖ Either we:-

- Except the decline in the professions, in the face of pressures from governments, the market and the public, relying instead upon statutory interventions in the market where necessary to protect public safety and effective competition; or
- We believe that there is a societal need or value in the qualities of professionalism that the professions stand for.



Ongoing relevance of professionalism?

- ❖ For all the pressures on the professions, there is also a detectable siren call for more (better?) professionalism and ethics. Witness the crisis in public confidence evidenced by:-
 - The financial crisis
 - Specific scandals e.g. Libor, HBoS, Lehman Brothers – raising questions of organisational culture and ethics
 - A recognition that traditional “hard” or statutory regulation does not always guarantee the public interest
 - A realisation that litigation is not the panacea of consumer protection and redress
 - Increased focus on standards in the financial sector e.g. the new UK Banking Standards Board:

“The Banking Standards Board (BSB) has been established to promote high standards of behaviour and competence across UK banks and building societies.

A successful, dynamic UK economy needs a strong, stable banking sector which serves the best interests of its consumers. For the sector to contribute fully to the economy and society it needs to be trusted; not only by its customers (in the UK and globally), but also by its staff, by potential employers, by regulators and by policy makers. Trust in the sector has been damaged, and it is only the industry itself – by demonstrating honesty, reliability and competence on a consistent and collective basis – that can rebuild it.”
- ❖ And confidence in specific professions, and professional people, is resilient amongst those who rely on them.

Ongoing relevance of professionalism?

❖ And the IAA ...

“International Standards of Actuarial Practice (ISAPs) are established to promote high quality actuarial practice globally.”

“High quality actuarial practice:

- Helps serve the public interest by benefiting users of actuarial work, regulators, and participants and beneficiaries of financial products and services, including social security programs; and*
- Benefits actuarial associations and individual actuaries by enhancing the credibility of the actuarial profession.”*



Resolving the tensions: the way forward

- ❖ Hypothesis 2: There remains a role for forward thinking professions and professional bodies prepared to adapt to remain relevant
- ❖ In particular, there remains a critical role for standards and ethics
- ❖ We may however need to be prepared to rethink how we define and uphold those standards and, perhaps, to be bolder and more confident in articulating what they require in practice, to command and retain public trust.
- ❖ In the UK, FRC independent survey of confidence in the actuarial profession suggested that stakeholders have gained confidence in the profession in recent years. 96% of those surveyed by Ipsos Mori were very or fairly confident in the integrity of the profession itself. 81% of those surveyed were confident in the clarity of the information.

Lessons for professional and regulatory bodies

- ❖ Importance of recognising internationalisation: practitioners increasingly don't practice in geographic silos, nor should regulators. The risks otherwise are duplication, inconsistency, over regulation or gaps.
- ❖ Focus on the outcomes: identify and target the mischief we are trying to solve. (Over) regulation of the process can obscure the key message and can be less amenable to direct application in different contexts, leading to more and more granular regulation.
- ❖ Focus on the purpose of regulation. This can be (1) to support the profession itself; (2) to enhance its credibility; but must, first and foremost, prioritise the public interest in order to command public confidence. The definition is less important than the concept, and perspective. This means both that we must commit, and be seen to commit to the overarching importance of the public good, but also produce regulation that is capable of being understood, at least conceptually, by wider stakeholders.

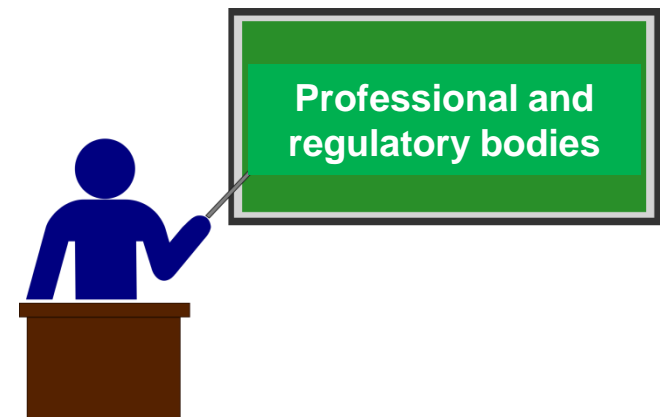
Lessons for professional and regulatory bodies (cont'd)

- ❖ A “zero tolerance” approach is neither possible, nor does it actually serve the public interest. We need to prioritise and target interventions according to public interest risk, recognising that any regulation creates a burden and intervenes in the market and that the reason for that intervention therefore needs to be capable of reasonable justification.
- ❖ Importance of not stifling innovation, or effective competition.
- ❖ We need to be mindful of an increasingly interconnected regulatory landscape, in which professions are no longer clearly segregated and are regulated at individual and entity level by (potentially) a multitude of overlapping regulators and regulatory regimes.



Lessons for professional and regulatory bodies (cont'd)

- ❖ Having defined our regulatory outcomes clearly, we must uphold and enforce professional standards rigorously and confidently, but fairly – the profession cannot afford to be toothless or to be seem to be self serving.
- ❖ “Soft” regulation is not soft, but critical. Professional bodies and regulators need to find new ways to recognise and uphold the importance of culture, and ethical judgements and insight.
- ❖ Professional regulatory bodies do still have a critical role in promoting and upholding professional and ethical standards – the need in fact, in light of the financial crisis, may never have been greater.



Regulatory Style (1)

❖ “Principles” versus “Rules” based regulation

- So called distinction really just describes the level of prescriptiveness
- Key point is that we regulate with sufficient clarity, such that what is required is capable of reasonable comprehension, with an eye also to enforceability (albeit not as the primary driver)
- The importance of clarity as to both substance and status of regulation (distinguish non-mandatory guidance and educational material)
- Be wary about prescribing excessive detail – can lead to over regulation, and potentially “group think”
- Role of professional judgement and importance of not hindering innovation
- Principles based regulation is (1) hard to get right; and (2) more challenging for both the regulator and regulated, but (3) might lead to better outcomes.

Regulatory Style (2)

❖ “Independence” versus “self regulation”

- Pure self-regulation out-moded?
- But: Danger in divorcing regulation from the profession.
- Self-regulation versus self-responsibility.
- The importance of external perspective, and perception.



Conclusion

“I see disturbing evidence that there has been a broad decline in professionalism over the past twenty to twenty-five years, not only in the three so-called “learned professions” – the clergy, medicine, and the law – but in many other important activities, for example those who serve in the “money markets” – including “Wall Street”, banks, and savings and loan institutions – have inflicted severe damage on the public. Some have called this period a “Greed era”. The decline of professionalism, especially in the law, has taken on epidemic proportions.”

Chief Justice Warren T Burger
23rd Annual John F Sonnett Memorial Lecture,
Fordham University of Law. 23 January 1995



Conclusion (cont'd)

As Harold Laski* observed as far back as 1935, any inherent conflict of interest within a profession becomes more pronounced at time of crisis.

A lesson learned again as a result of the recent financial crisis

We must, once and for all, assert the value of professionalism, in the public interest.

Let us be bold in asserting the value, to society, of the profession, and of its professionalism.

Bold in upholding, rigourously, but fairly, our standards and values.

The public interest will benefit. The future of the profession may depend on it.

***Harold J Laski, The Decline of the Professions,
Harper; Monthly magazine 1935, June/Nov p 676**

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