

**RESPONSE TO THE MORRIS REVIEW'S CONSULTATION DOCUMENT OF JUNE 2004**  
**FROM**  
**THE DISCIPLINARY BOARD OF THE ACTUARIAL PROFESSION**

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**1. Introduction**

1.1. The Disciplinary Board was established on 1 January 2004 and meets approximately four times a year. It is the body responsible under the disciplinary schemes of the Faculty of Actuaries and the Institute of Actuaries for monitoring the governance of the schemes. It reports annually to the profession's members: the first report is due in January 2005. The Board was set up to operate independently of the Councils of the Faculty and Institute, but reports bi-annually to the Councils. The Councils of the Faculty and Institute cannot remove members of the Board from office unless the disciplinary schemes are rewritten first.

1.2 The Board's members – three lay members and six actuaries - are appointed by the Disciplinary Appointments Committee. Brief CVs of the members are appended in Annex A\*. The Board's Chairman will always be a lay person, that is, not a member of the actuarial profession. All the members, both lay and actuarial, have extensive experience of professional regulation, either in the actuarial or other professions, or as members of financial regulators or other tribunals.

1.3 The Board's role is defined in the disciplinary schemes, notably in rule 9. A copy of the Institute's scheme is appended in Annex B; the Faculty's scheme is essentially identical\*\*. For the purposes of the Morris Review perhaps the most important role of the Board is in rule 9.2: subject to the agreement of the Councils, it may at any time arrange for a review of the provisions and operation of the new schemes or any aspects of them. There is therefore already built-in provision within the new schemes for review of the working of the schemes and for proposals to make changes, through the Board. The Board expects to use this power when it needs to suggest change, and to exercise it in consultation with all those with roles under the schemes – actuarial and lay. The Board will also publish its proposals on its website pages, for public comment. Consultation with every member of the profession about any change – large or small – is mandatory, as is approval by the members of the profession in General Meeting. Finally, approval by the Privy Council is a prerequisite to change to the Institute's scheme.

1.4 In addition to the role of monitoring the schemes, the Board is required to make certain regulations and to give procedural guidance, and has discretion to offer other such regulations and guidance not listed as required in the schemes, where it sees the need for them. Its approach to its role is in line with the principles of good regulation recommended by the Better Regulation Task Force. It

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\* Annex A: the brief CVs of Board members are found on the website at:

[http://www.actuaries.org.uk/link/professional\\_affairs/discipline/DisciplinaryBoardBiographies.html](http://www.actuaries.org.uk/link/professional_affairs/discipline/DisciplinaryBoardBiographies.html).

\*\* Annex B: the disciplinary schemes of the Institute and the Faculty are found on the website at:

[http://www.actuaries.org.uk/link/professional\\_affairs/discipline/rules.html](http://www.actuaries.org.uk/link/professional_affairs/discipline/rules.html).

seeks to achieve consistency and fairness in the operation of the schemes, together with transparency about their operation. All of the Board's regulations, guidelines and procedures, with its reports, are designed to be relevant, balanced, and proportionate in their effects. The Board's commitment to accountability is demonstrated in part through the publication of all these documents on the profession's website as they become available ([www.actuaries.org.uk](http://www.actuaries.org.uk) - then use the Professional Conduct button on the home page). The following quotation from Brian Harris's book: 'Disciplinary and Regulatory Proceedings' (2002 p 319) refers to penalty policies, but in the Board's view it should apply to all documents relevant to the operation of the Actuarial Profession's disciplinary schemes:

"But it is not enough for a disciplinary body to formulate a .... policy: that policy needs to be published both to its members and to the wider world to which the trade or profession is accountable. Only by publication will the policy be exposed to informed comment. Only by publication can the policy stand any chance of influencing those to whom it is applicable. Only by publication can the legal advisers of the defendants sensibly counsel their clients."

## **2. Scope of the Board's memorandum**

2.1 The Board's response to the Morris Review's Consultation Document is brief, as it relates principally to the areas for which the Board has responsibility under the current schemes, and to comparisons with the regulation of other professions. The response is sent with the knowledge of the Presidents of the Faculty and Institute of Actuaries, and will be forwarded for information to both Councils and published on the Board's website pages.

### **RESPONSE TO SPECIFIC QUESTIONS IN THE CONSULTATION DOCUMENT**

#### **1.34: Do you agree that the review can learn lessons from recent developments in the UK accountancy profession, for example, in areas such as standard setting or in the establishment of a single unified and independent regulator – the Financial Reporting Council?**

1.34.1 The Board understands that the Financial Reporting Council (FRC), which in relation to disciplinary matters supersedes the Joint Disciplinary Scheme, brings an overarching approach to the 5 separate accountancy professional regulatory bodies including their jurisdiction over firms, which may employ members of more than one accountancy regulatory body. Now that the Faculty and the Institute have virtually a unified disciplinary scheme, there is no need for an overarching body, or indeed a unified regulator for actuaries, as far as professional discipline is concerned.

1.34.2 Further, there is a question of cost. The costs of the Accountancy Investigation and Disciplinary Board, which may choose to take any public interest case from any individual professional accountancy body and carry out its own investigation, prosecution and sanctions, must be met by those professional bodies themselves. The Morris Review will undoubtedly wish to consider how much, given its small membership, the actuarial profession would be able to afford to support an overarching disciplinary scheme which was answerable to a body comparable to the FRC and completely independent of the profession itself. The voluntary and unpaid input by the profession's members into investigation and adjudication under the current disciplinary schemes might be lost, and would be difficult and costly to replace in a system not owned or sponsored by the profession.

**Question 1.36: Are there lessons for the actuarial profession from comparison with the professional and regulatory framework of the legal profession?**

1.36.1 The Board suggests that the Solicitors' profession is not the right comparator profession in the disciplinary context, on grounds of size, direct contact with the public including frequent handling of clients' funds, the nature of the professional practice involved, and the fact that the Law Society's disciplinary powers derive not only from Charter but also in part from statute.

1.36.2 Nor are there striking similarities between the actuarial profession and the Bar such as to make obvious lessons for comparison there either, although it is fair to say that the Bar has a disciplinary procedure which is controlled by the Bar Council, contains lay representation, and which, as the Board understands it, has met with general approbation and approval.

**1.37: Which other professions' regulatory models, and what aspects of them in particular, do you think the review should consider?**

1.37.1 There are obvious dangers in trying to 'cut and paste' disciplinary provisions from any profession's disciplinary scheme into another's without careful thought and legal advice.

1.37.2 The disciplinary arrangements for individual actuaries must take account of the different respects in which actuaries can be said to have duties, what the scope of those duties are, and to whom they are owed. If there has to be a comparator profession, and the Board strongly counsels against such an approach, perhaps architecture is somewhat analogous, to the extent that the professional is usually engaged by a commercial entity, but there may also be duties to a variety of individuals and organisations, under contract and statute, as well as under professional guidelines, but even here the analogy is somewhat stretched. Where the actuary is employed by a non-actuary, such as a financial institution, but does work which affects the clients of that Institution, the law is unclear, and only development in case law can clarify the circumstances in which an actuary owes a duty of care to a client.

1.37.3 It is outside the Board's terms of reference to promote change in this respect, but it may also be worth considering whether there needs to be a right accepted, or imposed, on institutions by statute to respect an actuary's right to confide in his professional body, and not to be punished or disadvantaged for refusing to do anything which his professional body tells him would be in breach of his professional duties or its guidelines. This latter is covered to some extent by the public interest disclosure and other whistle blowing legislation, but not wholly. It may be helpful for those who do have responsibility for promulgating actuarial standards to consider whether any actuary, who has raised concerns with his superiors about being required to act in breach of his professional duties or guidelines, should also have the right, without penalty, to raise this with his employer's governing body. These rights could possibly, for example, be included in the service contract of an actuary employed by a non-actuary.

1.37.4 Another problem, which the Morris Review may wish to consider in this context, is also referred to in paragraph C of the conclusions to this memorandum, and that is the absence of any disciplinary jurisdiction over firms, other than in the relatively narrow context of the FSMA and investment advice.

**Question 2.38: Do the new disciplinary processes implemented by the Profession from 1 January 2004 address the issues that Lord Penrose raised?**

2.38.1 In paragraph 59 of his report Lord Penrose acknowledges the profession's recent overhaul of its disciplinary processes, apparently with approval.

2.38.2 In paragraph 60 of the report Lord Penrose suggested supplementing, but not replacing, the new schemes with an additional procedure. He wrote:

"The people best placed to identify the need for disciplinary intervention are co-professionals. It would improve the public image of the profession if it were seen to accept responsibility for direct intervention where it was thought that the administration of life funds was likely to threaten the legitimate interests of policy holders. I would invite ministers to offer encouragement and support for initiatives that the profession might take in this direction."

2.38.3 Although it is outside its terms of reference to adopt such a role, the Board agrees that this is a matter that the Faculty and the Institute should consider, not only in the area of life insurance but in all branches of practice. The Faculty and the Institute may well need a process for systematic monitoring of compliance with their own guidance and procedures as well as a procedure to bring forward matters needing investigation in the public interest, or that of the profession.

2.38.4 As explained earlier, it falls outside the Board's functions under the scheme to seek out cases to investigate, and for it to do so would compromise any subsequent action which might be taken under the disciplinary schemes. It may nevertheless be helpful to explain that the disciplinary schemes already contain a framework for speedy response to whistle blowing, or to proactive intervention by the Profession, where no complaint may have been received. Rule 10.1 states:

'Where, having regard to the interests of the public and the profession, an Honorary Secretary of the Faculty/Institute considers it appropriate that a matter relating to the conduct of a Member should be investigated, such matter may be referred to an Investigating Actuary even though no complaint may have been received;'

Such referrals then proceed as though they were complaints. The Profession might, for example, wish to develop and publish a transparent procedure for Honorary Secretary referrals, which is clearly understandable by the public, the membership and those operating the disciplinary schemes. The procedure would seek to achieve a fair and consistent approach to identifying conduct by individuals that may raise questions of misconduct that justify investigation under the schemes, even though no complaint has yet arisen. It is, however, important to remember that the Faculty and Institute have jurisdiction only over individual members and not over firms (with the exception of a small number of firms licensed by the Institute as a Designated Professional Body under the Financial Services and Markets Act).

2.38.5 As operated currently, however, this framework does not provide a systematic review of all actuarial advice. Whether it should do so, or the extent to which it should do so, is a matter for the profession generally and not for the Board.

**2.40 Should the review consider whether a fully independent disciplinary process is needed?**

2.40.1 The Board assumes that this question seeks views on the value of imposing a disciplinary procedure on the Faculty and Institute but operated by and accountable to others, such as the Government.

2.40.2 It is the Board's view that the new disciplinary schemes as a whole strike an appropriate balance between professional and lay involvement, with suitable checks and balances at every stage.

2.40.3 The current schemes are, however, so new, and the complaints so few (8 to date under investigation since the schemes' inception on 1 January 2004) that it is difficult at this stage to make an informed judgement on their effectiveness in practice. It would be desirable to let them run for a period.

2.40.4 As stated in the introduction to this memorandum the Board is itself independent of the governing bodies of the Profession and is responsible for setting in train any arrangements to change the schemes. It has three lay members, two of whom are legally qualified, including the Chairman, and is appointed by the equally independent Disciplinary Appointments Committee.

2.40.5 There is therefore considerable independent and lay input into the present schemes at all stages. It is not clear what value would be added by a new 'fully independent' arrangement, that could result in the actuarial profession's members having to meet the costs of another regulator which would not have the same degree of accountability to and involvement of the members as the existing disciplinary schemes.

2.40.6 The Board applies to its own work the tests used by the Better Regulation Task Force (Annual Report 2004 annex 1), which include: "Is the regulation necessary?...Is it affordable? Is it effective?". Proposals for any new arrangement which failed those tests could add an unnecessary burden upon the members of the profession and bring no benefit to the public.

**2.41: In the accountancy profession the joint monitoring unit verifies whether firms are complying with audit standards. Given Lord Penrose's criticisms and the long-term nature of actuarial advice, is there a need to move away from reactive complaints-driven disciplinary procedures to a more proactive regime of monitoring of compliance with professional actuarial standards? If so, who would have responsibility for overseeing the monitoring and disciplinary proceedings and who should bear the associated costs?**

2.41.1 Not 'away from' but 'as well as'. There will always be some complaints about professionals made to their regulatory bodies, and a need for a system to investigate and conclude them, if necessary with disciplinary action. Further, as indicated in the answer to 2.38 above, there is already scope (which could be further built on by the Profession if it were considered appropriate) in the current disciplinary schemes for proactivity where no complaint has been received.

2.41.2 As stated in paragraphs 1.3 and 2.40.5 above, the Board, which is independent of the governing Councils, is already responsible for overseeing the monitoring of the disciplinary schemes and the profession's members bear the costs. It should also be remembered that the chief object of a monitoring regime should be to raise standards, not fines.

2.41.3 The Board considers that the role of overseeing of discipline should be separate, and be seen to be separate, from the role of overseeing compliance with standards, particularly because failure to comply with standards may lead to disciplinary action.

### **Conclusion**

The following comments go beyond the questions in the Consultation Document, but reflect issues identified by the Board in its consideration of the questions.

A. The Board appreciates that the timing of the review is not in the Morris Review's gift, but hopes that these very new disciplinary schemes will be given time to operate and then be themselves reviewed in operation before any further major change to the disciplinary arrangements of the Actuarial Profession are proposed. In the Board's view the schemes provide sufficient, effective independence from the Councils of the Faculty and the Institute, and deliver an appropriate balance of costs and benefits not only to the profession but more especially to the public. That does not mean that the Board rejects any possibility of change – quite the opposite. Doubtless changes could be made but, if so, they must be robustly measured against, and demonstrably pass, the tests quoted in paragraph 2.40.6 above.

B. Furthermore, there is an obvious point in this connection, but perhaps worth reiterating here, although the Morris Review will be well aware of it. It is important that, in discussing improvement to the regulatory regime, the public and government are aware that regulation cannot guarantee that every possible actuarial failure can be prevented or remedied by the profession or by the regulator, whatever its powers, nor can any procedure guarantee to deliver total customer satisfaction

C. As already stated, with the exception of regulation of investment advice under the FSMA, the current professional regulatory jurisdiction is given to the Actuarial Profession in terms of the conduct of individual members rather than of firms, which distinguishes this profession from others like accountants and auditors. The question whether that jurisdiction should be extended to include firms is not raised in the Consultation Document, and so it is not clear whether the Morris Review will in fact wish to consider it.

D. Finally, the Board looks forward to receiving the Morris Review's next document and would in the interim be pleased to discuss any questions arising from this response, or any proposals which the Review has to make about the disciplinary and regulatory regime for the profession. If there is any help that the Board can give, it would welcome the opportunity to do so.

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