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THE ACTUARY'S DUTY TO THE PUBLIC INTEREST

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Declaration

I declare that this research report is my own unaided work. It is submitted for the degree of Master of Arts, Applied Ethics for Professionals, in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.



Simon Louw

19 May 2019

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1. Introduction

Background

The primary professional organization of actuaries in South Africa is the Actuarial Society of South Africa, of which I am a Fellow. The professional conduct framework of the Actuarial Society of South Africa comprises of a code of conduct, a disciplinary procedure, and technical guidance notes covering Standards of Actuarial Practice and Advisory Practice Notes. This framework supports the "professional promise" (Actuarial Society, n.d.) as identified by the Actuarial Society of South Africa, which promise comprises three pillars:

- The application of specialist and up-to-date actuarial knowledge and expertise;
- The demonstration of ethical behaviour, especially in doing actuarial work; and
- The member's accountability to the Society for professional oversight.

  (Actuarial Society, 2012)

The elements of the professional conduct framework overlap the three pillars of the professional promise. However, the primary professional normative standard for members is the Code of Professional Conduct. My focus in this paper is on the Code of Professional Conduct and supporting statements. I shall refer to this Code of Professional Conduct as the 'Code', and to the Actuarial Society of South Africa as the 'Actuarial Society'.

The Actuarial Society is a member organization of the International Actuarial Association. The International Actuarial Association's Principles of Professionalism state upfront that "the distinguishing feature of a profession that sets it apart from a trade, a craft, a guild or a

syndicate is the overriding interest of the individual professional in the public well-being" (Actuarial Association, 2017, p. 1). In isolation, this presents a clear view regarding actuaries and the public interest.

The Actuarial Society's Code closely follows the International Actuarial Association's Principles of Professionalism. Accordingly, the Code makes several references to "the public interest" and a "responsibility to the public" (Actuarial Society, 2012). For example, "a member shall act honestly, with integrity, competence and due care, and in a manner that fulfils the profession's responsibility to the public" (2012, para. 2b). Also, "the Society serves the public interest through…" (2012, para. 23) and "members are encouraged to consider the public interest when rendering actuarial services…" (2012, para. 24). The concept of the public interest has a long history and use in the actuarial profession. The result is a clear expectation by actuaries that they should act in the public interest.

Aim

Regarding the actuarial profession, C.S. Bellis asks that "we should cast a sceptical eye over our normative claims and make sure they can be justified" (Bellis, 2000, p. 343). I shall be doing just that. My aim in this paper is to explore the question: should the Actuarial Society include in its Code a duty for members to act in the public interest? I argue in the negative which is contrary to popular or intuitive views. My weak claim is that the arguments do not sufficiently support the duty for actuaries to act in the public interest. My strong claim is that the requirement cannot be morally defended, and it should be removed from the Code.

In this paper, I will not defend the validity of a code of professional conduct. Specifically, I will not defend the moral basis of the Code as a whole. I assume the Code is morally justified. Instead, my focus is on the specific items in the Code relating to the public interest. If my strong claim is true, and the public interest requirements are removed from the Code, will this removal invalidate the Code as a whole? I believe not, and no damage is done by its removal.

Before I proceed, I highlight the contributions of the Public Interest Task Group of the Actuarial Society (Lowther et al., 2005). Having considered the subject in some depth, they propose "that the mandatory public interest duties of individual actuaries be limited to those that can be set out in objective terms in professional conduct standards and guidance notes" (*Ibid*.). (It will be seen in chapter 3 that this is a narrow conception.) They also make or record several observations which are similar to mine. I think my current endeavour remains valid because the Code was created several years after their work. I am considering the *status quo* as it exists now, and the questions remain open. Furthermore, my weak and strong claims are different, and my arguments are different to theirs. Finally, there is merit in revisiting the debate for a new generation of actuaries not exposed to the debates of the past (or for those older actuaries who might have forgotten them).

Outline of paper

In order to tackle the question, I must first establish that such a duty exists for actuaries. This is covered in chapter 2. In chapter 3 I discuss the nature of the public interest in an actuarial context. Having set the scene, I review and critique in chapter 4 some arguments

by others for the case of the public interest duty. Chapter 5 sets out my arguments against the public interest duty for actuaries. Chapter 6 considers some possible objections to my arguments. My concluding remarks are contained in chapter 7.

In the rest of this paper, unless specified otherwise, when referring to actuaries, I refer to them acting *qua* actuaries rather than in some other role, such as ordinary citizens.

2. Establishing the duty

My aim in this chapter is to establish that a duty to act in the public interest exists for South African actuaries. In the next chapter I shall consider what this duty might entail. For now, I want to establish its existence. To do so, I begin by briefly considering the international actuarial context. This has relevance to South African actuaries because of the professional similarities, affinities, and sense of community. Having viewed the international picture, I shall zoom into the South African situation.

In what follows, various terms are used which I shall for now assume to be broadly equivalent. These are: public interest; public good; public well-being; responsibility to the public. The next chapter elaborates on this.

International

The Actuarial Society is a member organization of the International Actuarial Association (or IAA). The IAA has issued a professional guideline "PG1 – Principles of Professionalism" (2017) as a guide for member associations regarding professional conduct. The IAA's PG1 states in the introductory section that "the distinguishing feature of a profession that sets it apart from a trade, a craft, a guild or a syndicate is the overriding interest of the individual professional in the public well-being" (Actuarial Association, 2017, p. 1). The positioning of this statement in the early part of the document, and the choice of words, indicates that the public interest is of primary importance for the IAA, and by extension, its member organizations. An argument could be made that merely showing an "interest" in the public well-being does not imply a normative requirement. I argue that, by prefacing "interest"

with “overriding”, and calling it a “distinguishing feature”, seek to elevate this to the status of a norm. This is borne out by subsequent statements in PG1 (p.5):

> The IAA membership Regulations require provisions in members’ Code of Conduct to be consistent with the principle that “An actuary shall act in a manner that fulfils the profession's responsibility to the public”.
>
> Actuaries have [a] professional responsibility to clients and/or employers, the public and to their Full Member Association.

In the United States of America, Jay M. Jaffe states that “the Code of Conduct makes a clear statement that U.S. actuaries intend to serve the public” (Jaffe, 2012, p. 3). He goes on to survey some other major, generally English-speaking, actuarial associations around the world, such as Canada, the United Kingdom, Australia and South Africa. He notes all have a public interest provision, although the conceptions of this range from broad to narrow.

The actuarial professional body in the United Kingdom is that of the Institute and Faculty of Actuaries. Many South African actuaries are also members of the U.K. body. This organization has issued an “Actuaries’ Code” to guide the conduct of members. The current version of “The Actuaries’ Code” is dated August 2013 and removed the strong public interest requirement that previously existed. Their code no longer includes an explicit duty to public interest. However, it does state in the purpose that “the Code consists of principles which members are expected to observe in the public interest…” (Actuaries, 2013, p. 2).

Furthermore, the Institute and Faculty of Actuaries suggest in a separate guide that one way to identify conflicts of interest is to:

> assess whether your personal or professional interests (including the professional requirement to have regard to the public interest) create a conflict which might make it hard for you to continue to act without compromising your objectivity (Actuaries, 2012, p. 5).

The suggestion clearly refers to "the professional requirement to have regard to the public interest" (*Ibid*.). It suggests that this requirement could trump other requirements in certain situations because the resulting conflicts "might make it hard for you to continue to act" (*Ibid*.). I discuss the issue of conflicts of interest in chapter 5.

South Africa

The Code of the Actuarial Society mirrors the IAA's Principles of Professionalism. The Code is accompanied by a letter from the then president of the Actuarial Society, Themba Gamedze. In this, Gamedze says he "believe[s] that the Code will play a vital role in guiding us towards fulfilling our mission in the public interest" (Actuarial Society, 2012). The word 'mission' refers to some important goal, or a vocation, rather than an ordinary objective. By using this word, Gamedze elevates the significance of the public interest. Furthermore, the fact that Gamedze chose to refer to the public interest at all, rather than other possible professional matters, is evidence that the public interest is weighty according to Gamedze.

The preface to the Code states:

> Any material failure to comply with either the principles or the specific requirements for professional conduct will be interpreted as a violation of the Code and may constitute unprofessional or unacceptable conduct. (*Ibid*.)

This statement means actuaries should generally follow the Code. I say “generally” because of the use of the words “material” and “may”. Together these words imply that, in order for conduct to be unacceptable, the conduct needs to be in gross violation of the Code and which could not be justified. There may be instances where it is justifiable to not follow the Code, and the conduct could be acceptable. However, the expectation is that these situations are not the norm. Thus, members are expected to follow the precepts of the Code. A stronger, and yet largely uncontroversial formulation, is that members have a duty to follow the Code.

The Code 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” (2012, para. 2b,9). Paragraph 23 of the Code explains the ways in which the Actuarial Society “serves the public interest” (2012, para. 23), which I discuss in the next chapter. One may point out that these quotes refer to the profession’s and the Actuarial Society’s role in the public interest, rather than that of individual members. I will assume for the sake of my argument that the profession, the Actuarial Society and the individual members can be taken as equivalent for the purposes of moral evaluation. It is beyond the scope of my paper to argue for this equivalence. However, my view is that they are equivalent. The profession is made up by the individuals; it exists because of them. The Actuarial Society provides the structures and mechanisms by which the profession organizes and regulates itself. It, too, would not exist if it were not for the existence of the individual members. Furthermore, the Code makes it clear that the actions of individual members directly affect the reputation of the profession and the Actuarial Society. Conversely, any wrongdoing by the Actuarial Society taints my

character as an actuary in the eyes of others. For these reasons, I assume equivalence between the profession, the Actuarial Society, and its individual members.

In the Code "members are encouraged to consider the public interest when rendering actuarial services…" (2012, para. 24). The use of "encouraged" implies a weaker standard than an imperative duty. Later on, I will evaluate the strength of the public interest responsibility. For now, it suffices to note the reference to the public interest in the normative standards of the Actuarial Society. Together with the above Code requirements, and my assumption of equivalence, there is an expectation that actuaries should act in the public interest.

The Actuarial Society's standards are reflected in the views of several South African actuaries. I shall quote a few here. Peter Withey, in his 2016 Presidential Address to the Actuarial Society, refers twice to the protection of the public interest, implying that actuaries ought to act in this way (Withey, 2016). Anthony Asher has written extensively on virtues for actuaries. For example, his 2001 guest editorial in the British Actuarial Journal is titled "on the virtue of serving the public interest" (Asher, 2001) which is unequivocal. Mickey Lowther and Wendy McMillan warn against "compromis[ing] the delivery of service to the broader community—showing, in other words, little or no concern for the public interest" (MW Lowther & McMillan, 2006, para. 2.8). The implication is that actuaries should act in the public interest.

I deal with objections in chapter 6. However, it is worth considering here the question of whether there is confusion between a responsibility to the public versus a responsibility to

promote the public interest. For example, the Code refers in paragraphs 2b and 9 to a "responsibility to the public" (Actuarial Society, 2012) rather than the public interest. Actuaries have certain responsibilities to their clients, whom may be considered 'the public', which ordinary employees do not have. In particular, actuaries may not act for their own self-interest at the expense of their clients. Some may call these special responsibilities to clients a responsibility to the public, possibly to distinguish them from ordinary responsibilities (such as those arising from common morality). I do not dispute these special responsibilities in general. The question then turns to what does it mean, for actuaries, to promote the public interest? How does that differ, if at all, from a responsibility to the public? This is explored further in the next chapter.

Summary

In this chapter I set out the numerous examples which lead me to conclude that a duty to act in the public interest exists for South African actuaries. This stemmed from both international as well as local actuarial standards, and was reflected in the views of prominent actuaries. However, you may disagree with me. If that is so, assume for the sake of argument that the duty does exist. The question is then, *ought* there to be such a duty? That is my question. Before I get to answering that, we need to first understand the nature of the public interest duty as it applies to actuaries.

3. Nature of the public interest duty

Having established a public interest duty for actuaries, I consider in this chapter the nature of this duty. What does it mean to act in the public interest? It is necessary to understand the nature of a duty to the public interest before we can ask whether there ought to be such a duty. The concept of public interest has a rich philosophical history. Accordingly, I begin in this chapter by describing some philosophical conceptions of the public interest in a professional context. Then I review how the actuarial profession has approached the topic. I conclude this chapter with my assessment, which is that we should adopt a broad conception of the public interest for the purposes of my paper's question.

Philosophical views

As noted at the start of chapter 2, there are several terms used that are synonymous with or related to the public interest. These include: public interest; public good; public well-being; and responsibility to the public. Bruce Jennings, Daniel Callahan and Susan M. Wolf helpfully refer to acts of 'public service', which acts they see can be directed to either the public interest, or the common good, or both (Jennings, Callahan, & Wolf, 1987). They define the public interest as the sum of private interests. For them, to act in the public interest is to act in a way which fosters the greatest realization of individual interests within a society for mutual advantage, while maintaining peace and order. (This hints at utilitarian justifications – see chapter 4.) They suggest that, for professionals, public service in the public interest might involve technical expertise in matters of public policy, and service to individual clients. Since the public interest is the sum of private interests, servicing the interests of private clients indirectly promotes the public interest.

Service to individual clients is a narrow conception of service in the public interest. An argument that professions should keep to the narrow view is that it limits the professions from interfering in public policy, where public policy should be set through a political process. Thus, it avoids the politicization of the professions. It also helps to focus the professional on service to their clients, rather than on some other end. Placing individual clients at the centre is in the liberal tradition in the sense of recognizing the autonomy and rights of individuals. It also evokes notions of fair treatment of and justice for individuals. In this view, service to clients requires respecting their individual autonomy and rights, and treating them fairly. It would be contrary to the public interest to act in ways which do not uphold this respect or fair treatment. This is alluded to by Jennings *et al* who say:

> Whatever else it may mean, the public interest clearly requires obedience to the moral and legal principles of justice and right that are designed to protect individuals from harm by others. (Jennings et al., 1987, p. 7)

Karim Jamal and Norman E. Bowie's review of three professional codes of ethics notes that each of these codes "indicates explicitly that the professional is to put public service ahead of personal interests" (Jamal & Bowie, 1995, p. 711). This could be interpreted as defining the public interest as the opposite of the professional's personal interests. In other words, so long as the professional is acting in the interests of the client, rather than for their self-interest, then this is in the public interest. This is consistent with the narrow conception of Jennings *et al* described above.

A similar narrow definition could be read into Michael Davis's statement:

> A profession, in contrast, is organized to help members serve others- according to a certain ideal expressed in its code of ethics. In this sense, professions are organized for public service. (Davis, 1991, p. 154)

On this view, professionals must work for others rather than themselves. They are not offering their services to themselves. Also, unlike business owners for example, they are not seeking solely to maximize their own profits. It is in this way a public service. Public service in the public interest is then rendering a service to individual clients.

Looking just at the concept of the 'public', Davis (1991) considers various definitions of the public as it pertains to American engineering codes of ethics at the time. This analysis can be applied to other professions, including actuaries. Davis considers definitions ranging from broad to narrow. He rejects broad interpretations, namely "everyone more or less equally" (Davis, 1991, p. 165) or "anyone" (*Ibid*.). He prefers a narrower conception being individual clients who rely on the professional's expertise. This is consistent with his view quoted above. If the public means individual clients, then the public interest must mean the interests of individual clients.

Jennings *et al* define the common good as relating to human flourishing. They suggest that, for professionals, public service for the common good might involve "distinctive and critical perspective[s]" (1987, p.6) on what flourishing or well-being means for a community, and how best to achieve it. Heinz C. Luegenbiehl quotes the "enhancement of human welfare" (Luegenbiehl, 1983, p. 47) from the American engineering code of ethics at the time, which is consistent with the view of professions' public service for the common good. This focus

on *eudaimonia* suggests a broad conception of public service. Jennings *et al* argue that professions have an obligation to both the public interest and to the common good, that is a broad view. I shall elaborate on their arguments in chapter 4.

A different take on public service can be read into Alexander Bertland's statement:

> Rather than simply charging a manager with serving the public, the manager is charged with serving the stakeholders in a way that develops their capabilities. (Bertland, 2009, p. 25)

Replacing 'manager' with 'professional', this means that professionals serve the public by helping individuals to develop their capabilities. The capability approach links to the concept of human well-being, which makes it similar to the 'common good' view described above. It is a broad conception of public service.

Actuarial views

The IAA's views on actuaries' responsibility to the public are presented in section 3.5 of PG1 (2017). According to the IAA, actuaries have an "overriding interest… in [the] protection of the public from unsound practices" (2017, p.4). For this reason, the public trusts actuaries (and awards them "status and recognition" (*Ibid*.) in return). The unstated assumption is that this trust must be maintained (perhaps to maintain the desired status level). This is achieved by individual actuaries acting in certain ways, described below. These actions constitute the IAA's views on what it means to act in the public interest.

First, actuaries should "[uphold] the values and standards of the profession" (*Ibid*.). This assumes that these values and standards are such as to promote sound practices that do not harm the public. This introduces some circularity, since one of the values is acting in the public interest. The circularity is as follows: the profession acts in the public interest by upholding certain values, one of which is acting in the public interest.

Second, some actuaries fulfil statutory roles, where these roles require the actuary to assume specific statutory obligations with the aim of protecting the public. Examples of such roles are certifying the financial soundness of insurance companies or pension funds. Financial soundness is expected to result in the insurance company or pension fund being able to meet its obligations to policyholders or pensioners as these obligations arise. This provides protection to the public.

Third, actuaries must keep a proper professional image by "avoiding conduct which could bring the profession into disrepute" (*Ibid*.). It is reasonable to assume that "unsound practices" (*Ibid*.) that harm the public, or individuals, would tarnish the profession's image and damage the public's trust in the profession, should this conduct come to light. I take it this is the rationale for the IAA's view regarding professional image.

Fourth, the IAA states that the actuary acts in the public interest also by "supporting the professional organization that provides public interface with the profession" (2017, p.5). The meaning of this is not entirely clear. One interpretation is that the profession engages in public debate, or perhaps gets involved with public policy. This is public interaction.

Individual actuaries get involved by assisting the profession in this public interaction, and in this way, act in the public interest.

According to the IAA, an actuary strives to protect the public "whether or not that comes into conflict with the immediate objective of earning his or her living" (2017, p.4). I will discuss conflicts in detail in chapter 5. For now, I note that this is another way of stating that public, or client, interests should be placed above the actuary's self-interest. This is the narrow public interest conception of the philosophers seen above.

The IAA settles on a narrow conception of the public interest. In this narrow view, the actuary's responsibility to the public is deemed to be fulfilled so long as the actuary's conduct falls within the professional and legal boundaries. The Actuarial Society makes the same point in the Code as the IAA:

> 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. (Actuarial Society, 2012, para. 24)

Certain activities of the Actuarial Society are considered by the Actuarial Society as being in the public interest. In chapter 2 I assumed equivalence of the Actuarial Society and its individual members, so that Actuarial Society activities can be seen as activities of individual members. The first stated Actuarial Society public interest activity is the education and continuing professional development of members. The unstated assumption is that having actuaries suitably trained and skilled promotes the public interest through the work that the

actuaries do. Then, by educating and developing actuaries, the Actuarial Society acts in the public interest.

Second is the development and enforcement of standards. This assumes that these standards in some way promote the public interest. It would not be in the public interest to set actuarial standards that caused harm to the public. This is akin to the IAA's "protection of the public from unsound practices" (2017, p.4). Enforcement is an important component of a profession, since standards without enforcement may result in conduct that falls short of the required standards. Thus, enforcement is itself in the public interest by ensuring the standards are adhered to.

Both of the above activities can be seen as falling into the narrow conception of the public interest, namely service of an appropriate standard to individual clients.

The third area of Actuarial Society activity in the public interest is engagement with regulators and participation in public debate. These two could be separated but it is sufficient for my purposes to consider them together. It is interesting that the Code specifically goes on to say that "members are encouraged to motivate improvements in regulation and participate in relevant policy debates" (Actuarial Society, 2012, para. 23). In this way, the Actuarial Society's engagement with regulators and participation in public debate is transferred to members. Unstated assumptions are that these regulator or public policy interactions are constructive, and that these interactions have as their aim the protection of the public. Jennings *et al* do consider special interest lobbying by professions as legitimate, but not a substitute for lobbying for the benefit of the public. So, it is clear

that this kind of regulatory and governmental interaction must be for the public's protection or benefit in order to be considered as in the public interest. I see this as a broad view.

The views of prominent actuaries are also relevant. In one example, Asher states that "actuaries play their social (public interest) roles in the regulation and management of institutions that provide appropriate and trustworthy insurance and savings products" (Asher, 2017, p. 22). This can be done via the special statutory roles as highlighted by the IAA. Alternatively, this role can be met through members adhering to the standards of their professional organization, provided the profession's standards are appropriately set. This is the same as the narrow conception of the IAA and Actuarial Society, where the public interest is met by actuaries doing their jobs properly (see assessment section below). Conversely, Christopher David Daykin urges for a broad view when he states that "our public interest role needs to be seen in the widest possible context" (Daykin, 1995, p. 21).

The concept of public interest comes up in the matter of whistleblowing. In some cases, the special statutory roles are required by law to report matters to the authorities. There may also be laws that require citizens to speak up, which is not specific to actuaries. In other cases, the general justification for whistleblowing is that it is in the public interest. So, whistleblowing could be seen as a particular type of public service in the public interest.

Summary and assessment

From the above discussion, it is clear that public service, as it relates to professionals, involves conceptions of the public interest that range from narrow to broad. In its narrowest

sense, public service means simply doing one's job properly, by adhering to standards, in the service of individual clients. I may be accused of being too simplistic in this assessment. However, this depends on how one defines 'doing one's job properly'. As far as actuaries are concerned, I intend this to mean meeting all the required actuarial technical and professional standards, and acting in the client's best interest, rather than for the actuary's own interest. In other words it means fulfilling the complete "professional promise" (Actuarial Society, n.d.), which typically goes beyond what normal employees are expected to do. However, the focus is still narrow. As the service moves wider than just individual clients, so the view broadens, for example contributing to public debate or to the development of capabilities. A very broad view of public service encompasses the ultimate goal of human flourishing.

The IAA's and the Actuarial Society's statements narrow the conception of public interest to actuaries doing their jobs properly in the service of individual clients (as I defined above). This very narrow conception barely resembles the public interest in any meaningful sense. The link to the public interest is indirect. This view could just as easily be applied to any employee, for example, since employees are expected to do their jobs properly. In this, there is no distinction between actuaries and fruit pickers, say. I hasten to add that what constitutes 'properly' is vastly different between actuaries and fruit pickers but that does not remove the similarity of the concept. This begs for a broader view of public interest.

The Code states in paragraph 24 that the narrow view satisfies the profession's expectations regarding the public interest. However, the question is whether it satisfies society's expectations regarding actuaries' obligations to the public interest. The public's view of

their interests should be considered. One sensible assumption is that the public has a broader view regarding the public interest. Thus, the actuarial profession should consider a broader view.

In contrast to paragraph 24 of the Code, the earlier statements in the Code and elsewhere (refer to chapter 2), imply a broader conception of the public interest. For example, actuaries are central to the long-term financial soundness of insurance companies. This ensures a stable insurance industry, which benefits the public at large. I do not think this can be achieved by narrowly focusing on just the individual client of the actuary.

Ought actuaries to provide a service of an appropriate standard to individual clients? If they want to work as a professional, then yes, they ought to do this to the required standard. Meeting this standard is a minimum requirement of professional work. Ought actuaries to provide a service in the public interest or for the common good? That is an entirely different question. Simply posing these two questions one after the other leads me to conclude that a broad conception of public interest is appropriate for my purposes here. If I assume a narrow conception of public interest, then the two questions posed are equivalent. However, they are not equivalent. Thus, a broad conception must be assumed.

Returning to the question posed towards the end of chapter 2, how does a responsibility to promote the public interest differ from a responsibility to the public? It should be clear from above that when a narrow conception of public interest is used, there is no meaningful difference between these two responsibilities. It is plausible that for this reason, these two responsibilities have been used interchangeably in the actuarial domain. However, if we

assume a broad conception, as I argue above, then a responsibility to promote the public interest is more than a responsibility to the public. The question then turns to whether the broad public interest duty can be justified, given that we accept the special responsibilities to the ’public’. This is addressed in the following chapters.

4. The case for the public interest duty

In this chapter, I will set out other's arguments for the public interest duty and provide my views on these arguments. In most cases, these arguments relate to professions generically, rather than actuaries specifically. This is not a problem because we can safely assume the arguments apply to the actuarial profession as well. This is because there are no relevant features of the actuarial profession which would not make this the case. The actuarial profession is a profession like many others. There is no special feature of the actuarial profession which would either advance or diminish an argument for the public interest for professions generically. Thus, in this chapter I shall use professions, or professionals, and actuaries interchangeably.

Unsurprisingly, the arguments can be grouped into three broad categories of normative ethical frameworks, namely consequentialist, deontological, and virtue ethics. What is perhaps surprising is that more arguments fall into the consequentialist category. I call this a duty to act in the public interest which immediately suggests a deontological approach. However, the arguments tend to focus on consequences.

Consequentialist

In what follows, I will not adopt any particular consequentialist framework. It could be argued that what follows is not strictly consequentialist in the sense of a coherent and consistent value-maximizing normative ethical framework. However, the arguments look only at the consequences of certain actions as the determinant of whether the action is right, and in that sense are consequentialist. The main consequences considered are the

avoiding of some kind of harm, or the provision of some kind of benefit. It is not argued that a particular action is the best out of all possible alternatives. The aim is merely to demonstrate that the action avoids harm or produces a benefit. The assumption is that this is a good thing and thus ought to be done.

Two recurring themes that arise when considering the professions' interaction with the public are power and protection. These two themes are related. In some cases, power of one over another results in the need for protection of the weaker party. In other cases, the powerful can use their power to protect the vulnerable. Professionals have special knowledge, expertise and skills that are valuable to society. As a result of this, the professions have been elevated to positions of power, authority and influence, as well as trust. This power can be used both positively and negatively, in ways I describe below.

Negative

On the negative side, the knowledge and power of professionals can be used to gain advantage over those without such knowledge or power. Because of this potential for abuse of power, there needs to be adequate safeguards in place to prevent the abuse of power. One such safeguard is a requirement for professions to act in the public interest. When a professional is obliged to act in the interests of the public, they cannot abuse their power for their own advantage as that would be contrary to the public interest. Therefore, in order to protect the public, there is a duty to act in the public interest.

Jennings *et al* approach this from the angle of dependence. According to them, society has become dependent on the valuable services of the professions. This dependency creates a vulnerability in members of the public to "fraud, exploitation, malpractice and injury" (Jennings et al., 1987, p. 3) by the professions. This risk can be mitigated by legal means, for example having laws that require licensing of professionals, or laws that ban such bad practices. However, Jennings *et al* think that legal means provide insufficient protection. They do not provide reasons for this position. Assuming it is correct, then the professions themselves must also provide mechanisms for the protection of the public against bad practice by professionals. One such mechanism is a requirement to act in the public interest. Jennings *et al* offer this as an argument in support of their narrow definition of public interest, in respect of services to individuals.

For both of the above arguments, I agree that the public, more specifically those potentially affected by the advice or actions of the professions, needs protection in certain instances. However, is a public interest professional requirement necessary for this? The legal alternative was deemed insufficient by Jennings *et al*, but is this always the case? Nowadays, there are a plethora of laws, regulations and forms of oversight designed to protect the public. Much professional time is spent understanding and complying with these legal requirements. The professional obligation should be to comply with the law and, in many cases, that gives sufficient protection. A duty of care to clients also provides protection for those clients. It is more understandable to say 'do not abuse or harm your clients', for example, than to say 'act in the public interest'. Thus, I think the above arguments do not provide strong enough reasons to adopt the public interest duty.

Asher (2001) poses questions about the actuarial concern for the public interest, which suggest negative reasons for this concern. He suggests the motivation is “guilt and fear” (2001, p.313). For example, the public interest concern could be as a means to reduce or avoid guilt, for example related to poor customer outcomes in the past, or abusive insurance sales practices. Or the commitment to the public interest could be a means to retain those who might be dissatisfied with a narrow professional focus, or, I suggest, to attract people into the actuarial profession who might otherwise not have found it attractive. Asher also suggests the commitment could be as a guard against redundancy of the actuarial profession in the face of technological improvements. What Asher could mean here is that computers might take over much of the standard actuarial work. In this case, in order to ensure survival of the profession, actuaries would need to make themselves indispensable to the public interest. I think that self-protection might not be the most persuasive reason for the public interest duty. On the face of it, self-protection or self-advancement seems completely at odds with the public interest.

A final negative consequence comes from not acting in the public interest. According to some, this could result in a profession being seen as “little more than a trade body” (Daykin, 1995, p. 21). The assumption is that this loss of professional standing is a bad thing and can be avoided by acting in the public interest. The motivation is thus self-preservation. As just above, I think this self-protection argument fails to convince.

Positive

On the positive side, there are several potentially good outcomes that could be used to argue for a public interest duty. As described in chapter 3, one area of service in the public interest is contribution to public policy. Professions can make a particularly meaningful contribution here. For example, professions exert significant "influence in the decision-making process of our major social institutions" (Jennings et al., 1987, p. 3). They also have the specialist knowledge that is necessary for technical aspects of public policy. Lastly, professions contribute to the successful implementation of many public policies according to Jennings *et al*. For these reasons, Jennings *et al* conclude that professions ought to undertake such public service.

My response to the above is that I agree professions have much to offer in the way of public policy, even going so far as individual professionals undertaking direct roles as regulators. However, this work is undertaken voluntarily. Not all professionals provide this service. Because it is not universally applicable, it cannot be an obligatory requirement of general professional conduct. Any particular desired standards of conduct for such public service can be accommodated in specific public service standards that apply only to those professionals undertaking such work. It does not have to be a general requirement. Just because some professionals can provide this service does not mean they (or all professionals) ought to provide the service.

Professions are often associated with protecting the public against others or against risks that they themselves cannot manage. (For more on paternalism, see chapter 5.) An actuarial

example is the protection of policyholders of insurance companies. Such protection comes in various forms. For example, protection comes from the long-term financial soundness of the insurance company, which enables the company to pay its obligations to policyholders as they become due. Another example arises because financial products are intangible and complex, often contingent on uncertain future events. This often makes them difficult for the public to understand. As a result, *caveat emptor* is inappropriate, and customers need protection. There is also protection in the smoothing of returns under certain insurance contract types. Assume for now that such protection is desirable. On this assumption, acts which contribute to this protection are good and are thus morally required in a consequentialist framework.

It is a matter of public interest that the financial services industry is stable and ensures the protection of customers. Actuaries, especially those in statutory roles, are critical to ensuring this stability and protection in the insurance sector and pensions schemes. Therefore, actuaries ought to act in the public interest.

In the above two cases, I agree that protection for the public is necessary. I think this protection is provided through specific statutory roles in the case of actuaries, as described above. The actuaries acting in these statutory roles have a statutory, and moral, obligation to act in the public interest. But this does not extend to actuaries not in these specific roles. Those actuaries not in statutory roles should act for their clients even where this is in conflict with the public interest, as I shall argue in chapter 5. Thus, the public protection argument does not support a public interest duty for all actuaries.

David Luban explains the concept of role morality as it applies to professionals (Luban, 2005). A professional fulfils a certain role as this professional, and this brings a morality associated with this role. (It seems plausible that this idea of role morality could be a way to justify the special responsibilities of actuaries identified in chapter 2. I will not expand on this as it is not my central aim in this paper.) According to Luban, problems arise when the requirements of the role morality clash with requirements of common morality. For example, a priest is told something during confession that common morality would require action on behalf of the priest (such as alerting authorities to illegal behavior). However, the priest's role requires confidentiality of confessions, and so the priest cannot act on such confessions. Luban proposes a four-level structure of rule utilitarianism to deal with such conflicts. To paraphrase Luban (2005, p. 6):

> An individual act is justified by a certain rule. The rule is justified by its importance for a certain role. The role is justified by showing that it is central to a certain institution. Finally, the institution is judged according to how much good it produces.

I will deal with conflicts of interest in chapter 5. For now, I raise Luban's points because it presents an interesting way to justify the public interest duty for professionals. Going in reverse, the argument is as follows: the institution of protecting the public is morally justified (for whatever reason or reasons). The professions' role is central to this institution of public protection. The rule to act in the public interest is necessary to ensure that the professional fulfils this role. Thus, acts by professionals in the public interest are morally justified. While this is an interesting view, and a possible way to deal with some situations (such as the role versus common morality conflicts described above), I think this approach does not provide a strong argument for a public interest duty for all professionals. This is

because it defends individual acts but does not necessarily imply that all professionals ought to act this way.

Common good

As stated in chapter 3, Jennings *et al* argue for a broad view of professional public service to include service for the common good. I showed above their arguments for the public interest. Turning to the common good, Jennings *et al* list some problems with having only a narrow view (1987, pp. 7,8). For them, the narrow view does not adequately account for the social setting in which service to individual clients takes place. It is not clear what they mean by this. Furthermore, they say the narrow view provides inadequate guidance to professionals in how to resolve conflicts of interest, say between two or more clients. In response to this, I say that a broad view only worsens this situation by creating the potential for more, or greater, conflicts of interest. Lastly, Jennings *et al* state that a narrow view excludes the broad roles that some professionals are already playing, and therefore a broad view is necessary. My counter-argument to this last point is similar to the public policy case above: this is voluntary work and should be of a certain standard (arguably a higher standard), but this does not make it a universal professional duty.

Despite limitations with the narrow view, a positive argument is required for the broad conception of public service. Jennings *et al* argue that professions have special knowledge and experience about how society should work (1987, p. 8). Given this, and their power and influence, professions ought to act for the common good according to them.

Bertland's (2009) application of the capabilities approach to business ethics can also be used to argue that actuaries ought to act for the common good. I include this with positive consequences although the capabilities approach has links to flourishing and thus virtue ethics, which I touch on later. As stated in chapter 3, the capabilities approach, as described here, falls under a broad conception of public service. The capability argument begins with the fundamental premise that all humans have a certain dignity. It is assumed that it is right to promote this dignity. Under the capability approach, this dignity is promoted by providing humans with the necessary capabilities. Therefore, it is right to provide these capabilities. If I extend this to the work of actuaries, then actuaries are in the position of being able to enhance, expand or even create certain capabilities for the public. Thus, actuaries ought to act in this way.

A further argument for the common good approach comes from a number of writers who refer to the need for actuaries to consider the wider implications of their advice, or to consider all stakeholders when formulating advice (e.g. Daykin, 1995; Lowther et al., 2005). This is taken as a reason that actuaries ought to act in the public interest. I do not deny that this is good practice in certain instances. However, I do not see a strong argument why this should always be the case. In a similar vein, Lowther *et al* suggest that South African actuaries should act in the public interest as this is in the spirit of *ubuntu* (Lowther et al, 2005). From this, one might further reason that South African actuaries ought to act in the public interest as this is necessary for the development and upliftment of South African society, especially given the political and economic history.

All these arguments for a professional obligation to the common good imply something supererogatory rather than obligatory. It goes beyond normal professional practice. In most cases, the work would be undertaken voluntarily. Public service for the common good occurs when called upon to do so. It does not apply all the time to all actuaries. Thus, it should not be stated as an obligation for all actuaries.

Deontological

One theory of professions postulates that the basis for the functioning of the profession is a social contract. That is, there is a contract that exists between the profession and society. The contract stipulates the terms of engagement, what the professions can do and what society expects. One of the terms of this contract, according to Mark S. Frankel, is that professions are given power by society in exchange for their promise to act in the public interest or for the common good (Frankel, 1989, p. 110). Assuming this to be true, then professions have an obligation to the public interest. This obligation arises in a standard contractarian way: one ought to abide by the terms of a (fair) contract.

Speaking of a professional code of ethics generally, Luegenbiehl states that such a code is evidence of a profession's commitment to the public interest, rather than mere self-interest (1983, p. 41). While this does not mention that such a code contains an explicit public interest duty, I think it must at least be implicit. If it is not explicit or implicit in the code, then how does the code signal this commitment? So, I conclude that such a code requires a commitment to the public interest. Luegenbiehl goes on to state this commitment is made in return for society's granting of the power of self-determination and self-regulation to the

profession. This arrangement between professions and society can be seen as a contract. Given that it is a contract, professions must abide by the terms of this contract. Hence, there is a professional obligation to act in the public interest according to this argument.

The difficulty with these two contract-based arguments is trying to establish the truth of the premises that these particular terms exist in the society-profession contract. The contracts are not explicitly written down. The contracts may not even be understood as contracts, meaning that society or professions would not be able to explain the terms of the contract, because they do not see their interaction as a contract. Given this, how can we confirm the terms of the contract? Some might say the contract is written down in the profession's code of conduct. But that creates a circularity since we started by inferring that the contract determines what goes into the code of conduct. We cannot then say that the code determines the contract.

I also ask, why should professions be singled out for these special contract terms with society, namely a requirement to act in the public interest in return for certain privileges? From above, these privileges are power (and by extension standing, wealth, and so forth), and rights to self-determination and self-regulation. For the first privilege, do not companies, entrepreneurs and many others also gain enormous power, and wealth, from society? Yet, they are not subject to the same obligation to act in the public interest. (This broadly assumes a stockholder theory of the firm, rather than a stakeholder theory, which admittedly is disputed.) Similarly, individuals and corporations are given the right to self-determination and self-regulation, subject to conditions. Professions are not special in this regard. Thus, if all in a society are granted the ability to gain power, self-determination and

self-regulation, then there is no reason why professions specifically should act in the public interest in return for these privileges. This is not to say that professions do not have certain special responsibilities to their clients, as noted towards the end of chapter 2. Rather, it is to say that professionals do not have a *special* responsibility of this specific type, namely the broad public interest, because it is a universal responsibility in return for certain common privileges.

Another argument for the public interest duty of professionals is that society simply expects professions to act in the public interest. There could be this expectation without having a contract as a basis. It is not clear why society might expect this but assuming that they do, then it would be accommodating of the professions to meet the expectation. I do not see this as creating an obligation, unless the expectation is very strong. A very strong expectation that is backed up by forms of rejection or prohibition should professions not act in this way, would create a good reason for professions to act in the public interest. However, I think that the existence and strength of this latter expectation and sanction can only be determined empirically. There is also the task of arguing why this state of affairs would be right, compared to alternative states.

Virtue theory

Some authors suggest that professions should act in the public interest, or for the common good, because it is virtuous to do so (for example Asher, in respect of actuaries). In simple terms, the argument is that acting in the public interest is a virtue. Such a virtue is a good thing and thus professions ought to do it. One could just as easily say everyone should then

do it. But we do not see this in all individuals' moral codes or in all corporations' codes of ethics, for example. So why are professions special in this regard? I think they are not. Hence, this argument does not sufficiently support a professional duty to act in the public interest.

Jennings *et al* state that professions "nurture particular values that are integral to our… way of life" (1987, p. 8). This is among one of the many reasons they give in support of their argument for a professional responsibility to the common good. The relevance here is the use of the word "nurture" which suggests a virtue. Perhaps some professions can be associated with nurturing in this sense, such as doctors. It is less obvious to see actuaries or accountants in this way for example. Taking a less literal interpretation of nurture, we might agree that professionals display certain agreeable traits and often strive for the common good. However, assuming they are this way, it does not mean they ought to be this way. Displaying the virtue is commendable but not obligatory.

Summary

Several arguments were put forward in support of a professional, or actuarial, duty to the public interest (narrowly or broadly considered). These spanned consequentialist, deontological and virtue ethics frameworks. Some of these were described above, centred mostly on matters of power and protection. I briefly restate them here. First, the duty limits the professions' ability to abuse their power for their own advantage, or to harm those dependent on their services. Second, the public requires various protections, which the professions can provide. Third, it is a mechanism for self-protection of the profession.

Fourth, professions contribute to the common good, for example by contributing to public policy or by promoting human capabilities. Their services and advice have implications wider than just the immediate client. Fifth, the duty is part of a contract the profession has with society. Society expects professions to act in this way. Finally, it is virtuous to act in this way.

My counter-arguments first pointed to the many forms of existing protections for the public, including specific statutory professional roles, and a duty of care to clients. These protections are sufficient. Second, professional public service in certain areas, such as public policy or for the common good, is voluntary. A universal obligation to the public interest cannot be required if the applicable work is voluntary, or limited to specific roles (such as statutory actuaries). In some cases, such as the upliftment of society, the service is beyond the scope of normal professional work. It is supererogatory. Third, self-protection of the profession, or other selfish reasons, are weak arguments for a public interest duty that are likely to be met with disapproval by the public. Fourth, theoretical contract terms cannot be verified, or public interest duties cannot be placed upon professions alone when the resultant privileges are universal.

In conclusion, I am able to state my weak claim: the arguments do not sufficiently support the duty for actuaries to act in the public interest.

5. Arguments against the public interest duty for actuaries

So far in this paper, I have argued that a public interest duty exists for South African actuaries. I have explored what this could mean, and suggested a broad conception which goes beyond mere service to individual clients. In chapter 4, I reviewed several arguments offered in support of the public interest duty for professionals. I concluded that these arguments do not sufficiently support this duty for actuaries. I now turn to arguments in support of my strong claim that the requirement for actuaries cannot be morally defended.

My arguments can be loosely grouped into what I term theoretical and practical, although this terminology and distinction is only for convenience. Under theoretical I consider arguments relating to the concept of the public interest duty. These arguments look at the act of promising, and at the issue of paternalism. The practical arguments relate to the problems with implementation of such a duty. The main practical challenge I focus on is conflicts of interest. Further practical considerations are the impact of modernization, and policing adherence to a public interest duty, for example. Possible objections to my arguments are considered in chapter 6.

Promising

The first section of the Code, which includes reference to the public interest, is titled “the Professional Promise” (Actuarial Society, 2012). By including this title in the Code, the Actuarial Society is making a public promise, as the Actuarial Society itself, but also requiring its members to make the same promise individually. Regarding the public interest responsibility, there is the question whether this promise can be credibly made. I address

this below. We must also ask why such a promise is made, for what purpose? This question refers back to arguments in favour of the public interest duty discussed in chapter 4. I concluded that these arguments do not support the duty. In other words, the possible reasons for making such a promise do not carry sufficient weight. Furthermore, how is the promise to be demonstrated, or how is it known when it is not being fulfilled? I consider this further below as part of the practical challenges of policing such behavior, under the sub-title of 'adherence'.

Given the positioning of the "Professional Promise" (*Ibid*.) title in relation to the public interest statement in the Code, it is reasonable to assume that the promise extends to the desire to act in the public interest. While I have no reason to doubt the validity of this promise, despite insufficient rationale for it as argued in the previous chapter, I assume for the sake of argument that this is a *bona fide* promise. Common morality (amongst other frameworks) requires that we keep our *bona fide* promises. However, it is not possible to keep this particular promise in all instances. For example, an actuary may act for their client against the public interest due to irresolvable conflicts of interest as discussed below. It is an empirical question, but I suggest this happens quite often. Another example is where it is simply impossible to achieve the goal, because it is too broad and requires too much of an actuary. There are also situations where the public interest is irrelevant. Because we cannot keep this promise in all instances, we should not make the blanket promise in the first place.

Paternalism

A possible implication of the actuary's duty to the public interest is that it could lead to a form of paternalism. This is where actuaries act in some way that they believe enhances the welfare of the public, or protects the public in some way, but which interferes with the autonomy of some individuals. For example, recommending compulsory saving for a society would enhance that society's welfare overall over time, but it may limit individuals' own choices. Individuals may prefer to spend their money now for example. This paternalism, arising from the public interest duty, is problematic for several reasons.

First, the welfare and protection of the public is the role of the state and not that of a single profession. I admit that this view of the state's role is not universally accepted, and I will not argue for this view. I note it appears, at least superficially, to be consistent with the South African constitution.

Second, a libertarian view is that a person should not get involved in the affairs of rational autonomous agents unless to avoid harm. Can potential harm be clearly demonstrated to justify actuarial interference? This might be possible to demonstrate in particular cases. However, it cannot be assumed in general. In a similar vein, a contemporary view is that consumers have rights as consumers. By acting paternalistically, actuaries may be acting in conflict with these consumer rights.

Third, various examples of protection for the public in the actuarial domain were given in chapter 4. It was assumed that these protections are desirable, but is this always the case?

In some cases, the paternalistic protection may result in unacceptable limitations to liberty or rights (for example an inability for a person to surrender an insurance contract, or to access their own pensions savings early – although in both cases it is arguable whether, or perhaps under what conditions, these limitations are indeed 'unacceptable'). A possible justification for the protection could be through rule utilitarianism, whereby the rule to protect the public justifies acts which in particular instances may not give the best outcome. However, this still requires justification of the rule in the first place, against all possible alternative rules. I think more work is required to provide this rule justification.

Fourth, a paternalistic stance may be accompanied by an attitude that actuaries know better and should make decisions for others, which suggests an arrogance and lack of sensitivity. At worst, the public interest duty could be a mask for a belief that the public is 'stupid' or cannot take care of itself. As Asher states:

> It would be unwise to presume to know more about the real needs of policyholders than they do themselves, or to refuse to provide benefits because an actuary does not believe they add value. (Asher, 2002, p. 57)

Conflicts of interest

In this section I will discuss the practical challenges around conflicts of interest in relation to the public interest duty. Much has been written about conflicts of interest and I will not explore all areas. My focus will be the conflicts that arise as a result of the public interest duty. I shall argue that the public interest duty is inconsistent with an obligation to manage conflicts of interest. Before that, I begin by defining conflicts of interest and explaining, by

way of example, the ways in which it arises *vis-à-vis* the public interest. Some solutions have been suggested, which I will discuss and show why I think the solutions do not work.

There are various ways to define conflicts of interest. For my purpose, I will take the definition as set out in the Code as this is most relevant to South African actuaries and their professional obligations. The Code describes such conflicts 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. (Actuarial Society, 2012, para. 16)

The above definition is consistent with the two definitions quoted by Jamal & Bowie (1995, p. 709). Jamal & Bowie explain that the conflict arises because of the information asymmetry that exists between the professional and the client. This means that the professional has knowledge or information, due to the specialized nature of their profession, that the client does not have. In these circumstances, the knowledgeable professional may be tempted to dupe the ignorant client to the professional's advantage. This action of taking unfair advantage is known as 'moral hazard' as defined by Jamal & Bowie (1995, p. 705). The information asymmetry creates the conditions for potential moral hazard. Moral hazard creates the conditions for conflicts of interest. Without moral hazard, the potential for gain, there would be no conflict.

However, this focus on 'gain' can be misleading. The Code definition above suggests any 'interest' that may impair objective and unbiased service. This 'interest' does not have to be an economic gain. It could be avoidance of some loss. For example, the actuary may be at risk of losing their job if they provided some advice or service that was contrary to the employer's interests. I think there is an even deeper sense of conflict which includes an actuary's attitudes and biases, or allegiances to something else. For example, a bias in favour of free market capitalism might impair impartial advice on social security. Or, crucially for this paper, allegiance to the public interest may prevent acting in a particular client's best interest.

The conflict of acting in the public interest versus acting impartially can manifest in several ways. I identify four possibilities. First, there is the conflict between the actuary as a professional and the actuary as a normal member of society. For example, a professional recommendation could be in the public interest (such as compulsory savings noted above) but contrary to the individual actuary concerned, who, for example, may personally prefer to spend all their income. In such cases, the actuary would have to give up their own interests in favour of the public interest. However, this may not be possible in all cases, particularly if the potential personal gain or loss is significant. In such extreme cases, the only viable option is to avoid the conflict altogether by declining to perform the particular actuarial service.

Second, there is potential conflict between the actuary and the employer. For example, the employer may pressurize the actuary to sign off a valuation that improves the short-term financial performance of an insurance company, to the long-term detriment of the

company. The long-term survival of an insurance company, and insurance industry, should be this actuary's concern and is one clear area of public interest as noted above. In this example, acting in the public interest conflicts with the employer's demands.

A third type of conflict could arise between different actuaries who may have different opinions on a particular matter related to the public interest. These opinions go beyond matters of technical accuracy, although disagreements on technical points do occur. Such cases are particularly problematic as there appears to be no professional guidance in how to resolve them. In fact, the Code permits "constructive criticism" (Actuarial Society, 2012, para. 12) and "alternative opinion[s]" (Actuarial Society, 2012, para. 13) between members. Is it possible that both actuaries are right and both are acting in the public interest in such cases? This seems unlikely.

The final category of conflict is between the client being advised, and other clients or the public more generally. For example, the client is an employer running a pension fund for staff. The actuary is hired to advise the employer regarding the pension fund. There are many situations where the best advice for the employer is not in the best interests of the pension fund members. Many outsiders would consider the fund members to be the 'public' in this situation, or at least to be the vulnerable party requiring protection. In another example, an actuary could design an insurance product with hidden, and excessive, charges, that benefit the insurance company to the detriment of the public purchasing the insurance. To whom do these actuaries in these examples owe allegiance? While these examples appear to show obvious conflicts, in reality the conflicts are quite subtle and difficult to

manage. Sally Gunz and Sandra van der Laan describe in detail a real-life case which, while not exactly of the kind above, illustrates these complexities (Gunz & van der Laan, 2011).

Now that I have defined the problem of conflicts of interest regarding the public interest duty, I turn to solutions that have been proposed. The Code states that a member has a duty to avoid a conflict of interest by declining to act or provide the service, or by disclosing the conflict under strict conditions. Thus, there is an obligation to manage the conflict. A problem arises when the obligation to act in the public interest clashes with the obligation to manage a conflict of interest. What if managing the conflict is contrary to the public interest? This creates a dilemma and there is no professional guidance in how to resolve this.

Embedded within the Code's description of conflicts of interest are professional requirements of objectivity, independence (my choice for "unbiased and fair"), and acting in the client's best interest. Superficially, this is similar to the Code's standard that "a member shall act honestly, with integrity, competence and due care" (Actuarial Society, 2012, para. 2b), interpreting 'due care' as acting in the client's best interest (as one among several possible interpretations of this). Similarly, Jamal & Bowie suggest that the negative obligation to avoid conflicts of interest can be achieved through "the positive obligations to be objective, competent, diligent, and independent" (Jamal & Bowie, 1995, p. 709). I will not dwell on the possible in-depth meanings of and distinctions between objectivity, independence, unbiased, or fair in the professional context. Instead, I think they can be grouped, in a heuristic way for my purposes, as 'impartiality'. I support these positive impartiality obligations (but clarified as described in the following paragraph). However,

they do not adequately deal with all cases of conflicts of interest between a particular client and the public more generally (the fourth category identified above). This is because impartiality cannot be guaranteed in these situations, as explained below.

I assume 'impartial' means not acting for some interest, say the public or a particular client. On this assumption, one cannot be both impartial and act for some interest at the same time. This would not be the case if impartial meant only free from conflicts of personal interest, that is not biased in favour of the actuary themselves or not influenced by personal feelings or opinions. This freedom from personal bias can be called 'objectivity'. With this objectivity, it is possible to be impartial (meaning only objective as defined here) and act for some other interest. However, this objectivity does not help with conflicts of public interest described above. This is because these conflicts involve acting for two different non-personal interests at the same time, such as the public and the client. Impartiality in these kinds of situations would require a display of fairness or lack of prejudice between competing non-personal interests. Call this 'independence'. I contend this independence is difficult, or sometimes impossible, to achieve in the cases of conflicts between public and client interests. In these cases, impartiality (meaning independence as defined here) does not resolve the conflicts because the impartiality cannot be guaranteed.

Gunz & van der Laan (2011) propose that conflicts of interest can be avoided by being independent, which is consistent with the views above. They further suggest that independence is a feature of integrity. For them integrity should be viewed in a virtue ethics framework. The implication is that integrity is a virtue. They suggest demonstrating integrity requires a degree of *phronesis*, and is developed through practice. Thus, through practice,

the professional develops integrity which enables them to maintain independence, and thereby avoid conflicts of interest. Their conclusion suggests that a virtuous actuary would be clear about their responsibilities in conflicted situations. I think this places too much of a burden on the individual actuary because it suggests a virtuous actuary would not make mistakes, or get confused. First, this is impossible to achieve in every single circumstance, all the time, and especially in difficult conflict situations. Second, it implies that if an actuary did make mistakes then they are not virtuous, and are then somehow deficient. I disagree with this because being virtuous does not guarantee there would be no confusion or failure. Even those with integrity will be faced with some conflicts of interest related to the public interest duty that cannot be resolved (other than by declining to act). We are fallible.

The above discussion shows that a duty to the public interest can give rise to conflicts of interest, and that these conflicts cannot be managed adequately in all instances where one must act. The duty to the public interest is thus inconsistent with the duty to manage conflicts of interest. One may ask whether the one duty trumps the other. This gives rise to the question under what circumstances would this be the case, which may be difficult to answer. Rather than trading off the two duties, I suggest that, along with the other reasons in this chapter, the public interest duty cannot be supported and should be removed. This would resolve the inconsistency.

Modernisation

The society of the 21st century is different to that of the 19th century when the actuarial profession is said to have begun in South Africa. Modernisation has resulted in several

changes to the way actuaries approach their work. For example, Bellis quotes Brint's (1994) argument of "a shift from 'trustee professionalism', where the professional worker claims to serve an objective public good, to 'expert professionalism', where the professional worker sells his or her expertise to serve the client's end" (Bellis, 2000, p. 328). The consequence of this shift is an expected reduction in the normative aspects of a profession, in particular aspects related to the public interest.

Lowther & McMillan (2006, p. 5) suggest other changes, such as increased regulation and oversight from outside the profession, that could lead to reduced normative requirements within the profession. This echoes my point in chapter 4 regarding laws etcetera designed to protect the public. The greater the public protective structures or institutions from outside the profession, the lesser there needs to be such protection-promoting standards from within the profession.

Modernisation has also lead to a greater individualism. Bellis (2000) offers two examples. First, Bellis refers to "a shift to a greater focus on individual rights" (2000, p. 333). She refers to this in the sense of risk sharing between individuals, which is the traditional mode of insurance. However, extending this, one could see a form of individualism where the actuarial service must be only concerned with the client in question. In this state, a client may ask 'why should the actuary be trusted if they have some other person's or group's interests in mind, rather than my own?'. Second, "a more educated and rationalist society is inclined to question and reject claims based on the traditional sources of status" (Bellis, 2000, p. 328). This inclination is supported by the internet, which offers an ever-increasing level of access to information, which the public can use to help them assess the professional

advice received. These trends show that the public interest rationale becomes difficult to defend in a highly individualist, rationalist and information-accessible world.

Adherence

The Code is supported by a disciplinary procedure. Without effective enforcement of the standards, members could contravene the Code with impunity (up to a point). A difficulty with the public interest duty is policing adherence to it. It is difficult to police because it is difficult to demonstrate whether it has or has not been complied with. In some cases, it may seem obvious, for example when advising the government on public policy. But even then, there are different 'publics' to consider, such as the government itself, the intended beneficiaries, or the likely contributors to the scheme, namely taxpayers. It would be difficult to demonstrate all such interests are promoted because there is likely to be some trade-off of interests between groups. As Lowther *et al* put it:

> …even with the benefit of hindsight, it is difficult, if not impossible, to identify what behaviour is in the public interest in any particular circumstance. (2005, p. 6)

If we cannot demonstrate adherence or otherwise, then we cannot undertake enforcement. If we cannot enforce a requirement, then there is reason to not have the requirement.

Frankel's functions

In his analysis of codes of professional ethics, Frankel (1989) states that these codes have several functions. He sees that the multiple functions serve to balance competing interests, chiefly those of the professionals versus the public. I call these 'Frankel's functions'. Frankel

does suggest the list is tentative, and empirical. He does not suggest it is exhaustive or that all functions must be fulfilled for a code to be adequate. Nonetheless, the list represents one possible way to determine whether a code achieves the right ends. I will use this and stretch it to the public interest provision in the Code, rather than to the whole Code. Thus, I consider to what extent the public interest duty is consistent with Frankel's functions. I do this as a means to draw a conclusion on the usefulness of the public interest requirement.

I do not believe Frankel intended anything with the ordering of his functions. I will take them in the order he presented them, also with no meaning behind the ordering. In what follows, I refer to 'provision' to mean a particular requirement or statement in a code of professional ethics, rather than the whole code as Frankel originally intended.

The first function is that is an "enabling document" (Frankel, 1989, p. 111), meaning that the provision should give guidance and direction to professionals, thus enabling them to act. I do not see the Code's public interest duty as enabling because, as it stands and given a broad conception of the public interest, it does not provide sufficient guidance to members on how to act according to this requirement. I suggest it is even disabling, presenting a potential barrier to action when conflicts present themselves.

The second function is a "source of public evaluation" (*Ibid*.), which helps to set public expectations through which professionals can be held to account. I consider the fourth function of "enhance profession's reputation and public trust" (*Ibid*.) to be very similar, and thus include it here. I think the public interest duty has the potential to fulfil these functions if it is adequately specified. Currently, there is potential for a misunderstanding between the

public and the profession over the meaning of the duty. While this may still result in evaluation by the public, it is likely that this is not what the profession intended when their understanding of the duty differs. Thus, the duty will not fulfil this function, in the right way, unless both the profession and the public are clear as to what it means. I contend that, as it stands, this clarity does not exist.

Frankel gives "professional socialization" (*Ibid*.) as the third function. This relates to fostering a common identity, allegiance and pride in the profession, for example. I think the public interest duty has the potential to provide this kind of benefit, provided it is clearly understood by all. However, to the extent that the duty leads to misunderstanding or a barrier to action as noted above, the duty may result in the opposite effect, such as shame of or disdain for the profession. For example, I may seek to distance myself from other actuaries who do not promote the common good and instead, say, help their clients enrich themselves at the expense of the general public, because these actuaries do not see the duty in the same way.

The fifth of Frankel's functions is to "preserve entrenched professional biases" (1989, p. 112), which is as negative as it sounds. The public interest duty is a good candidate for this function. However, it does so for the wrong reasons. Who would want to support something that encourages a "professional monopoly" (*Ibid*.), or is a "mask" (*Ibid*.), or which aims to stifle innovation in the profession?

A code provision may act as a "deterrent to unethical behavior" (*Ibid*.) by creating sanctions for bad behaviour and requiring members to report infractions by other members. I do not

see the public interest duty on its own as fulfilling this function. It needs to be read together with other statements in the Code, and the Actuarial Society's disciplinary procedure, to achieve this. It is these other provisions and procedures which achieve this function. There is nothing special about the public interest provision regarding this function. In this sense, it ranks equal with other Code provisions in its usefulness for this function.

The seventh Frankel function is that of a "support system" (*Ibid*.) against outside pressures on professionals, such as undue pressure to act in an improper way, or "vexatious claims by clients" (*Ibid*.). The eighth and final, related, function is that of "adjudication" (*Ibid*.) whereby a provision can be used to adjudicate disputes between members, and with the public. If the public interest duty is properly and clearly specified, it is possible that it could provide this sort of support (against pressures or with adjudication) in certain situations. If it is not well specified, it will not provide adequate such support. In its current form, and assuming a broad conception of public interest, it is not well specified in the Code.

Based on this analysis of the public interest duty against Frankel's functions, the main problem seems to be that the duty is not specified adequately enough. It is too vague. On this basis, it does not meet most of the suggested code functions. If that is the case, then what is its usefulness? I offer that it is not useful and so should not be upheld.

Other

A few writers have suggested a strong requirement that a code of professional ethics, or a provision therein, should result in the same, or at least acceptably similar, decision or action

by different members when faced with the same situation and possessing the same information. As it currently stands, and given a broad conception of the public interest, the duty in the Code is too vague to satisfy this requirement. A number of possibilities could meet the requirement for any particular situation, and not all actuaries would agree on a single choice. An objection could be raised that this is a too strong requirement for any code of ethics and is unlikely to be met in a majority of cases. A counter-argument is that, if that is the case, then there is little use to any provisions or codes. Without some aim or hope of uniform behavior, the rationale for a code or provision becomes weak. Thus, we need to ensure a reasonable degree of consistency of outcomes in similar situations. It would be difficult to argue that the current public interest provision achieves this.

Gunz & van der Laan note "the ease with which professional ethics can be compromised when those codes are vague and transgressions are rarely actionable" (Gunz & van der Laan, 2011, p. 353). Their article specifically deals with actuaries and conflicts of interest, although not with the public interest aspect. Nonetheless, the problems of vague provisions and policing adherence that they refer to, have been described above in respect of the public interest duty. The consequence of these problems that they identify is a risk of non-compliance, whether intentional or not. A way to avoid unintentional non-compliance is to remove the provision from the Code, particularly if it is not useful (as argued above).

A further argument against the public interest duty for actuaries is that it simply not our job (distinct from the paternalism objection raised above). In particular, the common good "is clearly the job of government" (Lowther et al, 2005, p. 3). Should individual actuaries choose to work for the common good, they can do so of their own volition, either as

actuaries or as normal members of society. It would be a voluntary action. Voluntary acts should not be stated as obligatory requirements in a code of professional conduct.

A different way to approach the question is to ask what if actuaries did not act in the public interest? Would this compromise their ability to meet the primary provision in the Code, namely "to render quality services to their clients" (Actuarial Society, 2012, para. 1)? I think not. In cases where wider implications need to be considered, this can be done so, and the service can be of the appropriate quality. In cases where the actuarial service or advice only relates to the particular client, the public interest is less relevant or not relevant at all. In these latter cases, the lack of consideration of the public interest does not necessarily detract from the quality of the advice. Only relevant (and material) implications need to be explained to the client. The rest is superfluous. Conversely, adding volumes of other considerations or implications to a report, in order to meet the public interest obligation, when they are not relevant, may serve to annoy the client and to undermine the quality of the advice in their eyes.

Summary

In this chapter I advanced several arguments why the public interest duty for actuaries is problematic and cannot be supported. My first argument against this duty was that it is a promise that cannot be kept in all instances. Because we ought to keep to our promises, we should not make this general promise. Second, it gives rise to forms of paternalism that should be avoided, such as unacceptable limitations to personal liberty or rights. It may mask an arrogance or sense of superiority by actuaries over the public. Third, and arguably

most importantly, the public interest duty is inconsistent with an obligation to manage conflicts of interest. My fourth objection was that the duty is less relevant due to the effects of modernization such as individualism and rationalism, backed by easy access to vast information. Fifth, adherence cannot be unequivocally determined, and so compliance cannot be enforced. My sixth argument was that the duty is insufficiently specified and fails to fulfil most of Frankel's functions of a code of professional ethics. If it is not useful in this way, why include it? Furthermore, the vagueness of the duty means that we cannot ensure a reasonable degree of consistency of outcomes, which is undesirable. It also results in a risk of non-compliance, whether intentional or not. Another argument was that the duty is properly the role of the state, rather than the profession. Finally, I argued that not having this duty would not detract from the primary obligation to provide a quality service to clients.

Based on these arguments, I conclude that the public interest duty for actuaries cannot be defended. It raises too many problems. I propose that the solution to avoiding these problems is to remove this provision from the Code, which would not detract from the primary obligation to provide a quality service to clients, honestly, competently and with due care.

6. Objections

In the previous chapter, I advanced several arguments against the public interest duty for actuaries. In this chapter, I consider possible objections or counter-arguments. The objections cover the whole scope of this paper, not just my arguments in chapter 5. I consider possible counter-arguments that the duty does not exist, that a narrow conception is adequate, that the case for the public interest duty is strong, and that my arguments against the duty are flawed.

The duty does not exist

An objection might go right back to the beginning by stating that the duty does not exist as an obligatory standard. According to this view, the provision in the Code is merely advisory. In this case, it is a 'nice to have'. If you can meet the standard, where applicable, then that is good. But if you cannot fulfil it, or it does not apply, then that is permissible according to this view. Another way of putting this is that the standard is best practice but not required practice. My response is to refer back to the discussion in chapter 2. The Code specifically says "a member shall act" (Actuarial Society, 2012, para. 2b) with reference to the public interest. The word 'shall' implies an obligation, unlike "a member may" or "members are encouraged". This is further backed up by disciplinary procedures for violations of the Code. If the standards were not obligatory, then disciplinary procedures would not be required. Given that there are disciplinary procedures for violations of the Code, means that the standards are obligatory (unless specifically stated otherwise for a particular standard).

The objector above could press the issue by asking what if the Code was re-worded to make the public interest provision explicitly voluntary (other than where required for statutory roles)? I agree that this proposal may resolve some of the difficulties described in the previous chapter. However, I am still opposed to it for a few reasons. First, there remains the possibility that confusion might still arise as to whether, or when, it is voluntary versus obligatory. For example, an actuary could be asked to defend why they did not act in the public interest in a particular case, even though it is voluntary. It is recognized that 'advisory' actuarial practice notes should be complied with unless there is good reason not to comply; that is 'comply or explain' applies. If this is the case, then the voluntariness moves back towards an obligation. Second, as stated several times, the public interest is difficult to define. Making the provision voluntary does not remove any of the definitional difficulties. Third, as argued elsewhere, broad public interest considerations are properly the role of the state and there are reasons why professions should not perform the state's role. Finally, if any individual has a duty to their society, that arises from common morality rather than actuarial role-specific morality. For these reasons, I believe that all references to the public interest should be removed from the Code.

An alternative objection to the existence of the duty might be that, while the Actuarial Society has this obligation, individual members do not. The Actuarial Society is distinct from the members. Members only need to support the Actuarial Society to fulfil its mission in the public interest. This was touched on in chapter 2 and I provided a brief outline as to why I think that the Actuarial Society and its members are not distinct for this purpose. I also refer back to the examples in chapter 2 showing that the members have this responsibility, quite apart from the Actuarial Society's responsibilities.

A narrow conception is adequate

I argued in chapter 3 for a broad conception of the public interest in relation to this duty for actuaries. An objection to this could be that a narrow conception is adequate. This objection points to the specific ways in which the public interest is defined in the Code, as set out in chapter 3. This is essentially service of an appropriate standard to individual clients, which indirectly benefits the public. On this basis, the public interest provisions of the Code are consistent and acceptable. Anything more than this would be supererogatory. In response, I noted in chapter 3 that there is no distinction between actuaries and any employee in this respect. Although actuaries have certain special responsibilities to clients, they are expected to do their jobs properly like ordinary employees. The nature of 'properly', and the kinds of work responsibilities, will differ between actuaries and non-actuaries, but the concept is similar. There is nothing especially actuarial about the narrow view, and so a broader approach is necessary. I further point to the examples in chapter 3 which imply an actuarial duty that goes beyond mere service to individual clients. Also, I ask what would an outsider consider to be the public interest? The public will have a broader view about the public interest compared to the narrow professional view. We should follow the public view if we want to align our service to their expectations.

If a narrow conception is preferred, then why not simply re-phrase it so that it does not use the term 'public interest' and rather refers to the specific ideals being pursued? Calling it 'public interest', which has many different potential meanings, when you mean something different or something quite narrow, causes confusion and is misleading.

The case for the duty is strong

In chapter 4 I set out various arguments in support of the public interest duty. These provide the reasons for this duty, that is why it should be done. Briefly these are to limit the abuse of power by professionals (a negative protection), and to provide various protections for the public (positive protections). Both of these are necessary for the public to trust the actuarial profession. In return, the profession gets the rights to self-determination and self-regulation, as well as prestige and economic rewards. As stated in chapter 4, I think that these latter self-interest type reasons for this duty are weak and are likely to meet with disapproval by the public.

My view is that the negative protections should come from within the profession. They do so via obligations to manage conflicts of interest, and to act honestly, competently and with due care. These provide sufficient negative protections. Also, they are less ambiguous and therefore stronger than a public interest requirement. Hence, a public interest requirement is not necessary for the negative protection. As for the positive protections, these are not necessary from within the profession due to the many forms of external protections for the public. A counter to this is that these external protections are inadequate. My response is that the remedy should be to beef up the external protections, where they properly belong, rather than to rely on requirements internal to the profession. External protections can be set out in statute, and can be subject to a democratic process. Professional requirements do not carry this statutory weight and are entirely self-determined, meaning that the

profession could change them without public consultation and agreement. The public should prefer the external protections.

My arguments against the duty are flawed

In chapter 5 I argued that the public interest duty is a promise made by the Actuarial Society and its members. I argued that this promise cannot be kept in all instances and so we should not make the promise, because common morality requires that we keep our promises. An objection to this is that it is not a blanket promise but rather a very specific promise, as elaborated on later in the Code. This objection is similar to the one above that the duty does not exist. It suggests the promise is not a firm promise. Instead it is conditional. It is beyond the scope of this paper to consider the moral validity of conditional promises. Assuming they are valid, or at least that this particular one is valid, the conditions should be clearly specified as it would otherwise be difficult to tell if the promise has been met. This points to the problems of vagueness and policing adherence that I identified in chapter 5. In other words, the specific conditions under which the promise arises and the specific conditions under which it must be kept, are not clearly delineated. Furthermore, it is not possible to precisely set out all these conditions in advance. Hence, the promise is not valid and should not be made.

A different counter-argument could be that the promise is not broken if the act is not contrary to the promise. That is, the promise to act in the public interest is deemed to be met if a particular action is shown to be not contrary to the public interest. My response is that this still suffers from the difficulty of demonstrating whether the public interest is

promoted or not. Furthermore, it is disingenuous. It is like following the letter rather than the spirit of the law. Or it is like saying withholding the truth is not the same as telling a lie. A promise to do X gives rise to an obligation to do X.

I stated in chapter 5 that there are public interest situations where the state should be involved rather than the actuarial profession. For example, the state should promote the common good, and protect the public. Given the state's role, there is no need for actuaries to have a public interest duty. An objection to this is that the state is unable to completely promote the common good, or fully protect the public (for whatever reasons). We could look particularly at the case of South Africa, where the state's capacity is limited and is focused on other priorities, such as ensuring basic rights and meeting basic needs. Given this situation, the actuarial profession should get involved. (See, for example, the suggestion of Lowther *et al* noted in chapter 4.) I support the view that citizens should be involved in the development and upliftment of their society. However, this is a universal requirement and not specific to actuaries. (This universality could be contested but is not implausible.) Actuaries cannot be asked for more than everyday citizens in this regard. The specific input of actuaries as actuaries to such public matters goes beyond normal actuarial practice, and so should be voluntary rather than obligatory. A counter to this response is that if it is not made obligatory then it would not be done. My response to this is that it assumes a negative view that actuaries do not care about their society, which is untrue. It also ignores the universal requirement to contribute to society that applies to actuaries as citizens. In other words, actuaries would contribute to society as required by common morality, and not because of any professional requirement. If they do not contribute, then they can be judged according to common morality. A professional obligation is not necessary.

An objection to my paternalism arguments is that this duty is a form of paternalism of the right kind, intended to benefit others. Gerald Dworkin identifies ‘hard’ paternalism as the kind of paternalism where interference is justified even when the person being interfered with is aware of the dangers (Dworkin, 2017). He also refers to ‘strong’ paternalism where the paternalism is justified because people are assumed to be mistaken or irrational. If we believe in both hard and strong paternalism, then we can say this kind of paternalism is justified even if it may result in limitations to liberty or rights. The argument is that, regarding matters in the actuarial domain, such as long-term finances, the public is either unknowledgeable or irrational, and can be forcibly prevented from doing themselves financial harm. This is further strengthened if dependants rely on the person, say if the person is a breadwinner. There are more people in need of protection in this case. It could be said the paternalism is for the dependants more than for the breadwinner.

My response to this objection is to ask if this kind of paternalism, in these kinds of situations, is the function of the actuarial profession or the government? The profession may advise the government, but it should be government that sets and implements the policies. This way there is democratic control over the policies and processes. The actuarial profession is not subject to the same democratic control, although it is subject to public opinion and censure, so it should not try to perform government duties. Similarly, the government sets up regulatory institutions to protect the public, such as the Financial Sector Conduct Authority and the Prudential Authority in South Africa. The actuarial profession follows the rules set by these institutions, rather than the actuarial profession setting the rules in respect of public protection.

I argued in chapter 5 that the obligation to act in the public interest is inconsistent with an obligation to manage conflicts of interest. One counter to this might be that the inconsistency can be resolved by specifying which obligation is to take precedence. My response is that it would be difficult to decide upfront which obligation should precede, or trump, the other. Much work is needed for this, and I have my doubts about its prospects of success. In the absence of this work, the suggestion should not be implemented. An alternative might be to remove the obligation to manage conflicts of interest. I will not go into this, but I think this is not a feasible alternative. The obligation to manage conflicts of interest is necessary to prevent moral hazard by actuaries and thus to maintain trust between actuaries and clients.

My arguments suggest that the inconsistency between the two duties is insoluble. An objector might ask whether this is always the case. Can the inconsistency be managed? I agree that it may be possible, in some situations, to manage the conflict between these two duties. However, the Code currently gives no guidelines in how to resolve this dilemma. I also think that it is very difficult (or impossible) to provide such guidelines that can work in all possible situations. My proposed solution is to remove the public interest duty from the Code. The objector may then ask about the position of actuaries in statutory roles. They have these conflicting duties, so how are they to act? I agree that such actuaries often face difficult choices, sometimes without adequate guidance to help them. However, this position is accepted voluntarily by them, and such actuaries must deal with these difficulties. It would be wrong to put all actuaries involuntarily into this position (conflict, not statutory) via a public interest obligation. One might say that it is not involuntary

because actuaries accept this as part of the conditions of membership. However, I think that there might be an inadequate appreciation of the difficulties of the public interest duty prior to accepting membership and so, also for all the other reasons given, it should not be in the Code.

Does modernization and individualism necessarily lead to a reduced need for professionals to act in the public interest? Some might argue that the increasing complexity of modern society actually strengthens the need to protect the public. The 2008 global financial crisis is one example of where a lack of oversight and lack of concern for the public interest triggered a global crisis. Perhaps if professionals had been doing their jobs out of concern for the public interest, this crisis might never have happened. My response is the same as above: these protections should come from outside the professions. The self-regulation of professions, and their stated regard for the public interest, still failed to prevent the 2008 crisis. Thus, greater protections from outside are necessary, rather than public interest duties from within the professions.

I identified a difficulty in enforcing the public interest duty. Without the ability to effectively enforce the duty, the duty should be removed. A counter to this argument could be that it is possible to have a professional standard without having enforcement thereof. In this case, reliance is placed on the honesty of the professional to comply. Where gross violations are identified, then these can be subject to disciplinary procedures. In the normal course of events, minor infractions could go unnoticed and unpunished but that would not detract from the overall force of the duty. In other words, the majority complies and this is sufficient. In response I refer back to the challenges in precisely defining this duty, as well as

the conflicts that may arise. I submit that these difficulties present themselves in the majority of cases. If so, then the majority does not actually comply. Hence there needs to be enforcement to ensure majority compliance. However, enforcement is not possible in this case, as argued in chapter 5, and so the duty to act in the public interest should be removed.

I could further respond to the above counter-argument by asking if we are to rely on professionals upholding the standards of their own accord, then why not remove all disciplinary procedures? I shall not go into it here, but there is a need for adherence to be policed. We cannot remove the disciplinary procedures entirely. Thus, the objection fails. The enforcement should apply to all provisions of the Code, unless they are specifically stated as non-obligatory. The public interest duty is not one such voluntary provision, as I argued in chapter 2. Thus, it must be enforced, or removed if it cannot be enforced. Because it cannot be enforced, it should be removed.

One problem I identified in a few places in chapter 5, is that the public interest duty is not adequately specified, given a broad conception. It is too vague. An objection could be that many principles in the Code are vague in varying degrees. However, the principles are still necessary for ensuring proper professional conduct. My response is that it may be that other provisions in the Code are vague, but my argument is on this particular requirement in the Code. The other requirements are not my concern at this stage, and they have no direct bearing on my argument, with the exception of the duty to manage conflicts of interest.

Alternatives

Some alternative ways of dealing with the public interest duty were touched on in the various objections above. I dismissed these alternatives. A further alternative worthy of exploration was suggested by David Coldwell in his comments on the proposal for this paper. Coldwell suggests that, perhaps, a 'Pareto optimal' guideline could be developed for the broad public interest work (Coldwell, 2018). Pareto optimality is a concept from economics on the optimal allocation of economic resources. An allocation is said to be Pareto optimal if it is impossible to make any person better off without making someone worse off. Coldwell's suggestion is that actuaries could use this to guide their judgements on public interest matters. For example, a piece of actuarial advice would not be contrary to the (broad) public interest if it made the particular recipient of the advice better off but did not make the general public worse off. Such advice would be permissible. So too might cases which made the client worse off, but the general public better off. An example of this latter case is reducing charges on insurance policies which makes the insurance company worse off (on one level) but makes the public better off due to cheaper insurance. Impermissible cases would be those that made the general public worse off. These examples are just indicative of the kind of thinking this approach might entail. Much further work is required to develop this fully.

An immediate observation on the Pareto optimal approach is that limits would have to be drawn as it becomes a more difficult exercise the more degrees of influence one considers. In the example above the immediately affected parties might be an insurance company and the insuring public. But what about other parties such as employees, shareholders,

regulators, taxpayers, the government, and so forth? Similarly, are short term or long term consequences to be considered, or both? Additionally, some work would be required to define 'better off' and 'worse off'. I think all of these questions are very difficult to answer, in a similar way that precisely defining the public interest duty is difficult.

A further initial observation is that the impermissible class in the example above (namely where the public is worse off) seems to overlap with the conflicts of public interest cases I identified in chapter 5 (for example where an insurer benefits from actuarial advice at the expense of the public). If so, then the Pareto optimal approach would run into the same problems. In these cases, the only way out is to not act. Not acting is an uninteresting scenario since we are searching for guidance on how to act.

Further work on this approach may prove fruitful, although I am sceptical at this stage. In the interim, the simplest way to resolve the difficulties around the public interest duty is to remove it from the Code.

Summary

In this chapter I considered possible objections to my arguments throughout the paper. The first objection was that the public interest provision in the Code is not an obligation and is merely advisory, or that it does not apply to members individually. My analysis showed this is not the case. Second, the adequacy of a narrow conception of the public interest, as is currently the case in the Code, was raised as an objection to my argument for a broad view.

In response I showed that a broad view is necessary to distinguish actuaries' role from that of general employees, and is what the public would expect.

My weak claim is that the arguments do not sufficiently support the duty for actuaries to act in the public interest. The objection was raised that the public interest duty is necessary to provide negative and positive protections for the public. I showed that the public interest duty is not necessary for this. The negative protections come from other Code provisions, and the positive protections should come from outside the profession.

My strong claim is that the public interest requirement cannot be morally defended, and it should be removed from the Code. In this chapter objections to my arguments for this strong claim looked at the nature of the promise, at possible solutions to the inconsistency between the public interest duty and an obligation to manage conflicts of interest, and at the enforcement problem. For these, I argued that the vagueness problem remains. The task of precisely defining the public interest duty, or providing suitable guidelines for practical use, is too onerous or problematic. Other objections revolved around the role of the state, or its ability to protect the public or promote the public good. I argued that the positive (paternalistic) protections should come from outside the profession, chiefly the government. Any assistance to the state in such tasks is voluntary, or arises from a common morality requirement rather than a professional obligation.

Coldwell's suggestion of a Pareto optimal framework as an alternative way to approach the public interest duty was also briefly considered. I observed that this is not without immense

difficulties, in the same way that defining the public interest duty is difficult. The simplest resolution is to remove the public interest duty from the Code.

7. Conclusion

Most actuaries working in South Africa belong to the Actuarial Society of South Africa. The primary professional normative standard for these actuaries is the Code of Professional Conduct. This Code contains an obligatory requirement that members should act in the public interest, where the public interest is narrowly defined in the Code. The narrow conception limits the public interest to actuaries doing their jobs properly, by adhering to standards, in the service of individual clients. I argued for a broader definition which goes beyond mere service to individual clients. It includes contributions to the development and upliftment of society, for example through participation in public debate, advising on public policy, or supporting capabilities that promote human dignity. The public would expect their interests to be advanced when the profession refers to the public interest.

I discussed several arguments in support of the public interest duty. The main justification is the provision of negative and positive protections for the public. My view is that the negative protections do not require a public interest duty. The negative protections come from existing obligations to manage conflicts of interest, and to act honestly, competently and with due care. I argued that the positive protections should come from outside the profession, notably the government. The duty was also justified with reference to the advancement of society. However, this sort of work in the actuarial domain is supererogatory and voluntary, and should not be made obligatory. It is a common morality requirement for all citizens, rather than an actuarial role-specific requirement. I concluded that the arguments do not sufficiently support the public interest duty.

I gave several reasons why I think the public interest duty for actuaries cannot be supported. It raises too many problems, such as not being able to keep the promise, and an inconsistency with a duty to manage conflicts of interest. It is too vague, leading to problems with enforcement, for example. Also, the public interest is properly the role of the state, rather than the actuarial profession. I defended my arguments against possible objections. Some alternatives were briefly considered but these appear, at least initially, to run into the same problems. For these reasons, I proposed that the public interest duty be removed from the Code. I argued that this will not detract from the primary professional obligation, which is to provide a quality service to clients.

Removing the public interest duty should not negatively affect the trust relationship between actuaries and clients or the public. Trust is maintained by acting honestly, impartially of one's own interests, with competence and due care, and by managing conflicts of interest. It is maintained by observing high technical standards, as well as through professional oversight, such as in the form of effective enforcement and discipline. All these elements remain when the public interest provision is removed.

Although I argued against a public interest duty for actuaries, where duty means obligation, I have not argued that performing a public service is always undesirable. I agree that actuaries can meaningfully contribute to public discourse or promote the common good, for example, if they so choose. However, this should not be an obligation of being an actuary. It would be voluntary, unless required in specific statutory roles.

To end I would like it to be clear that I continue to support the Code, other than the public interest duty. I support the view that actuaries have great responsibilities, which typically go beyond those of ordinary employees or citizens. Doing a proper job as an actuary means more than doing a proper job as an ordinary employee. It means fulfilling all the elements of the “professional promise” (Actuarial Society, n.d.). Specifically, actuaries have a duty of care to their clients. They must act in the client’s best interests, rather than for their own self-interest. They must be both objective and independent. Some take all of this to mean acting in the public interest. I disagree. Acting in the public interest means something different, or more than this. We should not confuse these professional responsibilities with the public interest. Removing the public interest duty from the Code is my proposal to avoid this confusion, and to avoid the problems I described in this paper.

Bibliography

Actuarial Association, I. (2017). PG1 - Principles of Professionalism.

Actuarial Society, of S. A. (n.d.). Professional Conduct. Retrieved July 17, 2018, from https://www.actuarialsociety.org.za/professional-resources-structure/professional-conduct/

Actuarial Society, of S. A. (2012). Code of Professional Conduct.

Actuaries, I. and F. of. (2012). Conflicts of interest: A guide for actuaries.

Actuaries, I. and F. of. (2013). The Actuaries' Code.

Asher, A. (2001). On the virtue of serving the public interest. *British Actuarial Journal*, *7*(III), 313–317.

Asher, A. (2002). What actuaries might learn about life. *South African Actuarial Journal*, *2*, 53–68.

Asher, A. (2017). Explicitly incorporating virtues into actuarial education. *Annals of Actuarial Science*, *11*(02), 253–285. https://doi.org/10.1017/S1748499516000245

Bellis, C. S. (2000). Professions in Society. *British Actuarial Journal*, *6*(2), 317–364.

Bertland, A. (2009). Virtue ethics in business and the capabilities approach. *Journal of Business Ethics*, 25–32. https://doi.org/10.1007/s10551-008-9686-3

Brint, S. (1994). *In an age of experts*. Princeton: Princeton University Press.

Coldwell, D. A. L. (2018). Commentary on proposal. Unpublished.

Davis, M. (1991). Thinking Like an Engineer: The Place of a Code of Ethics in the Practice of a Profession. *Philosophy and Public Affairs*, *20*(2), 150–167.

Daykin, C. D. (1995). Turning Promises Into Reality. *British Actuarial Journal*, *1*(1), 5–36.

Dworkin, G. (2017). Paternalism. In E. N. Zalta (Ed.), *The Stanford Encyclopedia of Philosophy*

(Winter 201). https://doi.org/10.1111/1467-9973.00225

Frankel, M. S. (1989). Professional Codes: Why, How, and with What Impact? *Journal of Business Ethics*, *8*, 109–115.

Gunz, S., & van der Laan, S. (2011). Actuaries, Conflicts of Interest and Professional Independence: The Case of James Hardie Industries Limited. *Journal of Business Ethics*, *98*, 583–596. https://doi.org/10.1007/s10551-010-0639-2

Jaffe, J. (2012). Acting in the Public Interest: What Does it Mean and Do U.S. Actuaries Mean It? *In the Public Interest*, (6).

Jamal, K., & Bowie, N. E. (1995). Theoretical considerations for a meaningful code of professional ethics. *Journal of Business Ethics*, *14*(9), 703–714.

Jennings, B., Callahan, D., & Wolf, S. M. (1987). The Professions: Public Interest and Common Good. *The Hastings Center Report*, *17*(1), 3–10. https://doi.org/10.2307/3562447

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*.

Lowther, M., & McMillan, W. (2006). Planning Lifelong Professionalisation Learning for Actuaries. *South African Actuarial Journal*, *6*, 1–17.

Luban, D. (2005). Professional Ethics. In R. G. Frey & C. H. Wellman (Eds.), *A Companion to Applied Ethics*. Blackwell. https://doi.org/10.1111/b.9781405133456.2005.00045.x

Luegenbiehl, H. C. (1983). Codes of Ethics and the Moral Education of Engineers. *Business & Professional Ethics Journal*, *2*(4), 41–61.

Withey, P. (2016). *2016 Presidential Address*.