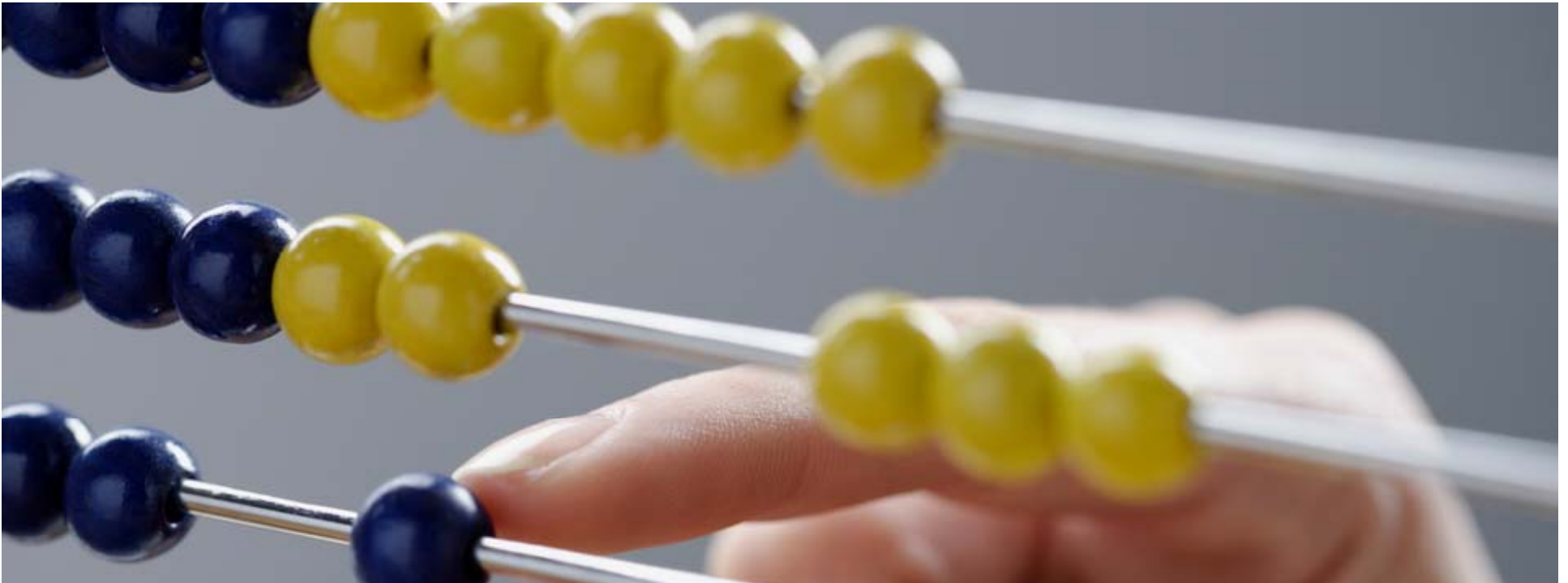


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## CASE STUDY 5: ADVISING A NEW CLIENT



# Agenda

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- Introduction of case situation
- Issues to consider
  - Issue#1: Code of conduct
  - Issue#2: Conflict of interest
  - Issue#3: Contact with previous consultant
  - Issue#4: Mr. Chair's "Eyes and Ears"
  - Issue#5: Request for discussion
  - Issue#6: Dealing with funds inflow

## Case Situation

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- Mr. Anand Actuary is an experienced consultant within the investment consulting practice of a firm of pensions consultants
- Mr. Actuary has just been informed that the firm has acquired a new client, PensionsTrust.
- PensionsTrust. was unhappy with the advice they received from their previous consultants, FiredFirm, and is in the midst of a dispute with them
- PensionsTrust would like Mr. Actuary to carry out a full review of PensionsTrust's investment arrangements, including strategy, structure and managers
- The Chairman of PensionsTrust, Mr. Chair would also like Mr. Actuary to be his investment “eyes and ears”
- PensionsTrust has three fund manager companies, Money A, Money B and Money C

## Case Situation

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- A Director in Money A, Mr. Vinay Director, is also a Director at Mr. Actuary's firm of pension consultants
- Pensions Trust is due to receive a large inflow of funds within the next month, owing to a recent acquisition
- PensionsTrust do not want to invest this money with Money A, Money B, and Money C until Mr. Actuary's review has been completed..however, they also do not want to be too late and risk being out of the market
- Due to the time constraints, and also to keep costs down, PensionsTrust has requested Mr. Actuary to give his opinions at a meeting in a few weeks time, instead of submitting a complex written report

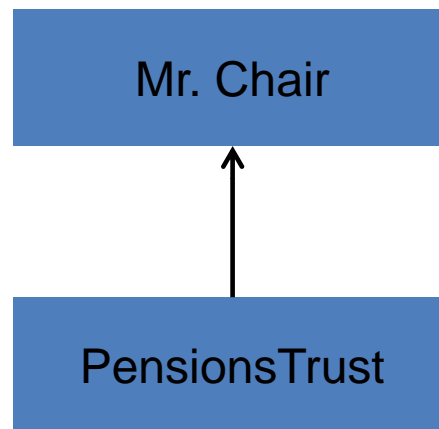
# Case Situation

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PensionsTrust

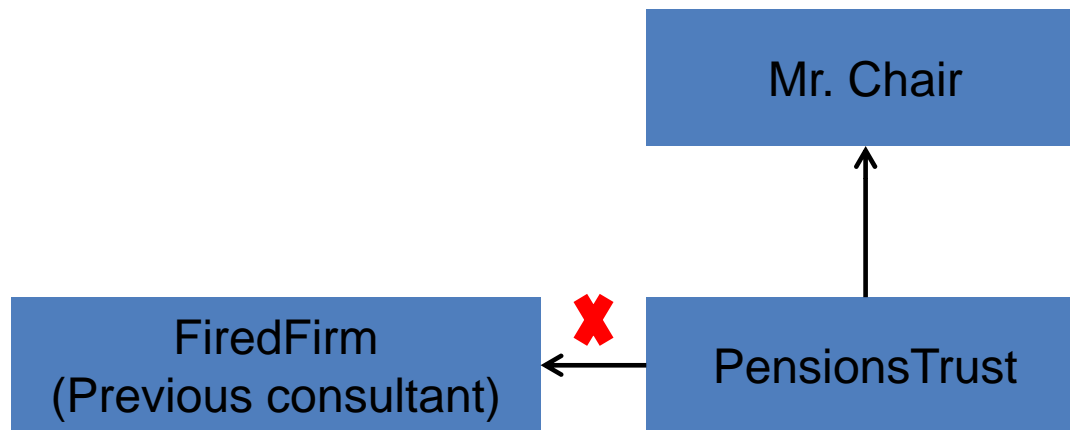
# Case Situation

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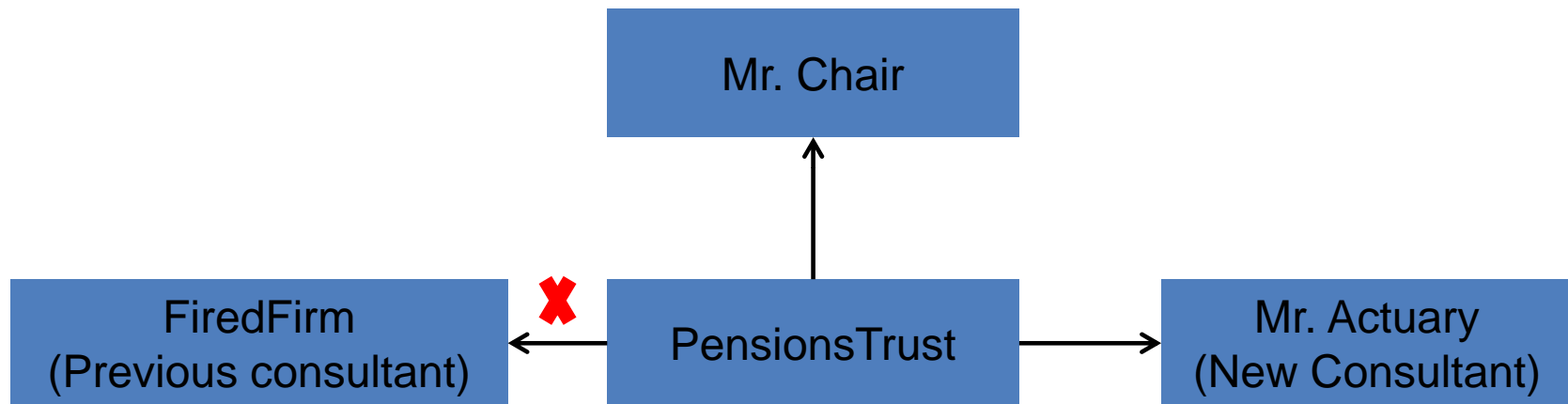
## Case Situation

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## Case Situation

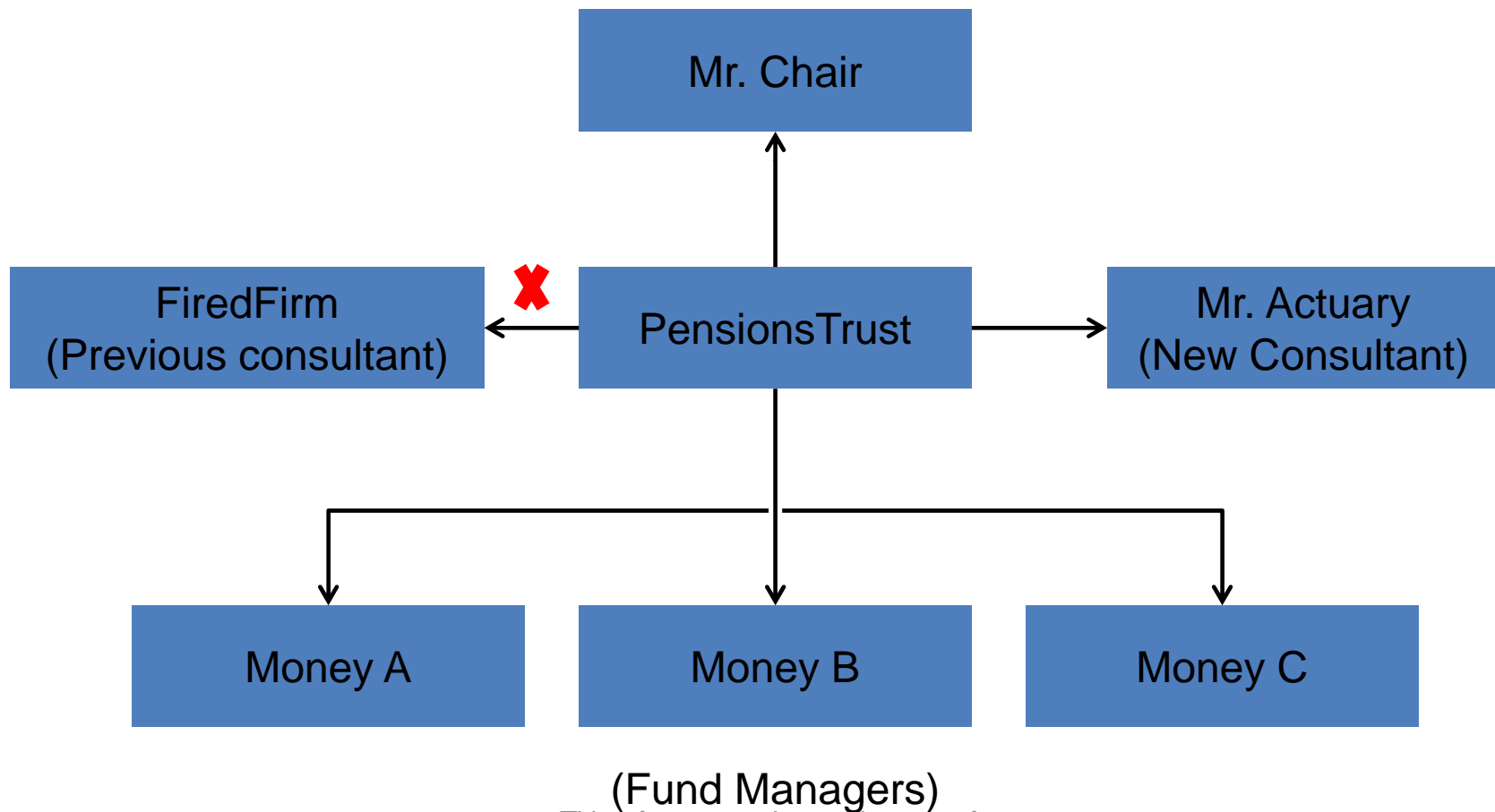
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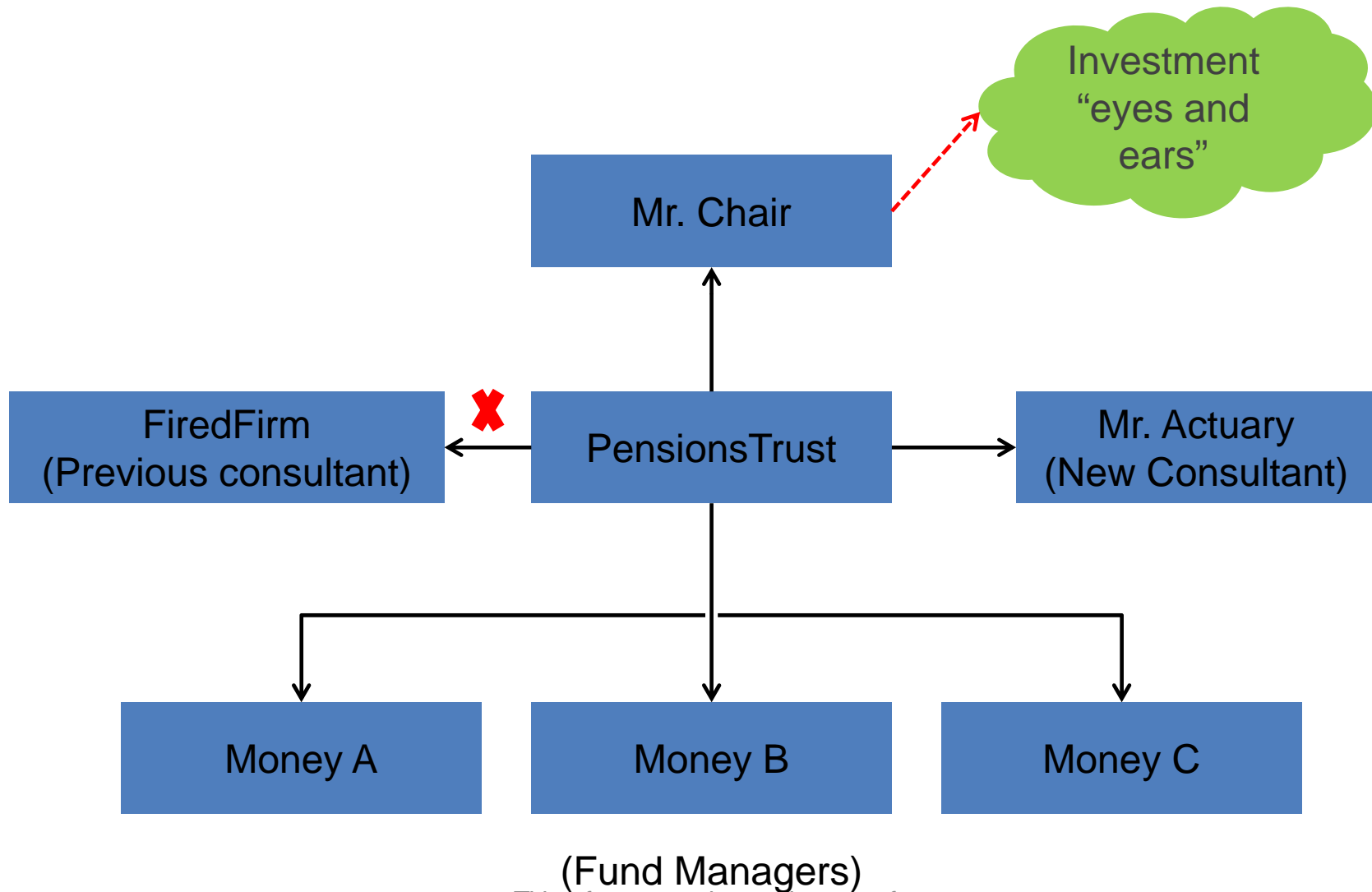
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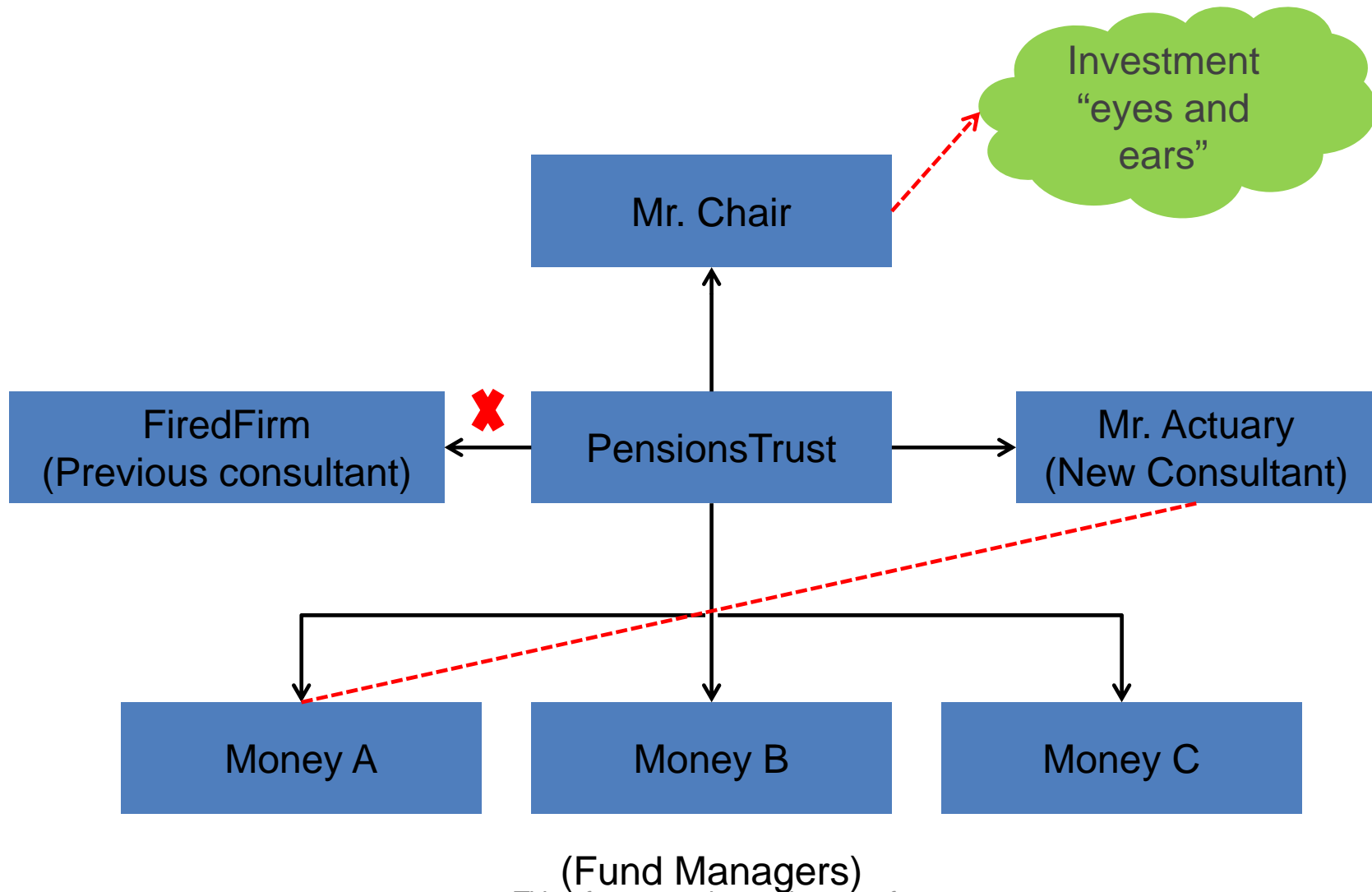
## Case Situation

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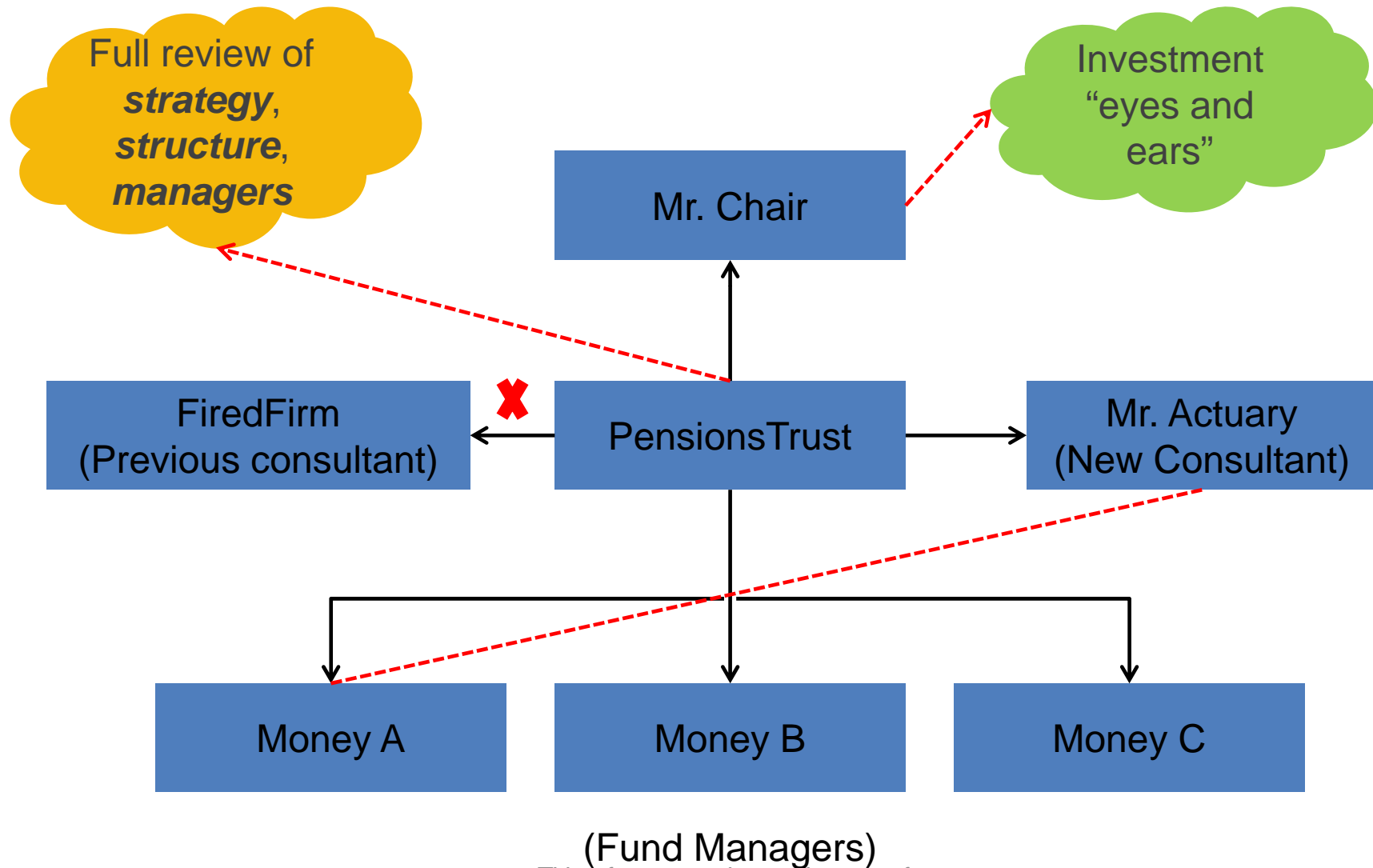
## Case Situation

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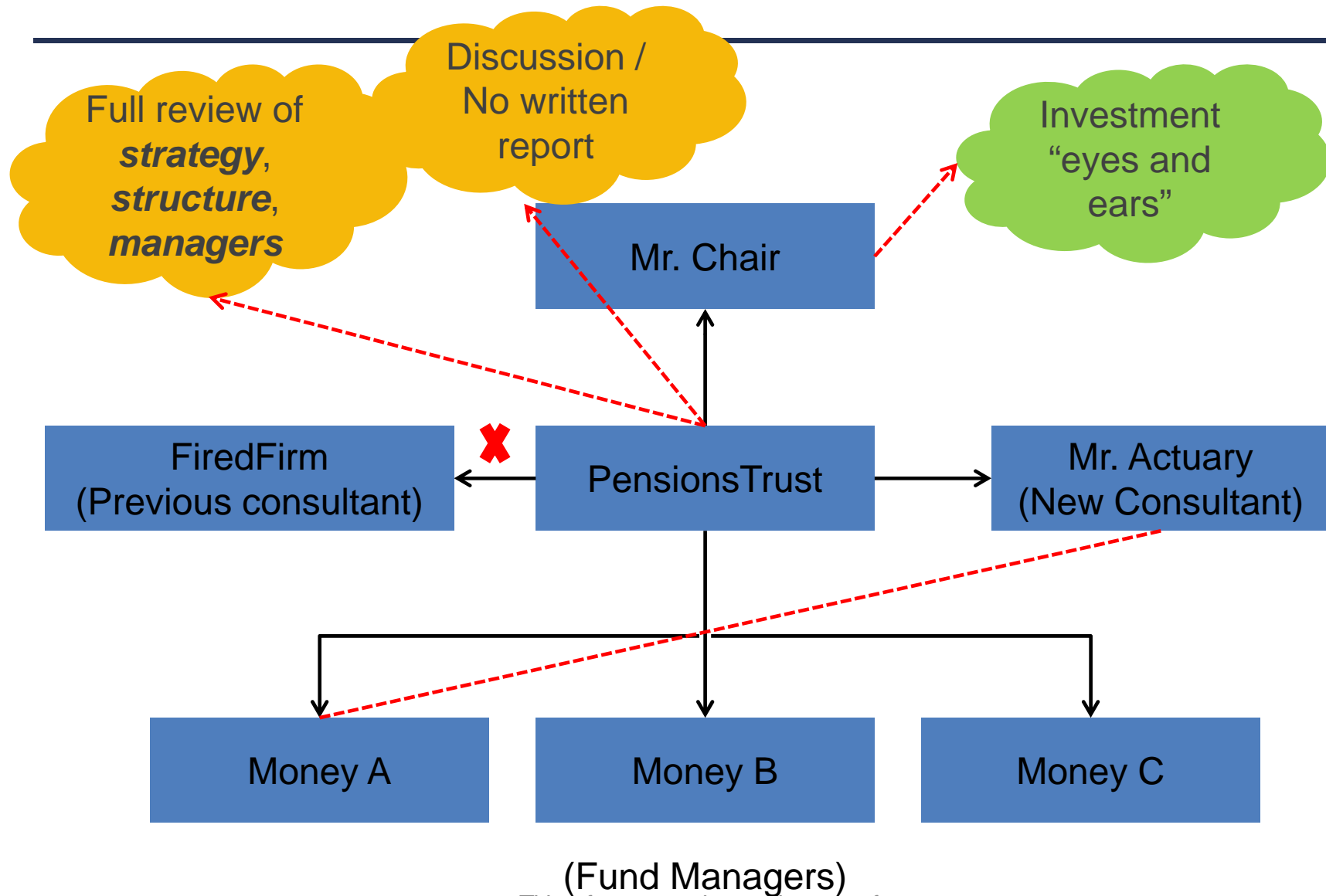


## Case Situation

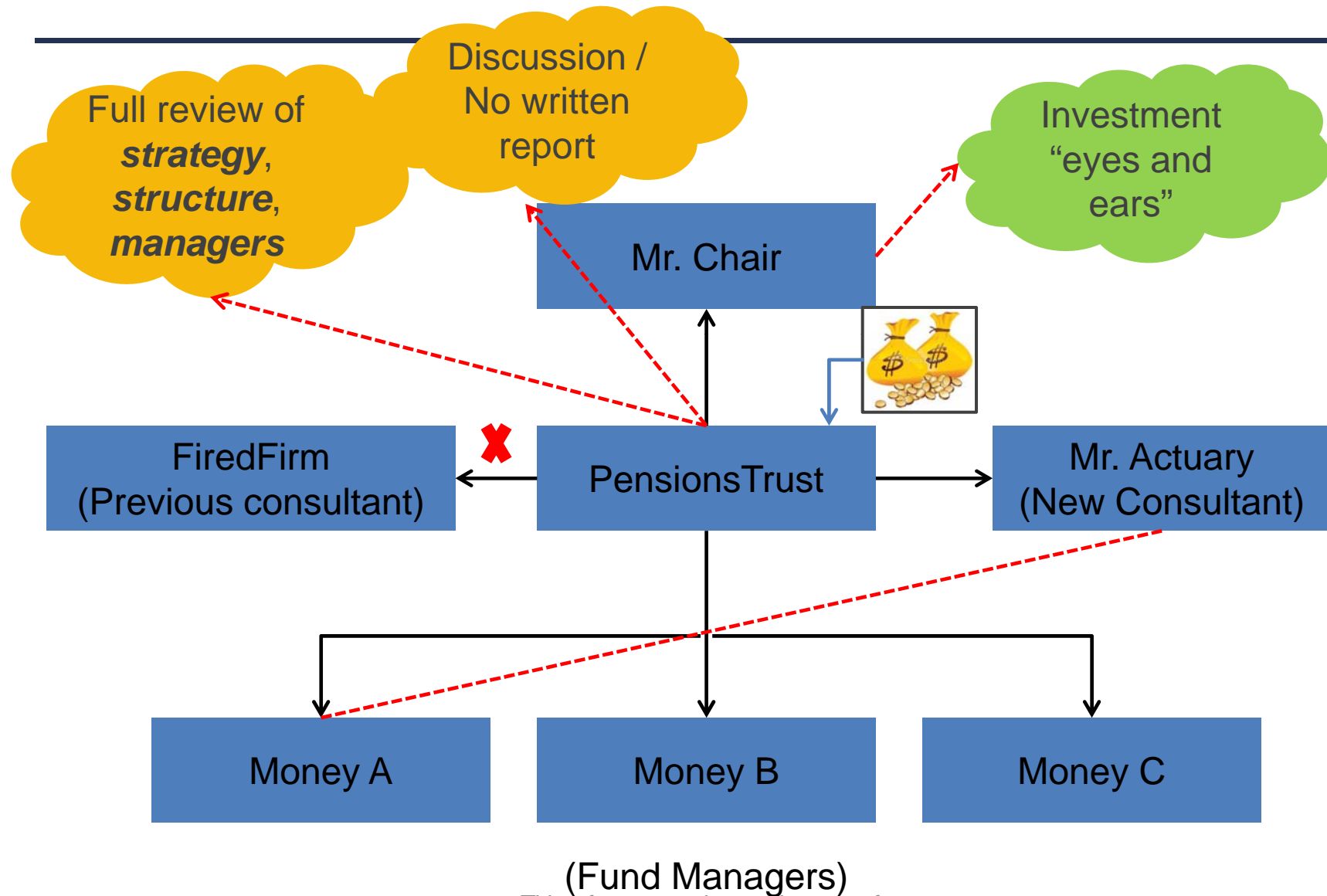
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## Case Situation



# Case Situation



## Issues to consider

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- **Issue#1: CODE OF CONDUCT – Mr. Actuary has been newly appointed with PensionsTrust – how should Mr. Actuary carry out his professional activities?**

## Issues to consider

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- Issue#1: CODE OF CONDUCT – Mr. Actuary has been newly appointed with PensionsTrust – how should Mr. Actuary carry out his professional activities?
- **Issue#2: CONFLICT OF INTEREST – Common director in Fund manager – Money A and in Mr. Actuary's pensions consultancy firm**



## Issues to consider

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- Issue#2: CONFLICT OF INTEREST – Common director in Fund manager – Money A and in Mr. Actuary's pensions consultancy firm
- **Issue#3: CONTACT WITH PREVIOUS CONSULTANT – Mr. Actuary may need some information from the previous adviser**

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- **Issue#4: Mr. Chair's "EYES AND EARS" – Mr. Actuary must not engage in areas he is not competent to deal with**

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- **Issue#5: REQUEST FOR DISCUSSION - PensionsTrust should have Mr. Actuary's advice confirmed in writing**

## Issues to consider

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- Issue#2: CONFLICT OF INTEREST – Common director in Fund manager – Money A and in Mr. Actuary's pensions consultancy firm
- Issue#3: CONTACT WITH PREVIOUS CONSULTANT – Mr. Actuary may need some information from the previous adviser
- Issue#4: Mr. Chair's "EYES AND EARS" – Mr. Actuary must not engage in areas he is not competent to deal with
- Issue#5: REQUEST FOR VERBAL DISCUSSION - It is a legal requirement for PensionsTrust to have Mr. Actuary's advice confirmed in writing
- **Issue#6: DEALING WITH FUNDS INFLOW – Wide range of risk warnings should be given, has huge potential for claims for incorrect advice**

## Issue#1 Code of conduct

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*Mr. Actuary has been newly appointed with Pensions Trust . What professional considerations should he keep in mind when carrying out his duties?*

### Professional Standards

#### Section 2.2 of PCS:

“A member has a duty to the profession and must not act in a manner which denigrates its reputation or impugns its integrity”

### Confidentiality

#### Section 2.5.1 of PCS:

“As a matter of law, information acquired by a actuary in the course of professional work is frequently confidential to the actuary’s client or the actuary’s firm. As such, it should not normally be disclosed unless consent has been obtained from the actuary’s client or the actuary’s firm, as the case may be”

# Issue#1 Code of conduct

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## Standards of advice

### Section 3.1 of PCS

“An actuary is expected to use best judgement in formulating advice, whilst paying proper regard to any relevant professional guidance or other guidance. He must keep himself abreast with updated professional guidance and adhere to that.”

## Issue#1 Code of conduct

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Thus,

- Mr. Actuary should carry out his work in a way that does not damage the Profession's reputation
- Mr. Actuary should be very careful about not disclosing any confidential information of PensionsTrust without authorisation to do so
- Mr. Actuary should refer to appropriate guidance form the Profession and keep himself updated regularly

## Issue#2 Conflict of Interest

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*Director in Fund Manager Money A is also a Director in Mr. Actuary's Firm*

### Conflict of interest

#### Section 5.1 of PCS

“Clients are entitled to assume that advice given by a actuary is unaffected by interests other than those of the client, taking account of any identifiable professional or legal duty of care of the client in respect of a third party”

#### Section 5.2 of PCS

“If there is or might appear to be a conflict of interest between two or more clients of a actuary or of the actuary's firm, or a conflict between a client and the actuary or the actuary's firm, the actuary must consider the nature and extent of the conflict and whether it is such as to make it improper for the actuary to give advice to one or more of the clients involved in the conflict”



## Issue#2 Conflict of Interest

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Thus,

- It is possible that Mr. Actuary had known that PensionsTrust had appointed Money A as one of their Fund Managers prior to his firm pitching for the business, and Mr. Actuary had disclosed this during their new business presentation to PensionsTrust.
- If Mr. Actuary did not know about his earlier, Mr. Actuary should disclose this conflict of interest now to PensionsTrust
- Mr. Actuary should not offer any advice relating to Money A without disclosing this conflict of interest

## Issue#3 Contact with previous consultant

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*Mr. Actuary should need some information pertaining to FiredFirm.*

*If Mr. Actuary perceives the need to contact FiredFirm, can he still provide his advice to PensionsTrust in the meantime?*

### Appointment of new advisor

#### Section 7.2 of PCS

“If an actuary invited to give actuarial advice to a client, knows or has reason to suspect that another actuary is acting or has recently provided advice on the same or a related matter, the actuary should contact the other actuary at as early a stage as possible to ask whether, he is aware of any professional reasons to be considered in accepting the appointment or any particular considerations which ought to be borne in mind before giving advice...”

## Issue#3 Contact with previous consultant

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### Appointment of new advisor

#### Section 7.1 of PCS

“A client has the indisputable to choose and to change professional advisers.....It is not the intention of the PCS to interfere in the commercial activities of a actuary or a actuary's firm and it is not intended to protect the position of an incumbent”

## Issue#3 Contact with previous consultant

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### Appointment of new advisor

#### Section 7.3 of PCS

“If an actuary concludes that there is a requirement to make contact with the other actuary, the appointment may be confirmed in principle before the other actuary has replied, but the actuary must ensure the client is aware that acceptance is provisional and the actuary may provide advice to the client only after receiving an undertaking from the client that the advice will not be acted upon or communicated to others until the other actuary has had sufficient opportunity to reply, say, within a period of 10 days”

#### Section 7.4 of PCS

“If, however, the client, having been informed of the obligation to make contact, refuses to consent to contact being made, the appointment should be declined”

## Issue#3 Contact with previous consultant

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Thus,

- Mr. Actuary should contact the previous consultant, FiredFirm, for details regarding the dispute, to inform him that he is the new appointed consultant and to ensure FiredFirm has no objection with Mr. Actuary's role
- Mr. Actuary should bring it to the attention of PensionsTrust that he needs to contact FiredFirm
- If PensionsTrust refuses to bring Mr. Actuary into contact with FiredFirm, and also refuse to provide the background information that Mr. Actuary requires, Mr. Actuary should normally decline the appointment

## Issue#4 “EYES and EARS” for the Chairman

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*Mr. Chair would like the new consultant, Mr. Actuary, to be his investment “eyes and ears”*

### Standards for advice

#### Sections 3.2 of PCS

“Many assignments offered to actuaries require considerable knowledge and experience for proper completion. Requisite knowledge includes methodology, relevant legislation and, in respect of work outside India, local conditions and the professional code of conduct in the country concerned.

Actuaries must not give advice, unless:

- Satisfied of personal competence in the relevant matters, or
- Acting in co-operation with, or with the guidance of, someone (not necessarily a actuary) with the requisite competence

## Issue#4 “EYES and EARS” for the Chairman

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Thus,

- Is it ‘strategic advice’ or short term tactical advice that PensionsTrust is looking for?
- Being Mr. Chair’s “eyes and ears” would imply day-to-day monitoring, and Mr. Actuary needs to be confident this is something he is equipped to deal with, in terms of competency as well as time resources
- The extent of Mr. Actuary’s responsibilities to PensionsTrust should be spelled out clearly in the written contract between his firm and PensionsTrust. Mr. Actuary should be confident that if PensionsTrust requires Mr. Actuary to take on this responsibility, the monetary terms in the contract are such that Mr. Actuary can do justice to his responsibilities.
- There is otherwise scope for professional indemnity claims if competency or resources were lacking and if that led to inadequate performance

## Issue#5 Request for discussion

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*To save on time, and to save on costs, Pensions Trust has suggested to Mr. Actuary that he not present a complex report.*

*Instead, they look forward to a discussion with him at the next Trustees' meeting in a few weeks' time*

### Financial interests

#### Section 6.1 of PCS

“An actuary must make full and timely disclosure to the client of any financial interest which the actuary or the actuary's firm may have in any assignment that the member undertakes for that client or in its outcome. Financial interest includes direct remuneration, direct and indirect benefits, commission and introductory fees paid by or to the actuary or the actuary's firm”



## Issue#5 Request for discussion

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### Professional standards

#### Section 2.3 of PCS

“Users of actuarial services, including actuary’s firm and colleagues in that firm, are entitled to have absolute confidence in the skill, objectivity and integrity of any member. If work which an actuary considers necessary is precluded by cost or time constraints the actuary should normally either decline to act or qualify the advice given”

## Issue#5 Request for discussion

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Thus,

- Mr. Actuary should point out that while he does not mind providing his advice at the next meeting, it is a requirement for PensionsTrust to have his advice confirmed in writing
- Mr. Actuary should only agree to provide advice at the next meeting itself if he is convinced about doing justice to his due diligence
- Mr. Actuary should issue a letter to PensionsTrust outlining what work he shall be doing for them in what timeframe, the extent of any written advice required, and the fees for his work
- If PensionsTrust pressurises Mr. Actuary to reduce his fees or to reduce the time taken to the extent that it may compromise the quality of his advice, he should decline to work or should work on the stated basis that his advice shall be qualified

## Issue#6 Dealing with funds inflow

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*A large sum of money is to be received within the next month, in relation to an recent acquisition. PensionsTrust is not comfortable to invest the money with the fund managers until Mr. Actuary's full review of the managers is completed. However, PensionsTrust does not want to be out of the market for too long. They have requested Mr. Actuary for advice regarding this matter.*

### Standards for advice

#### Section 3.5 of PCS

“Advice should normally include sufficient information and discussion about each relevant factor and about the results of the actuary's investigations to enable the intended recipient of the advice to judge both the appropriateness of the recommendations and the implications of accepting them”

## Issue#6 Dealing with funds inflow

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### Notes:

- This is likely to be a key item of discussion at the trustees' meeting
- The discussion would include the consideration of market risk and the use of derivatives. It is thus important that Mr. Actuary is convinced about his competence in these areas before taking up the appointment with PensionsTrust
- Wide range of risk warnings needed – huge scope for misunderstandings and claims for incorrect advice – potential reputation risk for the Profession

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*Questions?*

*Lead Presenter: Sunayana Mahansaria*

*Second Presenter: Manoj Chhatlani*

*Guide: Saket Singhal*

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*THANK YOU!*