



## APS X3: The Actuary as an Expert in Legal Proceedings

<b>Author:</b>	Regulation Board
<b>Status:</b>	Approved under the Standards Approval Process
<b>Version:</b>	1.0, effective 1 January 2015
<b>To be reviewed:</b>	No later than 1 January 2018
<b>Purpose:</b>	This APS sets out principles for actuaries to apply when instructed as an expert in relation to existing or contemplated legal proceedings (including those within the UK and outside UK jurisdictions)
<b>Authority:</b>	Institute and Faculty of Actuaries
<b>Target Audience:</b>	<b>Members</b> acting as <b>Expert Witnesses</b> or <b>Expert Advisors</b> in <b>Proceedings</b> and <b>Non UK Proceedings</b>

### General Professional Obligations:

All **Members** are reminded of the Status and Purpose preamble to the Actuaries' Code, which states that the Code will be taken into account if a Member's conduct is called into question for the purposes of the Institute and Faculty of Actuaries' Disciplinary Scheme. Rule 1.6 of the Disciplinary Scheme states that Misconduct:

“means any conduct by a Member...in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity or professional judgement which other **Members** or the public might reasonably expect of a Member having regard to...any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or...the [Financial Reporting Council] (including by the former Board for Actuarial Standards (BAS))”.



**Members** are required to comply with all applicable provisions of **APSs**.

In the event of any inconsistency between this **APS** and the **Actuaries' Code**, the Code prevails.

**Use of the words “must” and “should”:**

This **APS** uses the word “must” to mean a specific mandatory requirement.

In contrast, this **APS** uses the word “should” to indicate that, while the presumption is that **Members** comply with the provision in question, it is recognised that there will be some circumstances in which **Members** are able to justify non-compliance.

## 1. General Requirements

- 1.1. Where a **Member** is instructed to act, or is contemplating an instruction to act, as an **Expert Witness** or an **Expert Advisor** in relation to **Proceedings** then they must comply with the requirements set out in sections 2 to 5 below.
- 1.2. Where a **Member** is instructed to act or is contemplating an instruction to act, as an **Expert Witness** or an **Expert Advisor** in relation to **Non UK Proceedings** then they must consider the extent to which the principles underlying the requirements set out in sections 2 to 5 below are relevant to the instruction in question and, to the extent that they are relevant, apply those principles as may be appropriate in the circumstances.

## 2. Initial instructions

- 2.1 When being instructed, and throughout their engagement, **Members** must establish clearly the nature and scope of their instruction, including whether they are instructed as an **Expert Witness** or an **Expert Advisor** or if the instruction is likely to involve them being instructed as both. Where appropriate, the instructions should be recorded in writing.
- 2.2 When being instructed, and throughout their engagement, **Members** must be satisfied that they have the necessary level of relevant knowledge and skill in order to fulfil all of the requirements of the instruction. This may include skills relating to the giving of oral or written evidence.
- 2.3 If, at any stage before or during the engagement, **Members** are not satisfied that they have the necessary level of relevant knowledge or skill, they should disqualify themselves from acting.



### 3. Independent and objective advice

- 3.1. Having regard to principle 3 of the Actuaries' Code, **Members** should ensure that any advice they provide is, and can be reasonably seen to be, independent and objective and **members** should disqualify themselves from acting if they are unable to ensure that is the case.

### 4. Compliance with rules and procedures

- 4.1. **Members** instructed as an **Expert Witness** in Proceedings must ensure that in addition to their professional responsibilities they act in accordance with any obligations to the Court, tribunal or other body that apply in the **Proceedings** and jurisdiction in which they are instructed.
- 4.2. **Members** must familiarise themselves with, and adhere to, the rules and procedures that apply in the jurisdiction, and to the **Proceedings**, in which they are instructed.

### 5. Remuneration

- 5.1 **Members** instructed as an **Expert Witness** in **Proceedings**, or contemplating such an instruction, must not agree to be remunerated under an arrangement whereby their fee is linked in any way to the outcome of the **Proceedings** in relation to which they are instructed.



## Definitions

<b>Term</b>	<b>Definition</b>
APS	Actuarial Profession Standard.
Member	Means a member of the Institute and Faculty of Actuaries.
Expert Advisor	A person with relevant experience and expertise who is instructed to provide advice to an individual or organisation in relation to existing or potential Proceedings or Non UK Proceedings. In certain types of Proceedings this is recognised as a formal role in terms of the applicable rules.
Expert Witness	A person with relevant experience and expertise who is instructed to be a witness in Proceedings or Non UK Proceedings giving expert opinion evidence (rather than evidence as to the facts of a case).
Proceedings	Proceedings of a legal nature which take place in a jurisdiction within the United Kingdom and in which evidence is considered by a judge or other similar decision making entity or person, including (but not restricted to) civil or criminal courts, tribunals, disciplinary hearings, ombudsmen, public inquiries and parliamentary committees.
Non UK Proceedings	Proceedings of a legal nature which take place in a jurisdiction outside the United Kingdom and in which evidence is considered by a judge or other similar decision making entity or person, including (but not restricted to) civil or criminal courts, tribunals, disciplinary hearings, ombudsmen, public inquiries and parliamentary committees.