Institute and Faculty of Actuaries

Drafting note

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APS X3: THE ACTUARY AS AN EXPERT IN LEGAL PROCEEDINGS

Version: 2.1~~0~~, effective from ~~20 April 2018~~ [DD Month YYYY]

Purpose: This **APS** sets out principles for actuaries to apply when instructed as an expert in relation to existing or contemplated legal proceedings (both ~~including those~~ within and outside the UK ~~and outside UK jurisdictions~~).

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~~ decline to act or withdraw 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~~ decline to act or withdraw from acting if they are unable to ensure that is the case.

4. Compliance with rules and procedures

4.1. A **Members** instructed as ~~an~~ **Expert Witness** in **Proceedings** must check ~~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~~ whether there are any rules or procedures that apply to their role in the jurisdiction of the **Proceedings** in which they are instructed.

4.2. If such rules or procedures in 4.1 exist, **Members** must ~~familiarise themselves with, and~~ adhere to~~, the~~ those rules and procedures that apply to an **Expert Witness** in the jurisdiction~~, and to~~ of 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 those **Proceedings** ~~in relation to which they are instructed~~.

6. Interpretation and application

6.1. A failure to comply with this **APS** may result in a finding of ~~m~~Misconduct in terms of the **IFoA's Disciplinary ~~and Capacity for Membership~~ Schemes**.

6.2. This **APS** uses the word "must" to mean a specific mandatory requirement. It uses the word "should" to indicate that, while the presumption is that **Members** will comply with the provision in question, there may be some circumstances in which **Members** are able to justify non-compliance.

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

7. Definitions

Term	Definition
Actuaries' Code	The ethical ~~professional~~ code for **Members** issued by the Institute and Faculty of Actuaries~~.~~
APS	Actuarial Profession Standard~~.~~ issued by the Institute and Faculty of Actuaries
Member	~~Means a~~ 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)~~.~~
IFoA's Disciplinary ~~and Capacity for Membership~~ Schemes	The ~~currently in force~~ Disciplinary ~~and Capacity for Membership~~ Schemes ~~of the Institute and Faculty of Actuaries, as may be amended from time to time.~~ made under Bye-law 59 and forming part of the Rules of the Institute and Faculty of Actuaries
Proceedings	Proceedings of a legal nature (with the exception of Independent Expert work for Part VII transfers, which are covered by the terms of Part VII of the Financial Services and Markets Act 2000) 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~~.~~