



Institute  
and Faculty  
of Actuaries

# Compensation For Professional Shortcomings

Proposal for the introduction of a new  
Actuarial Profession Standard APS X5:  
Compensation for Professional Shortcomings

by the Regulation Board

Consultation paper

December 2019

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## 1. Introduction

I would like to invite you to participate in this consultation about the Institute and Faculty of Actuaries' (IFoA's) proposal to withdraw GN30: Compensation for Professional Shortcomings (GN30) and replace it with a new Actuarial Profession Standard (APS).

GN30 sets out the professional responsibility of all actuaries to consider the potential for clients to suffer loss as a result of any breach of their duty of care and to ensure that appropriate arrangements are maintained, firstly, to minimise the risk of such a breach and, secondly, to provide compensation for loss in the event of any breach.

GN30 was last reviewed in 2008. Since then, the regulatory framework of the IFoA has changed significantly, with a move towards simplified, principles-based standards. In December of 2018 the Regulation Board agreed to establish a working party to carry out a wide-ranging and substantive review of GN30 on its behalf to determine whether it remains fit for purpose in the context of the current regulatory framework and the IFoA's increasingly global membership.

This consultation paper sets out the proposals of the GN30 Review Working Party (Working Party) to withdraw GN30 and introduce an Actuarial Profession Standard (APS) and accompanying guidance material. The rationale for the proposed approach is set out in section 2, below.

The IFoA welcomes comments on the proposal from individual Members, employers of actuaries, other regulators and anyone else with an interest in the standards which the IFoA sets for its Members.

This consultation asks a number of questions and we would encourage you to provide comments to support your answers. The Working Party will take account of all comments and consider the extent to which the proposal ought to be implemented.

We thank you for taking the time to consider these proposals and look forward to receiving your comments.

**Mark Stocker**  
**Chair of the GN30 Review Working Party**  
**December 2019**

## 2. Outline and Background

- 2.1 The IFoA is considering withdrawing GN30 which deals with Compensation for Professional Shortcomings and replacing it with an APS, supported by non-mandatory Guidance.
- 2.2 Guidance Notes (GNs) are an older form of actuarial practice standard that contain a combination of mandatory duties and guidance material. Following the [Standards Framework Review](#) in 2016, with a view to simplifying standards and moving towards a principles-based framework, it was agreed that GNs should gradually be replaced, with any mandatory requirements being set out in APSs and guidance material published separately.
- 2.3 GN30 is one of two remaining GNs that continue to be in force. It came into effect on 1 September 1997 to protect the public interest as the actuarial profession developed beyond the practice areas of insurance and pensions.
- 2.4 GN30 requires all members to ensure that “appropriate arrangements” are maintained to provide compensation for loss in the event of any breach of professional duty. Appropriate arrangements are not prescribed but may include:
- the terms of the contract between the client and the actuary / employer;
  - the resources available to the actuary's employer;
  - the personal financial resources of the actuary; and
  - the scope and extent of professional indemnity insurance (PII).
- 2.5 The full text of GN30 is included as **Appendix 1**.
- 2.6 The Terms of Reference of the Working Party can be found [here](#).
- 2.7 In carrying out its review, the Working Party considered the following questions, in line with its terms of reference:

### **Whether GN30 is fit for purpose in the current regulatory framework applying to IFoA Members**

- 2.8 The Working Party has determined that GN30 is no longer consistent with the IFoA's principles-based regulatory standards. GN30 contains both mandatory requirements and guidance material. The current approach taken by the IFoA would be to separate this into an APS and non-mandatory guidance. On that basis, the Working Party has concluded that GN30 is not fit for purpose and should be withdrawn.

### **Whether GN30 appropriately reflects the international nature of IFoA membership**

- 2.9 In answering this question the Working Party sought the views of a number of Members based outside the UK. None were aware of any difficulties having arisen as a result of the requirements imposed by GN30. The Working Party also sought the views of the IFoA Executive to determine whether it was aware of any issues being flagged by Members based outside the UK in relation to GN30 and again it was suggested that no significant issues had been raised.

- 2.10 The Working Party decided on the basis of this feedback that it would not be appropriate to restrict the geographic scope of the proposed APS X5 but it agreed that it would seek to test this further in the consultation to ensure its introduction does not have the unintended consequence of disproportionately impacting Members based outside the UK.

**Whether GN30's obligations should remain mandatory, become mandatory for some Members or become advisory for all Members**

- 2.11 The Working Party agreed that the withdrawal of GN30 should not result in the public being offered materially any less protection than is currently provided, particularly with respect to consumer clients.
- 2.12 It also agreed that the "appropriate arrangements" required by GN30 appear to function satisfactorily, in that they have been in place for more than 20 years without raising any significant issues and provide sufficient flexibility without imposing any unreasonable obligations on Members. It concluded on that basis that the mandatory obligation in GN30 relating to appropriate arrangements to provide compensation for loss ought to be carried over into the proposed APS.
- 2.13 It was felt however that the requirement within GN30 for Members to maintain appropriate arrangements to minimise the risk of a breach of duty of care was not appropriate to carry over into the proposed APS, as this was the purpose of the IFoA's regulatory framework as a whole, of which the APS would form part. Reference to the regulatory framework and minimising risk has instead been included in the accompanying Guidance to APS X5.
- 2.14 The Working Party obtained a steer from the Regulation Board that consideration ought to be given to making the scope of the proposed APS narrower than that of GN30. This was on the basis that responsibility for making decisions about insurance cover and other appropriate arrangements to compensate for loss typically lies with senior Members within an organisation and in many cases, more junior Members are not realistically in a position to take or influence these decisions.
- 2.15 The Working Party has decided on that basis to restrict the scope of APS X5 to 'Members that are Principals in Organisations that provide Actuarial Work to external Clients'.

**Whether, taking into account affordability, PII should be mandatory for some or all Members, with particular consideration given to those providing consumer-facing services, such as certain expert witness work**

- 2.16 Research was carried out into the availability of PII both within the UK and internationally. The findings of the Working Party were that PII is generally available and affordable in the UK for individual Members, although less so outside the UK, and that the insurance market can fluctuate which has an impact on the affordability of premiums.
- 2.17 The Working Party considered the distinction between business-to-business work and business-to-consumer work. It was noted that business-to-business work by the actuarial profession might be distinguished from other professions by the value of the potential loss resulting from negligent advice. Loss to pension schemes, insurance firms and finance and investment companies could be hundreds of millions of pounds however much of this type

of work regulates liability through contractual provisions. In that context, requiring individual members to have PII for business-to-business work, rather than other appropriate arrangements, such as contractual arrangements or the resources of the employer, might be of little value to the public interest and a disproportionate burden on Members.

- 2.18 In business-to-consumer work however, for example the valuation of a pension in divorce proceedings or certain expert witness work, consumers could suffer significant loss but may not have the understanding and/or resources to agree contract terms on liability. On that basis, there appeared to be a public interest in the maintaining a requirement for actuaries involved in this type of work to have measures in place to compensate for loss, whether that be appropriate arrangements and/or PII.
- 2.19 The Working Party agreed that the “appropriate arrangements” of GN30 provide flexibility without placing unreasonable duties on those who deal with liability in contract or rely on their employer’s resources. For all of these reasons, it was agreed that it would be disproportionate and unreasonable for the new APS to require all Members to obtain PII.
- 2.20 The Working Party also noted that requiring actuaries working in-house, for example for insurance companies, to have PII in place would be of limited value, since they are not providing external services and it would be unlikely that an employer would sue an employee for loss arising as a result of an employee’s negligence.
- 2.21 On that basis APS X5 has been drafted in such a way that the requirement to have “Appropriate Arrangements” in place relates only to actuarial services provided to external clients.

**Whether the IFoA should assist Members in procuring PII by recommending or providing details of particular insurers**

- 2.22 The Working Party debated whether it would be appropriate for the IFoA to provide assistance to Members in procuring PII cover, for example by recommending or providing details of particular insurers.
- 2.23 It agreed that this would raise practical issues given the global nature of the IFoA membership and the difficulty in identifying and maintaining up to date information on appropriate providers in overseas markets. It also noted that providing assistance to Members in this way would bring with it risks in terms of reputational damage for the IFoA in the event of a failure of an insurer to provide cover or a satisfactory service.
- 2.24 The Working Party felt, on the other hand, that as a member organisation it could be argued that the IFoA should provide this type of assistance, in particular to help sole practitioners and smaller firms. The Working Party sought a steer from Regulation Board and it was agreed that a question ought to be included in the consultation to understand whether Members have in the past experienced difficulties in procuring PII and that this would help to inform the decision about whether such assistance might be given.

**Whether actuarial regulators in other countries place a duty on Members to have measures in place to compensate for professional shortcomings.**

- 2.25 The Working Party carried out a benchmarking exercise to determine whether actuarial regulators in other countries place similar obligations on their Members as those included in APS X5.
- 2.26 It found that only one of the world's ten largest actuarial regulators, the Actuaries Institute in Australia, requires individual members to have measures in place to compensate for loss. This requirement is set to be withdrawn in 2020 with such measures left as a commercial decision for individuals to take.

**What similar measures are in place for other professions, such as chartered accountants or chartered tax advisers**

- 2.27 The Working Party also considered what the requirements are for accountants, solicitors, surveyors, tax advisers, independent financial advisers (IFAs), insolvency practitioners and the medical professions (including doctors, nurses, osteopaths, midwives, pharmacists, opticians; paramedics and others). All require their members to have PII in place either personally or via their employer.
- 2.28 While the Working Party is aware that these professions generally carry out a higher proportion of consumer-facing work than actuaries and most of them commonly handle consumer client money, the Working Party concluded that it appears that for most professional regulators PII is generally expected and considered best practice.

**3. Draft APS X5**

- 3.1 On the basis of the findings of its extensive review, the Working Party proposes to introduce a new APS to be known as APS X5: Compensation for Professional Shortcomings.
- 3.2 The full text of the proposed APS X5 is included at **Appendix 2**.
- 3.3 APS X5 has three particular aims:
- i. To ensure reasonable provisions are in place in relation to compensation to Clients of External Actuarial Work for loss caused by the professional shortcomings of Members (or alternative arrangements relating to liability are in place);
  - ii. To raise awareness and encourage Members, particularly sole practitioners and those working for firms with insufficient resources, who could find themselves personally liable for compensation, to ensure they are adequately protected; and
  - iii. To be proportionate, balancing the need for appropriate protection for users of actuarial services against the need for sufficient and appropriate flexibility to ensure Members are not subject to an unreasonably onerous burden.
- 3.4 The APS requires Members who are Principals in Organisations that provide actuarial services to external Clients to consider the potential for those Clients to suffer loss, in relation

to the External Actuarial Work provided and ensure that Appropriate Arrangements are in place in relation to compensation for such loss.

- 3.5 APS X5 also includes the further general requirement that Members who are Principals in Organisations that provide actuarial services to external Clients must ensure that they are in a position to justify the appropriate arrangements that they have in place, if reasonably called on to do so.
- 3.6 The terms 'Principal', 'Organisation', 'Clients' and 'External Actuarial Work' are all defined within the APS.
- 3.7 The letter 'X' has been used in the title of the APS to denote its applicability to all practice areas.
- 3.8 The IFoA invites views on the content of APS X5, including its scope.

#### **4. Guide to APS X5**

- 4.1 The Working Party agrees that it would be useful for the proposed APS X5 to be accompanied by non-mandatory guidance to assist Members with their understanding of the requirements of APS X5. The text of the Guide can be found at **Appendix 3**.
- 4.2 The Guide incorporates some of the material which is contained within GN30 which the Working Party felt was of value and should not be lost if GN30 is withdrawn.
- 4.3 The Guide includes background information on the rationale and aims of the standard and explains the scope and application of APS X5.
- 4.4 Recognising that there will be a variety of different suitable approaches, the Guide also provides some examples for Members of what "appropriate arrangements" might be and the types of considerations that they ought to have in mind when determining what measures to take.
- 4.5 The Guide also contains some useful information about PII and the considerations that Members might want to have regard to when procuring this type of cover.
- 4.6 The Guide is non-mandatory resource material and imposes no obligations upon Members over and above those contained in APS X5.
- 4.7 The Working Party is interested in receiving comments on the Guide, including feedback on whether there are any topics not already covered which would be of benefit to Members to include in the Guide.

## **5. Consultation Documentation**

This consultation package includes the following documents:

- Appendix 1: GN30: Compensation for Professional Shortcomings;
- Appendix 2: Proposed APS X5: Compensation for Professional Shortcomings; and
- Appendix 3: Guide on APS X5: Compensation for Professional Shortcomings

## **6. Regulatory Impact Assessment**

The Regulation Board has recently introduced regulatory impact assessments as a tool for the appraisal of proposed regulatory or policy options in terms of their likely risks, costs and benefits.

The Board has carried out an impact assessment on the proposal to withdraw GN30 and replace it with the new APS X5. This can be found at Appendix 4.

## 7. Questions

The IFoA invites your comments on the proposed withdrawal of GN30 and introduction of APS X5. It would be helpful if you would offer them by responding to the following questions.

An online version of the questionnaire can be found on the IFoA's [website](#).

### About you

#### 1. Personal information

Name:	
Position:	

#### 2. Region

UK	India	
Republic of Ireland	Asia - other	
Rest of Europe	Canada	
South Africa	USA	
Africa - other	South or Central America	
South East Asia	Australia	
Hong Kong	Oceania - other	
China		

#### 3. Are you a Member of the IFoA?

Yes	No	
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#### 4. If yes, which category of membership do you hold?

Affiliate	Honorary Fellow	
Associate	Retired	
Certified Actuarial Analyst	Student	
Fellow	Student Actuarial Analyst	

**5. If you are an actuary, what is your main practice area? (Answer one option only)**

Life Assurance	Enterprise Risk Management	
General Insurance	Health and Care	
Pensions	Resource and Environment	
Finance and Investment	Other	

If other, please specify:

**6. Do you want your name to remain confidential?**

Yes	No	
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**7. Do you want your comments to remain confidential?**

Yes	No	
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**8. About your organisation (if applicable)**

Name:

**9. Type of organisation (Answer one option only)**

Actuarial consultancy	Public body or Regulator	
Insurance company or reinsurer	Educational Establishment	
Bank or Building Society	Not applicable	
Investment Firm	Other	

If other, please comment:

**10. How many IFoA Members (if any) does your organisation employ?**

None	101+ Members	
2-10	Sole practitioner	
11-50	Don't know	
51-100	Not applicable	

**11. Do you want the name of your organisation to remain confidential?**

Yes	No	
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**12. Do these comments represent your own personal views or your organisation's views?**

Personal views	Organisation's views	
Both personal views and organisation's views		

**APS X5**

The following questions are in relation to your/your organisation's views on the proposed withdrawal of GN30 and introduction of APS X5:

**13. Do you agree with the proposal to withdraw GN30 and introduce a new APS in its place?**

Yes	No	
Comments (please specify):		

**14. Overall do you think that the requirements contained in the proposed APS X5 are relevant and appropriate?**

Yes	No	
Comments (please specify):		

15. Do you think that Members' obligations under the proposed APS X5 are clearly set out?

Yes	No	
Comments (please specify):		

16. Do you agree that the scope of APS X5 is appropriate? (i.e that it should be limited to Members that are Principals in Organisations that provide actuarial work to external Clients)

Yes	No	
Comments (please specify):		

17. Do you think the key terms within the proposed APS X5 are sufficiently well defined? If no, which of these terms would you amend?

Yes	No	
Comments (please specify):		

18. Overall, do you agree that the proposed APS X5 is relevant and appropriate for Members working outside of the UK?

Yes	No	
Comments (please specify):		

19. Have you previously ever experienced any difficulty in procuring PII?

Yes	No	
Comments (please specify):		

20. Do you have any other comments on the requirements and provisions of the proposed APS X5?

Yes	No	
Comments (please specify):		

## Guide

21. Do you agree with the proposal to introduce a Guide to accompany APS X5?

Yes	No	
Comments (please specify):		

22. Overall, do you consider that the Guide is relevant and helpful for Members?

Yes	No	
Comments (please specify):		

23. Overall, do you consider that the Guide is relevant and helpful for Members working outside of the UK?

Yes	No	
Comments (please specify):		

24. Do you have any suggestions for any additional topics or information that should be included in the Guide?

Yes	No	
Comments (please specify):		

25. Do you think it would be helpful to have any further guidance (in addition to the Guide) and/or training opportunities in this particular area? If so, what should this guidance/training include?

Yes	No	
Comments (please specify):		

26. Do you have any other comments or suggestions in relation to the Guide?

Yes	No	
Comments (please specify):		

27. Do you anticipate that there would be any practical or resource implications caused by the introduction of these proposals? If yes, what sort of implications do you anticipate?

Yes	No	
Comments (please specify):		

23. Do you have any other general comments or suggestions in relation to the proposals?

Yes	No	
Comments (please specify):		

## 8. How to Respond

The deadline for responses is 17 February 2020.

Responses should be sent to [regulation@actuaries.org.uk](mailto:regulation@actuaries.org.uk)

A link to an online version of the questionnaire can be found on the IFoA's website at <http://www.actuaries.org.uk/regulation/pages/consultations-and-discussion-papers>.

You can also send a response by post to:

Regulation Team (Ref: APS X5)  
The Institute and Faculty of Actuaries  
Level 2 Exchange Crescent  
7 Conference Square  
Edinburgh  
EH3 8RA

Please indicate whether you wish any of the information you supply in your response to be treated confidentially. Unless you so indicate, we may make responses to this paper available on our website at [www.actuaries.org.uk](http://www.actuaries.org.uk)

### Consultation Meeting

A consultation meeting will be held once the consultation has closed and we encourage Members and interested stakeholders to attend to discuss and comment on these proposals. In order for us to gauge participant numbers, we should be grateful if you could please inform us via email to [regulation@actuaries.org.uk](mailto:regulation@actuaries.org.uk) if you would be interested in attending a meeting.

## 9. CPD

If you consider that in reading this consultation paper and engaging in the consultation process you have benefitted from learning about the proposals to withdraw GN30 and introduce APS X5 and its accompanying Guide, you may claim up to one hour of private study CPD.

Thank you for your time and interest.

## **GN30: Compensation for Professional Shortcomings**

### ***Classification***

Practice Standard

### ***Legislation or Authority***

None

### ***Application***

All actuaries who give advice to clients directly or through their employer

### ***Author***

Professional Affairs Board

### ***Status***

Approved under Due Process

<b><i>Version</i></b>	<b><i>Effective from</i></b>
1.0	01.09.97

## **1 Introduction and Duty of Care**

- 1.1 Actuaries have duties of care to clients, whether as a result of direct contractual relationship or indirectly through their employers. Breach of such duty of care may result in disciplinary proceedings.
- 1.2 A duty of care includes working to appropriate professional standards at all times (whether the work is full or part-time), considering how advice may be interpreted by third parties who can reasonably be expected to rely on that advice and communicating any significant uncertainty or risk.
- 1.3 It is the professional responsibility of all actuaries to consider the potential for clients to suffer loss as a result of any breach of their duty of care and to ensure that appropriate arrangements are maintained, firstly, to minimise the risk of breach of their duty of care and, secondly, to provide compensation for loss in the event of any breach.
- 1.4 Actuaries are becoming increasingly involved outwith the profession's traditional areas of insurance and pensions. It is not intended to impose obligations on actuaries involved in work which is not strictly actuarial which would put them at a commercial disadvantage relative to competitors. However, the principles underlying potential loss to a client or third party and how any need for compensation might be met must always be borne in mind if the high regard in which the profession is held is to be maintained.

## 2 Appropriate Arrangements

- 2.1 Appropriate arrangements may take one or more forms, depending upon the circumstances, including:
- 2.1.1 operational policies and procedures to minimise the possibility of a breach of the duty of care and related loss occurring; it may be appropriate to seek advice from a specialist in the risk management field;
- 2.1.2 agreement in the contract with the client on limitations, within those acceptable under law, to the scope and extent of potential responsibility for any losses, taking into account the impact of such limitations on the client's total cost;
- 2.1.3 being satisfied that appropriate means exist from which compensation may be paid; these may include, for example:
- the terms of the contract between the client and the actuary and/or his or her employer,
  - the resources available to the actuary's employer,
  - the personal financial resources of the actuary.
  - the scope and extent of professional indemnity insurance (PII) applicable to the work.
- 2.2 The terms of contract between the client and the actuary or between the actuary and his or her employer will typically define the matters (and possibly the monetary amount) for which responsibility is accepted. It may also explicitly address the issue of financial responsibility to others who are not themselves parties to the contract, such as pension scheme members.
- 2.3 The actuary should identify those who are at risk as a result of work undertaken, either directly or through a clearly defined contractual chain. That should determine whether any claim for compensation would be made directly or through another party in the contractual chain. If the latter, then consideration must be given to whether that action would result in a corresponding direct claim from the intermediate party. The actuary must be able to demonstrate awareness of these issues and be prepared to justify satisfaction with the arrangements made for potential compensation.
- 2.4 Where the actuary is in private practice, or the link between actuary and client is a direct one, PII is likely to be appropriate. In certain circumstances PII may be mandatory and also from time to time it may be stipulated as a contractual requirement by the client for specified categories of actuarial work. However, PII is not universally available or may only be available at unacceptable cost. If so other arrangements would be necessary.

### **3 Insurance Considerations**

#### **3.1 General**

PII provides an indemnity to the individuals and/or firms insured in the event of their incurring a civil liability to pay damages, for example, as a result of negligence or wrongful acts. In addition it may meet legal and other defence costs.

#### **3.2 Named Insured**

The actuary should consider the terms of any PII policy under which cover is potentially provided and be satisfied that it is reasonable in his or her particular circumstances. With the possible exception of sole practitioners, the insured party under a PII policy would normally be the firm or employer, not the individual actuary. Although these organisations undoubtedly have vicarious liabilities for the actions of their actuaries, individual actuaries still retain personal liability for their own actions. Whilst the actuary can usually expect to be covered under an employer's policy, the approach varies by insurer; some policies will automatically indemnify individual employees directly; others provide such indemnity only when requested by the employer at the time of a claim.

#### **3.3 Scope of Cover**

It is not the purpose of this Guidance Note to list definitive wordings or concepts which must be incorporated into every PII policy but the following are relevant:

- consideration of the risk exposure involved in the work undertaken, both in terms of the scope of individual losses and the accumulation of claims over time;
- the advisability of seeking suitably qualified advice which represents a sensible balance between best practice and premium outlay;
- the operative clause of the policy should provide cover appropriate to the circumstances for which the actuary has identified a potential liability.

#### **3.4 Limit of Indemnity**

3.4.1 There is no universally accepted rule quantifying an adequate or appropriate limit of indemnity. Factors taken into account in determining the limits selected by professional organisations include:

- estimation of maximum possible risk exposure both in terms of the maximum individual loss and the scope for accumulations of claims within any 12 month period, by virtue of the nature of the work and the scale of activity within the organisation;

- estimation of the value to be placed on protecting the continuing viability of the business;
- the associated costs of defending a claim for compensation;
- comparison with the approach adopted by similar organisations (benchmarking);
- PII market capacity;
- prevailing PII premium levels.

3.4.2 An actuary identifying that it is appropriate for professional work to be covered by PII must be aware of these issues and ensure that the balance established is a reasonable one.

### 3.5 **Level of Excess**

Actuaries must be satisfied that obligations within any excess, i.e. the amount to be paid by the insured before the insurers become liable to make any payment under the policy, can be funded personally or, if they are indemnified by their organisation, by that organisation. The level of that excess is sometimes imposed by insurers, but is more normally by mutual agreement. As with the limit of indemnity, there are no clearly defined rules to determine what is appropriate or acceptable.

### 3.6 **Duration of Cover**

3.6.1 Typically PII relates to claims made during the period of insurance. These will as a rule relate to work carried out some time earlier. The gap between the claim and the work giving rise to it could be considerable, particularly in pensions matters.

3.6.2 It follows that there is a requirement for continuing PII cover even when the actuary has ceased to practice. In these circumstances the actuary must ensure that annual policies should continue to be renewed for a minimum of five years after actuarial practice ceases or, if the circumstances indicate that this would be prudent, for even longer if possible.

#### **4 Other Considerations**

- 4.1 Where the conclusion is that PII is not required, for example because of the financial strength of his or her organisation or the availability of PII cover is limited, the actuary should ensure that the organisation will provide an indemnity in respect of personal liability for any errors or omissions.
- 4.2 If such an indemnity is not forthcoming, it is open to the actuary to arrange PII cover in the actuary's own name against claims made by third parties, but this would not cover claims brought by the employer.



Institute  
and Faculty  
of Actuaries

## APS X5: – COMPENSATION FOR PROFESSIONAL SHORTCOMINGS

**Version:** 1.0, effective from [ ]

**Purpose:** The purpose of this **APS** is to set out requirements for **Members** that are **Principals** in **Organisations** that provide **Actuarial Work** to external **Clients**, to have in place measures relating to compensation of **Clients**, or alternative arrangements relating to liability, for loss caused by professional shortcomings relating to that actuarial work.

### 1. Appropriate Arrangements

1.1. A **Member** that is a **Principal** in an **Organisation** that provides actuarial services to external **Clients** must consider the potential for those **Clients** to suffer reasonably foreseeable loss, whether direct or indirect, caused by negligence, breach of duty of care or equivalent legal liability in relation to the **External Actuarial Work** provided and ensure that **Appropriate Arrangements** are in place in relation to compensation for such loss.

2. A **Member** that is a **Principal** in an **Organisation** that provides actuarial services to external **Clients** must ensure that they are in a position to justify the **Appropriate Arrangements** they have in place in relation to 1.1, if reasonably called upon to do so to.

### 3. Interpretation and application

3.1. A failure to comply with this **APS** may result in a finding of misconduct in terms of the **IFoA's Disciplinary Scheme**.

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

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

#### 4. Definitions

<b>Term</b>	<b>Definition</b>
<b>Actuarial Work</b>	Work undertaken by a <b>Member</b> in their capacity as a person with actuarial skills on which the intended recipient of that work is entitled to rely. This may include carrying out calculations, modelling or the rendering of advice, recommendations, findings, or opinions.
<b>Actuaries' Code</b>	The ethical professional code for <b>Members</b> issued by the Institute and Faculty of Actuaries.
<b>APS</b>	Actuarial Profession Standard issued by the Institute and Faculty of Actuaries.
<b>Appropriate Arrangements</b>	<p>These are not prescribed and may take one or many forms, depending upon the particular circumstances and taking into account any relevant legal duties. They might include, for example:</p> <ul style="list-style-type: none"><li>• the scope and extent of professional indemnity insurance (PII) applicable to the <b>Organisation's Actuarial Work</b></li><li>• the terms of the contract between the <b>Client</b> and the <b>Member</b> and/or his or her employer;</li><li>• the resources available to the <b>Member 's</b> employer; and/or</li><li>• the personal financial resources of the <b>Member</b>.</li></ul>
<b>Client</b>	The person, including a corporate entity, for whom the <b>Actuarial Work</b> is produced
<b>External Actuarial Work</b>	<b>Actuarial Work</b> provided to a <b>Client</b> that is external to the <b>Organisation</b> .
<b>IFoA</b>	The Institute and Faculty of Actuaries.

<b>IFoA's Disciplinary Scheme</b>	The currently in force Disciplinary Scheme of the Institute and Faculty of Actuaries, as may be amended from time to time.
<b>Member</b>	A member of the Institute and Faculty of Actuaries.
<b>Organisation</b>	A corporate entity, including, for example, companies, partnerships and Sole Traders.
<b>Principal</b>	A Member who is a Partner, Director, Senior Manager, or holds an equivalent senior position, within an <b>Organisation</b> , or any Member who is otherwise responsible for, or has input into, determining any measures taken by that <b>Organisation</b> to compensate <b>Clients</b> for loss caused by professional shortcomings.

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Institute  
and Faculty  
of Actuaries

# Compensation for Professional Shortcomings

Guide on APS X5: Compensation for  
professional shortcomings

by the Regulation Board

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## 1. Introduction

- 1.1. This Guide is issued by the Regulation Board of the IFoA. Its purpose is to aid Members' understanding of the requirements of **APS X5: Compensation for Professional Shortcomings** (APS X5) and help those Members who it applies to meet their professional responsibilities under it.
- 1.2. The purpose of APS X5 is to set out requirements for Members that are Principals in Organisations that provide actuarial work to external Clients, to have in place measures relating to compensation of Clients, or alternative arrangements relating to liability, for loss caused by professional shortcomings relating to that actuarial work.
- 1.3. This Guide includes background information about the rationale and aims of APS X5 and explains its scope and application.
- 1.4. Recognising that there will be a variety of different suitable approaches, this Guide also provides some examples for Members of what appropriate arrangements for compensation might be and the types of considerations that they might wish to have in mind when determining what measures to put in place.
- 1.5. The Guide also contains some useful information about professional indemnity insurance (PII) and the considerations that Members might want to have regard to when procuring this type of cover.
- 1.6. Members must at all times remember the obligations imposed on them by the Actuaries' Code (the Code).
- 1.7. This Guide imposes no obligation upon Members over and above those embodied in the Actuaries' Code or APS X5.
- 1.8. While the Guide may be referred to and considered in the course of disciplinary proceedings it will not necessarily provide a defence to allegations of misconduct.
- 1.9. The defined terms used in APS X5 apply to this Guide.

## **2. Preliminary consideration – minimising risk**

- 2.1. The IFoA's regulatory framework, including the Actuaries' Code and Actuarial Profession Standards (the "Framework"), imposes on Members a number of professional requirements relevant to carrying out actuarial work for external clients. For example, the Actuaries' Code requires that Members respect confidentiality, carry out work with competence and care, act impartially and communicate accurately, while APS X2: Review of Actuarial Work imposes requirements in relation to Work Review and Independent Peer Review.
- 2.2. Compliance with the Framework, as well as any other relevant professional standards, should mean that the risk of loss to users of actuarial work caused by professional shortcomings is minimised and the potential for subsequent claims for compensation for loss is reduced.
- 2.3. Members who provide External Actuarial Work are therefore encouraged to consider whether operational policies and procedures applicable to actuarial work within their Organisation effectively take account of the Framework.

## **3. APS X5: Key provisions and principles**

### **Background**

- 3.1. Wherever they are working in the world, Members will generally have legal duties to Clients, whether as a result of direct contractual relationships or indirectly through their employers, to make sure that when they provide a service it is carried out to a certain standard. In many jurisdictions, this is expressed as having a duty of care. The requirements of a duty of care usually include working to appropriate professional standards and considering how advice may influence the decision making or judgement of users.
- 3.2. APS X5 has three particular aims:
  - i. To ensure reasonable provisions are in place in relation to compensation of Clients of External Actuarial Work for loss caused by the professional shortcomings of Members, or to ensure alternative arrangements relating to liability are in place;
  - ii. To raise awareness and encourage Members, particularly sole practitioners and those working for firms with insufficient resources, who could find themselves personally liable for compensation, to ensure they are adequately protected; and
  - iii. To be proportionate, balancing the need for appropriate protection for users of actuarial services against the need for sufficient and appropriate flexibility to ensure Members are not subject to an unreasonably onerous burden.

## Key provisions of APS X5

- 3.3. APS X5 requires Members who are Principals in Organisations that provide actuarial services to external Clients to consider the potential for those Clients to suffer loss, in relation to the External Actuarial Work provided and ensure that Appropriate Arrangements are in place in relation to compensation for such loss.
- 3.4. APS X5 also includes the further general requirement that Members who are Principals in Organisations that provide actuarial services to external Clients must ensure that they are in a position to justify the appropriate arrangements that they have in place, if reasonably called on to do so. This may be in response to a request from the IFoA for example.
- 3.5. Members are encouraged to document their reasoning at the time any appropriate arrangements are made, however such justification can also be provided at a later stage, on request.

## Scope and application of APS X5

- 3.6. APS X5 applies to Members who are Principals in Organisations that provide actuarial work to external Clients.
- 3.7. A Principal of an Organisation is defined in APS X5 as:

*A Member who is a Partner, Director, Senior Manager, or holds an equivalent senior position, within an Organisation, or any Member who is otherwise responsible for, or has input into, determining any measures taken by that Organisation to compensate Clients for loss caused by professional shortcomings.*
- 3.8. In most cases it will be clear whether or not a Member is a Principal of an Organisation. Members are expected to exercise judgement in determining whether or not they fall within the definition. If a Member is the decision maker in an Organisation and is in a senior position with responsibility for how an actuarial practice is run then they are likely to be considered the Principal of that Organisation
- 3.9. APS X5 applies to all practice areas and is not limited in terms of geographic scope.
- 3.10. The requirements of APS X5 only apply to Principals in Organisations that provide External Actuarial Work so would not apply where the work is provided for an Organisation's own use rather than that of an external Client, for example where actuaries are working in-house for insurance companies.

## 4. Appropriate Arrangements

- 4.1. Appropriate Arrangements, in terms of paragraph 1.1 of APS X5, are not prescribed and may take one or many forms, depending upon the particular circumstances in each case and taking into account any relevant legal duties. They might include:
- i. **The scope and extent of any PII applicable to the work.** Having PII cover would generally satisfy the requirement to have Appropriate Arrangements in place, providing cover is adequate. For further information, see section 5 of this Guide.
  - ii. **The terms of the contract between the Client and the Organisation.** This might include, for example, agreement in the contract with the Client on the scope of the advice being provided and any limitations in relation to the potential liability for any losses. Another Appropriate Arrangement might be a ring-fencing arrangement to ensure a Client has a prior claim on assets in insolvency.
  - iii. **The terms of the contract between the Member and their employer or other organisations for which they work.** For example, there may be terms setting out matters for which responsibility is accepted by the employer and the extent of any indemnity provided to the Member. In many circumstances, a Member's employer will be vicariously liable for the actions of the employee.
  - iv. **The Organisation's own resources.** An Organisation may have its own resources, for example PII or business insurance, to cover any claims for liability.
  - v. **The personal financial resources of a Member.** Relying solely on this could be risky for both Member and Client and is not encouraged unless the Member has sufficient means to provide reasonable and proportionate compensation.
- 4.2. Members are expected to use their professional judgement when determining whether an arrangement is 'Appropriate' in all of the circumstances of the particular case.
- 4.3. A contract between an actuarial firm and a commercial client that limits or excludes liability may, for example, be a permissible form of 'Appropriate Arrangement' if the terms are lawful and the limitations are reflected in the fee agreed by the Client for those services.
- 4.4. Other arrangements, for example limitations or certain exclusions of liability in relation to pro-forma contracts with a consumer client may not be considered an 'Appropriate Arrangement' depending on the nature of those arrangements.
- 4.5. Members are advised to seek legal advice in relation to these types of arrangements.

## 5. Professional Indemnity Insurance

- 5.1. PII provides an indemnity to individuals and/or firms who are insured in the event of their incurring a liability to pay damages, for example, as a result of negligence. It may also meet legal and other defence costs.
- 5.2. In certain circumstances PII may be required by law. It may also be stipulated as a contractual requirement by a Client for specified categories of work.
- 5.3. PII is not always universally available or may only be available at disproportionate cost and/or with significant coverage limitations. If so, other arrangements may need to be considered.
- 5.4. When relying on PII, Members are expected to consider the cover and be satisfied that it is reasonable in the circumstances. Members employed by an Organisation might do this by seeking assurance from their employer. Members procuring their own cover are encouraged to take account of the following considerations:

### Scope of cover

- 5.5. When considering the scope of any cover on which a Member intends to rely, the following factors are likely to be relevant:
  - i) The risk exposure involved in the type of work undertaken, with regard to potential for individual losses and accumulation of claims over time; and
  - ii) Appropriate advice, e.g. from a broker, that reasonably balances best practice and cost.

### Limit of Indemnity

- 5.6. There is no one-size-fits-all approach to quantifying a reasonable and proportionate limit of indemnity. Consideration of the following factors can assist:
  - i) Estimation of maximum reasonably envisaged risk exposure both in terms of the maximum individual loss and the scope for accumulations of claims within any 12-month period, by virtue of the nature of the work and the scale of activity within the organisation. Identifying those who are at risk as a result of work undertaken, either directly or through a clearly defined contractual chain should assist in determining whether any claim for compensation might be expected to be made directly or through another party in any contractual chain, or both;
  - ii) The costs of defending a claim for compensation;

- iii) Comparison, if available, with the approach adopted by colleagues or similar organisations;
- iv) Levels and terms of indemnity available, including excesses applied; and
- v) Proportionality of cost.

### **Levels of Excess**

5.7. Members will be expected to use their judgment, taking into account their particular circumstances, to ensure that any level of excess for PII cover can be covered by other Appropriate Arrangements.

### **Run-off Cover**

5.8. Most PII policies are provided on a claims-made basis, rather than a claims-occurring basis.

5.9. A claims-made basis covers claims that are made and reported during the policy period only and not once the policy period is over.

5.10. A claims-occurring basis covers claims that occur during the policy period irrespective of when the claim is made.

5.11. In order to cover claims that arise from actions carried out during the policy period but made after the end of claims-made policy, for example on retirement, it is likely to be appropriate to consider, if available, purchasing run-off cover that lasts until at least the legal limitation for the type of claims that could be made within any relevant jurisdiction. For example, the limit for most types of claim in England and Wales is six years; in Scotland it is five years. It should be noted, however, that limitation periods can be longer and Members will be expected to consider whether, taking into account their circumstances, it is reasonable and proportionate to have a longer period of run-off cover. It may be sensible to seek legal advice on limitation periods applicable to the Member's work and jurisdiction.

### **Errors and omissions cover**

5.12. Where the conclusion is that PII is not required, for example because of the financial strength of the Organisation, or the Organisation's PII cover is limited, the Member might wish to ensure that the Organisation will provide an indemnity in respect of personal liability for any errors or omissions.

5.13. If such an indemnity is not forthcoming, it is open to the Member to arrange PII cover in the Member's own name against claims made by third parties, but this might not cover claims brought by the employer.

## **6. Contact us**

6.1. The content of this guide will be kept under review and for that reason we would be pleased to receive any comments you may wish to offer on it. Any comments should be directed to:

**Regulation Team (Ref: APS X5)**

**The Institute and Faculty of Actuaries**

**Level 2, Exchange Crescent**

**7 Conference Square**

**Edinburgh**

**EH3 8RA**

*or*

6.2. Members may also use the IFoA's Professional Support Service (PSS), which is a free guidance service that can assist with any professional or technical actuarial matters including queries about the appropriate standards to apply to a piece of work. Queries can be submitted through the IFoA's website using the PSS form<sup>1</sup>.

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<sup>1</sup> <https://www.actuaries.org.uk/upholding-standards/professional-support-service/submit-query-professional-support-service>

**Appendix – APS X5: Compensation for Professional Shortcomings**

**[insert final version of APS X5]**

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## REGULATORY IMPACT ASSESSMENT

<p><b>Proposal:</b></p> <p>To withdraw <a href="#">GN30: Compensation for professional shortcomings</a> (GN30) and replace it with a new Actuarial Profession Standard (APS) implementing broadly the same substantial requirements</p>	<p><b>Date:</b> 11 December 2019</p>
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GN30 is one of two remaining Guidance Notes (GNs) that continue to be in force. The GN30 Review Working Party has conducted a detailed review of GN30 and concluded that it is no longer consistent with the IFoA's principles-based regulatory standards and as such should be withdrawn and replaced with an APS and supporting guidance. It is also significantly out of date, having been last reviewed in 1997.

The new APS is not designed to impose any new obligations on Members, rather it aims to provide clarification on the current requirements and provide consistency for Members. It is expected that the introduction of the new APS and its accompanying Guide will be of help to Members as it will be easier to understand what they are required to do (or not).

The scope of the proposed APS is limited to Members who are Principals in firms that provide actuarial work to external clients (i.e. consultancies), therefore it will not be applicable, in effect, to all Members. It will not, for example, be relevant to those actuaries working for an insurance company providing only internal advice, unless they are contracting out services to a third party.

The aim (and expectation) is also that this will only be relevant to those in senior enough a position within an organisation whereby they are in a position to make decisions about measures that are in place in terms of compensation for professional shortcomings (such as the form and level of PI cover). More junior Members who would not usually be expected to be involved in such decisions or discussions or that do not have sufficient authority to do so, would not fall within the scope of this APS.

In respect of those Members that it would apply to, it is expected that the new standard will simply reflect current practice and that the majority of these Members would already be compliant. Those Members are also most likely to be required to comply with substantively similar requirements in terms of GN30. It is not therefore expected that there will be any significant costs to Members in terms of training etc nor will it require the majority of Members to do anything different in terms of the arrangements they have in place in relation to PI or other appropriate arrangements.