



Institute
and Faculty
of Actuaries

Expert Witnesses

Guidance

By the Disciplinary Committee of
the Institute and Faculty of Actuaries

Expert Witnesses

1. Introduction

- 1.1 This Guidance has been issued by the Disciplinary Committee of the IFoA.
- 1.2 It is for use by:
 - (a) Panels, to provide further detail on their powers and procedures to be followed;
 - (b) any other party, so they are aware of the powers of the Panel and procedures to be followed; and
 - (c) IFoA staff.
- 1.3 This Guidance aims to promote transparency and consistency in the approach of Panels and the IFoA staff.
- 1.4 This Guidance applies to all Complaints and applications being considered under the Disciplinary Scheme of the IFoA (effective 1 August 2023) (the Scheme). For Complaints that are being considered under a former version of the IFoA's Disciplinary Scheme, the version of the Guidance applicable to the former version of the Disciplinary Scheme should be applied to the extent that it is possible to do so, otherwise this Guidance will apply.
- 1.5 This Guidance should be read alongside:
 - (a) the Scheme; and
 - (b) any Regulations issued by the Disciplinary Committee; and
 - (c) any other relevant Guidance published by the Disciplinary Committee.
- 1.6 Where there is any conflict or inconsistency between the Scheme and this Guidance, the Scheme shall be followed. Where there is any conflict or inconsistency between Regulations and this Guidance, the Regulations shall be followed.
- 1.7 Definitions of defined terms used in this Guidance are set out in the Scheme and Regulations.
- 1.8 This Guidance should not be treated as legal advice. When appropriate, the Legal Adviser will advise the Panel on questions of law and/or procedure, which may include advice on the use of this Guidance.
- 1.9 The Disciplinary Committee will review this Guidance every three years or earlier if needed.

2. Aim

- 2.1 This Guidance:
 - (a) explains who may be considered an expert witness;
 - (b) explains when an expert witness may be instructed;
 - (c) describes the role of an expert;

- (d) lists what should be included in an expert witness report; and
- (e) sets out the position regarding expert witness costs.

3. Who may be considered an expert witness?

- 3.1 Expert witnesses are individuals who are instructed to provide an opinion in a case based on their expertise and experience.
- 3.2 Expert witnesses may be instructed in more complex cases which involve technical issues. For example, an expert witness may be an Actuary who is instructed to comment on whether the conduct or advice provided by a Respondent was technically correct.
- 3.3 Expert witnesses may also be instructed in Capacity for Membership proceedings. For example, a healthcare professional may be asked to provide a report on a Respondent's health and capacity to hold membership of the IFoA.

4. When can an expert witness be instructed?

- 4.1 The IFoA or the Respondent/ Applicant may instruct expert witnesses to give evidence in relation to any relevant matter during an investigation or hearing under the Scheme. It is entirely a matter for the IFoA or the Respondent/Applicant as to whether they wish to instruct an expert witness. If the IFoA instructs an expert witness, they should make the Respondent/Applicant aware of the appointment and the identity of the expert as soon as possible after the expert has been instructed.
- 4.2 The instruction of an expert witness is not necessary in every case. It will ultimately be a decision for the relevant Panel whether to accept expert witness evidence obtained by either party. For example, the Panel may decide that the expert witness evidence that has been obtained is not relevant to or necessary for the determination of the matter. In these circumstances, the Panel may decide that the expert evidence should not form part of the evidence to be considered at the hearing.
- 4.3 Prior to issuing any instruction, an expert witness should be provided with the names of the parties to establish whether there is any conflict of interests. The expert should be asked to confirm in writing whether or not they are conflicted from accepting the instruction. Should any conflicts of interests arise during the course of the instruction, the expert should tell the instructing party as soon as possible.

5. Role of an expert

- 5.1 The principal duty of an expert witness is to assist the Panel on matters within the expert's own expertise. This duty overrides any obligation to the party that instructed or pays the expert. Experts are independent. The evidence presented should be the independent and objective product of the expert.
- 5.2 The expert should consider all material facts relevant to the scope of their instruction. They should provide their objective, unbiased opinion on matters within their expertise.
- 5.3 An expert should make it clear when a question or issue falls outside their expertise and when they are unable to reach a definite opinion (for example, because of a lack of information).

- 5.4 It is not part of the expert's remit to determine the facts of the disciplinary case. Where there are conflicting accounts in the evidence, the expert may set out alternate opinions based on each set of conflicting facts.
- 5.5 IFoA Members who are acting as an expert witness are also required to adhere to APS X3¹.
- 5.6 The expert witness may need to attend a hearing under the Scheme to give oral evidence and potentially to be questioned by the other party and/or the Panel.

6. Content of an expert report

- 6.1 The expert report should be addressed to the relevant Panel, as the expert's duty is to report to the Panel.
- 6.2 The expert report should do the following:
- (a) include a statement that the expert is not conflicted from acting;
 - (b) include a summary of the expert's qualifications and relevant experience;
 - (c) include details of any literature or other material which the expert has relied on in preparing the report;
 - (d) include a statement setting out the facts and instructions given to the expert upon which their opinion is based, including the documentation they have been provided with;
 - (e) confirm the identity of any other person(s) who assisted with the preparation of the report, and the qualifications of that person(s);
 - (f) where there is a range of opinion on the matters dealt with in the report, include a summary of the range of opinion; and
 - (g) include a statement of truth in the following form:

"I can confirm that I have made clear which of the facts stated in my report are within my own knowledge and I believe them to be true; and the opinions I have expressed represent my true and complete professional opinion."

7. Expert witness costs

- 7.1 Expert witness costs are payable by the party who has instructed the expert witness.
- 7.2 Expert costs may form part of an award of costs in favour of either party by a Disciplinary Tribunal Panel and/or Appeals Tribunal Panel. If expert witness costs are being included as part of a costs application, they should be included in any statement of costs.² Where appropriate, the statement of costs should include the expert witness's hourly rate and a breakdown of how the expert's costs were incurred (for example costs for preparation of a report and/or their costs for attendance at the hearing).

¹ Non mandatory guidance for APS X3 is also available [here](#).

² See Costs Guidance.

Document control

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