



The Actuarial Profession

making financial sense of the future

Exposure Draft 28: APS L2: The FSMA 2000 (Communications by Actuaries) Regulations 2003

Consultation feedback and responses

Professional Regulation Executive Committee

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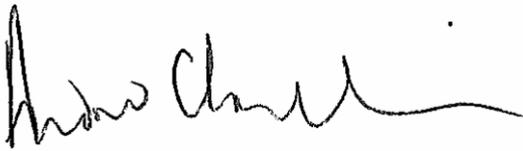
1 Introduction

Andrew Chamberlain, Chair of the Life Standards and Consultations Committee

I am pleased to introduce the Life Standards and Consultations Subcommittee's responses to the feedback on ED28 on behalf of the Life Practice Executive Committee.

We are extremely grateful to those respondents who set out their views on the Exposure Draft and who attended the consultation meetings held in both London and Edinburgh. The final version of ED28: APS L2, "The Financial Services and Markets Act 2000 (Communications by Actuaries) Regulations 2003", which was published on 1 September 2011 with an effective date of 1 October 2011, reflects both the value of these contributions and the careful consideration we have given to them when finalising this Actuarial Profession Standard (APS).

Comments from individual respondents are grouped together by question, followed by a response which is intended to address all of the material points raised. I hope you will find this summary of the feedback received, and the accompanying responses to that feedback, both helpful and informative. It demonstrates clearly how input from the Profession's members and other interested stakeholders can help to produce guidance which is useful both for members of the Profession and for users of actuarial services.

A handwritten signature in black ink, appearing to read "Andrew Chamberlain". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andrew Chamberlain
Chair, Life Standards and Consultations Committee
July 2012

2 Explanatory note

The feedback received has contained a few comments relating to purely grammatical or typographical issues. We have taken those on board and thank those respondents for these comments.

As to the structure of this response document, 6 questions were asked in the Survey Monkey survey accompanying ED28: APS L2. Each of those questions (bar the first one which asked for name, position, organisation and whether the respondent wanted their name/response to be confidential) is set out in full, along with the substantive comments made by respondents to those questions.

Wherever possible, in responding to the feedback to the questions, we have drawn together comments with a common or related theme and responded accordingly. Individual comments which could not be considered in this way have been responded to separately.

We have also set out tables listing the responses received in a percentage form. The percentages listed are percentages of the respondents who answered the question, rather than the number of respondents who actually started the survey (25 in total). Some of these comments were confidential and they have not been published in this document. The Committee, has, however, taken these comments into account in preparing the final version of APS L2.

APS L2 has also been mapped against the Financial Reporting Council's Actuarial Quality Framework and the Actuaries' Code in order to demonstrate our commitment to a cohesive regulatory framework. This mapping appears at Appendix 1. Finally, we wish to express our thanks to all of those who took the time and effort to respond to this consultation.

The Life Standards and Consultations Committee

3 Consultation Responses

Question 1: Do you have any comments on the use of words like "must" and "should" in specific places in ED 28?

Answer Options	Response Percent	Response Count
Yes	29.2%	7
No	70.8%	17
Comments		7
answered question		24
skipped question		1

Feedback comments on ED (all comments excluding those which say just "Yes" or "No.")

Response no.	Response
1	Yes. Under 1.5 I cannot see any circumstances where Relevant Actuaries should not be aware of these issues, therefore I believe that "Must" would be more appropriate in this case.
2	Yes. In 1.5, I would have expected "must" In 4.1 I would have expected "should refer" to be "must refer".
3	Same as in ED 27. Previously in some guidance notes it was necessary to assume that the Classification applied to all statements in it as no distinction was applied. Introducing must/should is an improvement on this as it should make it possible to have more coherence in an APS as the topics covered does not have to be restricted to the level of the previously used "Classification". I think the "must" and "should" could be made to stand out more in the text (perhaps using typeface). This will make it clearer, similar to the use of R and G in the FSA handbook or G and M in some guidance notes. There are paragraphs were the must/should approach is not followed, which reduces the clarity, e.g. 3.10, 7.1, 7.3.
4	The standard's rubric explains the meaning of "must" and "should", but I am far from convinced that paragraphs 1.4 and 1.5 of ED 28 use those two words in ways which fit with rubric. Indeed, I am not at all sure what paragraph 1.4 is intended to mean. How can a "must" requirement (as defined in the rubric) be couched in the past tense and passive voice? I wonder whether paragraph 1.4 is actually qualifying the definition of "Specified Circumstances" (as defined by the FSA). It is far from clear – see also point 6 below. It may even be that, by defining ordinary English words "must" and "should" in a special way, the authors make it difficult, if not impossible, to draw on language used by other regulators who may not use the terms in the same way. It seems very unwise to take standard English words and then define them in a way that is not wholly consistent with their natural meaning.

Response from Working Party

Response
The committee noted that the majority of respondents agreed with the use of the words 'should' and 'must', or had no comment. The committee also noted that the International Actuarial Association (IAA) is taking a similar approach to the use of these words.

Question 2: ED 28 is intended to be a principles-based re-write of GN37. Does ED 28 adequately capture this intention?

Answer Options	Response Percent	Response Count
Yes	91.3%	21
No	8.7%	2
Comments		7
answered question		23
skipped question		2

Feedback comments on ED (all comments excluding those which say just “Yes” or “No.”)

Response no.	Response
1	No. I am a GI actuary (see Q9) so not familiar with GN37; but reading it as an "outsider", the over-arching principles didn't seem to be clearly set out (cf BAS's Reliability etc. objectives).
2	Use of words seems clear.
3	No. To me it does not seem very principles based but is very prescriptive. I have not compared it with GN28 and have not checked that it carries forward all issues.
4	Yes. I think it covers all the relevant points from GN37 in a clear and concise manner.

Response from Working Party

Response
Members noted that those who indicated a greater familiarity with GN37 were supportive of the view that the draft did demonstrate this intention.

Question 3: Do you consider that ED 28 is helpful to Life actuaries in fulfilling their ethical obligations under the Actuaries' Code and under the Financial Services and Markets Act 2000 (Communications by Actuaries Regulations) 2003?

Answer Options	Response Percent	Response Count
Yes	85.7%	18
No	14.3%	3
Comments		10
answered question		21
skipped question		4

Feedback comments on ED (all comments excluding those which say just "Yes" or "No.")

Response no.	Response
1	Yes. ED28 clarifies the position and I believe it is very clear and helpful.
2	No. Seems too woolly; given that refers to ethical issues (which, by their nature, are rarely black & white issues) would be better to have example situations rather than just quoting stuffy wording from any Regs
3	The guidance is very clear and concise.
4	Yes. It is written as a "principles level" document.
5	Yes. Generally well written and covers potentially grey areas well.

Response from Working Party

Response
The committee noted comments regarding wider ethical issues, but agreed that it was very clear that the responsibilities set out in ED28 were not 'stand alone'. They should be read and considered in conjunction with the Actuaries Code and other parts of the regulatory framework.

Question 4: Do you feel ED 28 offers sufficient detail for Life actuaries to fully understand their duties and responsibilities?

Answer Options	Response Percent	Response Count
Yes	72.7%	16
No	27.3%	6
Comments		10
answered question		22
skipped question		3

Feedback comments on ED (all comments excluding those which say just “Yes” or “No.”)

Response no.	Response
1	Yes. ED28 is comprehensive. As it is supposed to be Principles-based in any case, I do not believe that and more detailed guidance would be helpful.
2	No. Would be better as some sort of checklist e.g. pre-appointment, during appointment, after appointment.
3	It does to me but I must stress that, though I work for a firm which is regulated, I am not a Life actuary.
4	Yes. The specific examples chosen are adequate.
5	No. I think that this is a useful document but would caution against the use of the word "fully". Fully "understand" must include reference to primary legislation and the FSA Handbook.
6	Yes, for role holders, not for other life actuaries

Response from Working Party

Response
The committee noted the comments but felt that changes were not necessary.

Question 5: Has there ever been an occasion where you have been either involved or had third party involvement in a matter relating to whistleblowing?

Answer Options	Response Percent	Response Count
Yes	13.0%	3
No	87.0%	20
Comments		3
answered question		23
skipped question		2

Feedback comments on ED (all comments excluding those which say just “Yes” or “No.”)

Response no.	Response
1	<p>1) Have reported a GI insurer to the FSA for (allegedly) not treating customers fairly and directors not complying with FSA's Principles of Business etc, following the insurers' communications with my clients</p> <p>2) Followed up with further whistleblowing disclosure to FSA on concerns over behaviour/quality of audits from auditors of same insurer, following my own analysis of the insurer's published accounts, having given the auditors chance to respond to my questions.</p>
2	Yes. Many years ago as a Scheme Actuary, I reported some minor pensions breaches to OPRA.

Response no.	Response
3	Yes. The situation was most unusual and led immediately to a conflict of interest. It may be worth a sentence in this standard to the effect a Relevant Actuary should consider whether any conflicts of interest arise following the matter.

Response from Working Party

Response
The committee noted the comments regarding whistleblowing but agreed that the drafting did not require amendment on the basis of the experiences outlined.

Question 6: If you have any other comments on ED 28, please set them out below.

Answer Options	Response Count
Comments	10
answered question	10
skipped question	15

Feedback comments on ED (all comments excluding those which say just “Yes” or “No.”)

Response no.	Response
1	I believe that the ED is appropriately succinct and to the point.
2	I have never understood why, when a firm has communicated an issue to the regulator, the relevant actuary is also expected to communicate the same matter (see section 4.2).
3	Paragraph 7.3 Is this intended to include the case of a Firm with enormous margins that reduce, but still leaving huge margins so that there is a material deterioration in risk but the resultant risk is still insignificant. It may be that it is intended as the regulator could judge whether it is interesting or not but perhaps it could trigger a large number of occasions that the FSA is so informed. Perhaps FSA guidance would cover this, 2) I am concerned that the phrase "when the significance of the risk first becomes known" could be better phrased "when it first becomes known that the risk is significant". As phrased, it could be become known that the significance of the risk is virtually zero, but it has become known and is so reportable, although read in conjunction of the Act it would still not be reportable. However, my version seems simpler in that it is more consistent with the Act. 3) 11.1.3 No mention of any proof of previous communication by predecessor, although any sensible person would seek such proof and I have not checked that the information that a new Function Holder needs to obtain, which ought to cover it.
4	Lane Clark & Peacock (LCP) has one specific comment to make on this Exposure Draft. It concerns the definition of "Firm". The ED is intended to cover the Lloyd's Actuary and syndicate actuaries in their appointed roles to Lloyd's and life syndicates. However, as currently defined in ED28, we are not sure whether

Response no.	Response
	"Firm" would technically cover a Lloyd's syndicate, or possibly even Lloyd's itself, as these are not insurance companies.
5	It is a bit unfortunate that the target audience is a defined term, so one has to go to the back of the document to see where it is meant to apply.
6	<p>My comments are limited to the clarity and transparency of the draft standard. I do not practise in the field of life assurance and so I have nothing to offer regarding the technical content of the draft.</p> <p>My starting point is that it is important that standards should be intelligible to lay readers as well as to actuaries, especially to those readers who are users of actuarial services so that they can make themselves aware of what their actuary is required to do – and, after the event, check whether the actuary has done it. Likewise, the standard needs to be clear to those who might be minded to make a complaint against an actuary and to those called upon to investigate the issue and/or be involved in a tribunal hearing. With that in mind, I make the following observations on ED 28:</p> <p>It should be easy to identify which standards are relevant to the user and which are not. The title of ED 28 is not ideal (“The Financial Services and Markets Act 2000 (Communications by Actuaries) Regulations 2003”). It presumes that the reader is familiar with the name of the relevant regulations before they start looking for standards which their actuary must adhere to.</p> <p>It should also be relatively straightforward to identify which actuaries the standard applies to and in what circumstances. ED 28 does not do this well. To the untrained eye, ED 28 says the standard is aimed at “relevant actuaries”, which is less than helpful. It is only when one is familiar with the use of bold font (and Upper Case) to denote a definition that one realises that “Relevant Actuaries” has a specific meaning...and then one must scroll down to the final page of the standard to find the meaning.</p> <p>It would be very much more helpful if the “Target Audience” wording on the front page said: “Actuarial Function Holders and With-Profits Actuaries appointed by or in respect of UK authorised insurance companies and Friendly Societies; Appropriate Actuaries of Friendly Societies to which SUP 4 applies, the Lloyd’s actuary and syndicate actuaries to life syndicates (“Relevant Actuaries”). Paragraph 2.5 of ED 28 seems to use the wrong word entirely when it instructs actuaries to “assume” that certain matters must be communicated to the FSA. From the structure of the sentence, it seems to be the actuary who must make the communication in question. If that is the correct interpretation, the only plausible meaning I can attach to the paragraph is that the standard intends that actuaries “should communicate” the matter to the FSA (or perhaps “should interpret the FSA’s SUP as requiring them to communicate ...”), rather than assuming it must be communicated.</p> <p>It is also not always clear which parts of ED 28 are drawn from other regulations and which are new requirements imposed by the Actuarial Profession.</p> <p>These are the examples of poor clarity which I identified from a cursory glance at ED 28. If the authors are minded to act on my comments, they may wish to search for other similar examples.</p>

Response from Working Party

Response		
<p>The committee noted the comments regarding material deterioration but felt that the phrase was sufficiently clear. If a material deterioration has occurred then the margins will also be similarly reduced.</p> <p>The committee noted comments on the use of the phrase 'specified circumstances', but agreed that the phrase should not be changed to 'specified matters' as the word circumstances had been used and clearly defined in the regulations.</p> <p>The committee agreed that the final sentence of para 7.1 should <u>not</u> be deleted. The sentence was included to cover the situation where an AFHs has already notified the FSA of a significant risk, or is aware that their predecessor has done so. While the risk may remain for a period of time, this point makes it clear that the notification should occur when the risk is first discovered and does not require repeated notifications where the risk remains unchanged.</p> <p>Regarding the comment about Lloyd's, the committee confirmed with the FSA that the Lloyd's actuary and syndicate actuaries to Lloyd's do not come under FSMA rules.</p> <p>On 12.1, the committee agreed to insert 'appointed actuary' for completeness and clarity.</p> <p>The committee also noted a number of typographical errors which have been corrected.</p>		
12.1	11.1. An actuary who intends to act as an actuary for a Close Link of a Firm and who has been at any time after 1 December 2001, but no longer is, the Actuarial Function Holder, With-Profits Actuary or Appropriate Actuary of the Firm, must disclose this to the senior management of the Close Link and inform them of the obligations which the Regulations place upon him/her.	12.1. An actuary who intends to act as an actuary for a Close Link of a Firm and who has been at any time after 1 December 2001, but no longer is, the Actuarial Function Holder, Appointed Actuary , With-Profits Actuary or Appropriate Actuary of the Firm, must disclose this to the senior management of the Close Link and inform them of the obligations which the Regulations place upon him/her.

4 List of Respondents

Non-confidential responses to the ED 28 consultation were received from the following:

Individuals

1. Simon Carne
2. Catherine Jones
3. Karen Mauer
4. C V Pountney
5. Alan Roberts
6. Andrew Stoker
7. Ian Woodcock

Organisations

1. Lane Clark & Peacock

5 Appendix 1: Mapping the Actuarial Quality Framework and the Actuaries' Code against APS L2

The left column refers to the particular sections of APS L2;

The middle column refers to the relevant Actuarial Quality Framework (AQF) Drivers which are supported by APS L2;

The right hand column refers to the provisions of the Actuaries' Code (Code) which are supported by APS L2; and

All numerical references relate to paragraph number of either APS L2 or the Actuaries' Code.

APS L2	Actuarial Quality Framework Driver	References to the Actuaries' Code
Section 1: Introduction	<ul style="list-style-type: none"> • Technical skills of actuaries • Communication of actuarial information and advice • Other factors outside the control of actuaries 	<p>Principle 5 – Open communication: members will communicate effectively and meet all applicable reporting standards.</p> <p>Principle 5 of the Code relates to 1.2 of APS L2</p> <p>Principle 2 - Competence and Care: members will perform their professional duties competently and with care.</p> <p>Principle 2 of the Code relates to section 1 of APS L2</p>
Section 2: When Specified Circumstances should be communicated	<ul style="list-style-type: none"> • Technical skills of actuaries • Communication of actuarial information and advice 	<p>Principle 2 - Competence and Care: members will perform their professional duties competently and with care.</p> <p>Principle 2 of the Code relates to section 2 of APS L2</p> <p>Principle 5 – Open communication: members will communicate effectively and meet all applicable reporting standards.</p> <p>Principle 5 of the Code relates to 2.3–2.6 of APS L2</p>
Section 3: How a matter should be communicated	<ul style="list-style-type: none"> • Communication of actuarial information and advice 	<p>Principle 5 – Open communication: members will communicate effectively and meet all applicable reporting standards.</p> <p>Principle 5 of the Code relates to section 3 of APS L2</p>
Section 4: Actions of Firms	<ul style="list-style-type: none"> • Communication of actuarial information and advice 	<p>Principle 5 – Open communication: members will communicate effectively and meet all applicable reporting</p>

APS L2	Actuarial Quality Framework Driver	References to the Actuaries' Code
		<p>standards.</p> <p>Principle 5 of the Code relates to section 4 of APS L2</p>
<p>Section 5: Guidance in relation to "material significance" (Regulations 2(4) and (b))</p>	<ul style="list-style-type: none"> • Other factors outside the control of actuaries 	
<p>Section 6: Threshold Conditions (Regulation 2 (4) (b))</p>	<ul style="list-style-type: none"> • Technical skills of actuaries • Other factors outside the control of actuaries 	<p>Principle 2 - Competence and Care: members will perform their professional duties competently and with care.</p> <p>2.1-2.4 of the Code relates to Section 6 of APS L2</p>
<p>Section 7: Guidance in relation to "significant risk" (Regulations 2(4) (c) and (d))</p>	<ul style="list-style-type: none"> • Communication of actuarial information and advice 	<p>Principle 5 – Open communication: members will communicate effectively and meet all applicable reporting standards.</p> <p>5.1 and 5.2 of the Code relate to 7.1 and 7.3 of APS L2</p> <p>Principle 2 - Competence and Care: members will perform their professional duties competently and with care.</p> <p>2.2 of the Code relates to 7.2 of APS L2</p>
<p>Section 8: Guidance in relation to the Duty of Confidentiality</p>	<ul style="list-style-type: none"> • Ethics and professionalism of actuaries 	<p>Principle 4 - Compliance: members will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure they are not placed in a position where they are unable to comply, and will challenge non-compliance by others.</p> <p>Principle 4 of the Code relates to Section 8 of APS L2</p>
<p>Section 9: Guidance in relation to acting in capacity as an actuary (Regulation 2 (2))</p>	<ul style="list-style-type: none"> • Ethics and professionalism of actuaries 	<p>Principle 4 - Compliance: members will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure they are not placed in a position where they are unable to comply, and will challenge non-compliance by others.</p> <p>Principle 4 of the Code relates to Section 9</p>

APS L2	Actuarial Quality Framework Driver	References to the Actuaries' Code
		of APS L2
Section 10: Guidance in relation to acting as a close link (Regulation 2 (3))	<ul style="list-style-type: none"> • Ethics and professionalism of actuaries 	<p>Principle 4 - Compliance: members will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure they are not placed in a position where they are unable to comply, and will challenge non-compliance by others.</p> <p>Principle 4 of the Code relates to Section 10 of APS L2</p>
Section 11: Newly Appointed Actuaries (Regulations 2 (4) (a) and (d))	<ul style="list-style-type: none"> • Ethics and professionalism of actuaries 	<p>Principle 3: Impartiality: members will not allow bias, conflict of interest, or the undue influence of others to override their professional judgement.</p> <p>Principle 3 of the Code relates to 11.1.1 and 11.1.2 of APS L2</p>
Section 12: Status Disclosure	<ul style="list-style-type: none"> • Ethics and professionalism of actuaries 	<p>Principle 3: Impartiality: members will not allow bias, conflict of interest, or the undue influence of others to override their professional judgement.</p> <p>Principle 3 of the Code relates in general terms to section 12 of APS L2</p>