



Institute  
and Faculty  
of Actuaries

# The Actuary as an Expert in Legal Proceedings

Guidance on APS X3

by the Regulatory Board

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*This guide imposes no obligations upon Members over and above those embodied in APS X3.*

*The guide does not constitute legal advice, nor does it necessarily provide a defence to allegations of Misconduct. While care has been taken to ensure that it is accurate, up to date and useful, the IFoA will not accept any legal liability in relation to its contents. The defined terms used in APS X2 apply to this guide.*

# Introduction

## Regulatory context

[Actuarial Profession Standard \(APS\) X3](#) places requirements on **Members** of the Institute and Faculty of Actuaries (IFoA) called upon to act as an **Expert Witness** or **Expert Advisor** in legal proceedings. APS X3 is intended to be consistent with and build on principles in the [Actuaries' Code](#) (the Code). APS X3 and the Code should be considered in the context that, the procedural rules of courts, and legal requirements within particular jurisdictions, take precedence.

APS X3 applies to **Proceedings** in all UK jurisdictions and requires **Members** to consider its application to **Non UK Proceedings**. However, APS X3 is not intended to cover Independent Expert work which is covered in [Part VII of the Financial Services and Markets Act 2000](#) (commonly described as “Part VII Transfers”).

APS X3 also does not apply to day-to-day expert actuarial advice provided in relation to, for example, commercial agreements, unless there are existing associated legal proceedings or the work develops to results in such.

## Purpose of APS X3

The purpose of APS X3 is to ensure that when instructed to act as an expert in legal proceedings, **Members** approach the work with independence, objectivity, and integrity and check that their approach is in line with any required rules or procedures of the court, or other decision making setting. In this way, the purpose of APS X3 is to help maintain and enhance the reputation of the profession and protect the public interest.

Legal proceedings in which experts are instructed are likely to have significant and material impacts on the parties involved. Expert opinions need to be thoroughly prepared and carefully explained. When carrying out the role of expert, a **Member** must be alert to procedural requirements that apply, as well as other good practice they might be expected to follow. To that extent, the purpose of APS X3 is also to support **Members** to act to an appropriate professional standard.

## Purpose of this guidance

This guidance is issued by the IFoA [Regulatory Board](#) for the use by, and the benefit of, **Members**. It is designed to support **Members** who have been approached to act as an expert for the purpose of legal proceedings. Often that will mean civil or criminal court cases, but it may extend to other types of proceedings where an actuary is required to provide expert advice or evidence, such as regulatory or disciplinary proceedings.

This guidance focuses primarily on proceedings in UK jurisdictions with specific guidance on such civil proceedings given in the appendices. Those instructed elsewhere must consider the extent to which the principles underlying APS X3 are relevant and apply them as appropriate. This guidance does not address criminal procedural rules, which vary across jurisdictions.

## Other sources of support

If you have a query about a specific situation and would like advice about the application of APS X3, you can contact the IFoA's [Professional and Regulatory Support Helpdesk](#). The Helpdesk is available to all **Members** and provides a confidential space to ask questions on the application of standards. By submitting a query to the Helpdesk, **Members** benefit from a tailored response to their query incorporating the views of the IFoA's experienced panel members.

[Contact us](#)

Please direct any queries or feedback to [regulation@actuaries.org.uk](mailto:regulation@actuaries.org.uk).

# About this guidance

APS X3 requires **Members** to apply professional judgement in making decisions when accepting, or considering accepting, instructions to act as an expert in legal proceedings, including deciding whether it may be appropriate to withdraw from such a role. This guidance highlights the questions **Members** may want to ask throughout that process to satisfy themselves that they have appropriately applied APS X3.

These questions are shown in the section entitled “Flowchart for applying APS X3,” which is followed by one section relating directly to each of the questions highlighted in the flowchart. In each of those sections a case study relevant to the matter at hand is embedded. In this way the guidance relates directly to the provisions of APS X3 as they are given in the standard and provides context for **Members** to consider when applying APS X3.

## Professional judgement

As noted, the application of APS X3 requires **Members** to apply professional judgement. In doing so, and when reading this guidance, **Members** are reminded of their obligations under Principle 3 (Impartiality) of the Code:

### Impartiality

3. *Members must ensure that their professional judgement is not compromised, and cannot reasonably be seen to be compromised, by bias, conflict of interest, or the undue influence of others.*
- 3.1 Members must take reasonable steps to ensure that they are aware of any relevant interests that might create a conflict.
- 3.2 Members must not act where there is an unreconciled conflict of interest.

## Further guidance






Undertaking the role of expert in legal proceedings is likely to involve a variety of activities not otherwise typical in the work of actuaries, such as interacting with courts, tribunals, or other decision-making bodies. Therefore, in addition to the above, further guidance has been provided on producing reports, and preparing for and attending hearings in section 7 “Undertaking the work”.

APS X3 requires **Members** to adhere to any applicable rules and procedures of the relevant court or setting in which they are acting. Appendices have been added to provide specific guidance for those acting in civil proceeding in UK jurisdictions.

With respect to any particular proceedings, there may be other guidance produced to support those acting as experts. **Members** should consider such guidance, as appropriate.

## Flowchart for applying APS X3

If you judge the following questions to have been appropriately addressed, you should have confidence APS X3 has been applied appropriately. The questions are ordered by the related provisions in APS X3, but you may wish to approach them in a different order and return to questions iteratively throughout an instruction to act as an expert in legal proceedings.

Provision(s)	Question to consider
1.1 and 1.2	1. Am I being asked to act in relation to <b>Proceedings</b> (inc. <b>Non UK Proceedings</b> )? 
2.1	2. What is the nature and scope of the instruction (inc. <b>Expert Witness</b> or <b>Expert Advisor</b> )? 
2.2 and 2.3	3. Do I have the necessary level of knowledge and skill? 
3.1	4. Am I sufficiently independent and objective? 
4.1 and 4.2	5. Are there any rules or procedures that apply to my role as expert in the <b>Proceedings</b> , and if so have I adhered to them? 
5.1	6. Is my remuneration linked to the outcome of <b>Proceedings</b> in any way?

# 1. Considering applicability

## Considering proceedings in the UK

- 1.1 When legal instructions are provided, **Members** should ensure that it is clear from the outset whether the work will involve acting as an expert in **Proceedings**, which for the purposes of APS X3 are defined as follows:

### 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.

- 1.2 If the work involved is in relation to legal **Proceedings**, then APS X3 must be applied, as required by paragraph 1.1 of APS X3, which states:

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.

- 1.3 APS X3 applies to all Members acting as an expert in **Proceedings**. **Members** should ensure those instructing them are aware of those requirements.
- 1.4 **Members** may be required to provide advice in relation to legal matters where there are no **Proceedings**, such as providing advice on commercial agreements. In such cases APS X3 does not apply. However, if during such work it becomes clear that a **Member** will be required to provide advice in relation to **Proceedings** arising from the work, APS X3 must be applied. It is important that in such cases **Members** make the users of their advice aware of their professional obligations under APS X3.

## Considering proceedings outside the UK

- 1.5 For these purposes, **Non UK Proceedings** is defined as follows:

### 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.

- 1.6 This guidance focuses primarily on proceedings within UK jurisdictions. However, **Members** acting in **Non UK Proceedings** must give appropriate consideration to the underlying principles of APS X3. APS X3 paragraph 1.2 states:

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.

- 1.7 While **Members** involved in expert work outside the UK are not required to apply the specific requirements in sections 2 to 5 of APS X3, they must still consider what the underlying principles of those requirements are and consider the extent to which those are relevant in all of the circumstances of the particular jurisdiction and case, and apply the principles so far as they are relevant and appropriate. This will require **Members** to exercise professional judgement in determining the extent to which APS X3 is relevant and appropriate.

### Case study 1 – Civil proceedings against an insurance firm

#### Scenario

Aisha is a With Profits Actuary based in London who routinely provides internal advice to an insurer's product committee on policyholder distributions. Following an adverse change in the market, a group of policyholders lodged a complaint which was escalated to the Financial Ombudsman and will now result in court proceedings at which Aisha's employer, an insurance firm, will be named as a defendant. Aisha is asked to provide additional analysis which it is likely will have to be submitted as evidence.

#### Matters to consider

Aisha should consider whether her additional analysis amounts to the role of **Expert Advisor** or **Expert Witness** for the purposes of APS X3. If she is called upon to give individual expert actuarial evidence in court, there should be no doubt that she is undertaking the role of **Expert Witness**.

However, she may only be called to give evidence as to the course of events, in which case she may not be acting as an **Expert Witness**. If Aisha is only called on to provide expert advice to her employer, she should adopt the role of **Expert Advisor** for the purposes of APS X3 and let her employer and their legal representative know that she has professional obligations to be and be seen to be independent and objective. This will also ensure that she is meeting her impartiality obligations under the Code. These are matters that Aisha is likely to be able to discuss with the internal legal team at her employer.

The risk or conflicts of interest (perceived or actual) in such a case are significant. Aisha should remind herself of her obligations under the Code, and refer to the IFoA [conflicts of interest guidance](#). She should consider discussing with her employer whether it might be appropriate to seek external actuarial expertise to support further work required for this case.

Aisha may also wish to ensure that she has no personal liability in relation to the work she produced prior to the proceedings.

## 2. Scoping an instruction

### Establishing nature and scope of instructions

2.1 **Members** must be clear as to the exact nature and scope of an instruction. APS X3 paragraph 2.1 states:

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 It may help **Members** to make those providing an instruction aware of **Members'** professional obligations under the Code and APSs at an early stage, especially when applying paragraph 2.1. As far as possible, **Members** should endeavour to fully understand the nature and scope prior to accepting an instruction. However, APS X3 paragraph 2.1 is intended to take into account that matters may develop, and that establishing the nature and scope of the instruction may be an on-going process.

### Understanding the roles of Expert Witness and Expert Advisor

2.3 A **Member** may be formally instructed during **Proceedings** (or **Non-UK Proceedings**) with a view to providing independent objective expert opinion upon questions posed by the instructing party. This is the role of an **Expert Witness**, defined in APS X3 as follows:

#### 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).

2.4 For the purposes of this definition, the term 'witness' should be understood in the broadest sense, to include providing oral evidence (either in person or virtually during a hearing) and/or written evidence through a report or sworn statement.

2.5 A **Member's** expertise may be sought by one party to advise it specifically and confidentially, without providing any expert evidence to assist the court, tribunal or other decision maker. This is the role of **Expert Advisor**, defined in APS X3 as follows:

#### 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.~~

2.6 **Members** acting as an **Expert Witness** will be instructed to prepare a written expert report and may also be required to give oral evidence at a hearing. If this is not clear **Members** may wish to seek confirmation from those instructing them as to whether they will need to appear at a hearing. **Members** being instructed as a Single Joint Expert in England and Wales may wish to refer to further guidance in Appendix A.

2.7 **Members** who are unsure whether they are being asked to act as an **Expert Witness** or **Expert Advisor** can contract the [Professional and Regulatory Support Helpdesk](#) for advice.

## Ensuring appropriate documentation

- 2.8 Initial instructions should be in writing, as a **Member's** advice will need to state the substance of the instructions. If additional instructions are later received orally, **Members** may wish to seek confirmation in writing to avoid confusion or ambiguity. Clarification should specifically be sought as to whether further outputs will be required.
- 2.9 If a **Member** does not have sufficient information on which to form an opinion, this should be raised with the instructing party immediately, and written clarification sought. Similarly, if instructions are received which raise matters which fall outside the **Member's** expertise, this should be discussed with the instructing party as soon as possible to determine whether the **Member** can continue to act as an expert on that instruction.

## Instructions from a litigant in person

- 2.10 A 'litigant in person' or 'party litigant' is an individual who conducts their own **Proceedings** without legal representation. The absence of legal representation does not change the **Member's** obligations. However, it may create additional practical considerations when communicating with someone unfamiliar with legal rules and procedures, particularly around communication and setting expectations. **Members** should therefore consider:
- requesting written instructions, (even if brief);
  - keeping detailed written records;
  - ensuring the person understands the **Expert Witness's** role is to be independent and objective, (ie not that of a representative, negotiator, or strategic adviser, which is the role of an **Expert Advisor**);
  - emphasising that the conclusions of advice may or may not support their case;
  - emphasising that there is a duty to give impartial actuarial opinion based on evidence;
  - address any concerns of potential issues early in the process, to set realistic expectations about appropriate modes of communication and avoid undue pressure.

## Case study 2 – Advising a litigant in person

Scenario
<p>Jonas is a pensions actuary providing expert advice on the allocation of pensions on divorce in England in the case of Mr and Mrs Brown. The Family Division of the High Court has appointed Jonas as a Single Joint Expert. Mrs Brown is represented by an instructing solicitor, and Mr Brown is representing himself.</p> <p>Mr Brown has a significantly larger pension than Mrs Brown, and he seems extremely concerned about the amount he might need to share when the divorce is settled. As well as leaving a number of voice messages, he has emailed Jonas a number of times to ask for Jonas' advice about how to reduce his losses when the divorce is settled.</p>
Matters to consider
<p>Acting as a Single Joint Expert for these purposes means providing advice to both parties in the divorce, as set out in the Family Procedures rules, in England and Wales. Additionally, Jonas will be acting as an <b>Expert Witness</b> for the purposes of APS X3 and must provide independent and objective advice (paragraph 4.1). Jonas must also make sure that he abides by Principle 3 (Impartiality) of the Code, which requires he be free of bias, conflict, or undue influence.</p> <p>Jonas should take steps to ensure that Mr Brown is clear about the scope of Jonas' role in the <b>Proceedings</b>, and that it is not for him to provide advice to Mr Brown on strategy. Jonas should take steps</p>

to highlight that these recent communications are not appropriate and set out the terms on which he is permitted to act, with reference to the relevant rules and standards. As a matter of best practice, Jonas may also wish to ask Mr Brown to communicate with him only using email, rather than over the phone, so that all interactions are documented. Finally, Jonas should ensure that any questions or communications which do fall within the scope of his role, and any responses which he provides, are shared with the other party.

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## 3. Assessing level of knowledge and skills

3.1 **Members** must be satisfied they have the expertise to accept an instruction. APS X3 paragraph 2.2 states:

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.~~

3.2 This is consistent with obligations under amplification 2.1 of the Code:

2.1 Members must ensure they have an appropriate level of relevant knowledge and skill to carry out a piece of work.

3.3 When considering whether they have the necessary knowledge and skills to accept a particular instruction, **Members** will need to apply their own professional judgement. In doing so, they should consider whether they have recent and relevant experience, including any work directly related to the matter under consideration. The **Member** should also consider whether they remain current with developments in the field in which they are instructed, ensuring that their knowledge aligns with contemporary standards and practice in that area. Finally, the **Member** should consider whether their professional experience would withstand scrutiny should they be required to justify it in a court or other setting. In making such an assessment, **Members** should have regard to their obligations under amplification 2.2 of the Code:

2.2 Members must continue to develop their knowledge and skills in a manner appropriate for their role and comply with the Institute and Faculty of Actuaries' Continuing Professional Development (CPD) requirements.

3.4 Previous experience in giving oral evidence in a court, or other setting, may not be essential. However, **Members** should be confident that they will be able to provide evidence in a clear and comprehensive manner. **Members** may wish to consider receiving some general training on giving evidence before doing so, or watching the process of expert evidence being given, prior to accepting an instruction.

### Case study 3 – Compensation for personal injury

#### Scenario

Peter is a consulting actuary who has been asked to provide expert advice for proceedings relating to a personal injury case (outside the UK). The last time that he provided advice of this kind was five years ago, before he relocated outside the UK to the jurisdiction of the proceedings. Peter does not speak the local language, but thankfully his routine actuarial work is all conducted in international business English.

#### Matters to consider

APS X3 paragraph 1.2 requires **Members** operating in jurisdictions other than those of the UK to consider whether the principles of APS X3 should be applied when acting in legal proceedings. Peter believes that personal injury claims are dealt with in a similar way to the UK, so it is likely that Peter will want to apply APS X3.

APS X3 paragraph 2.2 requires **Members** to satisfy themselves that they have the necessary level of relevant knowledge and skill to fulfil an instruction. Before accepting an instruction, Peter should look into current best practice with respect to the technical requirements of valuing personal injury claims. This is also consistent with Peter's obligations under amplification 2.1 and 2.2 of the Code.

APS X3 paragraphs 4.1 and 4.2 require **Members** to check for, and follow, any rules or procedures relevant to their role as expert in the setting (such as a court) for which they are providing evidence. Principle 4 (Compliance) of the Code also requires **Members** to apply relevant laws. Peter should therefore ask those instructing him to highlight any rules or procedures directly relevant to his role as expert, and Peter should consider whether he can reasonably apply those rules before accepting instructions to act.

Whilst Peter's normal business is conducted in English, it is likely that the local court operates in the local language, and Peter should consider if he can manage the nuances of court rules and procedures using translated versions. He may wish to ask if it will be possible for him to give oral evidence and produce a report using English or translators.

If any of the above are major concerns for Peter, it may be appropriate for him to decline to act.

### Clarifying the requirement

- 3.5 When instructed as an expert, a **Member** should take measures to ensure they have a clear understanding of the expertise required. This may include requesting a draft letter of instruction, before accepting the work, to see what is likely to be involved. This will not only help **Members** ensure they have met their obligations under APS X3, but their obligations to the user, or users, of their advice under amplification 2.3 of the Code:

2.3 Members must ensure their work is appropriate to the needs and, where applicable, instructions of user(s).

- 3.6 It may sometimes be appropriate for a **Member** to seek input from a professional in another discipline, for example, where tax advice is required. In such a situation, the **Member** should clarify with those instructing them that there is a need for additional expertise, so that a separate instruction prepared, and a separate report provided. If additional expertise is incorporated into a **Member's** own report, they should make clear in that report which elements rely on the advice of another expert. Such considerations are required under amplification 2.4 of the Code:

2.4 Members must consider whether input from other professionals or specialists is necessary to assure the relevance and quality of work and, where necessary, either seek it themselves or advise the user to do so, as appropriate.

### Falling below required standards

- 3.7 **Members** should act within their expertise, as corresponds with their duties under APS X3 and the Code. However, if the expert evidence provided by a **Member** does not meet the required standards, this may result in exclusion or rejection of their evidence and potentially give rise to civil or disciplinary action. Failure to comply with the relevant professional obligations or any excessive delay for which the **Member** is responsible, may result in the instructing party being penalised in costs. In extreme cases the court, in certain jurisdictions, may make

orders directly against the **Member** for any significant expense incurred as a result of reckless disregard of their duties to the court.

- 3.8 **Members** need to be aware that the rules that protect someone from being sued (eg for professional negligence) or having disciplinary proceedings brought against them on the basis of their expert evidence (also sometimes known as 'immunity from suit') may differ between jurisdictions.
- 3.9 **Members** should consider having appropriate professional indemnity insurance in place before accepting an instruction and will need to ensure that they (or their organisation) is following [APS X5: Compensation for Professional Shortcomings](#). A **Member** should also retain any notes or copies of documents that they relied upon when preparing their advice or report, as well as retaining a note of any meetings, as they may be referred to in the event their expert evidence is subsequently challenged.

### Reacting to changes

- 3.10 Matters may develop during a case, and **Members** need to ensure at every stage that they have the appropriate level of knowledge and skill for the associated expert work. Paragraph 2.3 of APS X3 states:

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.

## 4. Ensuring independence and objectivity

- 4.1 **Members** must be able to, and be seen to be able to, provide objective independent advice. Paragraph 3.1 of APS X3 states:

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.

- 4.2 APS X3 requires **Members** to ensure that any advice they provide is independent and objective. This means that not only should they be free from bias (actual or perceived) but should give (and be in a position to give) advice which is independent of any personal interests or feelings. This is consistent with Principle 3 (Impartiality) of the Code, which states:

3. *Members must ensure that their professional judgement is not compromised, and cannot reasonably be seen to be compromised, by bias, conflict of interest, or the undue influence of others.*

- 4.3 If the instructing party (with or without legal representation), acts in a way that compromises a **Member's** independence, the **Member** should consider withdrawing.
- 4.4 The instructing party may apply pressure to an expert to either give evidence, or form an opinion, that is contrary to the **Member's** true view, or to express an opinion which is outside the **Members's** expertise. In such a situation, the **Member** must keep in mind their duties under the Code. The **Member's** opinion must be objective, fully reasoned and stand up to scrutiny.

### Conflicts of interest

- 4.5 When considering whether it would be appropriate to accept an instruction, **Members** will need to consider carefully whether doing so could cause a conflict of interest. This is consistent with the requirement for independence and objectivity in paragraph 4.1 of APS X3, as well as with amplifications 3.1 and 3.2 of the Code:

3.1 Members must take reasonable steps to ensure that they are aware of any relevant interests that might create a conflict.

3.2 Members must not act where there is an unreconciled conflict of interest.

- 4.6 **Members** should note that, to remain consistent with Principle 3 of the Code a conflict of interest can arise not only when their professional judgement is compromised, but when it can reasonably be seen to be compromised. For example, it may be that another part of a **Member's** firm is acting for one of the parties in a dispute in a different capacity; this could cause a real or perceived conflict. Alternatively, a **Member** could have, in the past, advised one of the parties in the dispute on a different matter; which could cause a perceived conflict. **Members** must take appropriate steps to make sure their objectivity cannot be compromised, throughout the course of an instruction, by a conflict or perceived conflict. Should a conflict arise during the course of an instruction, this must be brought to the attention of the instructing party as soon as reasonably practicable. The **Member** should then decide whether they can continue to act as an independent and objective witness.

## Case study 4 – Valuation of life interest

### Scenario

Sana is a consulting actuary at a large pensions firm. Her friend Rachel is making arrangements for her widowed mother to get a life interest in the family home, following the death of her father. She and her brother will inherit the house after their mother dies. The value of the house significantly exceeds the inheritance tax limit, so Rachel needs a valuation of her mother's life interest to make sure that the house doesn't have to be sold to pay tax. Rachel knows that actuarial advice will be expensive, so she has approached Sana to ask if this is something that she could do on a "mates' rates" basis. By good fortune Sana works in the firm's team that provides this kind of advice and therefore has experience in this area.

Rachel and her brother do not get along and have an ongoing disagreement about the terms of their father's will, and the question as to what is to happen to the estate is likely to end up in court.

### Matters to consider

APS X3 requires that **Members** provide independent and objective advice, and Code has requirements relating to conflict of interest. While Sana will not necessarily have a financial conflict, she may have an emotional one, as she may feel under pressure to provide a smaller valuation of the life interest, as that would benefit Rachel. There may also be a perceived conflict to others involved in the matter if they are made aware of Sana and Rachel's personal connection. Sana should therefore explain to her friend why she cannot take on the instruction. She may wish to refer her friend to colleagues at her firm, on the clear basis that Sana herself will be in no way involved in the work and will have no access to the calculations or advice.

## 5. Identifying and applying rules and procedures

- 5.1 A key requirement of APS X3 is that, where a **Member** is approached, or agrees, to act as an **Expert Witness**, they must identify any rules or procedures which apply to the related proceedings. APS X3 paragraph 4.1 states:

**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.

- 5.2 Further, if such rules or procedures apply, **Members** must familiarise themselves with such rules and procedures within the relevant setting and adhere to those rules. APS X3 paragraph 4.2 states:

**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.

- 5.3 APS X3 and the Code will apply wherever and in whichever forum **Members** are working. The Code states that where relevant legal requirements conflict with the Code, **Members** must comply with those legal requirements. That also means that any legal requirements, including court procedure rules, take precedence over APS X3. For example, if a **Member** is being asked questions outside the scope of the court rules, then the **Member** can remind those instructing them of their duties to the court. The rules governing the instruction of experts continue to evolve and develop and it is possible that additional documents will be published from time to time. **Members** should confirm what the relevant and up to date rules and requirements are with those instructing them.
- 5.4 There may be additional published guidance or best practice documents which are relevant to **Members'** work. **Members** should have regard to the status of such materials and consider whether to apply them.

### Case study 5 – Applying rules

#### Scenario

Lesley is a pension actuary providing advice on pensions on divorce (in England and Wales). They are approached by a new client, to be instructed in a divorce case. Lesley has been asked to use the instructing solicitors' house template for the report, but based on their actuarial expertise, they are concerned that the template misses out information which it would be best practice to include. They feel they are being rushed by the solicitors, who seem to be valuing speed over quality.

#### Matters to consider

Strict rules provide details of information which should be included in these expert reports (the Family Procedure Rules, for the High Court in England and Wales). The solicitors should be aware of these requirements. The template format suggested by the solicitors may provide a helpful way of presenting or summarising the actuarial advice. However, it is for Lesley, as the actuarial expert, to determine what should be in the report, and they are obliged to ensure that the report meets the communications requirements of the Code and TAS 100, that they have met the independence and objectivity requirements of APS X3 paragraph 3.1, and the requirements of Principle 3 (Impartiality) of the Code.

Further, in acting with independence and objectivity, Lesley should not be drawn into producing a report which is tied to one side or another in the case. This is especially so if she is acting as a Single Joint Expert. Even if she is only advising one side in the case, and the template is ideal, in terms of what is included, Lesley should not be branding her report in any way which might give an appearance that she is not independent or objective, or that gives rise to any concern about a conflict. However, there are often alternative ways to present actuarial advice. If Lesley believes her objectivity is not compromised, she may consider following the solicitor's suggestion if appropriate to do so.

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## 6. Assessing remuneration arrangements

- 6.1 **Members** must not undertake **Expert Witness** work, where their pay is linked to the outcome of the associated **Proceedings**. Paragraph 5.1 of APS X3 states:

**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.

- 6.2 Actuaries should also consider Principle 3 (Impartiality) of the Code.

### Impartiality

3. *Members must ensure that their professional judgement is not compromised, and cannot reasonably be seen to be compromised, by bias, conflict of interest, or the undue influence of others.*

3.1 Members must take reasonable steps to ensure that they are aware of any relevant interests that might create a conflict.

3.2 Members must not act where there is an unreconciled conflict of interest.

- 6.3 There are different fee arrangements for providing an expert opinion, for example, a report and hearing appearance could be dealt with on an hourly rate, on a daily rate, or on a fixed fee basis (or a combination).
- 6.4 There may be situations where a **Member** is instructed as an **Expert Advisor** and, as the matter develops, that instruction turns into one to act as **Expert Witness**. The restriction on agreeing to enter into arrangements whereby the fee is linked to the outcome of **Proceedings** applies to those instructed as **Expert Witnesses** as well as to those “contemplating” such an instruction. Where a **Member** is considering an instruction as an **Expert Advisor**, they should also consider whether this is likely to transition into an **Expert Witness** role and whether this means that they should not enter into an agreement to act on a contingency fee basis.

### Case study 6 – Potentially inappropriate remuneration

#### Scenario

Return to the case of Peter, a consulting actuary considering an instruction in a personal injury case outside the UK. The instructing lawyers suggest that Peter’s fee be taken as a percentage of the final sum awarded to their client. They have told Peter that this is perfectly legal, and a pretty common arrangement.

#### Matters to consider

Peter should find out for himself whether this is legal in the jurisdiction concerned. If it is not, he may consider turning down the instruction on this basis alone, and reporting the instructing party to the relevant authority, as Principle 5 (Speaking up) of the Code requires **Members** to speak up about unlawful activity. In any event, Peter cannot accept the fee arrangement, as it would contravene APS X3 paragraph 5.1. Further, it would not be consistent with the requirement for independence and objectivity (paragraph 3.1 of APS X3). Nor would it be consistent with the Code, in terms of impartiality and conflict. If a different fee arrangement can be arranged, Peter may still wish to accept the instruction, as long as he is satisfied as to the other considerations set out in Case Study 3.

## 7. Undertaking the work

- 7.1 Once a **Member** is satisfied that they can accept an instruction under the terms of APS X3, there are other matters to consider with respect to undertaking the work itself. The following section outlines some of the activities which may be involved and provides guidance on how **Members** may wish to approach the work and manage issues which may arise.

### Preparing a report

#### *Forming an opinion*

- 7.2 APS X3 requires **Members** to ensure that any advice they provide as an expert is independent and objective. This means that not only should they be free from bias (actual or perceived) but they should also give (and be in a position to give) advice which is independent of any personal interests or feelings. The test of “independence” is that the expert would express the same opinion if given the same instructions by an opposing party. Experts should not take it upon themselves to promote the point of view of the party instructing them.

#### *Considering timescales*

- 7.3 **Members** should provide clear information on their availability and estimated timescales for completing reports, particularly when responding to preliminary enquiries. Courts routinely set strict deadlines to keep proceedings on track, and the expert must be able to complete the work within the timescales the court sets, as failure to do so would put them in breach of the court’s procedure rules. If the expert cannot meet the deadline, they should inform the instructing party as soon as practicably possible so that the court can manage the timetable appropriately. The expert must not wait until the deadline is close or missed. They should raise the issue at the earliest stage.

#### *Work review*

- 7.4 **Members** must also consider their obligations under [APS X2: Review of Actuarial Work](#), which requires them to apply **Work Review** to **Actuarial Work** for which they are responsible and has the following specific requirement in relation to the timing of such review, (APS X2 paragraph 2.3):

Where any form of review is applied to meet the requirements of this **APS**, it should be undertaken at a time such as to be capable of influencing the conclusions and outputs of the work.

- 7.5 For further guidance on the application of APS X2 refer to the [associated non-mandatory guidance](#).

#### *Framing a report*

- 7.6 An expert report should summarise the evidence presented to them and provide an opinion based upon that factual evidence. The **Member** producing the report must be objective and present their opinion based upon the facts presented to them and the area on which the opinion is sought. The **Member** should not omit to consider material facts which detract from their concluded opinion. The expert **Member** should also remind themselves about who will be reading the report and how knowledgeable they will be about the underlying facts and circumstances of the issue in question.
- 7.7 **Members** carrying out expert work within the Financial Reporting Council’s (FRC) **UK Geographic Scope** should have regard to the FRC’s framework of [Technical Actuarial Standards](#) (TASs) and consider whether their report

or any other aspects of their work fall within the scope of one or more of the TASs. The **UK Geographic Scope** is defined in [APS X1: Applying Standards to Actuarial Work](#) as follows:

### **UK Geographic Scope**

Refers to work done in relation to the UK operations of entities, as well as to any overseas operations which report into the UK, within the context of UK law or regulation (regardless of the location or domicile of the person carrying out the work).

- 7.8 The expert **Member** should identify the data used within the expert report to undertake an actuarial analysis. Although an actuary would not normally be responsible for verifying the data, where practical, taking into account the costs involved, they should be satisfied of its appropriateness for the exercise. A **Member** should also identify any limitations or shortcomings in the data used which might have an effect or have implications for the conclusions set out in their reports. If any such shortcomings are identified, these should be set out clearly in the report. The **Member** should also clearly indicate where a particular question or issue falls outside their specialist area.
- 7.9 There may be situations where it is not possible to obtain all of the information needed for the expert report. In all cases, any assumptions should be made clear in the expert report. It may also be useful to keep detailed notes of thought processes, methodology and the assumptions underlying the conclusions in the expert report. If the **Member** has insufficient data to finalise their opinion they should indicate their opinion is provisional only
- 7.10 The **Member** should check the appropriate wording for the statement of truth with those instructing them, and whether this needs to be included in their report. This should explain which facts and matters referred to in the report are within the **Member's** own knowledge and which are not, and that those facts within their knowledge are true, to the best of their knowledge and belief.
- 7.11 If an expert is asked to assume figures which they believe are unreasonable, they should be reminded of their duty is to provide an objective opinion. If a **Member** is asked to assume figures they do not accept, they must present their calculations and make clear that the answer given is hypothetical, or otherwise state that they do not believe the assumptions assumed in the related question to be appropriate. Further, if a **Member** is asked to comment upon methodology or figures which they believe are not specifically relevant to the matter in hand, or they believe may be misleading, they should make this clear when giving an answer.

### **Meeting of experts**

- 7.12 **Members** may be invited to a meeting of experts to exchange views and find common ground before a hearing takes place. The purpose of such a meeting is to have an open and honest discussion about matters in the case.
- 7.13 If a **Member** changes their opinion following a meeting of experts, then this should be communicated to the instructing party to discuss how best to present such amendments. For example, a signed and dated addendum may be sufficient, or the report may be amended (and reasons for the amendments clearly stated).
- 7.14 A **Member** may be asked to sign a single joint statement of agreements and disagreements. When doing so, **Members** should ensure that they are not subject to undue influence by instructing parties. The **Member** should always have in mind that their report is reflective of their own view.
- 7.15 A **Member's** duty is to provide independent, objective, and clear evidence based upon their expertise. Balanced with that, they must bear in mind amplification 1.1 of the Code, which states:

## 1.1 Members must show respect for everyone.

If a **Member** disagrees with an opinion expressed by another actuary or other professional, they must address this in a factual way and explain clearly why there is a disagreement, explaining the different assumptions and calculations used, if appropriate.

### *Handling errors in a report*

- 7.15 Errors do happen; the main issue to consider is how to deal with those errors. If an error is identified, the **Member** should inform the instructing party of the error and the reasons for it as soon as possible. Similarly, if, while giving evidence, the expert considers that an incorrect statement or error has been made, this should be identified to the court (or the relevant tribunal or other setting) immediately, in compliance with responsibilities under Principle 1 (Integrity) of the Code, which states:

*Members must act honestly and with integrity.*

### **Attending a hearing**

- 7.16 If the matter proceeds to a hearing, then the expert is likely to be required to attend and give evidence as to their opinion. In some types of proceedings, evidence in chief will be provided by means of the expert report. This means that it would not be necessary for the instructing party to take the expert through their evidence in detail at a hearing. However, in other types of proceedings the expert may be required to give some of their evidence orally. Once evidence in chief has been presented, the other party or parties will have the opportunity to cross-examine the expert. If the expert has been jointly instructed by all parties (which is something which happens in certain types of proceedings), all parties have an opportunity to cross-examine the expert. When being cross-examined the **Member** should be alert to questions which seek to manoeuvre the expert into adopting a certain position in respect of a particular matter.
- 7.17 An expert can be guided as to what general areas they may be asked to comment upon. However, it is not appropriate for the expert to receive advance notice of specific questions to which an answer will be sought, guidance on what the expert's answers to those questions should be, or any other form of coaching.
- 7.18 Evidence may not always be completed in a single day. In such a situation the **Member** will be able to speak with those instructing them about arrangements for the reconvened hearing; however, they must not discuss any of the facts of the case upon which they will be giving evidence with them. The **Member** is likely to be told this by the judge or other decision maker, before the case is adjourned.

# Appendix A – Civil proceedings in England and Wales

- A.1 As well as following APS X3 and the Code, if a **Member** is acting as an **Expert Witness** in civil proceedings in England and Wales they must follow the provisions of [Part 35 of the Civil Procedure Rules](#) (CPR) and the supplementary [Practice Direction](#). The Practice Direction states that an **Expert Witness** is also expected to have regard to the [Guidance for the Instruction of experts to give evidence in civil claims](#) (published by the Civil Justice Council).
- A.2 Part 25 of the [Family Procedure Rules](#) (FPR), and supplementary Practice Directions, sets out the legal framework governing expert evidence in family proceedings in the Family Court and the High Court in England and Wales. It covers when expert evidence may be used, how experts should be appointed, and the duties and procedures surrounding expert involvement. Although separate to the CPR, both sets of rules follow a similar structure.

## Instructions

### *Expert Witness or Expert Advisor*

- A.3 If someone is instructed as an **Expert Advisor**, then Part 35 of the CPR does not specifically apply. However, the IFoA regard it as good practice for actuaries to comply with the provisions in Part 35 even if the **Member** is acting in their capacity as an **Expert Advisor**.
- A.4 If someone is instructed as an **Expert Witness**, then Part 35 of the CPR specifically applies and should be followed. Similarly, a **Member** must comply with all requirements of Part 25 of the FPR if instructed as an expert in family proceedings. In such a situation, the **Member's** principal duty is to the court. Whilst the principal duty is to the court, which controls whether an expert may be instructed and how, the court does not issue the instruction letter.

### *Instruction as a single joint expert*

- A.5 Where one expert is to be instructed on behalf of both parties, a single joint set of instructions is likely to be issued. In such cases, the same considerations in relation to conflicts of interest and sufficiency of experience apply. To ensure transparency, if a **Member** is instructed as a single joint expert, they should keep all of the instructing parties informed of any material steps they are taking and should copy all correspondence to each (or every) party.
- A.6 A **Member** acting as an **Expert Witness** should always be cognisant of their overriding duty to the court, over and above their duty to the parties instructing them. A single joint expert should not attend any meeting which is not attended by all parties, unless the other parties have agreed in writing, or the court has directed, that such a meeting may take place.

### *Seeking clarity on instructions*

- A.7 In the event a **Member** requires clarity on the terms of their instruction, they should speak to those instructing them. Experts may also apply directly to the court for directions for the purpose of assisting them in carrying out their instructions (CPR 35.14 or Rule 25.16 of the FPR), for example if instructions are unclear.

## Undertaking the work

- A.8 There are certain requirements in Part 35 of the CPR which set out what information should be contained within an expert report. An expert's report must comply with the requirements set out in Practice Direction 35. In family

proceedings, the expert should also have regard to Part 25 of the FPR. When acting in England and Wales, **Members** must correspond with these requirements, in line with Principle 4 (Compliance) of the Code, which states:

*Members must comply with all relevant legal, regulatory and professional requirements.*

A **Member** should immediately let their instructing solicitor know, and comment in their report if they are unable to meet all of the requirements contained within Part 35 of the CPR, Practice Direction 35 or Part 25 of the FPR and relevant Practice Direction, and why. If a **Member** fails to comply with the provisions of the CPR or FPR when preparing their report, this may, in certain circumstances, lead to their evidence not being admitted.

### **Meetings between experts**

A.9 The CPR and FPR both provide for meetings between experts to exchange views and find common ground, if thought appropriate, and the **Member** will be advised of such a proposed meeting by those instructing them. Such meetings can be held on an “open” basis or on a “without prejudice” basis. If a meeting is held “without prejudice,” only limited (if any) reference can be made to those discussions in court, whereas discussions during an “open” meeting can be referred to during any subsequent hearing.

### **Written questions to experts**

A.10 In England and Wales, an order is often made for the exchange of each party’s expert reports. After expert reports have been exchanged, it is possible that one party may write to the other party with questions about their report to clarify opinions and issues following the exchange of reports. It is important that the **Member** (as author of the report) answers all questions honestly and accurately. To that end, if the **Member** does not understand the question, they should seek clarification.

### **Immunity from suit**

A.11 Experts acting in England and Wales can be the subject of civil or professional discipline proceedings if their evidence falls below the standards expected. A civil action can only be brought by an actuary’s client, not by an opposing party.

# Appendix B – Civil proceedings in Scotland

## Introduction

B.1 In Scotland, the solicitors instructed by each party in civil proceedings will decide whether it is necessary and appropriate to obtain an expert opinion on a matter and will instruct the expert to provide that report. There are no court rules requiring an expert report to be provided in civil proceedings in Scotland (the CPR or FPR do not apply).

## Duties of an expert witness

B.2 The **Expert Witness** owes a duty to the court. The expert should state in their report that they are aware of and have complied with that duty. The principal duties and responsibilities of an **Expert Witness** in Scotland are found in case law. These are covered by the terms of APS X3 and this guidance, and include:

- independence;
- impartiality
- having necessary knowledge and expertise;
- staying within expertise;
- not omitting to consider material facts;
- stating if an opinion is provisional only, or subject to any qualification.

B.3 There is no codified set of rules that govern expert witness evidence in Scotland. How expert evidence is used is covered by general evidential principles and case management rules. The instructing solicitor will be aware of the court rules that apply to the case and will be responsible for following these, rather than the instructed expert.

## Undertaking the work

B.4 A **Member** instructed as an **Expert Witness** may refer to the Law Society of Scotland's [Expert witness code of practice](#). This is intended to be a guide to assist the expert by providing a framework of experts' duties when instructed in Scotland. It specifically notes that experts must comply with the code of conduct of any professional body of which the expert is a member. Therefore, whilst there are no rules regulating expert evidence in Scotland, **Members** instructed as experts should follow the principles of APS X3 and the Code.

B.5 In Scotland, an expert report is addressed to the instructing solicitor, not the court. If a report is to be relied upon then this must be lodged with the court in advance of the hearing. Those instructing the **Member** will do this.

## Joint and multiple experts

B.6 Single Joint Expert appointments may be instructed in Scotland. Case management rules also encourage a meeting to take place between the respective parties' experts with a view to narrowing the issues in dispute or agreeing certain evidence, to save court time and avoid the need to lead evidence on matters not in dispute.

## Appendix C – Civil proceedings in Northern Ireland

C.1 **Members** instructed to prepare an expert report in Northern Ireland, should have regard to regional legislation and rules. The following set out what is expected of an expert witness preparing a report for the courts in Northern Ireland:

- [Rules of the Court of Judicature \(Northern Ireland\) 1980](#) (“the Rules of Court”); and
- Practice Directions (PDs), including:
  - [PD 02/2021](#) (Clinical Negligence);
  - [PD 01/2015](#) (Expert Evidence); and
  - [PD 07/2014](#) (Expert Declaration).

C.2 Members should also refer to [Guidance for the instruction of experts in civil claims in the High Court](#).

C.3 Experts are required to include a declaration in their report and the current wording of such declarations should be checked before the report is finalised. PD 07/14 includes wording for an expert declaration, and joint statement of declaration, which also sets out expert duties.

C.4 If a **Member** is instructed their report must be sent to the court. The court may direct the **Member** to make a further or supplemental report. Any party may, within 14 days after receiving a copy of the court expert’s report, apply to the court for leave to cross-examine the **Member** on their report, and on that application the court shall make an order for the cross-examination.

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## Appendix D – Settings other than a court

### Tribunals

- D.1 **Members** may be instructed to assist in a matter to be heard before a tribunal, for example, the Determinations Panel or the Upper Tribunal in cases heard by The Pensions Regulator. In such cases, **Members** should check for any applicable rules that apply to their role, and follow such rules if they apply, to the particular tribunal.

### Arbitration

- D.2 Arbitration is an alternative dispute resolution forum in which a third party reviews the evidence in the case and imposes a decision that is legally binding on both sides and enforceable in law. It involves the appointment of an arbiter and all parties agreeing to be bound by the decision.
- D.3 The form of an arbitration can vary enormously and there are a number of different types of arbitration available, including processes that are set out in legislation. For example, it may be conducted purely in writing or it may be conducted in formal hearings, with evidence heard and cross-examined, akin to a court case.
- D.4 **Members** instructed to become involved in an arbitration should seek guidance from those instructing them as to what role they are being instructed to undertake.

### Mediation

- D.5 Mediation is a term used to describe a meeting which takes place in the presence of a neutral third party (“the mediator”) who attempts to help the parties reach a settlement. The mediator may meet all sides together or hold meetings with each side in separate rooms. Most frequently, mediations take the form of a combination of the two types of meeting in succession during the course of the day (or over several days), depending upon the mediator’s assessment of how they can best assist the parties to arrive at a settlement.
- D.6 Those providing instruction should be asked to clarify what specific role, if any, a **Member** will be expected to play in the mediation. This will usually be one of an expert adviser, rather than being asked to give evidence.



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