

# Actuarial Standard of Practice EXP-1, The Actuary as Expert Witness

## Classification

Mandatory

**MEMBERS ARE REMINDED THAT THEY MUST ALWAYS COMPLY WITH THE CODE OF PROFESSIONAL CONDUCT AND THAT ACTUARIAL STANDARDS OF PRACTICE IMPOSE ADDITIONAL REQUIREMENTS UNDER SPECIFIC CIRCUMSTANCES.**

## Legislation or Authority

Council of the Society of Actuaries in Ireland

## Application

Any actuary instructed as an expert witness

<b>Version</b>	<b>Effective from</b>
1.0	05.09.2001
1.1	30.12.2006
1.2	01.11.2010
1.3	01.09.2020
1.4	01.08.2021

## Definitions

“ASP” means Actuarial Standard of Practice issued by the Society of Actuaries in Ireland.

“the Code” means the Code of Professional Conduct issued by the Society of Actuaries in Ireland (as updated from time to time).

“Court rules” means Rules of the Superior Courts, as applicable to expert witnesses, including those under S.I. No. 254 of 2016: Rules of the Superior Courts (Conduct of Trials) 2016.

“member” means a member of the Society of Actuaries in Ireland.

“should” (where the context requires) indicates that members to whom this ASP applies must comply with a particular requirement or prohibition, unless the circumstances are such that the requirement or prohibition is inappropriate and noncompliance is consistent with the standards of behaviour, integrity, competence and professional judgement which other members or the public might reasonably expect of a member.

### **1 Purpose and scope**

#### 1.1 Purpose

This ASP provides guidance to the actuary instructed as an expert witness. It refers to Court rules, but does not seek to replicate them. Actuaries should refer to the relevant documents for their full terms. It is not intended to restrain unreasonably the selection of

actuarial assumptions or methods, the communication of actuarial opinions, or the relationship between the actuary and a client, nor to constrain genuinely held differences of actuarial opinion.

## 1.2 Scope

These guidelines apply to actuaries in the Republic of Ireland when they provide actuarial evidence as experts to the courts or to other tribunals.

## 2. Background preparation

### 2.1 Review of relevant ASPs

An actuary undertaking an expert witness assignment must be familiar with all relevant ASPs issued by the Society, and be confident of possessing sufficient experience relevant to the case.

### 2.2 Conflicts of interest

2.2.1 General considerations relating to conflicts of interest are addressed in the Code. Certain additional considerations apply in relation to assignments in which the actuary is expected to give expert evidence, as set out below.

2.2.2 There is a conflict of interest whenever the actuary's objectivity, or duty owed to a client, or to the courts, is or could be impaired by competing interests. The actuary must disclose any such conflict to the instructing solicitors.

2.2.3 If the actuary is uncertain as to whether a conflict of interest exists, the actuary should make full disclosure of the facts to the instructing solicitors and in coming to a conclusion should take into account the solicitor's opinions regarding the potential conflict.

2.2.4 A particular problem may arise where one individual in a firm is asked to act as an expert witness for a party in litigation against a current or previous client of a colleague in the same firm. One actuary might, for example, be asked to assess compensation for loss of pension rights on wrongful dismissal where a partner or colleague advises, or has advised, the directors of the employing company. The actuary would normally only be able to act after disclosure of the possible conflict to both clients and having obtained the consent of both clients.

2.2.5 It is unlikely to be acceptable to either the instructing solicitors or an actuarial firm if two colleagues representing the same firm give evidence for opposing parties in a case.

## 3. Preparation of evidence

### 3.1 Quality of data

The actuary is normally provided with the data necessary for an actuarial analysis. The actuary should satisfy himself/herself that the data provided is reasonable and sufficient to

enable him/her to prepare a report, and should seek additional information if this is not the case. In particular, the actuary should disclose any data limitations or shortcomings that might affect or have implications for the results.

### 3.2 Actuarial assumptions

3.2.1 The actuary is normally responsible for both the actuarial assumptions and the methods of valuation used in writing a report and in giving evidence. However, in determining the assumptions due regard ought to be given to any established practice in a particular area and to any evidence provided by other experts (e.g. medical or economic evidence).

3.2.2 When considering what mortality assumptions to use in respect of an individual considered to have a normal expectation of life, the actuary should take into account

- The most recent relevant population mortality tables (Irish Life Tables issued by the Central Statistics Office in the case of an Irish resident);
- Expected future changes to mortality rates (issued by the Central Statistics Office in the case of an Irish resident) and
- Any relevant reports issued by the Society

Where there is medical evidence that the individual is expected to experience higher than average mortality, this must also be taken into account in the calculation of losses.

3.2.3 The actuary may, however, be asked by the client, by opposing parties or by the court to show what the outcome of a valuation would be on some alternative method or assumptions. It is perfectly proper for the actuary to present these calculations even if the actuary does not accept the assumptions given, provided that there is no misunderstanding by the court or any of the parties as to which of the actuary's calculations are based on assumptions the actuary regards as reasonable and which are not.

3.2.4 It is for the party requesting the calculations to decide whether to withdraw the request or to have the calculations presented in circumstances where it has been drawn to the court's attention that the calculations are based on methods or assumptions which are not accepted by the actuary.

### 3.3 Review of evidence

The actuary is often shown and asked to review evidence, including opposing evidence. The actuary should conduct this review objectively, in terms of the reasonableness of the other evidence, rather than solely in terms of whether it agrees or disagrees with the actuary's own evidence.

### 3.4 Formulating an opinion

3.4.1 The expert witness's fundamental obligation is to provide impartial evidence to the court. The actuary must be aware of the Court rules and the duties on the actuary to assist the court. An expert witness should confine the evidence given to matters which lie within the expert's experience and expertise.

3.4.2 The actuary acting as an expert witness must resist pressure from the client, the instructing solicitors or counsel to give evidence that is contrary to the actuary's true

opinion. The actuary's own opinion should not be modified to suit the exigencies of litigation.

- 3.4.3 If legal advisers propose that the actuary should avoid reference to particular information or, in some other way, depart from the principles set out in this ASP, the actuary should comply only if he/she is satisfied that this is consistent with the principles of the Code of Professional Conduct and, where relevant, ASP PA-2 General Actuarial Practice. It may be appropriate in exceptional circumstances for the actuary to seek independent advice or to suggest that, if the tenor or method of presentation of the evidence is not acceptable to the client, another expert should be instructed.

## **4 Communications and disclosures**

### **4.1 Background of the audience**

Actuarial concepts may be difficult to understand if their communication presupposes basic actuarial knowledge, or if they are presented using terms or acronyms with which the audience is unfamiliar. The actuary should explain technical terminology so that it can be understood by the court. It is a matter of judgement as to the extent to which technical concepts should be explained to the court.

### **4.2 Written reports**

4.2.1 A written report should include the sources of the data used in any calculations made and a description of the actuarial methods and assumptions used to make those calculations.

4.2.2 The report should also express the actuarial opinions clearly and succinctly, and in a manner appropriate to the audience.

4.2.3 The actuary should present all information in the report with sufficient detail that another actuary qualified in the same practice area could make an objective appraisal of the reasonableness of the work and, given the same data, reproduce the calculations to an appropriate degree of accuracy.

4.2.4 The report must comply with the Court rules and include any required statements.

### **4.3 Meetings of experts**

4.3.1 Opposing experts may be asked to meet before the trial, without solicitors being present. Instructions of this nature may arise either following a direction from the court to that effect or by agreement of the parties. The purpose of such a meeting is not for the experts to attempt to reconcile their clients' rival accounts of events or to decide between them; those are tasks for the court. The purpose of the meeting is for the experts to discuss technical matters that are within their expertise and their respective opinions concerning them with the objective that wherever possible, the experts should agree their evidence (in which case the factual basis on which the shared opinion is reached must be entirely clear) and determine and define the issues that remain in dispute.

4.3.2 Meetings held by agreement may be 'Without Prejudice' (the extent to which reference may be made in open court to discussions at such a meeting is limited)

or they may be 'Open'. The actuary should seek a clear understanding of these terms from the instructing solicitor and clear instructions before attending meetings as to whether they are to be 'Open' or 'Without Prejudice'. The status of the meeting should be mentioned specifically at its commencement.

4.3.3 In some circumstances, it may not be convenient for discussions between experts to take place in a face-to-face meeting and other arrangements may be made. The provisions of paragraphs 4.3.1 and 4.3.2 apply to any circumstances where opposing experts are instructed to communicate directly with each other, rather than through solicitors.

#### 4.4 Cross-examination

4.4.1 The actuary must respond truthfully to questions posed during cross-examination and always give an honest professional opinion. The actuary must refrain from advocacy on behalf of the client.

4.4.2 The actuary should explain and illustrate concepts and calculations in a professional manner. Considerations outlined in paragraph 4.5 below apply.

4.4.3 The actuary should not be afraid to resist any attempt to characterise an actuarial opinion as nothing more than speculation. The actuary should be prepared to defend the concept of uncertainty against an attempt to use it to discredit the validity of actuarial work and testimony, and should be ready to explain that actuarial techniques are designed to provide solutions to financial and business problems involving uncertain future events.

4.4.4 As an expert, the actuary is not confined to responding specifically to the narrow question as asked, if this would give a misleading impression. The actuary should expand the answer so that the concepts are made clear.

#### 4.5 Conflicting evidence

4.5.1 At times, the opinions, assumptions and conclusions expressed in expert evidence by others may conflict. These situations may generate doubt in the minds of the audience as to which expert to believe or indeed whether either expert is believable.

4.5.2 If asked to comment on the differences in evidence, the actuary should do so objectively and in a professional manner. It may be that the differences in the two opinions arose because they were based on different factual premises or different assumptions. It may follow, therefore, that the conflict of evidence can be reduced, or even resolved entirely, by showing how the conclusions of both actuaries would more closely (or exactly) match each other once the same factual premises and assumptions are adopted.

#### 4.6 Consistency with previous statements

When preparing expert evidence, actuaries should be mindful of statements that they may have made on the same, or a related, subject previously, whether orally or in writing. This includes, but is not limited to, opinions which they have given in evidence for previous cases, articles, speeches or other published comments and past work for clients and/or employers. If the actuary employs different methods or assumptions in the current situation, the actuary should be prepared to explain why.

#### 4.7 Discovery of error

If, after delivering expert evidence, the actuary discovers that a material error has been made in it, the actuary has an obligation to make appropriate disclosure to instructing solicitors as soon as possible. Any material errors in the actuary's evidence which the actuary becomes aware of during the course of giving evidence must be drawn to the attention of the court.

#### **Explanatory Note**

This Explanatory Note does not form part of the ASP.

Version 1.4. came into effect on 1 August 2021.

The change from Version 1.3 is the insertion of section 3.2.2 (and subsequent renumbering) which mandates the use of Cohort mortality in certain circumstances.