



Institute
and Faculty
of Actuaries

Disclosure

Guidance

by the Disciplinary Committee
of the Institute and Faculty of Actuaries

Disclosure

1. Introduction

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

2. Aim

- 2.1 This Guidance:
- (a) sets out the duty on the IFoA to disclose material to the Respondent; and
 - (b) explains the process to be followed when the IFoA or the Respondent requests disclosure of information or documents.

3. Disclosure by the IFoA

- 3.1 To ensure Respondents receive a fair hearing, the IFoA has a duty to disclose any unused material to a Respondent which may assist the Respondent's case or undermine the IFoA's case. "Unused material" is material within the possession or control of the IFoA which has not been used by the IFoA as evidence in proceedings involving the Respondent under the Scheme.
- 3.2 While most of the material gathered during the course of an investigation under the Scheme is included with the Case Report and/or Charge, there may be unused material in the IFoA's possession or control. Examples include, but are not limited to:
- (a) notes of interviews with witnesses / draft witness statements (if approved by the witness);
 - (b) emails, letters, telephone notes or any other written notes which discuss the matter subject to investigation or proceedings under the Scheme;
 - (c) documentary evidence provided by a witness that is not relied on by the IFoA;
 - (d) any instructions to an expert witness, and correspondence in which the expert provides any opinion relating to the investigation or proceedings under the Scheme.
- 3.3 The duty of disclosure is a continuing one, and unused material should be kept under review at all stages of proceedings under the Scheme to determine whether it should be disclosed. Such review should take place:
- (a) prior to a Case Report being sent to the Respondent;
 - (b) prior to service of a Charge and IFoA bundle of evidence;
 - (c) when a Respondent makes representations or provides written grounds of defence.
- 3.4 Any unused material which is disclosed should, where possible, be disclosed in sufficient time to ensure that the Respondent is provided with a fair opportunity to consider it.

4. Process for requesting disclosure of information or documents

Case Report and Adjudication Panel

- 4.1 All documents (including all submissions from the Respondent) which have been obtained during an investigation will normally be included as appendices to the Case Report, and consequently shared with the Respondent. There is therefore unlikely to be any unused material in proceedings before an Adjudication Panel.
- 4.2 The Respondent may ask the Case Manager to obtain certain documents or information as part of the investigation. If the Case Manager considers that the document or information is relevant to the investigation, they should take reasonable steps to obtain the documents or information. If the Case Manager does not consider that the information is relevant, or if they are unable to obtain the information or documentation, this should be highlighted to the Adjudication Panel in the Case Report, including reasons as to why the information has not been provided to the Adjudication Panel.

Disciplinary Tribunal Panel

- 4.3 The IFoA or the Respondent may request the disclosure of certain documents from the other party.

- 4.4 An application for disclosure of documents should first be made in writing to the other party. The application should clearly set out the documents requested and the reasons why they are relevant to the determination of the case.
- 4.5 If the other party does not agree with the disclosure request, then the party requesting the documents may submit a written application for disclosure to the Judicial Committees Secretary. The other party should have an opportunity to respond to the application.
- 4.6 The Chair of the Disciplinary Tribunal Panel will decide whether the application can be considered in writing or whether a preliminary hearing should be held to consider the application. If a preliminary hearing is to be held, this will be arranged in accordance with the applicable Rules and Regulations.
- 4.7 The Chair of the Disciplinary Tribunal Panel may order one party to disclose certain documents to the other before the final hearing, except:
- (a) where the disclosure of such information is subject of legal professional privilege;
 - (b) where the information might incriminate the Respondent or expose them to penalties imposed by law.
- 4.8 The Chair of the Disciplinary Tribunal Panel shall ensure that disclosure of relevant documents is only ordered where it is fair in the circumstances to do so. The Chair should have regard to whether the documents being requested are already within the possession or control of the party and if not, whether they can reasonably be obtained by the party. The IFoA does not have statutory powers to compel the production of documents for disciplinary proceedings.

Document control

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