



Institute
and Faculty
of Actuaries

Costs

Guidance

By the Disciplinary Committee of
the Institute and Faculty of Actuaries

Costs

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 advise on the use of this Guidance.
- 1.9 The Disciplinary Committee will review this Guidance every three years or earlier if needed.

2. Aim

- 2.1 This Guidance:
 - (a) explains what is meant by "costs";
 - (b) outlines when costs may be awarded at different stages of the Scheme;

- (c) lists what may be included in an application for costs;
- (d) describes what should be considered when awarding costs against a Respondent;
- (e) describes what should be considered when awarding costs against the IFoA; and
- (f) sets out what happens if costs are not paid by the due date.

3. What is an award of costs?

- 3.1 The term “costs” refers to a sum awarded by Panels in favour of either the Respondent or the IFoA when seeking to be compensated for the amount incurred by that party in bringing or defending a case. Costs are not a sanction.

4. When are costs awarded?

Disciplinary Orders

- 4.1 Where the Respondent agrees to a Disciplinary Order a fixed cost of £300 is to be applied, to be paid by the Respondent. This fixed cost will form part of the Disciplinary Order. A Disciplinary Orders Panel cannot award costs to a Respondent.

Interim Orders

- 4.2 Costs awards are not available to any party in an Interim Order application.¹ However the costs incurred in preparing for and/or attending an Interim Orders Hearing can be included in an application for costs at the Disciplinary Tribunal Panel and Appeals Tribunal Panel stages.

Adjudication Panel

- 4.3 The Adjudication Panel may make an order for costs against the IFoA or the Respondent.²
- 4.4 When a Case Report is submitted to a Respondent, the IFoA will make an application for £1,500 in costs if the Adjudication Panel makes a finding of prima facie Misconduct. The IFoA’s actual costs in investigating and determining a case at the Adjudication Panel stage will almost certainly exceed £1,500. The costs the IFoA can claim at the Adjudication Panel stage are fixed at £1,500 to enable the amount to be determined quickly and efficiently while, at the same time, making a fair and proportionate contribution to the IFoA’s costs.
- 4.5 The Respondent may provide the following to the Case Manager and the Judicial Committees Secretary within 14 days of the Case Report being served:
- (a) written submissions in relation to the IFoA’s application for costs;
 - (b) details of their financial circumstances, with supporting evidence; and
 - (c) a written application for their own costs, with supporting evidence, as outlined in section 5.

¹ Rule 10.9 of the Scheme.

² Rule 13.7 of the Scheme.

- 4.6 The IFoA may provide written comments on any application for costs or submissions provided by the Respondent. The IFoA's comments must be provided to the Respondent and the Judicial Committees Secretary at least 14 days before the hearing.
- 4.7 The information detailed at paragraphs 4.5 and 4.6 will only be shared with the Adjudication Panel once it has determined whether there is a prima facie case of Misconduct.
- 4.8 The issue of costs will be determined by the Adjudication Panel without the parties present.
- 4.9 Where an Adjudication Panel determines that a prima facie case of Misconduct is established, the invitation to the Respondent to accept the determination may include an order that costs must be paid by the Respondent. If the Adjudication Panel makes an award of costs, this should be for the fixed amount of £1,500. Enforcement of this fixed sum, including whether a payment plan is appropriate, is a matter for the IFoA to consider (see section 8 below).
- 4.10 The costs order will form part of the Adjudication Panel determination. If the Respondent accepts the Adjudication Panel determination, this will include accepting any order for costs.
- 4.11 Where an Adjudication Panel dismisses a case, they may make an award of costs against the IFoA, having regard to the principles detailed at section 7 below.

Disciplinary Tribunal Panel and Appeals Tribunal Panel

- 4.12 The IFoA and the Respondent can make an application for costs to a Disciplinary Tribunal Panel and an Appeals Tribunal Panel.³
- 4.13 If a party wishes to make an application for costs, the application should be prepared before the hearing takes place and should show the matters outlined in Section 5. Documentary evidence of the costs listed in the application should be provided where possible.
- 4.14 The application for costs should be sent to the other party at least 14 days in advance of the hearing. The application should include a reasonable estimate of any additional costs that are likely to be incurred before the hearing and during the hearing itself.
- 4.15 Copies of any costs application and any written submissions in response to an application made by the other party should be provided to the Judicial Committees Secretary either before or during the hearing. Documents relating to costs applications should only be provided to the Panel once it has made a determination on Misconduct/ the Appeal.
- 4.16 Once the Panel has made a determination on Misconduct/ the Appeal, the parties may make submissions to the Panel on costs. At the hearing, the other party may challenge the application for costs, and the Panel can ask questions about the application.
- 4.17 If a Charge is dismissed without a hearing, either party may make a written application for costs within 14 days of the date of the Disciplinary Tribunal Panel's determination being served.

³ Rules 15.13 and 18.15 of the Scheme.

Capacity for Membership

- 4.18 Costs awards are not available under the Capacity for Membership process.⁴ However if a case is referred back to continue under the Scheme as if a transfer to a Capacity for Membership Panel had not been made, costs may be recoverable.

Readmission Panel

- 4.19 Costs awards are not available to any party to an application for readmission.⁵

5. What is included in an application for costs?

- 5.1 Any party intending to make an application for costs before a Disciplinary Tribunal Panel or Appeals Tribunal Panel must prepare a statement of the relevant costs incurred.
- 5.2 Respondents making an application for costs to an Adjudication Panel must prepare a statement of the relevant costs incurred. The IFoA does not need to prepare a statement of costs for Adjudication Panel proceedings because IFoA applications will be for the fixed amount of £1,500.
- 5.3 All costs incurred by the IFoA in the investigation or by a Respondent in responding to the investigation (subject to paragraph 5.4 below) may be included in an application for costs. This may include costs incurred in preparing for and attending Interim Orders hearings. Depending on the stage reached in a case, costs may also include preparing for and attending any Panel hearing.
- 5.4 If a Respondent is representing themselves, the Panel will usually only make an award for costs incurred for 'out of pocket' expenses such as travel and associated expenses, not for time incurred by the Respondent (unless there has been a clear and unavoidable loss of income due to the time spent).
- 5.5 A statement of costs should include a breakdown of time spent and the hourly rates charged for each person involved. An example statement of costs is included at **Annex A**. The statement of costs may include, but is not limited to:
- (a) time considering papers;
 - (b) correspondence, telephone calls or meetings;
 - (c) taking and drafting witness statement(s);
 - (d) drafting documents;
 - (e) preparing papers;
 - (f) preparing for and attending a hearing;
 - (g) expert witness fees;
 - (h) fees for legal advice;
 - (i) all associated costs such as travel and accommodation.

⁴ Rule 16.17 of the Scheme.

⁵ Rule 17.8 of the Scheme.

5.6 The IFoA may also include all costs related to setting up a Panel such as venue hire, attendance fees and travel expenses for Panel members and legal adviser fees.

6. Costs against the Respondent

6.1 The IFoA will claim costs in all cases where allegations are found proved. This is on the basis that the membership of the IFoA should not bear the cost of bringing disciplinary proceedings against Respondents.

6.2 Where the costs are not fixed under the Scheme, the starting point for a Panel is to consider an award of the full amount of costs incurred and claimed for by the IFoA. The Panel may, if it considers it appropriate to do so, award a lower sum than the amount of costs claimed for.

6.3 The following are examples of when a Panel may reduce the costs award:

- (a) some of the costs incurred by the IFoA could reasonably have been avoided or reduced;
- (b) the costs incurred are excessive given the circumstances of the case; and
- (c) having regard to the financial or personal circumstances of the Respondent (for example, their current health, family situation, whether they have dependents and what, if any, impact the Panel's decision to recover costs will have on them and other parties).

6.4 When considering an award of costs against a Respondent, the Panel will consider the Respondent's financial circumstances to assess what the Respondent is able to pay. The Respondent will be asked to provide a statement of their financial circumstances, with supporting evidence where possible, to the Judicial Committees Secretary and to the IFoA in advance of the hearing. An example of the information that may be provided is included at **Annex B**.

6.5 The Respondent may also provide details of their personal circumstances, such as those referred to in paragraph 6.3(c), when providing any statement of their financial circumstances. Supporting evidence should also be provided.

6.6 The Respondent is not obliged to provide information of their financial or personal circumstances. If no information or supporting evidence is provided the Panel is unlikely to be able to take into account the Respondent's circumstances in considering an application for costs and should normally proceed on the assumption that the Respondent is able to pay any amount up to the full amount of costs being sought by the IFoA. Any personal or financial information provided by the Respondent will only be shared with the Panel if there is a finding of Misconduct.

6.7 Relevant financial circumstances may include a note of:

- (a) current monthly income (from all sources including gross salary, pension, investment income and property income);
- (b) current monthly outgoings and liabilities (including mortgage repayments, loans and tax payments);
- (c) anticipated monthly income and outgoings if the current figures are subject to change;
- (d) approximate value of capital assets (including all investments, bank accounts, business value, properties owned and pension fund);
- (e) debts and other liabilities; and

- (f) any other information necessary to assist the Panel in understanding the earnings, assets and liabilities of the Respondent (including any reasons why net assets cannot be converted or used to pay an award of costs).

6.8 Supporting evidence of the Respondent's financial circumstances should be provided by the Respondent, which may include (but is not limited to):

- (a) tax returns for the last two financial years;
- (b) accounts for the last two financial years;
- (c) bank statements for the previous three months;
- (d) valuation statements of investment funds for the last two financial years; and
- (e) any relevant correspondence (for example, relating to benefits or bonus).

7. Costs against the IFoA

7.1 The Respondent may make a claim of costs against the IFoA. Where a case is dismissed, costs are not automatically awarded against the IFoA.

7.2 The case of *Baxendale-Walker v Law Society* (2007) EWCA Civ 233 states costs will not ordinarily be awarded against the IFoA where it has properly exercised its regulatory function in bringing disciplinary proceedings against the Respondent. This is because awarding costs against a regulator which is funded by its own members may have a “*chilling effect on the exercise of its regulatory obligations, to the public disadvantage*”. The case demonstrates an award of costs against a regulator is highly unlikely to be successful unless bad faith on the part of the regulator is shown. The Panel should consider the approach in the case of *Baxendale Walker v Law Society*, including the following extract from the judgement:

“In respect of costs, the exercise of its regulatory function placed the Law Society in a wholly different position from that of a party to ordinary civil litigation. Unless a complaint was improperly brought or, for example, had proceeded as a “shambles from start to finish”, when the Law Society was discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs followed the event.”

7.3 In relation to Adjudication Panels, the IFoA is required to investigate all Allegations in the public interest. Once an Allegation has been accepted, it can only be determined by an Adjudication Panel; the Case Manager does not have any authority to withdraw an Allegation. Costs should therefore only be awarded against the IFoA by an Adjudication Panel in exceptional circumstances, for example if the decision to accept the Complaint was manifestly unreasonable.

7.4 If a Panel determines that costs should be awarded against the IFoA, the Panel may, if it considers it appropriate to do so, award a lower sum than the amount of costs claimed for by the Respondent. The following are examples of when a Panel may reduce the costs award:

- (a) some of the costs incurred by the Respondent could reasonably have been avoided or reduced; and
- (b) the costs incurred are excessive given the circumstances of the case.

8. What happens if costs are not paid by the due date?

- 8.1 An award of costs will state the amount of costs ordered and the date by when the amount is due to be paid.
- 8.2 If the outstanding amount of an award of costs made to the IFoA remains unpaid once the due date has lapsed, the IFoA may commence legal proceedings in the civil courts to recover the costs due.
- 8.3 Further disciplinary proceedings may be commenced by the IFoA for failure by a Respondent to comply with a costs award.
- 8.4 An application for payment in instalments may be made. This should be submitted with supporting evidence by email to the Judicial Committees Secretary as soon as possible after the determination is served.

Document control

Version	Date of publication	Overview
1.0	1 August 2023	Guidance for Disciplinary Scheme effective 1 August 2023

Annex A

Disciplinary Tribunal Panel of the Institute and Faculty of Actuaries

[Name of Respondent]

Statement of Costs

IFoA Costs incurred in preparation for Tribunal hearing (based upon [X] hearing days).

Preparation for and attendance at Disciplinary Tribunal Panel hearing by[X].

[Insert rates for each individual involved in prosecution costs]

Prosecution Costs are inclusive of VAT.

IFoA costs (pre Adjudication Panel)	Hours	Cost
Consideration of all papers		
Corresponding/ meeting with Respondent		
Corresponding/ meeting with complainant/ witnesses		
Internal correspondence/ meetings		
Preparing Case Report		
Preparing papers		
Total IFoA costs (pre Adjudication Panel)		
Notes:		

IFoA costs (post Adjudication Panel)	Hours	Cost
Consideration of all papers		
Internal correspondence/ meetings		
Corresponding/ meeting with Respondent		
Corresponding/ meeting with complainant/ witnesses		
Drafting of the charge		

Drafting witness statement(s)		
Drafting case summary and chronology		
Preparing the Tribunal bundle and papers for service and sending to Respondent		
Preparing and attending Case Management Call		
Preparing and checking costs application		
Corresponding with Counsel		
Attendance at Tribunal hearing		
Counsel's fee		
Total IFoA costs (post Adjudication Panel)		
Notes		

Other Expenses (provided by Clerk)		
Room hire for hearing		
Retiring rooms for hearing		
Stenographer fees		
Legal Advisor		
Panel		
Total Other Expenses		

GRANDTOTAL	
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Annex B

STRICTLY PRIVATE AND CONFIDENTIAL

CONFIDENTIAL STATEMENT OF FINANCIAL CIRCUMSTANCES

You should provide this statement to the Clerk to the Disciplinary Tribunal Panel or the Appeals Tribunal Panel about your financial circumstances. You will need to provide relevant supporting documentation with it; for example, bank statements, property valuations or trading accounts. The material will be kept in the strictest confidence and only shown to the Disciplinary Tribunal Panel or the Appeals Tribunal Panel at the relevant time in the disciplinary proceedings, if appropriate.

In the absence of information about your financial circumstances and evidence in support, a Disciplinary Tribunal or Appeals Tribunal Panel will assume you have the means to pay any fine and/or costs ordered.

1.	Name	
1.1	Full name(s)	
1.2	IFoA ARN	
1.3	Employment Status (e.g. retired, employed, self-employed, unemployed)	
1.4	Name and address of employer or business	
2.	Income (per month)	
2.1	Gross Salary, other earnings and remuneration (including all taxable benefits)	
2.2	Profits of business	
2.3	Gross Pension	
2.4	Gross investment income from:	
	2.4.1 Building societies	
	2.4.2 Bank dividends	
	2.4.3 Other investments (eg shares)	
2.5	Gross income from property	
2.6	Any other income not included in 2.1- 2.5 above.	
3.	Outgoings (per month)	
3.1	Tax payable on incomes declared above (including tax deducted at source)	
3.2	National Insurance Contributions	
3.3	Mortgage interest	
3.4	Endowment mortgage insurance	

3.5	Other interest payable (please specify)	
3.6	Other significant outgoings not included in 3.1-3.5 above	
4.	Capital Assets and Large Gifts	
4.1	Approximate market value of all investments:	
	4.1.1 Building Society/Bank deposits	
	4.1.2 Equity investments, government stocks	
	4.1.3 PEPs, ISAs, TESSAs	
4.2	Approximate market value of principal residence	
4.3	Cash at banks or elsewhere	
4.4	Net worth/value of any businesses which you own or share	
4.5	Approximate market value of other properties owned	
4.6	Pension fund (specify if personal pension)	
4.7	Approximate value of any other assets (please specify)	
5.	Capital Liabilities (total)	
5.1	Mortgage	
5.2	Bank loans	
5.3	Other liabilities (please specify)	
6.	Other information	
	Please specify below any other information necessary to assist the Panel in understanding your earnings, assets and liabilities in a fair and meaningful manner.	

7	Net Assets	
7.1	Your capital assets less your capital liabilities	
	Note: You should explain below if there are any reasons why net assets cannot be converted or used to pay an award of costs.	
8.	Any other relevant information (comment on separate pages if necessary)	
9.	Verification of Income	
	Please enclose documentary evidence in support of the income figures in Section 2. <ul style="list-style-type: none"> • Latest tax returns (last two years at least) • Latest accounts (last two years at least) • Bank statements • Correspondence, statements relating to benefits • Other (please specify below) 	
10	Declaration	
	The information provided in sections 1 to 9 above is true and accurate to the best of my knowledge.	
	Signature:	
	Date:	



Institute and Faculty of Actuaries

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