Institute and Faculty of Actuaries

Guidelines –

For Panel Members on the Civil Standard of Proof

by the Disciplinary Committee
of the Institute and Faculty of Actuaries

November 2021

The Disciplinary Committee

GUIDELINES FOR PANEL MEMBERS ON THE CIVIL STANDARD OF PROOF
(Version 3.0 August 2010)

The Civil Standard of Proof

1. Rule 1.4 of the Institute and Faculty of Actuaries' Disciplinary Scheme states:

> "*In all proceedings before a Disciplinary Tribunal Panel or an Appeal Tribunal Panel under this Scheme, the Institute and Faculty of Actuaries shall bear the burden of proving to the civil standard as applied by the Courts of England and Wales in relation to disciplinary proceedings cases that the Respondent is guilty of Misconduct."*

2. Thus, in disciplinary proceedings the Institute and Faculty of Actuaries are required to prove to the civil standard, as applied by the Courts of England and Wales, that the Respondent is guilty of misconduct. The standard of proof applied by the Courts of England and Wales in civil cases is that of the balance of probabilities. This means that the party bearing the burden of proof i.e. the Institute and Faculty of Actuaries, must demonstrate that it is "*more probable than not"* that the Respondent is guilty of misconduct.

Guidelines on the Balance of Probabilities Standard

3. Guidance on the balance of probabilities standard in the context of the civil standard of proof has been provided by the House of Lords (*in Re H (minors) [1996] AC 563*). In summary, their Lordships' guidance provides that:

   3.1. Proving an event on the balance of probabilities involves a Court being satisfied that an event occurred if it believes that, on the evidence, the occurrence of the event is more likely than not. It does not require a Court to be certain that the event did occur.

4. The House of Lords sought to clarify the application of the civil standard of proof in their judgements in *Re B (Children*) [2008] UKHL 35 and *Re Doherty [2008] UKHL 33*. In applying the civil standard of proof it should be noted that:

   4.1. There is only one civil standard of proof, the balance of probabilities, and "*Neither the seriousness of the offence nor the seriousness of the consequences should make any difference to the standard of proof to be applied"*.

   4.2. The House of Lords elaborated in *Re Doherty* that, although in some cases, *"a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard…The standard itself is, however finite and unvarying...They do not require a different standard of proof or a specially cogent standard of evidence, merely appropriately careful consideration by the tribunal before it is satisfied of the matter which has to be established."*

5. In applying rule 1.4 of the Disciplinary Scheme, the various panels constituted under the Scheme (with the exception of the Interim Orders Panel, whose suggested approach is outlined at paragraphs 6 to 11 below) should therefore adopt the following approach:

5.1. The civil standard of proof under the Disciplinary Scheme requires the Institute and Faculty of Actuaries to prove, on the balance of probabilities, facts which amount to misconduct.

5.2. In assessing whether the Institute and Faculty of Actuaries have satisfied this standard, the relevant panel should ask itself whether (1) on the evidence presented, the Institute and Faculty of Actuaries have shown that it is more likely than not that the facts on which they rely are as they contend, and (2) it is satisfied that those facts as proved lead it to conclude that the Respondent is guilty of misconduct.

5.3. There are no general rules regarding weighing the strength of evidence presented to the relevant panel, as it is a matter of common sense and logic based on the particular circumstances of each case.

5.4. In the event of concern as to how the panel should apply the civil standard of proof, advice can be taken from the panel's legal adviser.

Standard of Proof to be Applied by the Interim Orders Panel

6. Special considerations apply in the case of the Interim Orders Panel, whose task is not to determine whether the Respondent is guilty of misconduct, but instead to decide whether an Interim Order should be made against the Respondent before his guilt or otherwise is determined at a later hearing. Under Rule 3.34 of the Disciplinary Scheme, the Interim Orders Panel may not make an Interim Order unless (1) there is sufficient *prima facie* evidence to support the allegations against the Respondent, and (2) such measure is warranted by the seriousness of the alleged Misconduct.

7. Once both the above conditions have been established, Rule 3.35 of the Disciplinary Scheme states that in considering whether to make an Interim Order, the Interim Orders Panel shall have regard to the effect of such an Order on the Respondent, as well as the protection of the public (including the likelihood of further alleged misconduct occurring).

8. The standard of proof to be applied by the Interim Orders Panel is set out in Rule 3.34(a): whether there is sufficient *prima facie* evidence against the Respondent. But the Panel should address the other matters set out in Rules 3.34 and 3.35.

9. The standard of proof to be applied in order to demonstrate sufficient *prima facie* evidence is lower than the "balance of probabilities" standard described above. The test has been described as requiring the establishment of an arguable case for what is being alleged, or a "case to answer".

10. In applying Rule 3.34(a) of the Disciplinary Scheme, the Interim Orders Panel should therefore adopt the approach that the Investigation Actuary who applies for an Interim Order must show that, on the basis of the available evidence, an arguable case for the allegations against the Respondent exists.

11. In the event of concern as to how the Interim Orders Panel should apply this standard of proof, advice can be taken from the Panel's legal adviser.