



Disciplinary Committee

21 September 2022, 09:15 – 12:15

Attending: Nicola Williams, Chair Kevin Doerr Robert Garvin Rosalyn Hayles Velia Soames	Executive Staff: Sarah Borthwick, Secretary to the Disciplinary Committee Julia Wanless, Judicial Committees Secretary Jenny Higgins, Head of Disciplinary Investigations Catherine Mouat, Disciplinary Investigation Coordinator (note taker) Suzie Lyons, Head of Legal Services (for Item 9) Ben Kemp, General Counsel (for Items 1 to 3)
In attendance: Laura Markham, Project Manager, Professional Oversight Team at the FRC (observing for Items 4 to 9 and 14 – 19) Callum Roberts, Project Associate – Enforcement at the FRC (observing for Items 4 to 9 and 14 to 19)	
Apologies: None	

Item	Title
1.	Welcome and apologies There were no apologies.
2.	Declaration of Conflicts of interests None.
3.	Chair's update – oral NW updated the Committee on the following; <ul style="list-style-type: none">NW had been due to attend the IFoA conference on 23 June 2022, but was not able to due to the train strike. She advised that she intended to watch the relevant sessions online.NW attended the Regulatory Board meeting on 5 July 2022 at which SB presented the Annual Report of the Disciplinary Committee's activities. This was well received.Across June and July 2022 NW had met individually with all Committee members and other stakeholders whose work impacts upon the Committee. She had found this a very helpful process and advised she would provide anonymised notes so key themes can be picked up. Action: NW to provide anonymised note of points raised during individual stakeholder meetings. [redacted] The Committee thanked BK for attending the meeting.
4.	Executive's Update The FRC joined the meeting and were welcomed by NW. SB highlighted item 10 of the Executive Update and asked the Committee whether there was still a desire to prepare training for the Investigation Actuary Pool and Disciplinary Pool on the speaking up principle. It was agreed that it should be considered when developing the training plan as part of the revised Scheme implementation. The Committee noted the remainder of the Executive Update. Action: SB and JH to consider speaking up guidance when developing training plan.



Item	Title
5.	<p>Minutes and Actions</p> <p>The Committee approved the minutes of the 22 June 2022 meeting and agreed that these should be published in full on the website, subject to any comments on redaction from the Committee. The Committee noted the action sheet.</p> <p>Action: SB to arrange publication of 22 June 2022 minutes, subject to any comments on redaction.</p>
6.	<p>Scheme Review</p> <p>JH presented the paper and summarised that;</p> <ul style="list-style-type: none">• The member vote would be launched in late September and close on 25 October 2022• A dedicated email address has been set up for queries about the proposals and will be monitored throughout the vote• A variety of communications had been prepared to help raise awareness and encourage members to vote• Draft guidance and a training plan will be presented to the Committee for approval at their January 2023 meeting <p>During discussion it was agreed that an example of the new draft guidance would be shared with the Committee later in the year, so the Committee could see the approach being taken.</p> <p>It was also noted that points raised by members during the vote would be collated to see if there were any themes arising. JH agreed that if there were particular themes arising, details would be brought to the Committee at their January 2023 meeting.</p> <p>Action: JH to bring to the January 2023 Committee meeting, if appropriate, note of themes arising during the member vote.</p>
7.	<p>Indicative timeframes guidance</p> <p>JH and JW presented the revised guidance and explained that the guidance had been updated to reflect changes to process and to manage all parties' expectations. In particular, there had been a shift towards more engagement with Respondents during the Tribunal process and an Adjudication Panel diet process had been adopted allowing panels to be scheduled every two months.</p> <p>It was noted that KD had provided written comments and questions on the draft guidance in advance of the meeting. It was agreed that KD's comments would be incorporated into the guidance.</p> <p>VS commented that although she did appreciate why the guidance allowed more time for cases, she noted that the cumulative effect of the different stages of the process may result in some cases not being concluded for a long time. VS noted that the overall impact on Respondents, referrers and witnesses should be considered.</p>



Item	Title
	<p>JH advised that cases are progressed as quickly as possible and it is anticipated that most cases will be concluded well within the timeframes set out in the guidance. She noted that the timeframes will depend on the circumstances of each case, for example the witnesses involved, the level of engagement by the Respondent, the documentation required, whether an expert needs to be instructed and whether it is appropriate to serve a draft Charge in the interests of fairness to the Respondent. The guidance sets the aim that all cases will be completed within the timeframes set out in the guidance. The timeframes in the revised guidance allow for increased engagement with the Respondent and that generally leads to a more effective process.</p> <p>RH suggested that when the updated guidance is published it would be helpful to give some explanation around it so users can appreciate that the processes were carefully considered. RH also provided some drafting suggestions.</p> <p>Subject to the suggested changes, the guidance was approved by the Committee and it was noted that it would be published in October 2022.</p> <p>Action: JH and SB to incorporate changes and publish guidance.</p>
8.	<p>Costs guidance</p> <p>JH presented the paper and explained the proposed change to the guidance which was to reflect current case law. The Committee noted that the Supreme Court stated that the appropriate test for self-funded regulators is that set out in <i>Baxendale Walker</i>, which was the test previously relied upon by the IFoA. The <i>Baxendale Walker</i> test is that costs should not be awarded against a regulator unless a case is improperly brought or has been a “<i>shambles from start to finish</i>”.</p> <p>Subject to two minor drafting comments, the Committee approved the revised guidance and noted that it would be published in October 2022.</p> <p>Action: SB and JH to finalise and publish costs guidance.</p>
9.	<p>Independent Regulatory Appointments Process Review: Implementation</p> <p>SL presented the paper on the updated independent appointments process and explained that the Regulatory Appointments Committee (RAC)’s updated Terms of Reference provided opportunity for this Committee to assure itself that the Committee’s own oversight responsibilities continue to be met.</p> <p>RH asked whether the Legal Advisers had given any views on the suggestion that they would provide feedback on Panel members. SL observed that Legal Advisers already provide feedback and were generally supportive of improvements to enhance feedback for training and support purposes as well as to inform decisions on renewal, retiral etc. The Executive will work with the Legal Advisers to update the feedback forms.</p> <p>The Committee asked if any training was recommended. SL agreed to explore options to provide diversity, equity and inclusive centred performance observation training to this Committee and anyone supporting it in performance observation work as part of the usual training cycle.</p> <p>The Committee approved the proposals in the paper in principle;</p> <ul style="list-style-type: none">to record the Committee, Conveners/Deputy Conveners and Chair/Deputy Chair views on skill and experience requirements for roles within the process,to update feedback forms to enhance and increase observation feedback from Legal Advisers,to note the Committee’s ability to make future recommendations to the Regulatory Appointments Committee (RAC) for its decision on any changes to overall pool tenures under the new Disciplinary Scheme (if approved). The Committee agreed that any such recommendations shall include a reasoned basis for the request to allow it to be decided, in the public interest, by the RAC.



Item	Title
	<p>The Committee was invited to follow up with any additional queries.</p> <p>Action: Executive to update templates and process as approved; Executive to report back on training request.</p> <p>The FRC left the meeting.</p>
10.	<p>Case Update Report</p> <p>JH introduced the case update report and explained the rationale for the new format. It was hoped that the new format will assist the Committee in identifying relevant trends and builds upon what is produced for the Regulatory Board as part of the Committee's annual report.</p> <p>JH then presented the investigation section of the report. It was noted that no allegations had been received since the last update report. The Committee noted that there were 15 live cases, of which eight were being prepared for Tribunal. JH advised that the FRC had not accepted the eight linked cases which had been referred to them. Therefore, these matters would continue to be investigated under the IFoA's Disciplinary Scheme.</p> <p>JW presented the Panels and outcomes section of the report. She highlighted that the next Adjudication Panels would be taking place in October/November 2022. She advised the Committee that a reconvened Disciplinary Tribunal Panel would be heard on 4 October 2022, and a Readmission Hearing on 7 October 2022.</p> <p>The Committee noted that one case had been referred to the Independent Examiner. The referral was considered by the Deputy Independent Examiner, who accepted the referral and affirmed the decision of the Adjudication Panel.</p> <p>SB asked the Committee for feedback on the revised case update report. VS commented that she liked the new format but asked if paragraph numbers could be added.</p> <p>Action: JW and JH to add paragraph numbers to case update report.</p>
11.	<p>Feedback</p> <p>The Committee noted this paper, which was presented by JH.</p> <p>It was suggested that the wording of the questions included in the feedback questionnaires be amended given that most hearings are now held remotely.</p> <p>Action: JW to amend feedback form</p> <p>The Committee also noted that the Executive would be considering how feedback is shared with the Committee to improve how meaningful the data is and to ensure the Committee are able to fulfil their responsibilities for appointments, observations and tenures, as discussed at item 9 above.</p> <p>Action: SB, JW and JH to consider presentation of feedback.</p>
12.	<p>Determinations Review Sub Committee</p> <p>The Committee noted the report which was presented by VS, which highlighted that, overall, determinations continue to be of a high quality.</p>



Item	Title
13.	<p>Ongoing correspondence</p> <p>SB presented this paper, setting out details of correspondence from a former Respondent and a former referrer of an Allegation. The Committee was invited to consider the correspondence and consider how they wanted to respond.</p> <p>It was agreed that a response to the former Respondent would be sent by the Chair, on behalf of the Committee. The Committee would all approve the communication prior to it being sent. The response would respond directly to four specific points raised by the former Respondent.</p> <p>It was agreed that the Chair would also respond to the former referrer of an Allegation noting that he had withdrawn his complaint and the matter was closed.</p> <p>Action: Chair to send responses to the former Respondent and former Referrer of complaint.</p> <p>RH suggested that it would be helpful for the Committee to have a written policy setting out what matters the Committee will and will not consider. RH offered to assist SB in the development of this.</p> <p>Action: SB to develop policy setting out what the Committee will and will not consider.</p>
14.	<p>Objectives update</p> <p>The FRC re-joined the meeting.</p> <p>The Committee noted the table setting out the progress of the objectives for 2022/23 and the future workplan. It was noted the workplan would be updated following this meeting.</p> <p>Action: SB to update future workplan.</p>
15.	<p>Risk Register</p> <p>SB presented the updated risk register and the Committee noted that a line chart would be prepared tracking risks so the Committee can identify any movements or trends.</p> <p>KD suggested that the column 'overall status' should be renamed 'underlying status'.</p> <p>It was agreed that the Committee should have a fuller discussion on the risk register at a Committee meeting in 2023. SB advised she would need a steer from the Committee as to which risks they would like to focus on at that meeting and it was agreed that she would seek input from the Committee.</p> <p>Action: SB to amend column title and seek input from Committee.</p>
16.	<p>Matters to raise with Regulatory Board</p> <p>SB presented the paper and suggested it would be good practice for the Committee, at the end of each meeting, to agree whether there was anything that needed escalated to the Regulatory Board. The Committee approved this suggestion and it was agreed that SB would advise the Regulatory Board, via the Executive Update, that the Costs Guidance and Indicative Timeframes Guidance had been updated.</p> <p>Action: SB to advise Regulatory Board of updated guidance.</p>
17.	<p>Schedule of Guidance</p> <p>This was noted by the Committee. SB advised she would update the schedule in relation to the guidance that had been approved by the Committee during the meeting.</p> <p>Action: SB to update schedule</p>



Item	Title
18.	Schedule of term times This was noted.
19.	AOB None. NW thanked the FRC for attending the meeting to observe.

Dates of future meetings;

- Tuesday 17 January 2023 (915 to 1215)
- Wednesday 26 April 2023 (915 to 1215)
- Tuesday 20 June 2023 (915 to 1215)
- Wednesday 11 October 2023 (915 to 1215)
- Tuesday 16 Jan 2024 (915 to 1215)