



Institute
and Faculty
of Actuaries

Standard and Burden of Proof

Guidance

by Disciplinary Committee
of the Institute and Faculty of Actuaries

Standard and Burden of Proof

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) describes the standard of proof to be applied in disciplinary proceedings;
 - (b) sets out who bears the burden of proof in certain cases;
 - (c) describes the Prima Facie test for Adjudication Panels and Interim Orders; and
 - (d) explains how decisions by other bodies, such as a Court, should be considered.

3. The Standard of Proof

- 3.1 The term “standard of proof” refers to the level of certainty needed to establish that something happened. The standard of proof in proceedings before a Disciplinary Tribunal Panel, Appeals Tribunal Panel, Capacity for Membership Panel and Readmission Panel is the “Balance of Probabilities”¹.
- 3.2 “Balance of Probabilities” means that whoever is trying to prove their position must show that it is more likely than not that something happened based on the available evidence. The Panel is not required to be certain that the event occurred.
- 3.3 When considering whether something is more likely than not to have happened, the decision maker should remember that the standard of proof does not vary depending on the seriousness of the allegation or charge².
- 3.4 Adjudication Panels and Interim Orders Panels follow the tests as described under Sections 5 and 6, respectively, below.
- 3.5 There are no general rules about how each Panel should weigh the strength of the evidence presented to them. It is a matter based on the circumstances of each case. If the Panel has queries about how they should apply the standard of proof, they should take advice from the Panel’s Legal Adviser.

4. Burden of Proof

- 4.1 The term “burden of proof” applies to who is responsible for proving that their position is true (to the required standard of proof).
- 4.2 The IFoA bears the burden of proving a Charge of Misconduct in proceedings before a Disciplinary Tribunal Panel and Appeals Tribunal Panel (Rule 1.9). This means that the IFoA must prove that the facts alleged in the Charge happened. The IFoA should provide submissions on why it considers the facts set out in the Charge amount to Misconduct, however the IFoA is not required to prove that the facts alleged amount to Misconduct. Whether the facts amount to Misconduct is a matter of judgement for the Panel.
- 4.3 In Capacity for Membership proceedings the IFoA has the burden of proving that the facts alleged happened. The party making the application has the burden of proving that the Respondent’s capacity to be a member of the IFoA is significantly impaired as a result of their illness, health or medical condition and that the impairment is relevant to the Allegation (Rule 1.11).
- 4.4 In all proceedings before a Readmission Panel, the person making the application (the Applicant) has the burden of demonstrating that they are a suitable candidate for readmission to membership of the IFoA (Rule 1.12).
- 4.5 Where the burden of proof rests with the IFoA, there is no requirement for the Respondent to prove anything. However, the Respondent can provide documentation supporting their position to the relevant Panel for consideration.

¹ Rules 1.9 – 1.12 of the Scheme

² *In re B (Children)*[2008] UKHL 35 and *In re Doherty* [2008] UKHL 33

5. Adjudication Panels

- 5.1 In proceedings before an Adjudication Panel, the Adjudication Panel will decide whether a Prima Facie case of Misconduct is established. This means that, upon initial examination, there appears to be sufficient evidence to find that the Respondent has committed Misconduct.
- 5.2 The Case Manager is neutral at this stage of the disciplinary process; their role is to provide the information obtained during the investigation to the Adjudication Panel. It is for the Adjudication Panel to determine whether there is a Prima Facie case of Misconduct. If the Panel has queries about whether the Prima Facie test has been met, they should take advice from the Panel's Legal Adviser.

6. Interim Orders

- 6.1 Rule 10.4 of the Scheme says the Interim Orders Panel shall impose an Interim Order if the criteria set out in the Regulations have been established. The Interim Order Regulations state that, when considering an Interim Order, the Interim Orders Panel shall decide, by simple majority:
- whether there is Prima Facie evidence to support the Allegation(s) against the Respondent;
 - whether an Interim Order should be imposed; and
 - if an Interim Order is to be imposed, the terms and duration of the Interim Order.
- 6.2 The term Prima Facie evidence means that, upon initial examination, there appears to be sufficient evidence.
- 6.3 The Panel shall also consider the need to protect members of the public (taking into consideration the seriousness of the alleged Misconduct), maintain public confidence in the profession and the effect of the Interim Order on the Respondent.
- 6.4 If there is a dispute about the facts of any matter, the IFoA will be required to prove, on the balance of probabilities, that those facts took place. Given the potential implications of an Interim Order, Respondents should be given an opportunity to challenge the allegations and give evidence in support of this. As Interim Orders can be applied for at any stage of the proceedings, a full investigation may not have been carried out at the time of the Interim Orders Panel hearing. In addition, Interim Orders Panel hearings are normally scheduled at short notice. Interim Orders Panels should be aware that the evidence provided to a hearing may not be comprehensive and should base their decision on the information available at the time of the hearing.
- 6.5 If the Panel has queries about whether the Prima Facie test has been met or the approach to be taken if the parties dispute the facts, they should take advice from the Panel's Legal Adviser.

7. Decisions by other bodies

- 7.1 Where a Respondent has been:
- (a) the subject of a civil judgment or determination (Rule 6.1(a));
 - (b) convicted of a criminal offence (Rule 6.1(b)); and/or

- (c) subject of an adverse final determination by an actuarial regulatory body (which is a full member of the International Actuarial Association – Rule 6.1(c));

the findings of fact made in those proceedings shall be conclusive proof of those facts. This means that the IFoA does not need to obtain any underlying evidence to prove that the facts established by the judgment, conviction or determination happened. A copy of the relevant judgment, determination or conviction is sufficient to prove what happened. The Panel should not have regard to any other evidence when considering whether the facts established by the judgment, conviction or determination are proved.

7.2 Where a Respondent has been the subject of:

- (a) an adverse final determination (Rule 6.2(a)); and/or
- (b) a judgment (Rule 6.2(b)); and/or
- (c) a disqualification order (Rule 6.2(c))

by any regulatory body (other than where Rule 6.1 applies), the findings of fact made in those proceedings shall amount to Prima Facie evidence of those facts. This means that the IFoA can rely upon a copy of any relevant determination (Rule 6.2(a)), judgment (Rule 6.2(b)), or disqualification order (Rule 6.2(c)) as evidence of the facts, however this only amounts to Prima Facie evidence. The IFoA or the Respondent can provide additional evidence which supports or undermines the alleged facts. The Panel will be required to weigh up the evidence provided by the parties to determine the facts.

Document control

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Institute and Faculty of Actuaries

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