



Institute  
and Faculty  
of Actuaries

# The Capacity for Membership Process

April 2018

## The Capacity for Membership Process Outline

The purpose of this note is to provide information about the Capacity for Membership Process. If you have any questions you should contact the Disciplinary Investigations Team or the Judicial Committees Secretary (“the secretary”).

### 1. What is the Capacity for Membership Process?

The Disciplinary and Capacity for Membership Schemes (the Scheme) provides an alternative route to deal with issues that arise in rare cases where a Member’s current capacity to hold membership is impaired and such impairment is directly relevant to the allegation or charge (IFoA). This alternative route is known as the Capacity for Membership Process.

### 2. What is the difference between the Capacity for Membership Process and the Disciplinary Process?

Some key differences are: -

- The purpose of the Capacity for Membership Process is to support Members experiencing significant issues of health, balanced against the public interest requirements of the IFoA.
- Capacity for Membership Panels do not make findings of Misconduct. Instead the Capacity for Membership Panel will make factual decisions in relation to (i) the conduct alleged against a Member and (ii) if the Respondent’s ill health is the essential cause of any established failings and continues to be a concern.
- Capacity for Membership Panels issue outcomes not sanctions. These outcomes are intended to support the decision of the Capacity for Membership Panel. They detail the support measure necessary, in the public interest, to support the Member during the period of illness in light of the established facts.
- Unlike the Disciplinary Tribunal Panel, the Capacity for Membership Panel meet in private. Decisions of the Capacity for Membership Panel are usually not published.

### 3. Who can apply to have a case transferred to the Capacity for Membership Process?

A Respondent who is facing an allegation of Misconduct, or an authorised person on his/her behalf, can make an application to have his/her case transferred to the Capacity for Membership Process at any time in the course of disciplinary proceedings, prior to a final determination being issued by the relevant disciplinary panel.

Applications can also be made by the Case Manager appointed to investigate an allegation.

An Adjudication Panel or Disciplinary Tribunal Panel can decide, even if there is no application, to transfer a matter for consideration under the Capacity for Membership Process.

If you are making an allegation about a Member of the profession and you suspect that there may be issues of ill health, then include those concerns on the allegation form or in correspondence with the Case Manager.

### 4. When can a case be transferred?

An application for a case to be heard under the Capacity for Membership Process must be made prior to a final determination being issued by the relevant disciplinary panel.

## 5. Who should the application be made to?

Depending on what stage matters are at, the application should be made to either the Case Manager or the secretary.

The application will be passed to the relevant disciplinary panel to consider in the first instance. If, for example, the case is under investigation for consideration by an Adjudication Panel, it will be passed to that panel to consider. Is it likely that most cases falling under the Capacity for Membership Process will be transferred at the adjudication stage. If however the case is at the Disciplinary Tribunal stage before the question of capacity is raised, the application will be referred to the Disciplinary Tribunal Panel.

The appropriate disciplinary panel will decide whether the case should be referred to the Capacity for Membership Panel for consideration.

## 6. What is the process for having an application for transfer considered?

The process for having a case transferred to the Capacity for Membership Panel can be found at part 9 of the Scheme.

The relevant disciplinary panel will consider whether:

- (a) On the face of it, it is more likely than not that there is evidence of Misconduct.
- (b) There is evidence that the Respondent's current capacity to hold Membership of the IFoA is materially impaired by reason of ill health and that any such impairment is relevant to the allegation or charge.
- (c) It is in the public interest that the request is granted.

These points are explained in more detail below:

### 6.1 *What if the disciplinary panel decides that there is not evidence of Misconduct?*

At that point, if the disciplinary panel does not consider that there is a case of Misconduct, all proceedings will end. If the Respondent is in need of further support from the profession he/she will be referred to the Membership team who can offer a range of support options for Members who need it.

### 6.2 *What happens if the disciplinary panel do consider there has been prima facie Misconduct and impairment?*

If the disciplinary panel consider that there is prima facie evidence of Misconduct and impairment, the application may be granted and the matter transferred to the Capacity for Membership Panel. In this situation, it is also open to an Adjudication Panel to issue an invitation to the Respondent to accept a finding of Misconduct and sanction under the disciplinary process. If accepted by the Respondent, this would result in there being a published determination (that would not contact any confidential information regarding the Respondent's health) and the matter being concluded.

Paragraph 6.4 sets out what will happen if there is evidence of Misconduct but the impairment test has not been met.

### 6.3 *What does "current capacity to hold Membership" mean?*

The disciplinary panel will consider whether there is evidence that the Respondent's illness prevents him/her from meeting their obligations as a Member of the IFoA.

This will include consideration whether the Respondent is able to comply with the Actuaries' Code and the IFoA's broader regulatory framework, which includes the Scheme.

#### **6.4 Why must there be a connection between the allegation of Misconduct and the Respondent's illness?**

In order to have a disciplinary case transferred to the Capacity for Membership Process the disciplinary panel must conclude that the Respondent's illness is connected to the allegation of Misconduct being investigated. Mechanisms already exist within the Scheme to cater for Respondents who become unwell during a disciplinary process, for example, the investigation may be delayed until the Respondent recovers his/her health.

If the Respondent suffered ill health at the time of the alleged Misconduct but has since recovered, the Respondent's illness will be considered as possible mitigation but would not be a reason to transfer the case to the Capacity for Membership Process.

If the relevant disciplinary panel is unable to establish that there is prima facie evidence that the Respondent's current capacity to hold membership is materially impaired or that such impairment is directly relevant to the allegation or charge, the matter will not be transferred to the Capacity for Membership Process. If there is prima facie evidence of Misconduct it is then open to the Adjudication Panel to issue an invitation under rule 6.6 of the Scheme. If the matter is at the Disciplinary Tribunal Panel stage a finding of Misconduct can be made under rule 8.20 of the Scheme.

For Members who are suffering from ill health but are not also subject to an allegation of Misconduct, a wide range of support is available from the Membership team.

#### **6.5 What kind of public interest considerations are relevant?**

There may be circumstances where a Member is suffering from ill health but the relevant disciplinary panel decides that it is not in the public interest to transfer the case to the Capacity for Membership Process. For example, where the allegation under investigation is so serious that it is likely to result in a Member's expulsion from the IFoA, it is unlikely that it would be considered to be in the public interest to transfer the case to the Capacity for Membership Process. In those circumstances, it is likely that the matter would remain within the disciplinary process for public interest reasons. In order to determine whether to transfer the matter to the Capacity for Membership Process the Panel will consider what type of risks to the profession and the public are at issue.

### **7. Consent Orders**

At any stage after a case has been transferred to the Capacity for Membership Panel, the Case Manager may invite the Respondent to agree a consent order that would propose a jointly acceptable outcome, subject to approval from the Capacity for Membership Panel, to bring an early resolution to the matter.

A consent order proposes an outcome such as a condition on the Members practice or a suspension of up to two years. If the Respondent agrees to the proposal, it is sent to the Capacity for Membership Panel for them to approve or reject the consent order in whole or in part. A Capacity for Membership Panel can only approve a consent order that includes conditions that are within its powers to impose. That means a consent order will never be more onerous than conditions that the Capacity for Membership Panel could impose.

If the Capacity for Membership Panel rejects the consent order the case will go to the Capacity for Membership Panel for a hearing.

### **8. What happens before the Capacity for Membership Panel Hearing?**

Once a case has been transferred to the Capacity Process a hearing will be arranged before a Capacity for Membership Panel.

Respondents will be invited to submit all of the information they consider relevant to the Capacity for Membership Panel. The Capacity for Membership Panel may also provide directions on the kind of information that would be helpful. A written report from an independent medical professional will be necessary in most cases.

#### **9. What happens at the Capacity for Membership Panel Hearing?**

The Chair of the Panel will be in charge of the process. The process for each Capacity for Membership Panel hearing is flexible and will accommodate the needs of the Respondent. The Capacity Panel will be held in private. A Legal Adviser and the IFoA secretary will be present and will be available to help and support the Respondent on the day.

The Capacity for Membership Panel will consider all the evidence and decide:

- Whether the facts of the allegations are proved.
- Whether the ill health was directly relevant to the allegation or charge.
- Whether the current capacity of the Respondent is materially impaired by reason of illness or other relevant health or medical condition.

If the facts of the allegation are not proved then the case will be dismissed and where appropriate the Member will be offered support to help manage their professional and regulatory responsibilities.

If the Panel finds that the allegations are proven and the behaviour is deemed to fall short of the standards reasonably expected of a Member but the Respondent's ill health was not materially connected to the behaviour, the Capacity for Membership Panel will decide how to deal with the case and will most likely refer it back to the disciplinary process under the Scheme.

If the Capacity for Membership Panel decide that allegations are proved and the ill health is relevant to the allegation or charge the Panel can direct one or more of the following outcomes:

- No action.
- Suspension of Membership of up to two years.
- Special conditions attached to the individual's Membership to allow the Member to continue to work; for example a temporary removal of a practising certificate; or
- Refer the case back to the disciplinary process for determination.

#### **10. What kind of illness is covered?**

The Capacity for Membership Panel's focus is to consider the impact of the Respondent's ill health on his/her ability to comply with professional and regulatory obligations, regardless of the nature of that ill health. The Capacity for Membership Process does not therefore prescribe a list of illnesses that will qualify for having the case transferred to the Capacity for Membership Process. This will depend very much on the circumstances of each case.

The Respondent will need to provide evidence of the material impact that the illness has had upon them. Written independent medical evidence will usually be required.

#### **11. Will the Respondent's medical circumstances be kept confidential?**

Capacity for Membership Panel hearings are held in private and remain confidential. Decisions of the Panel will usually not be published. However if the Panel directs that it is in the public interest that an outcome, such as temporary suspension, be public, that will be listed on the 'Find an Actuary' section of the IFoA website. Details of the Respondent medical circumstances will be kept confidential.

**12. Who can attend the hearing?**

The Respondent has a right to attend the hearing in person, or can elect to have a representative appear on his/her behalf. This can be a legal representative or for example a family member, friend or colleague. If the Respondent prefers not to or is unable to attend or be represented then the hearing can proceed in absence of the Respondent.

**13. What happens if the Respondent disagrees with the Capacity for Membership Panel's decision?**

If the Respondent is unhappy with the decision of the Capacity for Membership Panel, he/she can appeal within 28 days of receiving the decision in writing. The grounds for appeal are set out in the Scheme.

**14. Who can I speak to?**

If you have any questions then you can contact either the secretary at the IFoA or the Disciplinary Investigation Team, whose contact details are:

Judicial Committees Secretary  
Institute and Faculty of Actuaries  
Level 2, Exchange Crescent  
7 Conference Square  
Edinburgh  
EH3 8RA

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