



Institute  
and Faculty  
of Actuaries

# Disciplinary Orders

## Guidance

by the Disciplinary Committee  
of the Institute and Faculty of Actuaries

# Disciplinary Orders

## 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) explains the factors that should be taken into account when considering whether an Allegation is capable of being resolved by way of a Disciplinary Order;
  - (b) sets out the process for proposing a Disciplinary Order;
  - (c) explains the approach to preparing a proposed Disciplinary Order;

- (d) explains the approach Disciplinary Orders Panels should take when considering a proposed Disciplinary Order.

### **3. Deciding whether a Disciplinary Order is appropriate**

- 3.1 It is entirely a matter for a Case Manager to decide whether an Allegation is capable of being resolved by way of a Disciplinary Order. The Case Manager shall seek the views of the Investigation Actuary, if one has been appointed.
- 3.2 A Respondent may ask the Case Manager for their case to be dealt with by way of a Disciplinary Order. If the Case Manager does not agree, the Case Manager should give reasons for their decision.
- 3.3 In considering whether the Allegation is capable of being resolved by way of a Disciplinary Order, the Case Manager must consider the following criteria:

#### **Whether it is in the public interest for the Allegation to be dealt with by way of a Disciplinary Order.**

- 3.4 Disciplinary Orders will normally be appropriate for less serious cases of Misconduct where the Allegations are clear and simple. It will be in the public interest for these cases to be dealt with quickly and efficiently. Examples of cases that may be appropriate for a Disciplinary Order include:
  - (a) less serious criminal convictions
  - (b) communication issues
  - (c) less serious conduct issues in a Respondent's non-professional life.
- 3.5 It is not in the public interest for more serious cases to be dealt with by way of a Disciplinary Order. For example, where the allegations are complex, the alleged conduct is serious and/or the matter involves a more serious criminal conviction, it is likely to be in the public interest for such cases to be determined by an Adjudication Panel or a Disciplinary Tribunal Panel. For these more serious cases some relevant matters might only be identified by carrying out a full investigation and holding an Adjudication or Disciplinary Panel hearing will ensure that the case is assessed in a fair and transparent manner.

#### **Whether there has been an appropriate level of investigation into the Allegation to conclude that a Prima Facie case of Misconduct may exist.**

- 3.6 The purpose of Disciplinary Orders is to allow Allegations to be disposed of quickly and efficiently, bearing in mind that the Respondent is under no obligation to accept the Disciplinary Order. A full investigation into the Allegation is therefore not required before a Disciplinary Order can be proposed. Disciplinary Orders will normally be proposed in the early stages of an investigation. However it is open to the Case Manager to carry out any investigations they deem appropriate.
- 3.7 It is sufficient for the Case Manager to be satisfied that a Prima Facie case of Misconduct may exist. The Case Manager does not need to be satisfied that an Adjudication Panel would probably make a finding of Prima Facie Misconduct. However, the Case Manager should be satisfied that an Adjudication Panel may make a finding of Prima Facie Misconduct. In considering whether there may be a Prima Facie case of Misconduct, the Case Manager should consider the definition of Misconduct and may also take into account how similar cases have been dealt with under the Disciplinary Scheme.

- 3.8 It is open for the Case Manager to include in a proposed Disciplinary Order some, rather than all, of the matters included in an Allegation. For example, a Case Manager may set aside some matters if there is insufficient evidence to support some of the matters and it is unlikely that sufficient evidence could be obtained or if it is clear that a matter would not amount to Misconduct (or contribute to an overall finding of Misconduct) even if proved. If a Case Manager does not intend to proceed with some of the matters included in an Allegation, the Case Manager should set out their reasons for this.

**Whether there are any possible breaches of the FRC’s Technical Actuarial Standards (TASs), the IFoA’s Actuarial Professional Standards (APs), or any Guidance Notes related to the TASs or APs.**

- 3.9 Cases involving breaches of these standards or guidance notes that may amount to Misconduct will normally be more complex and may require expert evidence. It is more appropriate for these cases to be considered by a Panel. This will allow any actuary members on the Panel to assess the evidence and technical issues before it.

**Whether the Allegation, if proven, would likely result in an outcome within the range of outcomes set out in Rule 11.1**

- 3.10 The sanctions available for inclusion within a Disciplinary Order are those at the less severe end of the spectrum. More serious cases which attract more severe outcomes should be dealt with by a Disciplinary Tribunal Panel.
- 3.11 The Disciplinary Committee has issued Sanctions Guidance to assist Panels in determining the appropriate sanction or combination of sanctions. The Case Manager should have regard to this when considering whether the outcomes set out in Rule 11.1 are adequate to address the Allegation(s).

**Whether the Disciplinary Order will offer an appropriate level of public protection**

- 3.12 The purpose of the Disciplinary Scheme is to protect members of the public, maintain the reputation of the profession and to uphold proper standards of conduct and competence. The Case Manager should be assured that the sanction forming part of the Disciplinary Order will appropriately protect the public. The Case Manager should also be satisfied that sufficient investigation has been carried out such that it is unlikely that the case is more serious than it might initially have appeared. The Case Manager should also consider whether there is any reason to believe that concluding the matter more quickly through a Disciplinary Order might make it more likely that the Respondent might commit similar acts of Misconduct in the future; the Case Manager should take into account the nature of the Respondent’s engagement with the disciplinary process when assessing this.

## **4. Proposing a Disciplinary Order**

- 4.1 If the Case Manager considers that an Allegation could be resolved by way of a Disciplinary Order, they will write to the Respondent to ask whether they would agree, in principle, to this. The Case Manager should set out why they think the case is suitable for a Disciplinary Order to allow the Respondent to make an informed decision.
- 4.2 The Respondent must respond to the Case Manager’s proposal within 14 days. If the Respondent requires additional time to consider the proposal, they should request an extension and provide reasons for this.

- 4.3 The Respondent should normally only be offered the option of resolving the Allegation through a Disciplinary Order on one occasion. In some circumstances the possibility of a Disciplinary Order may be revisited at a later stage in a case.

## **5. Preparing and agreeing a Disciplinary Order**

- 5.1 The process for preparing and agreeing or rejecting a Disciplinary Order is set out in the Disciplinary Order Regulations.
- 5.2 When preparing a proposed Disciplinary Order, the Case Manager is required to set out the proposed outcome. In considering the appropriate outcome to propose, the Case Manager should follow the approach taken by Panels in determining sanctions, as set out in the Sanctions Guidance. The Case Manager may also have regard to previous determinations of Panels.
- 5.3 The proposed costs to be included in a proposed Disciplinary Order is £300. This fixed sum is a contribution to the IFoA's costs in investigating and determining an Allegation and should be applied to all Disciplinary Orders.
- 5.4 The proposed publication arrangements to be included in a proposed Disciplinary Order should be in accordance with the Publication Guidance.
- 5.5 A Respondent may agree to resolve the case by way of a Disciplinary Order but at the same time provide comments on the factual matters set out in the proposed Disciplinary Order. When finalising the proposed Disciplinary Order to be served on the Respondent the Case Manager should consider these comments, but any decision to revise the proposed Disciplinary Order is solely at the discretion of the Case Manager. The Case Manager should only revise the proposed Disciplinary Order if satisfied that it will result in a more accurate or clearer account of those factual matters.

## **6. Approval, variation or rejection of a proposed Disciplinary Order**

- 6.1 The process for a Disciplinary Orders Panel to consider a proposed Disciplinary Order is set out in the Disciplinary Order Regulations.
- 6.2 By signing a proposed Disciplinary Order, the Respondent accepts that the matters set out in the proposed Disciplinary Order are true. The Disciplinary Orders Panel should treat the proposed Disciplinary Order as an admission of Misconduct.
- 6.3 Although a Disciplinary Orders Panel can suspend its consideration of a proposed Disciplinary Order in order to request further relevant information, this is only expected to happen in exceptional circumstances. As detailed above, a full investigation into the Allegation is not required before a Disciplinary Order can be proposed. The Disciplinary Orders Panel will therefore not normally be presented with the same amount of investigation material as an Adjudication Panel or Disciplinary Tribunal Panel might receive. The Disciplinary Orders Panel should, though, be satisfied that sufficient investigation has been carried out.
- 6.4 When considering a proposed Disciplinary Order, the Disciplinary Orders Panel should have regard to the importance of concluding cases fairly and expeditiously.
- 6.5 A Disciplinary Orders Panel should approve a proposed Disciplinary Order where:
- (a) it is in the public interest to do so; and
  - (b) the criteria set out in the Disciplinary Order Regulations have been met.

- 6.6 In making this assessment the Disciplinary Orders Panel should consider section 3 of this Guidance.
- 6.7 A Disciplinary Orders Panel may decide to vary a proposed Disciplinary Order, for example:
- (a) where they consider that the outcome included in the proposed Disciplinary Order is not adequate, or is too severe, having regard to the Sanctions Guidance; or
  - (b) to make a material improvement to the wording of the Disciplinary Order.
- 6.8 A Disciplinary Orders Panel may decide to reject a proposed Disciplinary Order, for example:
- (a) where the Panel considers that facts included in the proposed Disciplinary Order amount to a level of Misconduct that is materially more serious than the Misconduct finding stated in the proposed Disciplinary Order, potentially warranting a more severe outcome.
  - (b) where the Panel considers that Allegations which do not form part of the proposed Disciplinary Order would amount to Misconduct if proven (and which might be capable of being proven).
  - (c) where the Panel considers that the conduct disclosed by the facts falls materially short of Misconduct.

## Document control

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# Institute and Faculty of Actuaries

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