



Institute
and Faculty
of Actuaries

Writing Determinations

Guidance policy

by the Disciplinary Committee of
the Institute and Faculty of Actuaries

November 2021

GUIDANCE ON WRITING DETERMINATIONS

The Disciplinary Committee oversees the operation and management of the Institute and Faculty of Actuaries (IFoA) [Disciplinary and Capacity for Membership Schemes](#) (“the Scheme”).

Purpose of this Guidance Note:

- To provide guidance to all Panels including Adjudication Panels, Interim Orders Panels, Disciplinary Tribunal Panels and Appeal Tribunal Panels (a “Panel” or collectively, “Panels”) in writing Determinations in cases where there is an allegation of Misconduct as defined in as defined in Rule 4.2 of the Scheme.
- To assist Panels to know from the outset the approach likely to be taken when providing reasons for any decisions made.
- This guidance does not amount to a prescriptive set of rules.

General Principles

The following general principles should be applied when a Panel considers writing its Determinations:

- (a) The responsibility for the content of Determinations lies solely with the decision making Panel. The Chair shall evidence this by his/her signature on behalf of the Panel.
- (b) The Legal Adviser to the Panel is not part of the decision making Panel and is there to assist the Panel with legal clarifications.
- (c) It is the role of the Panel to provide clear, reasoned decisions so that any reader (such as parties to the case or members of the public or profession) may understand why each finding of fact and each sanction applied has been decided. Plain English should be used at all times, where possible. Panels should provide clear reasoning for any decision made in respect of costs (where applicable).
- (d) Panels should also bear in mind that the thinking behind each decision may be subject to scrutiny by a subsequent decision maker and clear reasons should also therefore be provided for any decision made with this in mind.
- (e) Panels should provide clear reasoning for any specific order in relation to publication of the Determination.

Drafting of Determinations

The Panel is responsible for the drafting of the Determination and this should not be done by anyone outside of the Panel. At the start of the drafting process, the Chair should discuss within the Panel who should complete the first draft of the Determination. In making that decision the Panel should be guided by the expertise of each of the Panel members.

In drafting the Determination it is good practice that the facts and allegations are kept separate. The Determination should, in as far as possible, follow a consistent format by considering:

- (a) whether or not the facts are proved; and then
- (b) whether or not prima facie evidence of Misconduct (at Adjudication stage) or a finding of Misconduct (for Disciplinary Tribunal stage) has been established.

Where there has been a finding or *prima facie* finding of Misconduct, reasons must be provided.

A helpful example for the format of addressing allegations in a Determination is as follows:

- What happened?
- What rules were broken?
- Why is it wrong (what is the mischief)?

This format is not prescriptive and in every case Panels must satisfy themselves as to what is appropriate in each case.

There is separate guidance on anonymity, costs and publication and Panels should refer to the relevant guidance in force at the time of making any decision.

Scheme Rules

Adjudication Panel

Rule 6.9 of the Scheme states that when making a Determination under Rule 6.4 or issuing an invitation under Rule 6.6, “...*the Adjudication Panel shall provide to the Respondent and the Institute and Faculty of Actuaries a statement of its reasons.*”

Disciplinary Tribunal Panel

Rule 8.25 of the Scheme states that, “...*The Disciplinary Tribunal Panel’s reasons shall be served upon the Respondent when the determination is served or as soon as reasonably practicable thereafter.*”

Practicalities

The final report is sent by the Clerk to the Panel to the interested parties as set out with Rules 5.39, 6.9, 8.25-26 and 11.20 of the Scheme.

The Judicial Committees Secretary shall assume responsibility for the publication of the determination as so prescribed by the Panel.