

## Faculty of Actuaries

### DISCIPLINARY SCHEME OF THE FACULTY OF ACTUARIES

#### SCHEDULE

#### DISCIPLINARY SCHEME REFERRED TO IN RULE 35 *Effective 13 September 2007*

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## 1. INTRODUCTION AND SCOPE

### ***Interpretation***

- 1.1 In the interpretation and operation of this Scheme regard shall be had to the principles of natural justice and fairness and applicable articles of the European convention on Human Rights.
- 1.2 In this Scheme
- (a) the words defined in the Appendix to this Scheme shall have the meanings ascribed to them therein;
  - (b) words defined in the Rules and Bye-laws shall have the same meaning in this Scheme.
- 1.3 The Interpretation Act 1978 shall apply to this Scheme.

### ***Burden and Standard of Proof***

- 1.4 In all proceedings before a Disciplinary Tribunal Panel or an Appeal Tribunal Panel under this Scheme, the Faculty shall bear the burden of proving to the civil standard as applied by the Courts of England and Wales in relation to disciplinary proceedings cases that the Respondent is guilty of Misconduct.

### ***Misconduct***

- 1.5 A Member shall be liable to disciplinary action under this Scheme if he has been guilty of Misconduct.
- 1.6 For the purposes of this Scheme, Misconduct means:
- (a) any breach of the Rules and Bye-laws of the Faculty; and/or
  - (b) any conduct,

by a Member, whether committed in the United Kingdom or elsewhere, in the course of carrying out professional duties or otherwise constituting failure by that Member to comply with the standards of behaviour, integrity, competence or professional judgement which other Members or the public might reasonably expect of a Member having regard to any advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Faculty and/or, for so long as there is a relevant Memorandum of Understanding in force, by the Board for Actuarial Standards and to all other relevant circumstances.”

- 1.7 It shall amount to *prima facie* evidence of Misconduct that the Respondent has before a court of competent jurisdiction in the United Kingdom or elsewhere pleaded guilty to, or been found guilty of, an indictable offence or has in any civil proceedings been found to have acted fraudulently or dishonestly, or has failed to comply with an undertaking given pursuant to Rules 2E and 4B.
- 1.8 Misconduct may include any conduct which occurred either before or after the Respondent became a Member save that conduct which was disclosed in writing to the Faculty by the Respondent prior to being admitted as a Member shall not be Misconduct for the purposes of this Scheme.
- 1.9 References to the Respondent shall include a former Member who has resigned or has ceased to be a Member for any reason since the time of the conduct in respect of which an allegation is made. Any such former Member shall remain bound to supply such information and explanations as may be required by an Investigating Actuary, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel regarding his conduct and shall remain bound by any determinations of a Disciplinary Tribunal Panel or an Appeal Tribunal Panel or any determination of an Adjudication Panel which is the subject of an agreement under rule 4.8 in respect of any Misconduct committed notwithstanding that his Membership has ceased.
- 1.10 A Member may be liable for Misconduct when that Member:
- (a) fails to comply with his obligations under rule 3.11;
  - (b) hinders or frustrates the Investigating Actuary in his functions; or
  - (c) fails to pay any fine or award of costs under this Scheme within the period set by or agreed with the appropriate tribunal or panel.
- 1.11 A Member may be liable for Misconduct:
- (a) where a person with whom he is connected is guilty of conduct which if committed by the Member would have amounted to Misconduct and either:
    - (i) any act, omission or behaviour by the Member has caused or contributed to such conduct; or
    - (ii) following his becoming aware of any such conduct, the Member does not take such action as other Members might reasonably expect him to take in the circumstances; or
  - (b) notwithstanding that other proceedings may be taken against the Member or any firm of which he is a partner, any body corporate of which he is a director, employee or controller (within the meaning of section 422 of the Financial Services and Markets Act 2000 or any amendment or re-enactment thereof), or any person employed by him or by any such firm or body corporate.

1.12 For the purposes of rule 1.11 and without limitation, a Member shall be deemed to be connected with:

- (a) his employer or employee;
- (b) any director or employee of a body corporate of which he is a director or employee; and
- (c) any member or employee of a partnership of which he is a member or employee.

## **1A. THE ACCOUNTANCY AND ACTUARIAL DISCIPLINARY BOARD (the AADB)**

### ***Liability for disciplinary proceedings under the AADB Scheme***

1A.1 All Members shall be liable to disciplinary proceedings under the AADB Scheme on the grounds set out in that Scheme, irrespective of whether the act of misconduct upon which such proceedings are based took place before or after the date of adoption of the AADB Scheme by the AADB and the date of acceptance or approval of that Scheme in writing by the Council of the Faculty.

### ***Duty to co-operate***

1A.2 The Respondent and any Member (not being a Respondent) shall ensure his or her full and prompt co-operation with the AADB and/or its representatives in connection with any investigation under the AADB Scheme, and in particular (but without limitation) provide the AADB with all information and copies of documents relevant to the investigation which are in the Member's control.

### ***Call-in by the AADB***

1A.3 If, before the making of any determination under rule 4.2, or as the case may be the exercise by the Respondent of the right of election under rule 3.17, the Faculty receives notice in writing from the AADB that the AADB is considering whether a Complaint currently being dealt with under this Scheme should be investigated under the AADB Scheme, then:

- (a) any action in relation to that Complaint under this Scheme shall immediately be suspended; and
- (d) the Respondent, the Complainant, the Investigating Actuary, the Disciplinary Board and, if appropriate, the Adjudication Panel shall be informed that investigation of the Complaint is suspended pending the determination of the AADB.

1A.4 Where the AADB determines that the Complaint should be investigated under the AADB Scheme:

- (a) no further investigation shall be undertaken, and no determination shall be made, under this Scheme; and

- (e) the Respondent, the Complainant, the Investigating Actuary, the Disciplinary Board and, if appropriate, the Adjudication Panel shall be informed that the Complaint will be investigated by the AADB.

1A.5 Where the AADB determines that the Complaint should not be investigated under the AADB Scheme:

- (a) any action in relation to that Complaint under this Scheme may be recommenced; and
- (b) the Respondent, the Complainant, the Investigating Actuary, the Disciplinary Board and, if appropriate, the Adjudication Panel shall be informed that investigation of the Complaint under this Scheme has resumed.

### ***Enforcement of AADB Sanctions and Findings***

1A.6 Subject to rule 1A.7, any finding made or sanction imposed under the AADB Scheme shall be put into effect, for the purposes of enforcement only, as if it were made or imposed under this Scheme.

1A.7 Rule 1A.6 only has effect in relation to a finding or sanction against which there is no possibility of appeal within the AADB Scheme, either because all routes of appeal have been exhausted or because no notice of appeal against the finding made or sanction imposed has been received by the AADB within the time limit set out under the AADB Scheme.

### ***Enforcement of Costs awarded by the AADB***

1A.8 Where costs are awarded against a Member in accordance with the AADB Scheme, that Member shall pay the costs so ordered in accordance with the AADB Scheme.

## **2. APPOINTMENTS**

### ***Disciplinary Appointments Committee***

2.1 The Disciplinary Appointments Committee shall consist of:

- (a) two Fellows appointed by the Council;
- (b) two Fellows of the Institute appointed by the Council of the Institute;
- (c) a Lay member being a Queen's Counsel appointed alternately by the Dean for the time being of the Faculty of Advocates and by the Chairman for the time being of the General Council of the Bar,

all holding office for a term of three years, such term being renewable.

2.2 The Chairman of the Disciplinary Appointments Committee shall be the Lay member appointed under rule 2.1(c).

- 2.3 Any meeting of the Disciplinary Appointments Committee shall be quorate only if there shall be three or more members present, of whom one is a Lay member. In the absence of a quorum at the date set for any meeting or hearing of the Disciplinary Appointments Committee, such meeting or hearing shall stand adjourned to a place and time to be determined by the Chairman of the Disciplinary Appointments Committee.
- 2.4 The Disciplinary Appointments Committee may convene in person or through appropriate telephone conferencing or other similar facilities, or both, and the quorum provisions of rule 2.3 shall apply taking into account those present through the telephone.
- 2.5 Decisions of the Disciplinary Appointments Committee shall be made by simple majority.

### ***Disciplinary Pool***

- 2.6 The Disciplinary Appointments Committee shall appoint members of a Disciplinary Pool from which members of:
  - (a) Disciplinary Tribunal Panels;
  - (b) Interim Orders Panels; and
  - (c) Adjudication Panels,may be selected under the provisions of this Scheme.
- 2.7 Members of the Disciplinary Pool shall consist of Fellows, Fellows of the Institute and Lay members.
- 2.8 In appointing members to the Disciplinary Pool, the Disciplinary Appointments Committee shall have regard to the numbers of members of the panels likely to be required from time to time for the purpose of the proper functioning of this Scheme.
- 2.9 The Disciplinary Appointments Committee shall nominate from the Disciplinary Pool:
  - (a) a Convener and Deputy Convener of the Disciplinary Tribunal Panels;
  - (b) a Convener and Deputy Convener of the Interim Orders Panels; and
  - (c) a Convener and Deputy Convener of the Adjudication Panels,save that no person can occupy more than one position under this rule.
- 2.10 The appointments under rule 2.6 and nominations under rule 2.9 shall be for a term of three years, such term being renewable.

### ***Pool of Investigating Actuaries***

- 2.11 The Disciplinary Appointments Committee shall appoint a Pool of Investigating Actuaries who shall consist of Fellows and Fellows of the Institute, each holding office for a term of three years, such term being renewable.
- 2.12 The Disciplinary Appointments Committee shall nominate two of the Pool of Investigating Actuaries to be the Chairman and Deputy Chairman of the Pool of Investigating Actuaries respectively each holding office for a term of three years, such term being renewable.
- 2.13 In appointing members to the Pool of Investigating Actuaries, the Disciplinary Appointments Committee shall have regard to the numbers of Investigating Actuaries likely to be required for the purposes of the proper functioning of this Scheme.
- 2.14 At the request of the Chairman of the Pool of Investigating Actuaries the member of the Disciplinary Appointments Committee so designated by the Disciplinary Appointments Committee for this purpose for the time being may appoint to the Pool of Investigating Actuaries a Fellow or Fellow of the Institute as an Investigating Actuary for the purpose of the investigation of a specified Complaint.

### ***Independent Examiner***

- 2.15 The Disciplinary Appointments Committee shall appoint an Independent Examiner who shall be a Lay member.
- 2.16 The Independent Examiner shall be appointed for a term of three years, such term being renewable.
- 2.17 Should the Independent Examiner appointed under rule 2.15 be unavailable for any reason to fulfil his functions under Part 5 of these rules, the Disciplinary Appointments Committee may appoint a further Independent Examiner under rule 2.15 in relation to that referral until such further Independent Examiner has completed his report on the referral or for as long as the Disciplinary Appointments Committee shall deem appropriate.

### ***Interim Orders Panels***

- 2.18 Each Interim Orders Panel shall be appointed and a Chairman nominated from the members of the Disciplinary Pool, with the approval of the Convener of the Interim Orders Panels, in accordance with regulations to be made by the Disciplinary Board, for the purpose of hearing a particular referral made under the provisions of rule 3.21.
- 2.19 Each Interim Orders Panel shall consist of:
  - (a) two persons being Fellows or Fellows of the Institute, at least one of whom shall be a Fellow; and
  - (b) one Lay member.



### ***Adjudication Panels***

- 2.20 Each Adjudication Panel shall consist of three or more members, at least one of whom shall be a Lay member, appointed from the members of the Disciplinary Pool, with the approval of the Convener of the Adjudication Panels, in accordance with regulations to be made by the Disciplinary Board.
- 2.21 One of the members appointed to each panel under rule 2.20 shall be nominated, with the approval of the Convener of the Adjudication Panels, in accordance with regulations to be made by the Disciplinary Board, as Chairman of the panel.
- 2.22 An Adjudication Panel may consider one or more Case Reports submitted under the provisions of rule 3.18.
- 2.23 Members of an Adjudication Panel who have commenced the consideration of a Case Report shall remain constituted as the Adjudication Panel for the purpose of that Case Report until the conclusion of its determinations under Part 4 of this Scheme, subject to the provisions of rule 5.7.

### ***Disciplinary Tribunal Panels***

- 2.24 Each Disciplinary Tribunal Panel shall be appointed and a Chairman nominated from the members of the Disciplinary Pool, with the approval of the Convener of the Disciplinary Tribunal Panels, in accordance with regulations to be made by the Disciplinary Board.
- 2.25 Each Disciplinary Tribunal Panel shall consist of three or more persons, at least one of whom shall be a Fellow; and at least one shall be a Lay member.

### ***Appeals Tribunal***

- 2.26 The Appeals Tribunal shall consist of 14 members appointed in accordance with the following provisions:
  - (a) a Queen's Counsel appointed by the Dean for the time being of the Faculty of Advocates;
  - (b) a Queen's Counsel appointed by the Chairman for the time being of the General Council of the Bar;
  - (c) two Fellows appointed by the Disciplinary Appointments Committee;
  - (d) two Fellows of the Institute appointed by the Disciplinary Appointments Committee;
  - (e) two solicitors appointed by the President for the time being of the Law Society of Scotland;
  - (f) two solicitors appointed by the President for the time being of the Law Society of England and Wales;
  - (g) two accountants appointed by the President for the time being of the Institute of Chartered Accountants of Scotland;

- (h) two accountants appointed by the President for the time being of the Institute of Chartered Accountants in England and Wales,

all holding office for a term of three years, such term being renewable.

- 2.27 The Chairman and the Deputy Chairman of the Appeals Tribunal shall be the Queen's Counsel appointed in accordance with the provisions of rule 2.26 each position being held for a term of three years, such term being renewable. The position of Chairman and Deputy Chairman shall be nominated alternately by the Dean for the time being of the Faculty of Advocates and by the Chairman for the time being of the General Council of the Bar.
- 2.28 When an appeal is referred to the Appeals Tribunal, the Chairman of the Appeals Tribunal shall appoint an Appeal Tribunal Panel for the purposes of hearing an appeal, comprising:
  - (a) himself or the Deputy Chairman of the Appeals Tribunal who shall be the Chairman of the Appeal Tribunal Panel; and
  - (b) two or four other members of the Appeals Tribunal at his discretion to include at least one Fellow and one solicitor or accountant.

### ***Disciplinary Board***

- 2.29 The Disciplinary Appointments Committee shall appoint the members of a Disciplinary Board to consist of:
  - (a) three Fellows;
  - (b) three Fellows of the Institute; and
  - (c) three Lay members,each appointed for a term of three years, such term being renewable.
- 2.30 The Disciplinary Appointments Committee shall nominate one of the Lay members appointed under rule 2.29(c) to be the Chairman of the Disciplinary Board.
- 2.31 Any meeting of the Disciplinary Board shall be quorate only if there shall be three or more members present, of whom one is a Lay member. In the absence of a quorum at the date set for any meeting or hearing of the Disciplinary Board, such meeting or hearing shall stand adjourned to a place and time to be determined by the Chairman of the Disciplinary Board.

2.32 The Disciplinary Board may convene in person or through appropriate telephone conferencing or other similar facilities, or both, and the quorum provisions of rule 2.31 shall apply taking into account those present through the telephone.

2.33 Decisions of the Disciplinary Board shall be made by simple majority.

### ***Legal Advisers Pool***

2.34 The Disciplinary Appointments Committee shall from time to time nominate a pool of barristers, advocates and solicitors (each being called or admitted in Scotland or in England and Wales as the case may be for a period of ten years or more) who may advise an Adjudication Panel, an Interim Orders Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel as provided for under this Scheme.

### ***General***

2.35 No appointment shall be made under Part 2 of this Scheme of:

- (a) a member of the Council or of the Council of the Institute;
- (b) a person currently or previously appointed under Part 2 of this Scheme in respect of the same Complaint, Case Report or Charge or the subject matter thereof; or
- (c) a member and/or director of the Financial Reporting Council or any of its operating bodies or any person carrying out functions under the AADB Scheme.

2.36 Any person who has been appointed under Part 2 of this Scheme who becomes a member of the Council or of the Council of the Institute shall be deemed to have resigned from his appointment under Part 2 of this Scheme with immediate effect.

2.37 No person who is a member of the Disciplinary Appointments Committee may be appointed to any other body or position held under Part 2 of this Scheme. Any person being appointed to the Disciplinary Appointments Committee shall be deemed to have resigned with immediate effect from any other body or position held under the provisions of this Scheme.

2.38 No person who is a member of the Disciplinary Board may be appointed to any other body or position held under Part 2 of this Scheme. Any person being appointed to the Disciplinary Board shall be deemed to have resigned with immediate effect from any other position or body held under the provisions of this Scheme.

2.39 In the event of the resignation, incapacity or death of any person appointed under Part 2 of this Scheme, a replacement may be appointed in the same manner as the person who is being replaced.

- 2.40 No Member who has been found guilty of Misconduct shall be appointed to any body referred to in Part 2 of this Scheme. Any person appointed to such a body who is found guilty of Misconduct shall be deemed to have resigned immediately from his appointment to the relevant body referred to in Part 2 of this Scheme.
- 2.41 For the avoidance of doubt, a Member has been found guilty of Misconduct who has agreed to an imposition of a sanction by an Adjudication Panel.
- 2.42 Any Member shall be suspended from any appointment to any body referred to in Part 2 of this Scheme if he has before a court of competent jurisdiction in the United Kingdom or elsewhere pleaded guilty to, or been found guilty of, an indictable offence or has in any civil proceedings been found to have acted fraudulently or dishonestly, or has failed to comply with an undertaking given pursuant to Rules 2E and 4B or is the subject of a Complaint under this Scheme until either:
- (a) a determination by an Adjudication Panel under rule 4.2(a) that no disciplinary action shall be taken against the Respondent; or
  - (b) a finding that he is not guilty of Misconduct by either a Disciplinary Tribunal Panel under rule 6.22 or an Appeal Tribunal Panel under rule 7.15.
- 2.43 If, by reason of illness or absence or for any other reason, any person appointed to any body referred to in Part 2 of this Scheme is unable to serve at any time, another person shall be nominated to act in that member's place in accordance with regulations to be made by the Disciplinary Board.
- 2.44 Any meeting of an Adjudication Panel (subject to rule 2.45) or any meeting or hearing of an Interim Orders Panel or Disciplinary Tribunal Panel shall be quorate only if there shall be three or more members present, of whom one is a Lay member. In the absence of a quorum at the date set for any meeting or hearing of the relevant panel, such hearing shall stand adjourned to a place and time to be determined by the chairman of the relevant panel.
- 2.45 An Adjudication Panel may convene in person or through appropriate telephone conferencing or other similar facilities, or both, and the quorum provisions of rule 2.44 shall apply taking into account those present through the telephone.
- 2.46 Any Interim Orders Panel, Adjudication Panel, Disciplinary Tribunal Panel or Appeal Tribunal Panel shall have the power to elect a temporary chairman on the day if a designated chairman is unable to perform that function.
- 2.47 The proceedings of any investigation under Part 3 of this Scheme, or before any Adjudication Panel, Interim Orders Panel, Disciplinary Tribunal Panel or Appeal Tribunal Panel or of the Independent Examiner shall be valid notwithstanding any invalidity in the appointment of any member thereof.

- 2.48 Any person appointed under this Part may continue to act in that capacity in relation to any relevant Complaint, Case Report or Charge as the case may be notwithstanding that his term of office has otherwise expired.

### 3. INVESTIGATION STAGE

#### ***Complaints and Appointment of an Investigating Actuary***

- 3.1 Subject to rule 3.1A, every Complaint received by the Faculty shall be referred to the Chairman of the Pool of Investigating Actuaries.
- 3.1A Where a Complaint is received by the Faculty that relates to matters that are the subject of an investigation under the AADB Scheme no action shall be taken by the Faculty in relation to that Complaint under this Scheme.
- 3.2 The Chairman of the Pool of Investigating Actuaries shall, subject to rules 3.2A and 3.2B, assign the Complaint to one or more Investigating Actuaries.
- 3.2A Where the Chairman of the Pool of Investigating Actuaries considers that the Complaint should be referred for consideration under the AADB Scheme he shall refer the Complaint to the AADB to determine whether or not to accept the referral.
- 3.2B Where the AADB decides to accept a referral under rule 3.2A the Chairman of the Pool of Investigating Actuaries shall:
- (a) take no further action under this Scheme in relation to the Complaint; and
  - (b) inform the Respondent, the Complainant, and the Disciplinary Board that the Complaint will be investigated by the AADB.
- 3.2C Where the AADB declines to accept a referral made under rule 3.2A, the Chairman of the Pool of Investigating Actuaries shall proceed under rule 3.2 of the Scheme with the investigation of the Complaint.
- 3.3 As soon as reasonably practicable upon an assignment under rule 3.2, the Case Officer shall send to the Respondent:
- (a) a copy of the Complaint;
  - (b) a copy of this Scheme;
  - (c) the name of the Investigating Actuary; and
  - (d) the name and contact details of the Case Officer.

- 3.4 In making an assignment under rule 3.2, or at any time thereafter, the Chairman of the Pool of Investigating Actuaries may assign the Complaint to more than one member of the Pool of Investigating Actuaries. In such a circumstance:
- (a) the members of the Pool of Investigating Actuaries to whom the Complaint has been assigned shall together be the Investigating Actuary and references in this Scheme shall be construed accordingly;
  - (b) the Chairman of the Pool of Investigating Actuaries shall nominate one of the Investigating Actuaries to whom the Complaint is assigned as Lead Investigating Actuary; and
  - (c) the decisions of the Investigating Actuary shall be by simple majority of those Investigating Actuaries to whom the matter is assigned, save in the absence of a simple majority the Lead Investigating Actuary shall have the casting vote.
- 3.5 The Chairman of the Pool of Investigating Actuaries may at any time replace any member serving as an Investigating Actuary with another member of the Pool of Investigating Actuaries or change the nomination of who shall be Lead Investigating Actuary.

### ***Investigations***

- 3.6 The Complaint shall form the basis of the investigation by the Investigating Actuary into the alleged Misconduct.
- 3.7 The Investigating Actuary may:
- (a) appoint a Member, a solicitor or other person or persons to carry out enquiries on his behalf; and/or
  - (b) instruct a barrister, advocate or solicitor to assist in the preparation of the Case Report and/or Charge and to present the Charge to the Disciplinary Tribunal Panel and to the Appeal Tribunal Panel.
- 3.8 The Investigating Actuary may take into account any additional conduct of the Respondent which might constitute Misconduct which shall come to his notice while the Complaint is being investigated and may conduct his investigation in conjunction with the investigation of another Complaint being undertaken by him or another Investigating Actuary.
- 3.9 The Investigating Actuary may seek and receive from the Complainant and/or any other person such information as he thinks proper.

- 3.10 The Investigating Actuary may interview any Member, the Complainant, the Respondent and/or any other individual. Neither the Respondent nor his representatives shall be present during any interview or meeting arranged by the Investigating Actuary with any other person unless in his discretion the Investigating Actuary consents thereto.
- 3.11 The Investigating Actuary shall have the power:
- (a) to require copies or originals of any documents relevant to the investigation from any Member (whether or not such Member is the subject of the investigation);
  - (b) to require any further information from any Member relating to the subject matter of the investigation;
  - (c) to require any Member (whether or not such Member is the subject of the investigation) to attend before him and/or the Case Officer (and/or such other persons as the Investigating Actuary may designate) at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation; and
  - (d) to take any legal or other expert advice as to any matter relevant to the subject matter of the investigation.
- 3.12 Nothing in rule 3.11 shall mean that the Respondent or another Member shall be required to produce any document or information which is the subject of legal professional privilege or which might tend to incriminate him or expose him to criminal penalties.
- 3.12A Where, at any stage during the course of an investigation, it appears to the Investigating Actuary that it is appropriate that a Complaint is referred for consideration under the AADB Scheme, the Investigating Actuary shall immediately refer the Complaint to the Chairman of the Pool of Investigating Actuaries.
- 3.12B Upon receipt of a referral under rule 3.12A, where the Chairman of the Pool of Investigating Actuaries considers that the Complaint should be referred for consideration under the AADB Scheme, he shall:
- (a) forthwith suspend any further investigation of the Complaint under this Scheme; and
  - (b) proceed in accordance with rules 3.2A and 3.2B.

- 3.12C Where the AADB declines to accept a referral under rule 3.12B, the Chairman of the Pool of Investigating Actuaries shall, in accordance with rule 3.2, assign the Complaint to an Investigating Actuary to recommence investigation under this Scheme. Any assignment under this rule may be to the Investigating Actuary who acted under rule 3.12A, or to an Investigating Actuary newly appointed under rule 3.5.

### ***Content of a Case Report***

- 3.13 The Case Report shall contain a statement of all the relevant facts that the Investigating Actuary regards as material to whether or not there has been Misconduct.
- 3.14 The Case Report shall contain, but is not limited to, a report on the Complaint assigned to the Investigating Actuary under rule 3.2. The Case Report may contain references to matters which may amount to Misconduct outside the scope of the Complaint, if that alleged Misconduct:
- (a) has come to the attention of the Investigating Actuary in the course of his investigation; and
  - (b) is not or has not been the subject of a Complaint being investigated separately by an Investigating Actuary and/or a separate Charge.
- 3.15 The Case Report shall be signed by the Investigating Actuary or the Lead Investigating Actuary as the case may be.
- 3.16 Upon the Case Report being signed under rule 3.15, the Case Report shall be sent to the Respondent by the Investigating Actuary.

### ***Completion of an investigation***

- 3.17 The Respondent may, within 14 days of receipt of the Case Report sent under rule 3.16, by written notice to the Investigating Actuary elect to proceed directly to a Disciplinary Tribunal Panel. If so, Part 4 of this Scheme, save for rules 4.13, 4.14 and 4.15, shall not apply.
- 3.18 Subject to the right of the Respondent to elect to proceed directly to a Disciplinary Tribunal Panel under rule 3.17, the Investigating Actuary shall submit the Case Report to an Adjudication Panel as soon as reasonably practicable after the Case Report has been sent to the Respondent under rule 3.16.

### ***Interim Orders***

- 3.19 An Interim Order is an order made by an Interim Orders Panel to suspend:
- (a) the Respondent from Membership of the Faculty; or
  - (b) any Certificate of the Respondent.



- 3.20 An Interim Order shall cease to have effect:
- (a) after six months, or such shorter period as may be specified in the order;
  - (b) on a determination of the Adjudication Panel under rule 4.2(a);
  - (c) on the acceptance by the Respondent of an invitation issued by the Adjudication Panel under rule 4.4;
  - (d) on a determination of the Disciplinary Tribunal Panel; or
  - (e) on a determination of the Interim Orders Panel or the Chairman thereof under rule 3.30,

whichever shall be the sooner, unless the order is renewed by a further hearing of an Interim Orders Panel.

3.21 Where there is alleged Misconduct the Investigating Actuary may at any time up to a hearing by the Disciplinary Tribunal Panel submit to an Interim Orders Panel an application for an Interim Order together with the Complaint and/or a Case Report and/or any relevant material in support of the application.

3.22 The Respondent shall forthwith be served with written notice of:

- (a) any application to the Interim Orders Panel under rule 3.21, including a copy of the Complaint and any relevant material; and
- (b) the hearing of the Interim Orders Panel under rule 3.23.

3.23 On an application under rule 3.21 or at a further hearing under rule 3.28, the Interim Orders Panel shall convene a hearing and shall, subject to rules 3.26 and 3.27, determine (by simple majority) whether to make an Interim Order.

3.24 The Interim Orders Panel, before deciding whether to make an Interim Order under rule 3.23, shall give the Respondent a reasonable opportunity to make representations to the Interim Orders Panel in writing or, at the option of the Respondent, orally, as to:

- (a) whether the Interim Orders Panel shall make an Interim Order; and/or
- (b) the duration of any Interim Order.

3.25 In the event of an oral hearing under rule 3.24 the Respondent may attend and make such representations as are provided for in rule 3.24.

3.26 The Interim Orders Panel shall not make an Interim Order under rule 3.23 unless it is satisfied that:

- (a) such measure is warranted by the seriousness of the alleged Misconduct; and
- (b) there is sufficient *prima facie* evidence before it to support such allegations.

- 3.27 If the Interim Orders Panel is satisfied that the conditions in rule 3.26 are fulfilled, it shall then have regard to the following considerations in deciding whether to make an Interim Order under rule 3.23 and, if so, the appropriate period to specify under rule 3.20(a):
- (a) the effect on the Respondent; and
  - (b) the protection of the public, including the likelihood of further alleged Misconduct occurring.
- 3.28 The Interim Orders Panel may have a further hearing in accordance with the provisions of this Part 3 to consider the renewal of an Interim Order when the term of an Interim Order would otherwise expire.
- 3.29 The Respondent may by notice under rule 7.2 appeal to the Appeals Tribunal within 14 days of the making of an Interim Order. Such an appeal shall not affect the continued operation of the Interim Order.
- 3.30 The Investigating Actuary or the Respondent may at any time make an application to the Chairman of the Interim Orders Panel for the rescission or variation of an Interim Order on the basis that the circumstances upon which the order was made have changed to a material degree.
- 3.31 Written notice of the making, rescission or variation of an Interim Order shall be served forthwith upon the Parties and upon the Faculty.
- 3.32 The Interim Orders Panel may be advised by a barrister, advocate or solicitor chosen from the Legal Advisers Pool.
- 3.33 Subject to rule 3.34 hearings of the Interim Orders Panel shall be in private.
- 3.34 Hearings of the Interim Orders Panel shall be held in public whenever the Respondent so requests. In the event of a public hearing the Interim Orders Panel may, acting of its own motion or upon the application of any Party, hold all or part of the hearing in private if there is good reason to do so.

#### 4. **ADJUDICATION PANELS**

##### ***General***

- 4.1 The Adjudication Panel shall meet in private.
- 4.1A Before making any determination under rule 4.2, if the Adjudication Panel considers that any matter raised by the Complaint included in a Case Report should be referred for consideration under the AADB scheme, the Chairman of the Adjudication Panel shall:
- (a) refer the Complaint to the AADB to determine whether or not to accept the referral; and
  - (b) adjourn consideration of the Case Report and notify the Respondent, the Complainant and the Investigating Actuary accordingly.

- 4.1B Where the AADB decides to accept the referral under 4.1A the Chairman of the Adjudication Panel concerned shall:
- (a) arrange for the Adjudication Panel to take no further action under this Scheme in relation to the Case Report; and
  - (b) inform the Respondent, the Complainant, the Investigating Actuary and the Disciplinary Board that the Complaint will be investigated by the AADB.
- 4.1C Where the AADB declines the referral made pursuant to rule 4.1A:
- (a) an Adjudication Panel shall resume consideration of the Case Report under this Scheme; and
  - (b) The Convener of Adjudication Panels shall determine whether the Adjudication Panel should be the Panel which acted under rule 4.1A or a Panel newly appointed for the purpose.
- 4.2 The Adjudication Panel (by simple majority) shall determine whether:
- (a) no disciplinary action shall be taken against the Respondent; or
  - (b) the Case Report discloses a *prima facie* case of Misconduct and that:
    - (i) the Respondent shall be invited to accept that there has been Misconduct and, where the Adjudication Panel considers it appropriate, invited to accept a sanction in accordance with the procedure in rules 4.4 to 4.8; or
    - (ii) the matters referred to in the Case Report be referred to a Disciplinary Tribunal Panel.
- 4.3 Before making a determination under rule 4.2, the Adjudication Panel shall consider:
- (a) the Complaint;
  - (b) the Case Report; and
  - (c) any representations submitted to the Adjudication Panel by the Respondent.
- 4.4 In accordance with rule 4.2(b)(i), the Adjudication Panel may in writing invite the Respondent to accept that there has been Misconduct and, where the Adjudication Panel considers it appropriate:
- (a) invite the Respondent to accept a reprimand in terms provided for by the Adjudication Panel;
  - (b) invite the Respondent to pay within a specified time scale a fine up to the amount provided for under rule 9.1(b); and/or

- (c) invite the Respondent to complete a period of education, retraining and/or supervised practice, on terms provided for under rule 9.3.
- 4.5 When exercising its discretion whether to issue an invitation under rule 4.4, the Adjudication Panel shall have regard to the gravity of the alleged Misconduct as set out in the Complaint and/or the Case Report.
- 4.6 A determination under rule 4.2 shall be served upon the Respondent and the Faculty forthwith.
- 4.7 When making a determination under rule 4.2 or issuing an invitation under rule 4.4, the Adjudication Panel shall provide to the Respondent and the Faculty a statement of its reasons.
- 4.8 A Respondent accepting an invitation pursuant to rule 4.4 shall do so in writing within 21 days of such invitation and in so doing:
  - (a) shall be deemed to have accepted that the conduct in the Case Report as specified by the Adjudication Panel as amounting to Misconduct is Misconduct for the purposes of this Scheme;
  - (b) agrees to be bound by any sanction specified as if it was a sanction imposed by a Disciplinary Tribunal Panel save that the appeal procedure in Part 7 of this Scheme shall not apply.
- 4.9 If the Respondent does not accept, within 21 days, an invitation pursuant to rule 4.4 the conduct in the Case Report shall be referred to a Disciplinary Tribunal Panel under rule 4.2(b)(ii).
- 4.10 The Adjudication Panel may at any time adjourn its consideration of a matter and, in particular, seek further information from the Investigating Actuary or, through the Investigating Actuary, from the Respondent and/or the Complainant. The Adjudication Panel may consider this further information before issuing an invitation under rule 4.4 and/or a determination under rule 4.2.
- 4.11 Forthwith upon the determination of the Adjudication Panel under rule 4.2(a) or rule 4.2(b)(ii) or the Respondent's acceptance under rule 4.8 of an invitation under rule 4.4, the Adjudication Panel shall communicate the determination and the reasons to the Complainant.
- 4.12 The Adjudication Panel may be advised by a barrister, advocate or solicitor chosen from the Legal Advisers Pool.

## **Charges**

- 4.13 A determination under rule 4.2(b)(ii) to refer the matter to a Disciplinary Tribunal Panel or an election by a Respondent under rule 3.17 shall cause the Investigating Actuary to prepare a Charge in accordance with the provisions of rules 4.14 and 4.15 containing material and evidence in support of the Charge, for submission to a Disciplinary Tribunal Panel.
- 4.14 A Charge shall be supported where necessary by concise particulars of the Charge and a statement of all the facts and matters that the Investigating Actuary regards as material.
- 4.15 The Charge shall not be limited to the matters within the scope of the Complaint. The Charge may contain alleged Misconduct outside the scope of the Complaint, if that alleged Misconduct:
- (a) has come to the attention of the Investigating Actuary in the course of his investigation; and
  - (b) is not or has not been the subject of a Complaint being investigated separately by an Investigating Actuary and/or a separate Charge.

## **5. COMPLAINANT'S RIGHT TO REVIEW**

- 5.1 If the Complainant is dissatisfied with a determination of the Adjudication Panel under rule 4.2(a), he may refer the matter to the Independent Examiner for review of procedure as provided for in rule 5.3.
- 5.1.A There is, however, no right of referral to the Independent Examiner of any action taken under rules 4.1A and 4.1B.
- 5.2 A referral to the Independent Examiner must be made by the Complainant giving notice in writing to the Independent Examiner within 28 days after communication to him of the determination of the Adjudication Panel. The Independent Examiner shall forthwith send a copy of the notice of referral to the Faculty.
- 5.3 In conducting his review the Independent Examiner:
- (a) shall review whether the procedures of investigation under Part 3 and followed by the Adjudication Panel in making a determination under rule 4.2(a) were in accordance with this Scheme;
  - (b) shall not:
    - (i) substitute his own view as to the appropriate weight placed on the alleged Misconduct for the determination made by the Adjudication Panel;
    - (ii) review the merits of a determination under rule 4.2(a) if the determination was made in accordance with correct procedure

and the determination was within the range of determinations open to a reasonable Adjudication Panel.

- 5.4 The Independent Examiner in conducting his review under rule 5.3 shall consider:
- (a) the Complaint;
  - (b) the Case Report and any other material considered by the Adjudication Panel;
  - (c) any representations made to the Independent Examiner by the Complainant;
  - (d) any representations made to the Independent Examiner by the Respondent; and
  - (e) any representations made to the Independent Examiner by the Investigating Actuary.
- 5.5 The Disciplinary Board shall have power to make regulations for the procedure of the Independent Examiner. Subject to this Scheme and such regulations made under this rule, the Independent Examiner has discretion to determine his own procedure.
- 5.6 After concluding his review, the Independent Examiner shall either:
- (a) affirm the determination; or
  - (b) remit papers to an Adjudication Panel for reconsideration having taken into account the matters contained in the review of the Independent Examiner.
- 5.7 When remitting papers to an Adjudication Panel under rule 5.6(b) the Independent Examiner shall specify whether the Adjudication Panel should comprise the same members as dealt with the matter which was the subject of his review or should be a newly constituted Adjudication Panel.
- 5.8 The determination of the Independent Examiner under rule 5.6 and his reasons shall be notified in writing to:
- (a) the Complainant;
  - (b) the Respondent;
  - (c) the Adjudication Panel;
  - (d) the Investigating Actuary;
  - (e) the Disciplinary Board; and
  - (f) the Faculty.
- 5.9 The determination of the Independent Examiner under rule 5.6 shall be final and there shall be no appeal against the determination.

- 5.10 The Complainant may at any time withdraw a referral to the Independent Examiner whereupon the review under Part 5 of the Scheme shall cease.
- 5.11 The Independent Examiner may seek and receive advice from any individual on legal or actuarial matters.
- 5.12 The Independent Examiner may provide to the Disciplinary Board from time to time a report covering such matters as he thinks fit in relation to the operation of this Scheme and the procedures adopted by the Investigating Actuaries and the Adjudication Panel.

## 6. DISCIPLINARY TRIBUNAL PANELS

### ***Charges***

- 6.1 The Investigating Actuary shall be responsible for presenting the Charge and relevant evidence to the Disciplinary Tribunal Panel.
- 6.2 The Investigating Actuary shall be responsible for providing the Respondent with a copy of the Charge.
- 6.3 The Charge shall be submitted by the Investigating Actuary to a Disciplinary Tribunal Panel either:
  - (a) when there has been a referral after determination to do so by the Adjudication Panel under rule 4.2(b)(ii); or
  - (b) when there has been an election by the Respondent to proceed directly to a Disciplinary Tribunal Panel under rule 3.17.
- 6.4 In determining its findings on the Charge and the sanction, the Disciplinary Tribunal Panel shall not have regard to any proceedings or correspondence of the Adjudication Panel under Part 4 of this Scheme or of the Independent Examiner under Part 5 of this Scheme.
- 6.5 In accordance with rule 6.8, the Respondent, if not intending to make an admission of misconduct shall, subject to any decision of the Chairman of the Disciplinary Tribunal Panel under this rule to the contrary, serve upon the Disciplinary Tribunal Panel and the Investigating Actuary written grounds of defence not later than 14 days before the hearing.

- 6.6 Where written grounds of defence have been served under rule 6.5 the Investigating Actuary and the Respondent shall, subject to any decision of the Chairman of the Disciplinary Tribunal Panel under this rule to the contrary, provide to the Disciplinary Tribunal Panel submissions on any point of law identified by the Parties which may be required to be considered by the Disciplinary Tribunal Panel no less than 7 days before the hearing. Any legal submission shall be in the form of a skeleton argument and shall be accompanied by copies of supporting authorities.

#### ***Rights of the Respondent***

- 6.7 The Respondent shall be given a proper opportunity of answering the Charge.
- 6.8 The Respondent shall be entitled to make representations and call any witnesses before the Disciplinary Tribunal Panel in relation to:
- (a) whether or not there has been Misconduct; and/or
  - (b) if he accepts that there has been Misconduct or is found guilty of Misconduct by the Disciplinary Tribunal Panel, mitigation as to the sanction.

#### ***Proceedings of other Courts and Tribunals***

- 6.9 In a hearing before a Disciplinary Tribunal Panel that involves the decision of a court or tribunal that relates to the Respondent:
- (a) the fact that the Respondent has been convicted of a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence;
  - (b) the finding and sentence of any tribunal exercising a professional disciplinary jurisdiction may be proved by producing a certified record of the finding and sentence; and
  - (c) the judgement of any civil court may be proved by producing a certified copy of the judgement.
- 6.10 In any of the cases set out in this rule, the findings of fact by the court or tribunal upon which the conviction, finding, sentence or judgement is based shall be admissible as *prima facie* evidence of those facts, such evidence rebuttable only with evidence to the contrary.

#### ***General Provisions for the Disciplinary Tribunal Panel***

- 6.11 Where in the opinion of the Disciplinary Tribunal Panel the Charge does not show a *prima facie* case of Misconduct the Disciplinary Tribunal Panel may dismiss the Charge without hearing the Parties.



- 6.12 The Chairman of the Disciplinary Tribunal Panel may require the Respondent and the Investigating Actuary and/or their representatives to appear before him from time to time for the purpose of making such orders as he shall think fit as to procedural matters for the proper determination of the matter by the Disciplinary Tribunal Panel. Any procedural hearings under this rule shall be held in private.
- 6.13 The Chairman of the Disciplinary Tribunal Panel shall appoint a date for a hearing. Such date shall be appointed as soon as reasonably practicable following submission of the Charge pursuant to rule 6.1, unless the Chairman of the Disciplinary Tribunal Panel shall decide first to hold a procedural hearing pursuant to rule 6.12, in which circumstances the Chairman of the Disciplinary Tribunal Panel shall appoint a date for the hearing as soon as reasonably practicable thereafter. All Parties must serve upon the Secretary to the Disciplinary Tribunal Panel and any other Party no later than 14 days before the hearing the copies of the documents upon which they intend to rely.
- 6.14 On the application of any Party, the Chairman of the Disciplinary Tribunal Panel may order the disclosure of documents in another Party's possession if they are relevant and if he considers that it is fair in all the circumstances that the documents should be so disclosed.
- 6.15 The Chairman of the Disciplinary Tribunal Panel shall not require under rule 6.14 the production of any document which is the subject of legal professional privilege or which might tend to incriminate or expose the Respondent to penalties imposed by law.
- 6.16 Where a Charge concerns:
- (a) acts, omissions or other conduct committed by that Respondent outside the United Kingdom; or
  - (b) facts which may best be ascertained by the Disciplinary Tribunal Panel sitting outside the United Kingdom; and
  - (c) in the opinion of the Disciplinary Tribunal Panel it is necessary, convenient or in the interests of justice for it to sit outside the United Kingdom,

then the Disciplinary Tribunal Panel may in its discretion convene outside the United Kingdom for the purpose of taking some or all of the evidence in the matter or for the purpose of disposing of the matter.

### **Hearings**

- 6.17 The Chairman of the Disciplinary Tribunal Panel shall give to the Parties reasonable notice in writing of the hearing appointed under rule 6.13. Subject to rule 6.18, the Disciplinary Tribunal Panel shall hear the Charge in public.
- 6.18 The Disciplinary Tribunal Panel may, acting of its own motion or upon the application of any Party, hear the Charge, in full or in part, in private if there is good reason to do so.

- 6.19 At any stage the Disciplinary Tribunal Panel may appoint a barrister, advocate or solicitor from the Legal Advisers Pool to assist it in any matters of law or procedure. Such adviser may be present at any hearing and may give such advice to the members of the Disciplinary Tribunal Panel during any private deliberations as may be requested by them. Any advice given in private must be made available to the Parties and included in the record of the hearing.
- 6.20 Subject to this Scheme, the Disciplinary Tribunal Panel shall have complete discretion over the procedure to be adopted before it and may, save where fairness requires otherwise, consolidate or hear together any related Charge or Charges under this Scheme.
- 6.21 The Disciplinary Tribunal Panel may at any time before or during the hearing direct that a Charge or any particulars of a Charge shall be amended, provided that:
- (a) the Disciplinary Tribunal Panel (or the Chairman of the Disciplinary Tribunal Panel if prior to the substantive hearing) is satisfied that the Respondent will not be substantially prejudiced in the conduct of his defence by the making of such an amendment; and
  - (b) the Disciplinary Tribunal Panel shall, if so requested by the Respondent, adjourn for such time as is reasonably necessary to enable him to deal with the Charge as so amended.
- 6.22 At the conclusion of the hearing, the Disciplinary Tribunal Panel shall determine, by simple majority, if a Charge of Misconduct has been established. In the absence of such a majority, the Charge shall be dismissed.
- 6.23 If the Disciplinary Tribunal Panel determines that the Respondent has been guilty of Misconduct, the Disciplinary Tribunal Panel shall:
- (a) determine that no sanction is appropriate; or
  - (b) impose one or more of the following sanctions:
    - (i) reprimand the Respondent;
    - (ii) suspend the Respondent from Membership of the Faculty for any period it thinks appropriate up to a maximum of five years;
    - (iii) order the Respondent to complete a period of education, retraining and/or supervised practice, on terms provided for under rule 9.3;

- (iv) expel the Respondent from Membership of the Faculty for any period it thinks appropriate up to a maximum of five years which must elapse before an application for readmission as a Member may be submitted to the Faculty;
  - (v) exclude the Respondent (being a former Member who is subject to this Scheme pursuant to rule 1.9) from Membership of the Faculty for any period it thinks appropriate up to a maximum of five years which must elapse before an application for readmission as a Member may be submitted to the Faculty;
  - (vi) suspend or withdraw any Certificate of the Respondent;
  - (vii) order the payment of a monetary fine by the Respondent.
- 6.24 If a sanction has been imposed under rule 6.23(b)(iii), the Disciplinary Tribunal Panel (or a newly constituted Disciplinary Tribunal Panel) may be recalled on the application of the Investigating Actuary and impose a further sanction should the Respondent not comply with the terms of the sanction of education, retraining and/or supervised practice first imposed.

### **Costs**

- 6.25 The Disciplinary Tribunal Panel may make an award of costs against the Respondent or the Faculty as it considers appropriate.

### **Communication of Determination**

- 6.26 A determination of the Disciplinary Tribunal Panel shall be served upon the Respondent forthwith, which determination shall, subject to rule 8.2(a), be effective from the date of its making. The Disciplinary Tribunal Panel's reasons shall be served upon the Respondent when the determination is served or as soon as reasonably practicable thereafter.
- 6.27 The Disciplinary Tribunal Panel shall also communicate its determination and reasons to:
- (a) the Investigating Actuary;
  - (b) the Complainant;
  - (c) the Disciplinary Board; and
  - (d) the Faculty.

## 7. APPEALS

- 7.1 The Respondent may by notice appeal against:
- (a) an Interim Order made under Part 3 of this Scheme; and/or
  - (b) the determination of the Disciplinary Tribunal Panel.
- 7.2 A Notice of Appeal under rule 7.1 shall be given in writing and served upon the Investigating Actuary and upon the Chairman of the Appeals Tribunal:
- (a) no later than 14 days after the making of an Interim Order under rule 3.23 (or such longer period as the Chairman of the Appeals Tribunal may decide on the application of the Respondent); and
  - (b) no later than 28 days after the receipt by the Respondent of the written determination (or such longer period as the Chairman of the Disciplinary Tribunal Panel may decide on the application of the Respondent).
- 7.3 A Notice of Appeal under rule 7.1 shall state the grounds of the appeal. The grounds of appeal so stated shall not thereafter be amended except with the leave of the Appeal Tribunal Panel appointed under rule 2.28 to hear the appeal.
- 7.4 If Notice of Appeal is served where the Respondent has been expelled, excluded or suspended under rule 6.23 or where any Certificate of the Respondent has been withdrawn or suspended under rule 6.23, the Respondent shall remain suspended, excluded or expelled or the Certificate of the Respondent shall remain withdrawn or suspended as the case may be until the appeal has been determined.
- 7.5 No appeal shall be based solely on the question of costs without the consent of the Chairman of the Appeals Tribunal.
- 7.6 The Complainant shall be notified of an appeal under rule 7.1.
- 7.7 In the event of an appeal from a determination of an Interim Orders Panel, the Case Officer shall provide to the Chairman of the Appeals Tribunal as soon as reasonably practicable:
- (a) the determination of the Interim Orders Panel;
  - (b) any record of the proceedings before it; and
  - (c) any documentary evidence and any other evidence and written submissions placed before it.
- 7.8 In the event of an appeal from a determination of a Disciplinary Tribunal Panel, the Case Officer shall provide to the Chairman of the Appeals Tribunal as soon as reasonably practicable:
- (a) the determination of the Disciplinary Tribunal Panel;

- (b) any record of the proceedings before it; and
  - (c) any documentary evidence and any other evidence and written submissions placed before it.
- 7.9 The Chairman of the Appeal Tribunal Panel shall appoint a hearing of the appeal and shall give reasonable notice in writing of the hearing to the Parties, but such hearing shall be vacated in the event of the Respondent withdrawing his Notice of Appeal.
- 7.10 At any time before the determination of the appeal by the Appeal Tribunal Panel the Respondent may withdraw his Notice of Appeal whereupon the appeal shall be deemed dismissed and the Appeal Tribunal Panel shall, if requested to do so by any Party, consider the making of a cost determination pursuant to rule 7.15(c).
- 7.11 The hearing of the appeal shall be by way of re-hearing. The Appeal Tribunal Panel may:
  - (a) hear or re-hear any witnesses as it thinks fit (save in an appeal from the making of an Interim Order);
  - (b) admit fresh evidence if it thinks it is reasonable and in the interests of justice to do so; and
  - (c) obtain such legal or other advice or opinions as it thinks fit.
- 7.12 The Respondent shall be permitted to make representations and call any witnesses before the Appeal Tribunal Panel.
- 7.13 Subject to rule 7.14, the hearing of the Appeal Tribunal Panel shall be in public.
- 7.14 The Appeal Tribunal Panel may, acting of its own motion or upon the application of any Party, hear the appeal, in full or in part, in private if there is good reason to do so.
- 7.15 The Appeal Tribunal Panel shall make one or more of the following determinations on the appeal:
  - (a) affirm, vary or rescind any determination of the Disciplinary Tribunal Panel or the Interim Orders Panel;
  - (b) substitute any other determination or determinations which the Disciplinary Tribunal Panel or the Interim Orders Panel may have made;
  - (c) make an award of costs against the Respondent or Faculty as it considers appropriate.
- 7.16 The Appeal Tribunal Panel shall make its determination by simple majority.
- 7.17 The determination of the Appeal Tribunal Panel shall be final.

- 7.18 A determination of the Appeal Tribunal Panel shall be served upon the Respondent forthwith, which determination shall, subject to rule 8.2(a), be effective from the date of its making. The Appeal Tribunal Panel's reasons shall be served upon the Respondent when the determination is served or as soon as reasonably practicable thereafter.
- 7.19 The Appeal Tribunal Panel shall also communicate its determination and reasons, where relevant, to:
- (a) the Disciplinary Tribunal Panel;
  - (b) the Interim Orders Panel;
  - (c) the Investigating Actuary; and/or
  - (d) the Complainant;
- and in all cases to
- (e) the Disciplinary Board; and
  - (f) the Faculty.

## **8. COSTS ORDERS AND FINES**

- 8.1 A fine or an award of costs made by the Disciplinary Tribunal Panel or by the Appeal Tribunal Panel shall be recoverable by the Party in whose favour the order is made as a debt due from the Party against whom the order is made.
- 8.2 Any fine payable or costs ordered to be paid shall be paid by the Respondent within 28 days:
- (a) of the receipt of the Disciplinary Tribunal Panel's determination unless Notice of Appeal is given in which case the period of 28 days begins from the receipt of the Appeal Tribunal Panel's determination; or
  - (b) of the Respondent's acceptance of the invitation of the Adjudication Panel under rules 4.4 and 4.8.
- 8.3 If a Respondent does not pay any fine or award of costs imposed under this Scheme or the AADB Scheme in the time required, he may be guilty of Misconduct and further disciplinary proceedings may be commenced against him under this Scheme.

## 9. DISCIPLINARY BOARD

- 9.1 The functions of the Disciplinary Board shall comprise:
- (a) monitoring the governance of this Scheme;
  - (b) deciding the maximum fine which an Adjudication Panel may invite a Respondent to pay under rule 4.4(b);
  - (c) providing bi-annual reports to the Council and the Council of the Institute and such other interim reports on specific issues as it deems necessary;
  - (d) producing an annual report to the profession;
  - (e) setting and monitoring time frames for investigations and proceedings under this Scheme;
  - (f) organising training of those involved in this Scheme;
  - (g) receiving and considering reports from the Independent Examiner under rule 5.12, from any Chairman, committee, panel or tribunal appointed under this Scheme, from the AADB regarding Complaints considered under the AADB Scheme, and from the Chief Executive of the Profession on the operation of this Scheme;
  - (h) making and varying such regulations (not being inconsistent with the provisions of the Charter, the Supplementary Charter, the Rules and Bye-laws or this Scheme) as it may consider necessary for the implementation of this Scheme and for the performance by Investigating Actuaries, Interim Orders Panels, Adjudication Panels, Disciplinary Tribunal Panels and Appeal Tribunal Panels of their respective functions under this Scheme;
  - (i) providing guidance on procedure it considers appropriate not being inconsistent with this Scheme for the performance of functions under this Scheme; and
  - (j) such other functions as shall be agreed from time to time by the Council and the Council of the Institute.
- 9.2 The Disciplinary Board may at any time, subject to the agreement of the Council and the Council of the Institute or such other body delegated by them for the purpose, arrange for a review of the provisions and operation of this Scheme or any aspect of it to be undertaken.
- 9.3 The Disciplinary Board shall from time to time provide guidelines for the manner in which sanctions involving education, retraining and/or supervised practice under this Scheme may be imposed. Such guidelines shall be published by the Faculty.

## 10. GENERAL PROVISIONS

10.1 Subject to rule 10.1A, where, having regard to the interests of the public and the profession, an Honorary Secretary of the Faculty considers it appropriate that a matter relating to the conduct of a Member should be investigated, such matter may be referred to an Investigating Actuary even though no Complaint may have been received; thereafter the matter shall proceed for the purposes of this Scheme as if a Complaint had been made to the Faculty save that the provisions of Part 5 of this Scheme shall not apply.

10.1A Before proceeding under rule 10.1 the Honorary Secretary shall first consider whether, having regard to all the circumstances, it is appropriate that the matter is referred to the AADB scheme and, if so, he shall refer the matter for decision by the AADB whether to accept the referral.

10.1B Where the AADB decides to accept the referral the Honorary Secretary shall,  
(a) take no further action under this Scheme in relation to the matter; and  
(b) inform the Respondent and the Disciplinary Board of the referral.

10.1C Where the AADB declines the referral the Honorary Secretary shall proceed under rule 10.1.

10.2 In this Scheme, any function which may be undertaken by:

- (a) the Chairman of the Disciplinary Appointments Committee;
- (b) the Chairman of the Investigating Actuaries Panel;
- (c) the Convener of the Interim Orders Panels;
- (d) the Convener of the Adjudication Panels;
- (e) the Convener of the Disciplinary Tribunal Panels;
- (f) the Chairman of the Appeals Tribunal; or
- (g) the Chairman of the Disciplinary Board,

may be undertaken by any Deputy Chairman or Deputy Convener of that body previously so nominated or appointed or, in the absence of such a Deputy Chairman or Deputy Convener, by such other member of the body as the Chairman or Convener of the body shall designate for that purpose, in each case in the event that the Chairman/Convener or Deputy Chairman/Deputy Convener shall be unavailable to fulfil that function.

10.3 It is intended that this Scheme shall be operated in conjunction with the disciplinary scheme of the Institute and accordingly:

- (a) any investigation into the conduct of a Member or Members may be undertaken in conjunction with an investigation into the conduct of a Member or Members of the Institute;



- (b) save where fairness requires otherwise, any proceedings under this Scheme may be dealt with, or heard, with related proceedings under the disciplinary scheme of the Institute;
  - (c) a Complaint concerning a person who is a Member and a member of the Institute shall proceed under this Scheme and under the disciplinary scheme of the Institute simultaneously with a single Investigating Actuary, Interim Orders Panel, Adjudication Panel, Disciplinary Tribunal Panel and Appeal Tribunal Panel as the case may be;
  - (d) an Investigating Actuary appointed by the Institute under its disciplinary scheme shall have the power to require of a Member those matters specified in rule 3.11(a), 3.11(b), and 3.11(c) of this Scheme and any failure by the Member to comply with such obligations and a Member who hinders or frustrates an Investigating Actuary appointed by the Institute may be liable for Misconduct under the provisions of rule 1.10;
  - (e) any person appointed to a position or body under Part 2 of this Scheme may be appointed to an equivalent position or body under the disciplinary scheme of the Institute;
  - (f) the provisions of rules 2.37 or 2.38 shall apply to a person who is appointed to the Disciplinary Appointments Committee or the Disciplinary Board under the provisions of the disciplinary scheme of the Institute; and
  - (g) the provisions of rules 2.40 and 2.42 shall apply as if for "Member" there is substituted the term "member of the Institute", for "Misconduct " there is substituted the term "misconduct under the disciplinary scheme of the Institute", and for "this Scheme" there is substituted the term "the disciplinary scheme of the Institute".
- 10.4 Subject to rule 9.1(h), an Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel and an Appeal Tribunal Panel (or the Chairman of such Panel as the case may be) may give all such directions with regard to the conduct of and procedure at meetings or hearings as it considers most suitable for the clarification of the issues and generally for the just handling of the proceedings before it. This includes the power to vary the time limits set out in this Scheme and to adjourn any meeting or hearing.
- 10.5 Save where fairness requires otherwise, any hearing or meeting of an Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel can deal with Complaints, Case Reports or Charges involving one or more Respondents and for such purpose appropriate directions may be given under rule 10.4.
- 10.6 Anyone who serves as an Investigating Actuary, on an Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel, or as the Independent Examiner, shall be entitled to such remuneration as the Council provides for.

- 10.7 Provided that an Interim Orders Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel is satisfied that the Respondent has been given reasonable notice of a hearing, the proceedings of that body shall be valid and of full effect even if the Respondent does not attend, is not represented or does not state his case.
- 10.8 All documents put before an Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel shall be deemed to be authentic. If a Party challenges the authenticity of any document the relevant body shall consider the objections raised by such Party (and any evidence raised in rebuttal), and shall, on the basis of such representations, give the evidence contained in such document such weight as it thinks fit.
- 10.9 The Disciplinary Board shall, as soon as reasonably practicable, be given:
- (a) by the Case Officer brief particulars of any Complaint made under this Scheme after it is referred to an Investigating Actuary; and
  - (b) by the Chairman of each of an Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel (as the case may be) a report on the proceedings under this Scheme, containing such particulars as he shall consider appropriate.
- 10.10 Any notice or other document required by any provision of this Scheme to be given or sent to a Party may be sent by pre-paid post addressed to him at his address notified to the Faculty for communications, or, if the Faculty is aware that this address is no longer current for him, to his usual or last known place of business or residence. Service of any notice or document shall be deemed to have been effected at the end of 48 hours from the time of posting, and in proving that a document was so sent it shall be sufficient to prove that the cover containing it was properly addressed, stamped and posted.
- 10.11 The following matters shall be made public by the Faculty as soon as reasonably practicable in accordance with arrangements prescribed by the Disciplinary Board under rule 10.12:
- (a) the making, rescission or variation of an Interim Order;
  - (b) the referral by an Adjudication Panel of matters in a Case Report to a Disciplinary Tribunal Panel under rule 4.2(b)(ii);
  - (c) the determination and, where applicable, any sanction imposed by an Adjudication Panel resulting from the acceptance by a Respondent under rule 4.8 of an invitation by the Adjudication Panel under rule 4.4;
  - (d) any final determination of a Disciplinary Tribunal Panel; and
  - (e) any final determination of an Appeal Tribunal Panel.

10.12 The Disciplinary Board shall prescribe such arrangements as it thinks fit for the manner in which the following shall be published as soon as reasonably practicable:

- (a) determinations of an Adjudication Panel to refer to a Disciplinary Tribunal Panel or, to find Misconduct, and, where relevant, to reprimand, fine or require the completion of a period of education, retraining and/or supervised practice;
- (b) the election by the Respondent to refer a matter to a Disciplinary Tribunal Panel under rule 3.17;
- (c) Interim Orders and the rescission or variation of those orders;
- (d) determinations (with reasons) of a Disciplinary Tribunal Panel and Appeal Tribunal Panel;
- (e) referrals to a Disciplinary Tribunal Panel and Appeal Tribunal Panel;
- (f) date(s) and place of any public hearings to be held under this Scheme.

10.13 At any hearing of an Interim Orders Panel, a Disciplinary Tribunal Panel (including any procedural hearing before the Chairman) or an Appeal Tribunal Panel, the Respondent may be:

- (a) represented by a solicitor, advocate or another Member or member of the Institute or such other person as the Chairman of the relevant panel may agree provided that this does not unreasonably delay any such hearing; and
- (b) accompanied by a friend or member of his family, or by another Member or member of the Institute, but the accompanying person may remain during any private session of the relevant panel only with the agreement of the panel.

10.14 The Disciplinary Board may prescribe such arrangements for investigation and determination of Complaints against Members who are resident and practising outside the UK as seem appropriate under the circumstances to accord as nearly as possible with this Scheme.

10.15 Provisions of this Scheme shall form part of the Rules and Bye-laws and may be rescinded, varied or added to accordingly.

## **11. COMMENCEMENT AND TRANSITIONAL PROVISIONS**

### ***Commencement***

11.1 The provisions of this Scheme shall come into force on such day(s) as the Council may by resolution determine.

### ***Transitional Provisions***

- 11.2 Complaints received by the Faculty, or matters referred by the Council under Rule 36(d) of the Faculty's former Rules and Bye-laws, prior to the date on which this Scheme came into force shall be dealt with as follows:
- (a) if on the date on which this Scheme came into force a case had already been brought before the Investigation Committee under former Rule 36(c) or referred to the Investigation Committee under former Rule 36(d), the case (including any Tribunal hearing and/or appeal) shall be determined under the provisions of former Rules 35 – 43, which provisions shall continue in force for the purpose;
  - (b) any other case to which this rule applies shall be determined under the provisions of former Rules 35-43, which provisions shall continue in force for the purpose unless both the Respondent and the Complainant (or, if there is no Complainant, the Council), agree that it should be transferred to this Scheme.
- 11.3 Any of the first appointments to be made under Part 2 of this Scheme may be made for an initial period of less than three years if the body or person responsible for such appointment considers it appropriate for the proper functioning of the Scheme.
- 11.4 The appointment of the first Chairman of the Disciplinary Appointments Committee shall be made by the Dean for the time being of the Faculty of Advocates.
- 11.5 The appointment of the first Chairman and of the Deputy Chairman of the Appeals Tribunal shall be made by the Dean for the time being of the Faculty of Advocates.

## **APPENDIX**

In this Scheme, unless the context otherwise requires:

'AADB'	means the board established by the Articles of Association of The Accountancy and Actuarial Discipline Board Limited (and any other person or body exercising functions on behalf of or in succession to such board);
'AADB Scheme'	means the disciplinary scheme for the Actuarial Profession made and adopted by the AADB as amended and in force from time to time;
'Adjudication Panel'	means a panel appointed under rule 2.20;
'Appeals Tribunal'	means the Appeals Tribunal referred to in rule 2.26;
'Appeal Tribunal Panel'	means a panel of the Appeals Tribunal appointed under rule 2.28;
'Board for Actuarial Standards'	means the operating body of that name appointed by the Financial Reporting Council Limited;
'Case Officer'	means a person appointed by the managements of the Faculty and Institute to assist an Investigating Actuary in the conduct of the investigation of a Complaint;
'Case Report'	means a report referred to in rule 3.13;
'Certificate'	means any certificate issued pursuant to the Rules and Bye-laws;
'Charge'	means a formal allegation that a Member has been guilty of Misconduct defined in the document prepared by the Investigating Actuary under rule 4.13;
'Chief Executive of the Profession'	means the person appointed by the Council for the purpose of submitting reports to the Disciplinary Board pursuant to rule 9.1(g) on behalf of the Faculty;
'Complainant'	means a person who makes a Complaint to which this Scheme applies;
'Complaint'	means a formal statement in writing addressed to the Faculty and containing allegations to the effect that a named Member has or may have been guilty of Misconduct;
'Council of the Institute'	means the Council of the Institute of Actuaries;
'Disciplinary Appointments Committee'	means the committee appointed in rule 2.1;

'Disciplinary Board'	means the board referred to in rule 2.29;
'Disciplinary Pool'	means the pool referred to in rule 2.6;
'Disciplinary Tribunal Panel'	means a panel referred to in rule 2.24;
'Faculty's former Rules'	means the Rules of the Faculty in force on the date immediately prior to the date when this Scheme came into force;
'Independent Examiner'	means the person appointed under rule 2.15;
'Institute'	means the Institute of Actuaries;
'Interim Order'	means an order provided for in rule 3.19;
'Interim Orders Panel'	means a panel referred to in rule 2.18;
'Investigating Actuary'	means an Investigating Actuary referred to in rule 3.2;
'Lay member'	means a person who is not and has never been a Member, Fellow, Affiliate or student of the Faculty or of the Institute;
'Lead Investigating Actuary'	means a member of the Investigating Actuaries Pool nominated under rule 3.4(b);
'Legal Advisers Pool'	means the pool of barristers, advocates and solicitors nominated under rule 2.34;
'Memorandum of Understanding'	means an agreement entered into between, on the one hand, the Faculty and, on the other hand, the Board for Actuarial Standards and/or the Financial Reporting Council which provides, amongst other things, for the Board for Actuarial Standards to issue standards and the Faculty to recognise those standards in its Disciplinary Scheme;
'Member'	means a member of the Faculty of any class, and for the purpose of this Scheme students of the Faculty shall be deemed to be Members;
'Misconduct'	means misconduct under rule 1.6;
'Party'	means a Respondent or an Investigating Actuary, as the case may be;
'Pool of Investigating Actuaries'	means the pool referred to in rule 2.11;
'Respondent'	means the Member whose conduct is the subject of the matter of a Complaint or investigation by or proceedings before an Investigating Actuary, Interim Orders Panel, Adjudication Panel, Disciplinary Tribunal Panel or Appeal Tribunal Panel;
'rule'	means a rule of this Scheme;
'Rules and Bye-laws'	means the Rules and Bye-laws of the Faculty in force from time to time;

'Scheme'

means this Disciplinary Scheme adopted under Rule 35 of the Rules and Bye-laws.