



Institute
and Faculty
of Actuaries

Introduction of a revised Disciplinary Scheme: rationale for the proposals

What is the vote about?

Our voting members are being asked to vote on the introduction of a revised Disciplinary Scheme.

Rationale – why do this?

We set out below the rationale for the introduction of a revised Disciplinary Scheme.

Motion

APPROVAL OF A REVISED DISCIPLINARY SCHEME:

To pass a Resolution to replace the current Disciplinary and Capacity for Membership Schemes with the revised Disciplinary Scheme (at Appendix 1) as Rule 20 of the IFoA's Rules.

Rationale

Council, with the support of the Regulatory Board, proposes that a revised Disciplinary Scheme is introduced to replace the current Disciplinary and Capacity for Membership Schemes (the Current Scheme).

The Current Scheme was introduced in 2004 and although there have been several changes since that time, including the introduction of the Capacity for Membership Scheme in 2018, there has not been a wholesale review. The passage of time, our changing membership demographic and the changing regulatory landscape meant that a full review was due.

A Disciplinary Scheme Review Working Party was established to carry out a full review of the Current Scheme. The Working Party considered the approach of other regulators, disciplinary best practice and feedback received from the Financial Reporting Council, users of the Current Scheme and the wider membership. The revised Disciplinary Scheme was approved by the Disciplinary Committee in March 2022, the Regulatory Board in April 2022 and Council in June 2022. The revised Disciplinary Scheme has been drafted in accordance with the following principles:

- **Principle 1: Public interest and independence of disciplinary enforcement-** The public interest obligations of the Royal Charter of the IFoA, and the independence of the disciplinary enforcement arrangements for the IFoA, are central to its identity and shall continue be upheld in every aspect of disciplinary process and procedure.
- **Principle 2: Consistency with the principles of better regulation-** The revised Disciplinary Scheme should follow the principles of better regulation: transparent; accountable; proportionate; consistent and targeted.
- **Principle 3: Clarity of communication-** The revised Disciplinary Scheme should be drafted in clearer terms which are understandable for our members and all users, bearing in mind the IFoA's international membership.
- **Principle 4: Scope for flexibility in the governance of process and procedures -** The more detailed procedures about how mechanisms such as the Capacity for Membership process, Disciplinary Tribunal Panels etc. work in practice should be contained within regulations, rather than the Disciplinary Scheme itself. This will enable the disciplinary process to be improved on a more regular basis, where appropriate.
- **Principle 5: Simplicity and allowing for streamlined processes where appropriate-** Where appropriate, measures should be introduced to allow cases to be concluded more efficiently or remove them from consideration altogether. This will allow time and resource to be focused on more serious cases.

The IFoA believes that the changes being made will provide a Disciplinary Scheme which assists the IFoA in meeting their regulatory objectives by maintaining high standards and confidence in members. The changes will also provide a Disciplinary Scheme where investigations are only instigated where it is appropriate to so do. The revised Disciplinary Scheme will also introduce flexibility as to how cases can be dealt with and enables the IFoA's disciplinary resources to be focussed more appropriately, which will benefit members.

Key Changes to the Disciplinary Scheme

A copy of the revised Disciplinary Scheme has been provided at Appendix 1. The table below sets out the key changes that have been incorporated into the revised Disciplinary Scheme and the rationale for these changes.

The new processes that have been introduced are illustrated in the flowcharts accompanying the voting documents. A high-level flowchart has also been provided which shows the full disciplinary process and how the different stages fit together.

Key Changes	Why
<p>Disciplinary Scheme and Regulations</p> <p>The revised Disciplinary Scheme has been drafted in plain English where possible.</p> <p>Much of the process has been removed from the Disciplinary Scheme and has been included in the underpinning Regulations.</p>	<p>To make the rules and regulations clearer for all.</p> <p>Putting process into Regulations allows more flexibility and enables the disciplinary process to adapt more easily to changes in best practice. Any amendments to the Regulations require approval by the Disciplinary Committee.</p> <p>The relevant sections of the Disciplinary Scheme have been inserted into the applicable Regulations to enable users to follow the process more easily.</p>

Key Changes	Why
<p>Misconduct</p> <p>A misconduct based disciplinary regime has been retained, however the definition of misconduct has been revised. The new definition of misconduct is included at Rule 2.1 of the revised Disciplinary Scheme. The following illustrates the changes that have been made to the definition in the Current Scheme:</p> <p>For the purposes of the Disciplinary Scheme, Misconduct means any conduct <u>act or omission or series of acts or omissions</u> by a Member, whether committed in the United Kingdom or elsewhere, in the course of carrying out <u>their</u> professional duties or otherwise <u>non-professional life</u>, constituting failure by that Member to comply with <u>which falls significantly short of the standards of behaviour, integrity, competence or professional judgement which other Members or the public might reasonably expect of a Member. having regard to the Bye-laws of the Institute and Faculty of Actuaries and/or to any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or, for so long as there is a relevant Memorandum of Understanding in force, by the FRC (including by the former Board for Actuarial Standards) in terms thereof, and to all other relevant circumstances.</u></p>	<p>A misconduct regime is in line with the approach of comparable regulators and continues to be the most appropriate approach. A misconduct regime appropriately addresses the public interest, the reputation of the profession and the accountability of individual members. It is also consistent with the Royal Charter and duty to put the public first.</p> <p>The revised definition is shorter and clearer.</p> <p>The reference to “UK or overseas” has been removed from the definition as it is not necessary to distinguish between the location of members.</p> <p>The Current Scheme applies to members in their professional and non-professional lives. The revised definition of misconduct makes this clear to ensure members are aware of their obligations.</p> <p>The revised definition makes it clear that only behaviour which falls “significantly short” of the standards expected of members will be misconduct. This is in line with the current approach followed by IFoA panels and other regulators and is intended to clarify the current approach to the threshold of misconduct.</p>

Key Changes	Why
<p>Assessment of complaints</p> <p>The introduction of a new process to allow all complaints to be assessed at the outset to determine whether they should be investigated.</p> <p>The Head of Disciplinary Investigations will assess every complaint against set criteria. It is expected that most complaints will proceed to be investigated. If the Head of Disciplinary Investigations recommends that a complaint is not accepted, it will be considered by an Assessment Panel (made up of one lay member and one actuary member). The Assessment Panel will have the final decision as to whether to accept that complaint. If the Assessment Panel does not accept the complaint, the referrer of the complaint has limited rights to have the decision reviewed by a new Assessment Panel.</p> <p>Once a complaint is accepted for investigation, it will be known as an Allegation.</p> <p>An overview of the process is illustrated in the accompanying flowchart.</p>	<p>An assessment process will ensure a proportionate approach to regulatory enforcement so disciplinary investigations are only instigated where it is appropriate to do so. It is expected that this will:</p> <ul style="list-style-type: none"> • avoid the need to investigate cases where it is clear from the outset that the conduct alleged could not amount to Misconduct or where the complaint should be considered in some other forum; • reduce the stress for members where the matters alleged should not be dealt with under the Disciplinary Scheme; • manage the expectations of those who refer matters to the IFoA; • allow resources to be focused on more serious cases to allow these cases to be concluded faster.

Key Changes	Why
<p>Disciplinary Orders</p> <p>The introduction of Disciplinary Orders which can be used at an early stage in the disciplinary process where the Respondent member accepts the disciplinary allegations amount to misconduct.</p> <p>Disciplinary Orders will be available for less serious cases of misconduct. Where a Respondent agrees to a Disciplinary Order, this will be considered by a Disciplinary Order Panel (made up of one lay member and one actuary member) who will approve or reject the order.</p> <p>An overview of the new Disciplinary Order process is illustrated in the accompanying flowchart.</p>	<p>Disciplinary Orders are a proportionate and cost-effective way to deal with less serious cases of misconduct where the Respondent co-operates and agrees with the allegations from the early stages of an investigation. Allowing cases to be resolved faster and more cost-effectively will benefit Respondents, the IFoA and referrers of allegations.</p>
<p>Appointment of Panels</p> <p>The requirement for Conveners to appoint the Panels will be removed. Panels will be appointed by the Executive based on availability of appropriate Panel members.</p>	<p>This will create a more efficient process for appointing independent Panels to consider cases, ensuring hearings can be scheduled at the earliest opportunity. The appointments process will still be subject to conflict checks and ensuring that the Panel includes an actuary from the appropriate specialist area, with input being sought from the Deputy Convener of the relevant Panel, who is an actuary, when required. As with the process under the Current Scheme, the appointment of Panel members will be carried out independently from those investigating the complaint.</p>
<p>Investigation Actuaries</p> <p>There will be no requirement to appoint an Investigation Actuary to every case. Instead, Investigation Actuaries will be appointed to cases which involve technical actuarial allegations.</p>	<p>Investigation Actuaries currently assist the Case Manager with all investigations. However, some cases do not involve any technical actuarial issues, for example where there is a conviction.</p> <p>By reserving members of the Investigation Actuary pool for more technical cases, this will ensure that our valuable volunteer resources are not overburdened. This may also enable non-technical cases to be concluded more quickly, which is of benefit to all involved.</p>

Key Changes	Why
<p>Adjudication Panels</p> <p>The Adjudication Panel stage of the disciplinary process has been retained; however the sanctioning powers of the Adjudication Panel have been extended to allow an Adjudication Panel to offer a sanction of exclusion to a member who has already resigned from the IFoA.</p> <p>The Adjudication Panel process is illustrated in the accompanying flowchart.</p>	<p>Currently an Adjudication Panel can make an offer of a low level sanction to a Respondent where they make a finding of prima facie misconduct. The Respondent has the option to accept the Adjudication Panel's determination, or refer the matter for a full hearing before a Disciplinary Tribunal Panel.</p> <p>For cases where a more serious sanction is appropriate, for example in dishonesty cases where an expulsion or exclusion may be appropriate, the Adjudication Panel may refer the case for a full hearing by a Disciplinary Tribunal Panel as the Adjudication Panel's powers of sanction are not sufficient.</p> <p>Allowing the Adjudication Panel to offer a sanction of exclusion to former members will assist former members who do not wish to return to membership of the IFoA as they will avoid the stress, time and costs involved in their case being considered at a Disciplinary Tribunal Panel hearing. This will also reduce IFoA costs and allow resources to be managed more effectively. As with the Current Scheme, the Respondent can chose not to accept the sanction offered at the Adjudication Panel stage and instead refer the matter to a Disciplinary Tribunal Panel hearing, therefore there is no unfairness to the Respondent.</p>
<p>Capacity for Membership</p> <p>The Capacity for Membership Scheme will be retained; however it will be included within the Disciplinary Scheme, rather than existing as a separate scheme.</p>	<p>Incorporating the Capacity for Membership process into the Disciplinary Scheme allows the process to be clearer and easier to follow and reduces duplication.</p>

Key Changes	Why
<p>Costs</p> <p>Costs have been introduced at the Disciplinary Order and Adjudication Panel stages as follows:</p> <ul style="list-style-type: none"> • a fixed cost award of £300 to be applied to Disciplinary Orders; • where an Adjudication Panel makes a finding of prima facie misconduct, a fixed cost of £1,500 to be awarded against the Respondent; • where an Adjudication Panel dismisses a case, costs may be awarded against the IFoA where the IFoA has acted negligently. 	<p>Costs refer to a sum awarded by Panels in favour of either the Respondent or the IFoA to compensate for the amount incurred by that party in bringing or defending a case.</p> <p>Under the Current Scheme costs are only available at the Disciplinary Tribunal Panel stage. It is proposed that cost recovery is included at the earlier stages of the disciplinary process. This is on the basis that the membership of the IFoA should not bear the cost of bringing disciplinary proceedings against Respondents who through their own failings have found themselves before a Panel. In the interests of fairness, Adjudication Panels will also be able to award costs in favour of a Respondent where the IFoA has acted negligently.</p> <p>While parties can claim for their actual costs incurred at the Disciplinary Tribunal Panel stage, it is proposed that the IFoA can only claim for a fixed level of costs at the Disciplinary Order and Adjudication Panel stage. This is to simplify the process and to avoid the issue of costs causing unnecessary delays to the process. The Respondent can claim for their full costs incurred. It will be for the relevant Panel to decide what costs should be awarded.</p>
<p>Rights of review and appeal</p> <p>The IFoA will be given the right to apply for a review of an Adjudication Panel determination and an appeal of a Disciplinary Tribunal Panel decision, where it is in the public interest to do so.</p> <p>The appeals process is illustrated in the accompanying flowchart.</p>	<p>A robust and comprehensive disciplinary process should include a mechanism for the parties involved in a case to be able to appeal a decision. Under the Current Scheme, only a Respondent can appeal determinations of Disciplinary Tribunal Panels, Interim Order Panels and Capacity for Membership Panels and only a referrer of a complaint can ask for a review of an Adjudication Panel determination where the case has been dismissed.</p> <p>It is important from a public interest perspective that the regulator has a right of appeal. The revised Disciplinary Scheme provides the IFoA with the right to apply for a review or appeal. However, the IFoA must be able to demonstrate that any review or appeal sought is in the public interest. This brings the IFoA's Disciplinary Scheme into line with most other regulators</p>

Readmission to membership

Applications for readmission to membership following expulsion or exclusion will be considered by a Readmissions Panel rather than a Disciplinary Tribunal Panel. The Readmissions Panel will be made up of one lay member, one actuary member and an employee of the IFoA.

Under the Current Scheme, where a Respondent who has been expelled or excluded from membership wishes to return to membership, their application will be considered by a Disciplinary Tribunal Panel at a hearing. As the readmissions process is separate from the Disciplinary Tribunal Panel process, it is appropriate for the panel that considers readmission applications to be named appropriately. The Readmissions Panel has been introduced for clarity and to distinguish between the processes.

The inclusion of an employee of the IFoA on a Readmissions Panel is a new feature. Currently IFoA employees deal with applications for reinstatement of membership, which is the process used by former members to reapply for membership if they have not been excluded or expelled. The experience and insight gained from the reinstatement process will be of benefit to the readmissions process. Employees involved in the investigation of allegations will not be eligible to sit on the Readmissions Panel.

UK actuarial framework

The UK Government intends to strengthen the framework for actuarial regulation by establishing a new regulator, the Audit, Reporting and Governance Authority (ARGA), which will replace the Financial Reporting Council. It is currently expected that ARGA's statutory enforcement powers will augment and complement the IFoA's disciplinary processes. Further detail on the UK Government's plans is expected in 2023. Once the draft legislation is available, the IFoA will consider whether any further changes are required to its disciplinary framework. The UK Government's response to the consultation on strengthening the UK's audit, corporate reporting and corporate governance systems [can be downloaded here from the gov.uk website](#).

The member vote: introduction of a revised Disciplinary Scheme

It is proposed that the revised Disciplinary Scheme replaces the Current Scheme as Rule 20 of the IFoA's Rules. Changes to the IFoA's Rules require approval by the IFoA's Council and the voting members of the IFoA. The IFoA's Council has approved the revised Disciplinary Scheme. What is now required is approval by a majority of those voting IFoA members who choose to vote.

Members are not required to vote on the supporting Regulations, however these have been provided for information.

Any questions?

If you have any queries about the revised Disciplinary Scheme, please email disciplinary.scheme@actuaries.org.uk.