

# The Actuarial Profession

## The Disciplinary Board

### **GUIDELINES FOR DISCIPLINARY TRIBUNAL PANELS AND APPEAL TRIBUNAL PANELS ON THE AWARD OF COSTS**

*(Version 1.1 January 2007)*

#### **Introduction**

*(i) The disciplinary schemes refer to awards of costs in the following rules:*

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

7.5 No appeal shall lie to the Tribunal solely on the question of costs without the consent of the Chairman of the Appeals Tribunal.

7.15 The Appeal Tribunal Panel shall make one or more of the following determinations on the appeal:

.....

(c) make an award of costs against the Respondent or Faculty/Institute as it considers appropriate.

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 in the time required, he may be guilty of Misconduct and further disciplinary proceedings may be commenced against him under this Scheme.”

*(ii) The Disciplinary Board has prepared these guidelines for use by Disciplinary Tribunal Panels and Appeal Tribunal Panels.*

*(ii) The Board’s objective in offering the guidelines is to seek to achieve consistency and fairness in the operation of the disciplinary schemes. The guidelines will be published on the profession’s website, to assist the transparency of the procedures, and printed copies will be made available on request to inquirers.*

*(iii) The guidelines are not directives, nor do they limit the discretion under the schemes of the Chairman of the relevant tribunal panel. They will be developed in the light of experience of cases under these schemes. The Board will review them annually; earlier review will take place if need arises.*

## Guidelines

1. A tribunal panel should award costs only after it has considered all the relevant matters. A costs award will not be appropriate in every case. A tribunal panel should look at the conduct of the Respondent and the conduct of the Faculty/Institute, and consider whether there are any aggravating and/or mitigating factors relevant to whether or not to make a costs award.
2. Following an application by one of the parties for costs, the other party should have a right to be heard in reply. A disciplinary tribunal panel should normally await an application for costs rather than initiating such award, but if it considers that a successful party may have strong grounds for a costs award it may draw attention to the right to make an application.
3. A disciplinary tribunal panel has discretion as to whether to award costs, whereas an appeal tribunal panel must make an order for costs, but both panels have discretion as to the sum to be awarded. An award should be in a specified sum. This sum should not include the costs of the investigation.
4. The Faculty/Institute will prepare for a disciplinary tribunal panel a statement of costs incurred since the date when an adjudication panel referred the matter, or when the Respondent elected under rule 3.17 to proceed to a disciplinary tribunal panel. It will prepare for an appeal tribunal panel a similar statement including costs incurred since the date of the lodging of the appeal. A Respondent will also be required to prepare a similar statement and will be advised to bring evidence of those costs.
5. An award for costs should not normally be made to a Respondent where a disciplinary sanction is imposed. However in those circumstances costs might be awarded to the Faculty/Institute, at the tribunal panel's discretion, if those costs in the case had been increased by reason of the actions of the Respondent or the Respondent's advisers.
6. Not every successful Respondent will, however, be entitled to a costs award. A tribunal panel should be satisfied that the Respondent is entitled to be reimbursed for some, though not necessarily all, of the costs incurred in order to reach a position where it is accepted that there should be no disciplinary sanction imposed. The tribunal panel's objective should be to ensure that the Respondent is treated fairly and consistently with other respondents. Where, for example, it appears that it should have been clear to those conducting the investigation that there was no case to answer (if they had investigated it properly) on the whole of, or any of, the charges, costs could be awardable to the Respondent on those parts of the charge that clearly, in the opinion of the tribunal panel, should not have been brought. However the tribunal panel should have discretion to reduce an award if the Respondent's own conduct has contributed to the fact that a case was not stopped earlier.

7. Costs awarded to the Faculty or Institute may at the panel's discretion be a contribution to the costs incurred in bringing the case to a tribunal panel or defending an appeal, rather than the full costs. The Respondent's means should be taken into account.
8. A tribunal panel should aim to deal with the costs award at the hearing. In the exceptional circumstances that neither party is in a position to deal with the matter on the day, and a decision is needed, the tribunal panel may consider a request by either party for adjournment.
9. Having reached a decision on an award, a tribunal panel should bear in mind the decision on judging whether a costs order is right in the circumstances, given by the Court of Appeal in *Kastor Navigation Co Ltd and Another v AGF MAT and Others (no 2)* (*Times Law Report 30 April 2004*):

“The judge must have regard to all the circumstances and stand back from the mathematical result and ask himself, in the light of those circumstances, whether it was a right result.”
10. Where an application for costs is made, brief reasons for any refusal of an award should be given and included in the tribunal panel's reasoned decision.

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