



Disciplinary Board

10 March 2021, Time: 10:30 - 14:30

By video conference

Attending:	Stephen Redmond (lay member and Chair) (SR) Velia Soames (lay member) (VS) Kevin Doerr (actuary member) (KD) Simon O'Regan (actuary member) (SO) George Russell (actuary member) (GR) Jim Webber (actuary member) (JW)
In attendance:	Ian Farr, Chair of Scheme Review Working Party (Item 4)
Apologies:	Julia Wanless, Judicial Committees Secretary (JSW)
Executive Staff:	Kirsten Mavor, Secretary to Board (KM) Michael Scott, Head of Disciplinary Investigations (MS) Sarah Borthwick, Case Manager (SB) (item 4) Rita Alexander, Case Manager (RA) (item 9) Catherine Mouat, Disciplinary Investigations Coordinator (CM) (note taking)

Item	Title	Action
	Welcome, apologies and conflict check	
	<p>The Chair opened the meeting and welcomed the Board Members. The Chair advised that Ian Farr, Chair of Scheme Review Working Party would be joining the meeting for item 3.</p> <p>JSW, the Judicial Committee Secretary has passed on her apologies.</p> <p>Board Members were asked to raise any conflicts arising from the agenda. GR referred to the conflict he has with some of the cases that might be discussed under item 8. It was agreed that GR would leave the meeting if the relevant cases were discussed.</p>	
1 & 2	Chair and Executive Updates	
	<p>The Chair referred to activities since the last Board Meeting in December. The updates from both the Chair and the Executive were noted by the Board.</p>	
3.	Minutes and Action List	
	<p>The Board approved the December minutes and agreed that the highlighted areas should be redacted before the minutes are published.</p> <p>The Board asked when the regulatory governance changes were likely to go through. KM advised that the proposed changes are subject to a member vote which will go out at the end of March. If the member vote is successful, the new governance arrangements will take effect from 1 June 2021.</p> <p>The Board noted the action list.</p>	

Item	Title	Action
4.	<p>Scheme Review</p> <p>IF and SB joined the meeting to present the Working Party's recommendations.</p> <p>SB presented the cover paper and advised that a Working Party meeting was held in February 2021. Further meetings are scheduled for March and May 2021. The Board was asked to approve the slight shift in timescales with the remaining proposals to be presented to the Board in June 2021. The Board noted and approved these changes.</p> <p>The Board requested a summary paper for the June meeting providing an overview of what the Working Party has covered and what has been approved by the Board. SB advised one had been shared with the Working Party and would be shared with the Board. It was also agreed that a more detailed project plan would be provided at the June Board meeting.</p> <p>IF presented three detailed proposals relating to (i) duty to self-report (ii) adjudication panels and related matters and (iii) Capacity for Membership Process. The Board considered these proposals in detail and accepted the recommendations.</p> <p>With regard to the duty to self-report, the Board agreed with the recommendation that this should be removed from the Scheme as it is covered in the Actuaries' Code and related guidance. The Board agreed that it was appropriate for this Board and the Regulation Board to consider whether any further guidance should be issued in relation to the obligation to self-report and clarify what the duty is if a Member is charged with a crime.</p> <p>The Board noted that the current default position when a <i>prima facie</i> finding is made by an Adjudication Panel is for the matter to be referred to Tribunal if the Respondent does not accept the Panel's view or fails to respond. It was agreed that this approach should be changed so that a Respondent has to actively refer a matter to Tribunal. The Board agreed to the other recommendations in relation to Adjudication Panels and noted that the maximum level of fine set at the Adjudication Panel stage is due to be reviewed by the Board.</p> <p>The Board agreed that the Capacity for Membership process should be simplified as much as possible. The Working Party recommended that the disciplinary and capacity provisions should be contained within one Scheme and the Board agreed with this recommendation. The Board agreed that any minor alterations to conditions set by a Capacity for Membership Panel should be made by the Executive as this would be a proportionate and efficient approach.</p> <p>SR thanked both IF and SB for attending the meeting and for the progress that has been made.</p>	<p>SB</p> <p>KM</p> <p>KM</p> <p>KM</p>
5.	<p>2020/21 Objectives</p> <p>The Board noted the cover paper, project plan (Board priorities) and traffic lights report. KM advised that the annual report period has been extended until 31 May 2021 and the project plan has been amended to reflect this.</p>	

Item	Title	Action
6.	<p>Costs Guidance and Other</p> <p>KM presented this paper seeking approval of amendments to the Costs Guidance to reflect recent changes in case law. The Costs Guidance has also be amended to clarify that costs will usually only be awarded to litigants in persons if they were out of pocket expenses. The Board approved both sets of proposed amendments to the Costs Guidance and agreed that the updated version should be published.</p> <p>The Board discussed whether more should be done to highlight the change in the approach to recovering costs over recent years. It was agreed that this should be discussed further under item 8 when discussing feedback on costs recovery.</p> <p>KM presented a table setting out the guidance issued by the Board and when it was due for review. It was agreed by the Board that a 'light touch' review of all guidance should be carried out this calendar year. A more substantive review will take place when the Scheme Review is near completion. The Board would like the table setting out the guidance to be included as a standard item at each meeting.</p>	<p>KM</p> <p>KM</p> <p>KM</p>
7.	<p>Report from Independent Examiner and Convener of Disciplinary Tribunals</p> <p>The Board noted the contents of these two reports. It was agreed that there was useful feedback in both of these reports and they should be shared with the Scheme Review Working Party.</p> <p>It was noted that the Convener expressed a view that the current definition of Misconduct could be improved and it was agreed that he should be given a further opportunity to comment on the new definition of Misconduct which had been approved by the Board.</p> <p>KM will send an acknowledgement on behalf of the Board thanking both the Independent Examiner and the Convener for their helpful insight into the disciplinary process.</p>	<p>SB</p> <p>KM</p>
8.	<p>Case Update Report</p> <p>Before considering the Case Update Report, MS advised that:</p> <ul style="list-style-type: none"> Rita Alexander has joined the Disciplinary Investigations Team as a Case Manager on a fixed term contract. This will help address resourcing issues previously highlighted. RA joined the meeting at this point and introduced herself. On behalf of the Board, SR welcomed RA to the team and the Board meeting. Detailed feedback has been provided by a number of Respondents and also an Investigation Actuary which is discussed later under this agenda item. <p>MS presented the Case Update Report. MS advised that nine new cases had been received since the last Report and there are 18 live cases.</p> <p>Four cases had been considered at the Adjudication Panel stage in the reporting period. Three Tribunals were also held. Copies of the relevant determinations have been provided to the Board.</p> <p>The Board noted the contents of the Case Update Report and agreed steps could be taken to improve the presentation of this Report. In particular, it would assist the Board if it was simplified and more user friendly. The Executive agreed to look into this.</p>	<p>CM/MS</p>

Item	Title	Action
	<p>The Board reviewed associated feedback from the panel members and legal advisers. It was noted that concerns had been raised by panel members about the drafting of an allegation which included a factual inaccuracy. MS explained that in presenting a Case Report all allegations put forward by the person making the Allegation were included. It was not the role of the Case Manager at this stage to disregard any allegations on the basis they could not amount to misconduct. This was properly the role of the Adjudication Panel. However it was agreed that the Case Manager, when drafting allegations, should highlight within the Case Report where there are any factual inaccuracies within the allegations put forward.</p> <p>It was also agreed that guidance should be provided to panel members which would assist them with navigating their way around the bundle of papers.</p> <p>The Board also noted the detailed feedback received from various Respondents and also an Investigation Actuary. This included feedback submitted via the online survey which is sought at the conclusion of a case and also separate feedback addressed specifically to the Board.</p> <p>The Board discussed this feedback in detail and considered whether there were any learning points from the points raised. The Board considered that the comments provided were relevant in terms of its role in reviewing the management and operation of the disciplinary process. Also, some of the feedback was relevant to the current review of the disciplinary process by the Scheme Review Working Party.</p> <p>It was agreed that the Respondents and the Investigation Actuary should receive a letter from the Chair expressing the Board's gratitude for raising these specific concerns for the attention of the Board. It was agreed that these letters should be circulated to Board members before sending to the recipients. It should be made clear that it is beyond the Board's remit to comment on the final decisions reached by the independent Tribunal.</p> <p>The Board noted that detailed feedback has also been received from a Respondent in a 'live' investigation. The Board agreed that further consideration should be given on how to respond to this detailed letter and it was agreed that a short meeting should be set to discuss further.</p>	<p>MS</p> <p>MS/JSW</p> <p>KM</p> <p>KM</p>
9.	<p>Determinations Review Sub Committee Report</p> <p>VS presented this paper. She advised that the Sub Committee is now meeting quarterly and it reviewed five determinations. VS advised the Board that the increased frequency of meetings meant that the number of determinations reviewed was more manageable and the Board would also be provided with a report at each scheduled meeting. Overall, VS advised the Board that the quality of determinations remains high.</p> <p>The Board accepted the recommendations put forward by the Sub Committee and noted they would be actioned by the Executive.</p>	<p>KM/JSW</p>

Item	Title	Action
10.	<p>Risk Register</p> <p>KM presented this item and referred to fact that the Board requested that the risk register be included as a standing item with time allocated for discussion at each meeting. The Board considered the risk register and agreed with the wording of the risk in relation to the possible transition from Disciplinary Board to Disciplinary Committee. JW asked where the scoring criteria on the risk matrix came from. KM advised that the risk matrix is used across the IFoA and agreed to find out further information about the background to the risk matrix.</p> <p>The Board approved the register and agreed that it should be discussed again at the next meeting.</p>	KM
11.	<p>AOB</p> <p>SR proposes that a strategy session be held in May 2021 so that the Board can consider the new way of working, if the member vote is successful. Availability will be sought from board members.</p> <p>It was agreed that there were no papers before the Board where it would be appropriate to publish.</p> <p>The meeting concluded at 2:40.</p>	KM
12.	<p>Regulation Board update for Chairs</p> <p>The Board noted the update from the Regulation Board.</p>	
13.	<p>Board Remit</p> <p>The Board noted its own terms of reference</p>	
14.	<p>Schedule of term times</p> <p>The Board noted this.</p>	
15.	<p>Forward Planning Schedule</p> <p>The Board noted this and will provide any comments to KM if there is anything to be added.</p>	

Dates of next meetings:

16 June 2021

23 September 2021

8 December 2021

(strategy day in May - tbc)