



Institute
and Faculty
of Actuaries

Guidelines –

For Disciplinary Tribunal Panels and Appeal Tribunal Panels on the award of costs

by the Disciplinary Board
of the Institute and Faculty of Actuaries

May 2021

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

1. Introduction

- 1.1 The purpose of this note is to provide information for users of the Disciplinary and Capacity for Membership Schemes ("the Scheme") in understanding costs awarded by Disciplinary Tribunal Panels and Appeal Tribunal Panels (the "Panel" or "Panels" collectively). There are a number of notes like this available on our [website](#), dealing with different stages of the Scheme. If you cannot find a note that deals with your query, please contact us for assistance.
- 1.2 The Disciplinary Board's objective in producing these guidelines is to achieve and demonstrate consistency and fairness in the operation of the Scheme. These guidelines are published on the IFoA's website, to assist the transparency of the procedures.
- 1.3 These guidelines are not directives, nor do they limit the discretion under the Scheme of the relevant Panel or Chair.
- 1.4 The Board will review this guidance every three years or earlier if the need arises.

2. Which rules within the Scheme refer to awards of costs?

- 2.1 Rules 8.24, 11.16(c), 12.1-12.3 of the Scheme.

3. What is an award for costs?

- 3.1 Costs refer to a sum awarded by Panels in favour of either the Respondent or the Institute and Faculty of Actuaries ("IFoA") when seeking to be compensated for the amount incurred by that party in bringing or defending a case. Usually, costs will be awarded to the party in whose favour a case has been determined subject to the principles set out in paragraph 5.3.
- 3.2 The IFoA will claim costs in all cases where allegations are found proved. 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.
- 3.3 Costs are not a sanction but a consequence, usually of a finding of Misconduct.

4. How should an application be made for costs?

- 4.1 Any party intending to make an application for costs before a Disciplinary Tribunal Panel must prepare a statement of the relevant costs incurred. The statement of costs must clearly show the time spent and the hourly rates charged. An example of the information the IFoA will normally provide to a Panel is included at **Annex A** below. The Respondent should provide a similar level of detail to allow the Panel to assess their application.
- 4.2 For an Appeal Tribunal Panel, a similar statement must be prepared which includes the additional costs incurred since the date of the lodging of the appeal.
- 4.3 The statement of costs should be sent to the other party at least 14 days in advance of the hearing. Where appropriate, documentary evidence of costs incurred should be provided. The statement

of costs should include a reasonable estimate of any costs that are likely to be incurred in the 14 days before the hearing and during the hearing itself. It is not necessary to serve the statement of costs on the Clerk/ Panel when sending the statement to the other party, however at least 7 copies of the statement of costs and any supporting documents should be brought to the hearing.

- 4.4 A Panel will only consider an application for costs at the conclusion of a hearing after it has considered all other matters. At that time, either the IFoA or the Respondent can make an application for costs to the Panel. The party making the application should provide the Panel with their statement of costs and any supporting documentation at that time and explain why they are seeking an award of costs.
- 4.5 Following an application by either the IFoA or the Respondent, the other party should have a right to be heard in reply, including an opportunity for the Respondent to provide evidence of his or her means as appropriate. The Panel will also have an opportunity to ask questions about the costs application and the Respondent's financial circumstances, where appropriate.
- 4.6 A Panel will aim to deal with any costs application at the hearing. The Panel may however, at its discretion, consider a request by either party for adjournment for the purpose of hearing a costs application.

5. What costs can be included in a statement of costs?

- 5.1 The following costs may be included in a statement of costs:
- All costs incurred by the IFoA in the investigation of an Allegation or by a Respondent in responding to an Allegation being investigated by the IFoA.
 - All costs incurred by the IFoA or by a Respondent in preparing for and attending any Panel hearing, including the cost of legal representation, expert witnesses and all associated costs such as travel and accommodation.
 - The IFoA may also include all costs related to setting up a Panel such as venue hire, attendance fees for Panel members, stenographer fees and legal adviser fees.
- 5.2 Where applicable, the statement of costs should include a reasonable estimate of any costs that are likely to be incurred from when the statement of costs is sent to the other party until the conclusion of the hearing.
- 5.3 The IFoA is likely to defend any costs claimed by a Respondent and it is not necessarily the case that costs will be awarded to a Respondent where the charge of Misconduct is not proved. The Panel will consider how the IFoA has handled the case and will be guided by the appropriate authority, the current approach being that set out in the case of **CMA v Flynn Pharma [2020] EWCA Civ 617**.[\[11\]](#) The Panel will consider the approach in that case including the following: -
1. The fact that the IFoA is a regulator exercising functions in the public interest is an important consideration;
 2. The default position is therefore that no order for costs should be made against the IFoA where it has brought or defended proceedings acting purely in its regulatory capacity;
 3. The default position may be departed from only if there is a **good reason**;

4. The mere fact that the IFoA has been unsuccessful is not a good reason.
5. Examples of good reasons include **unreasonable conduct** on the part of the IFoA , or **substantial financial hardship** likely to be suffered by the Respondent if a costs order is not made;
6. There may be additional factors, specific to a particular case, which might also permit a departure from the default position.

6. How much can a Panel award?

- 6.1 An award should be in a specified sum which may be any amount up to the total being applied for by either the IFoA or the Respondent. The Panel will not make an award above the amount being claimed.

7. What factors will a Panel take into account when considering an application for costs against a Respondent?

- 7.1 The guiding principle applied by a Panel is that a Respondent should pay all costs incurred by the IFoA as 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.
- 7.2 The starting point for a Panel would be to consider an award of the full amount of costs incurred and claimed for by IFoA. The Panel may, if it considers it appropriate to do so, award a lower sum than the amount of costs claimed for. The following are examples of when a Panel may reduce the costs award:
 - Some of the costs incurred by the IFoA could reasonably have been avoided or reduced;
 - The costs incurred are excessive given the circumstances of the case;
 - Having regard to the Financial or Personal Circumstances of the Respondent as set out in the relevant sections below.

8. What factors will a Panel take into account when considering an application for costs against the IFoA?

- 8.1 Following the principles of the case of **CMA v Flynn Pharma [2020] EWCA Civ 617**.[\[11\]](#). (see above), costs will not ordinarily be awarded against the IFoA where it has properly exercised its regulatory function in bringing disciplinary proceedings against the Respondent.
- 8.2 Costs may be awarded by a Panel to the Respondent if there is good reason for doing so and this may include where there is unreasonable conduct by the IFoA in its conduct of disciplinary proceedings against the Respondent. In these circumstances, when deciding on the amount of a costs award the Panel will consider the extent to which inappropriate or unnecessary actions by the IFoA have increased the Respondent's costs relative to their costs had the IFoA conducted the disciplinary proceedings in a proper manner.
- 8.3 The Panel will also have regard to the overall reasonableness of the amount of costs claimed by the Respondent and may reduce an award if the costs incurred are considered to be excessive

given the circumstances of the case or to the extent that they could reasonably have been avoided or reduced. If a Respondent is representing themselves, the Panel will usually only make an award for costs incurred for 'out of pocket expenses' such as travel and associated expenses, not for time incurred by the Respondent.

9. Panel Decision on Costs

- 9.1 Where an application for costs is made, reasons for the Panel's decision whether to allow or refuse that application, and the reason for the amount of the award (if any), will be given in writing.

10. Financial circumstances

- 10.1 When considering an award of costs against a Respondent, the Panel will take into account the Respondent's financial circumstances to assess what amount the Respondent is able to pay. The Respondent will therefore be asked to provide a statement of their financial income, assets and liabilities to the Clerk and the IFoA in advance of the hearing. This will only be provided to and considered by the Panel if there is a finding of misconduct. Supporting evidence should be provided where appropriate. If no statement is provided by the Respondent then the Panel is unlikely to be able to take into account the Respondent's financial circumstances in considering an application for costs and should normally proceed on the assumption that the Respondent is able to pay any amount up to the full amount of costs being sought by the IFoA.

- 10.2 Relevant financial factors may include:

- Current income and likelihood of income in the future;
- Existence and nature of savings and other assets;
- Involvement with, or ownership of businesses;
- Amount of debt and any other liabilities, or likely future liabilities;
- Amount and reasonableness of stated outgoings;
- Insolvency (actual or pending).

Attached as **Annex B** is a Statement of Financial Circumstances Form setting out in more detail the information normally required by a Panel from a Respondent.

11. Personal circumstances

- 11.1 As well as financial factors, the Panel will also consider the Respondent's personal circumstances if requested to do so by the Respondent. For example, the Panel may consider the Respondent's current health, family situation, whether they have any dependents and what, if any, impact its decision to recover money due will have on the Respondent and other parties. If the Respondent would like the Panel to consider their personal circumstances, they should provide the Panel with documentary evidence which supports their submission.

12. What happens if costs are not paid by the due date?

- 12.1 The IFoA will seek to recover costs awarded to it in all cases where ordered, even where membership has ceased.

12.2 The Secretary to the Panel will confirm, in writing, the amount of costs ordered (including the date by when the amount is due to be paid and how payment can be made) alongside the notice of the determination. If the outstanding amount remains unpaid once the due date has lapsed, the IFoA will commence legal proceedings in the civil courts to recover the debt and further disciplinary proceedings may be commenced for failure by a Respondent to comply with an order by a Panel.

Further information

If you have any further questions, please contact the secretary to the Panels, whose contact details are as follows:

Judicial Committees Secretary
Institute and Faculty of Actuaries

Telephone: +44 (0)20 7632 2189

Email: clerk@actuaries.org.uk

Disciplinary Tribunal Panel of the Institute and Faculty of Actuaries

[Name of Respondent]

Statement of Costs

IFoA Costs incurred in preparation for Tribunal hearing (based upon [X] hearing days).

Preparation for and attendance at Disciplinary Tribunal Panel hearing by
[X]. [Insert rates for each individual involved in prosecution costs]

Prosecution Costs are exclusive of VAT.

IFoA costs (pre Adjudication Panel)	Hours	Cost
Consideration of all papers		
Corresponding/ meeting with Respondent		
Corresponding/ meeting with complainant/ witnesses		
Internal correspondence/ meetings		
Preparing Case Report		
Preparing papers		
Total IFoA costs (pre Adjudication Panel)		
Notes:		

IFoA costs (post Adjudication Panel)	Hours	Cost
Consideration of all papers		
Internal correspondence/ meetings		
Corresponding/ meeting with Respondent		
Corresponding/ meeting with complainant/ witnesses		
Drafting of the charge		

Drafting witness statement(s)		
Drafting case summary and chronology		
Preparing the Tribunal bundle and papers for service and sending to Respondent		
Preparing and attending Case Management Call		
Preparing and checking costs application		
Corresponding with Counsel		
Attendance at Tribunal hearing		
Counsel's fee		
Total IFoA costs (post Adjudication Panel)		
Notes		

Other Expenses (provided by Clerk) – exclusive of VAT		
Room hire for hearing		
Retiring rooms for hearing		
Stenographer fees		
Legal Advisor		
Panel		
Total Other Expenses		

GRAND TOTAL	
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STRICTLY PRIVATE AND CONFIDENTIAL
CONFIDENTIAL STATEMENT OF FINANCIAL CIRCUMSTANCES

You should provide this statement to the Clerk to the Disciplinary Tribunal Panel or the Appeal Panel about your financial circumstances. You will need to provide relevant supporting documentation with it; for example, bank statements, property valuations or trading accounts. The material will be kept in the strictest confidence and only shown to the Disciplinary Tribunal Panel or the Appeal Panel at the relevant time in the disciplinary proceedings, if appropriate.

In the absence of information about your financial circumstances and evidence in support, a Disciplinary Tribunal or Appeal Panel will assume you have the means to pay any fine and/ or costs ordered.

1.	Name	
1.1	Full name(s)	
1.2	IFoA ARN	
1.3	Employment Status (e.g. retired, employed, self-employed, unemployed)	
1.4	Name and address of employer or business	
2.	Income (per month)	
2.1	Gross Salary, other earnings and remuneration (including all taxable benefits)	
2.2	Profits of business	
2.3	Gross Pension	
2.4	Gross investment income from:	
	2.4.1 Building societies	
	2.4.2 Bank dividends	
	2.4.3 Other investments (e.g. shares)	
2.5	Gross income from property	
2.6	Any other income not included in 2.1- 2.5 above.	
3.	Outgoings (per month)	
3.1	Tax payable on incomes declared above (including tax deducted at source)	
3.2	National Insurance Contributions	
3.3	Mortgage interest (include capital repayment as well as interest)	
3.4	Endowment mortgage insurance	
3.5	Other interest payable (please specify)	
3.6	Other significant outgoings not included in 3.1-3.5 above.	

4.	Capital Assets and Large Gifts	
4.1	Approximate market value of all investments:	
	4.1.1 Building Society/ Bank deposits	
	4.1.2 Equity investments, government stocks	
	4.1.3 PEPs, ISAs, TESSAs	
4.2	Approximate market value of principal residence	
4.3	Cash at banks or elsewhere	
4.4	Net worth/ value of any businesses which you own or share	
4.5	Approximate market value of other properties owned	
4.6	Pension fund (specify if personal pension)	
4.7	Approximate value of any other assets (please specify)	
5.	Capital Liabilities (total)	
5.1	Mortgage	
5.2	Bank loans	
5.3	Other liabilities (please specify)	
6.	Other information	
	Please specify below any other information necessary to assist the Panel in understanding your earnings, assets and liabilities in a fair and meaningful manner.	
7	Net Assets	
7.1	Your capital assets less your capital liabilities	
	Note: You should explain below if there are any reasons why net assets cannot be converted or used to pay an award of costs.	

8.	Any other relevant information (comment on separate pages if necessary)
9.	Verification of Income
	<p>Please enclose documentary evidence in support of the income figures in Section 2.</p> <ul style="list-style-type: none"> • Latest tax returns (last two years at least) • Latest accounts (last two years at least) • Bank statements • Correspondence, statements relating to benefits • Other (please specify below)
10	Declaration
	The information provided in sections 1 to 9 above is true and accurate to the best of my knowledge.
	Signature:
	Date: