



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

December 2016

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

### **Introduction**

The purpose of this note is to provide information for users of the Disciplinary Scheme (“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 our Disciplinary Scheme. If you cannot find a note that deals with your query, please contact us for assistance.

The Disciplinary Board's objective in producing these guidelines is to demonstrate consistency and fairness in the operation of the Disciplinary Scheme (“the Scheme”). These guidelines are published on the IFoA's website, to assist the transparency of the procedures.

These guidelines are not directives, nor do they limit the discretion under the Scheme of the Chair of the relevant Panel.

The Board will review this guidance every three years or earlier if the need arises.

### **What is an award for costs?**

Costs are not a sanction but a consequence, usually of a finding of Misconduct.

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 respectively. Usually, costs will be awarded to the party in whose favour a case has been determined, subject to the general principles associated with the award of costs as referred to in **Baxendale-Walker v The Law Society [2007] EWCA Civ 233** (see below).

The IFoA will claim costs in all cases where allegations are found proved. This is on the basis that the Membership should not bear the cost of bringing disciplinary proceedings against Respondents who through their own failings have found themselves before a Panel.

### **When are costs applied for?**

If either party intends to claim costs, they should make an application to the Panel in advance of a Disciplinary or Appeal Tribunal hearing, respectively. The relevant Panel will advise when such information ought to be provided.

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.

A Panel will only consider any application for costs at the conclusion of a hearing after it has considered all the relevant matters on liability. A costs award may not be appropriate in every case. A Panel will 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.

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.

### **How should an application be made for costs?**

Any party intending to make an application for costs before a Disciplinary Tribunal Panel should prepare a Statement of Costs of the relevant costs incurred supported by evidence of time spent and hourly rates charged, for example. It will prepare for an Appeal Tribunal Panel a similar statement including costs incurred since the date of the lodging of the appeal. The Panel may at its discretion, ask for further details to be produced in order to satisfy itself as to the appropriate award, if any, to be made.

An example of the information a Panel will require in order to assess an application is attached at Annex A below.

### **What costs can be claimed?**

Costs usually relate to the expenses incurred by a party such as legal representation and disbursements such as photocopying, travel and accommodation incurred as a result of the matter being brought before disciplinary proceedings. An award in favour of the IFoA should not include the costs of investigation, being the costs incurred by IFoA prior to the date when:

- (a) an Adjudication Panel referred the matter,
- (b) the Respondent elected under rule 3.18 to proceed to a Disciplinary Tribunal Panel or
- (c) the matter was referred directly to a disciplinary tribunal Panel under rule 3.13.

The IFoA will 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 Court of Appeal decision in **Baxendale-Walker v The Law Society [2007] EWCA Civ 233**. The Panel will consider the guidance in the whole of that case, including the following extract from the judgment:

*“In respect of costs, the exercise of its regulatory function placed the Law Society in a wholly different position from that of a party to ordinary civil litigation. Unless a complaint was improperly brought or, for example had proceeded as a “shambles from start to finish”, when the Law Society was discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs followed the event.”*

### **How much can a Panel award?**

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 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.

### **What factors will a Panel take into account when deciding how much to award?**

Not every successful Respondent will be entitled to a costs award. A Panel will determine whether or not it is satisfied that the Respondent is entitled to be reimbursed. The Panel may decide that an award for costs are made for some, though not necessarily all, of the costs incurred by the party in whose favour the award is granted.

The Panel's objective is to ensure that the Respondent is treated fairly and consistently with other Respondents. As such, the Panel will take account of the way in which the investigation/prosecution of the case has been conducted; the Respondent's own conduct during that process and the overall circumstances of the case. The Panel will also take into account the financial circumstances of the Respondent if evidence is provided to that effect.

Having reached a decision on an award, a tribunal Panel will bear in mind the decision on judging whether a costs order is right in the circumstances.

Where an application for costs is made, brief reasons for the Panel's decision whether to allow or refuse that application will be given in writing.

### **Which rules within the Scheme refer to awards of costs?**

**Rules 6.25, 8.16(c), 9.1-9.3 of the Disciplinary Scheme.**

### **What happens if costs are not paid by the due date?**

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

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  
7th floor Holborn Gate  
326 - 330 High Holborn  
London  
WC1V 7PP.

Email: [clerk@actuaries.org.uk](mailto:clerk@actuaries.org.uk)  
Telephone: 020 7632 2189.

Case Reference Number:

BEFORE THE DISCIPLINARY/APPEAL TRIBUNAL PANEL OF THE  
INSTITUTE AND FACULTY OF ACTUARIES

BETWEEN:

THE INSTITUTE AND FACULTY OF ACTUARIES

- And -

RESPONDENT

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STATEMENT OF COSTS AT [DATE]

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#### DESCRIPTION OF FEE EARNER

[Status of person, hourly rate]

[1 unit of time = 6 minutes]

#### Part A- IFoA Costs

Investigation costs as at date of issue (see enclosed copy schedule)	XXXX
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#### Part B- [breakdown of work undertaken here]

Description of work	Time taken in minutes	Amount in £
Reviewing documents	XXX	XXX
Preparation for hearing	XXX	XXX
Attendance at hearing	XXX	XXX
TOTAL CLAIMED Part A and Part B		XXXX