

# The Disciplinary Committee of the Institute and Faculty of Actuaries

## REGULATIONS FOR APPROVAL OF APPOINTMENTS AND NOMINATIONS TO DISCIPLINARY TRIBUNAL PANELS

### Introduction

The Committee's objective in preparing these regulations is to seek to achieve consistency and fairness in the operation of the Disciplinary and Capacity for Membership Scheme (the Scheme). They will be published on the IFoA's website, to assist the transparency of the procedures, and printed copies will be made available on request to inquirers.

The regulations are not directives; nor do they limit the discretion under the Scheme of the Convener of the Disciplinary Tribunal Panels. They will be developed in the light of experience of cases under the Scheme, which were introduced on 1 January 2004. The Committee will review them annually; earlier review will take place if need arises.

### Approval of the appointment of Panels

1. For the purpose of rule 2.26 of the Scheme, the Convener of the Disciplinary Tribunal Panels ("the Convener") must, when approving the appointment of each Panel, have regard to the following:
  - (a) The nature of the charge or charges against the Respondent.
  - (b) The need to appoint three or more members of the disciplinary pool, at least one of whom must be a lay member. In approving the number of Panel members the Convener must consider the nature, extent and complexity of the charge or charges to be determined and the balance of membership – actuarial and lay – that would be appropriate.
  - (c) The avoidance of any conflict of interest or potential bias: guidance on this matter is given in regulation 2 below.
  - (d) The branch of the profession relevant to the charge or charges: the Convener must approve the appointment of at least one Fellow from the branch of the profession which is relevant to the complaint.
  - (e) Any reasonable representations from the Respondent: the Convener must consider any reasonable representations from a Respondent, for example, on possible conflict of interest of which the Convener had been unaware when approving the appointment, or on any other matter that could weaken that quality or the credibility of the Panel's determination of the application.

### Conflict of interest and bias

2. Conflict of interest and bias:
  - (a) The Panel members-designate must be asked if they are aware of any conflict which would preclude them from hearing this charge of misconduct.

- (b) The Panel members-designate must be allowed the time necessary to carry out a conflict search within their employer's records.
- (c) Sometimes the Convener may be asked to advise on the possibility of a conflict. The test for bias, paramount for Tribunal members, is this:

*"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Tribunal was biased."*

Lord Bingham in *Porter v Magill* [2002] 1 All ER 465.

- (d) Knowledge of the Respondent: in a small profession the question may arise whether personal knowledge of the Respondent would disqualify a Panel member from hearing a case. The test to be applied is whether it would be possible to proceed fairly and justly having regard to the Panel member's background knowledge. (Woolf, J in *R v Frankland Prison Board of Visitors ex parte Lewis* [1986] 1 All ER 272, 277.). In each individual case it must be decided whether the familiarity in question is of such a nature and degree as to indicate a lack of impartiality.

### **Approval of the nomination of a Chair of a Panel**

- 3. In approving the nomination of the Chair of a Panel the Convener must have regard to the following:
  - (a) The Chair shall be nominated from among the three members appointed to that Panel.
  - (b) The Scheme does not specify whether the Chair should be a Fellow or a lay member. It is therefore open to the Convener to approve the nomination of a lay member as Chair if he thinks it appropriate for the application to be heard.
  - (c) The experience of Panel members of the work of Disciplinary Tribunal Panels, of the schemes and of acting as Chair in general.

### **General**

- 4. In accordance with rule 2.59 of the Scheme, any function which may be undertaken by the Convener of the Disciplinary Tribunal Panels may be undertaken by any Deputy Convener of the Disciplinary Tribunal Panels or, in the absence of a Deputy Convener, by such other member of the disciplinary pool as the Convener shall designate for that purpose, in the event that the Convener or Deputy Convener shall be unavailable to fulfil that function.
- 5. For the avoidance of doubt, the person exercising these functions may approve the appointment of himself or herself as a member of a Panel, and the nomination of himself or herself as the Panel's Chair.