



Institute
and Faculty
of Actuaries

London

7th Floor · Holborn Gate · 326-330 High Holborn · London · WC1V 7PP
Tel: +44 (0) 20 7632 2100 · Fax: +44 (0) 20 7632 2111

Edinburgh

Level 2 · Exchange Crescent · 7 Conference Square · Edinburgh · EH3 8RA
Tel: +44 (0) 131 240 1300 · Fax: +44 (0) 131 240 1313

Oxford

1st Floor · Park Central · 40/41 Park End Street · Oxford · OX1 1JD
Tel: +44 (0) 1865 268 200 · Fax: +44 (0) 1865 268 211

Beijing

6/F · Tower 2 · Prosper Centre · 5 Guanghua Road · Chaoyang District · Beijing China 100020
Tel: +86 (10) 8573 1000 · Fax: +86 (10) 8573 1100

Hong Kong

2202 Tower Two · Lippo Centre · 89 Queensway · Hong Kong
Tel: +11 (0) 852 2147 9418 · Fax: +11 (0) 852 2147 2497

www.actuaries.org.uk

© 2015 Institute and Faculty of Actuaries



Institute
and Faculty
of Actuaries

Safeguarding the Public Interest

Frequently Asked Questions

About Our Disciplinary Scheme



Contents

Introduction

Section A - General FAQs

1. What is the purpose of the Scheme?
2. How does the Scheme interact with other legal processes?
3. If a member is charged with a criminal offence, do they need to inform the IFoA?
4. If I make a complaint, can I get financial compensation through the Scheme?
5. What happens when the IFoA receives a complaint?
6. Can a member be subject to any orders or restrictions before the disciplinary process is completed?
7. What standard of proof is applied?

Section B - Misconduct

8. Why is it important to understand what “misconduct” means?
9. What is the meaning of “misconduct” in the Scheme?
10. Who decides if an allegation amounts to “misconduct”?
11. Does the Scheme deal with allegations about the standard of service received from an IFoA member?
12. What type of behaviour might amount to misconduct under the IFoA Scheme?
13. Is “misconduct” restricted to conduct at work?
14. Does every breach of the Code, or of an APS or a TAS, amount to “misconduct”?

Conclusion

Introduction

In regulating our members, the Institute and Faculty of Actuaries (IFoA) maintains and protects the standards, professionalism, reputation and the public perception of members. Discipline is an essential part of this. Our Disciplinary Scheme (the Scheme) provides a critical safety net for both members of the general public and members of the IFoA. The Scheme allows the IFoA to investigate allegations of misconduct and to deal appropriately with established individual member failures. The Scheme also feeds back into our wider regulatory function to allow us to identify trends exposed by the Scheme and thereafter initiate appropriate preventative measures such as guidance and training for our membership.

We hope that the Scheme is clear and easy to understand. The purpose of this FAQ document is to provide additional support to users of the Scheme in the form of practical guidance on how the Scheme runs, what to expect and to answer some common queries. These FAQs are also intended to help anyone with an interest in our disciplinary processes to understand the key elements of the Scheme and to provide some additional guidance on the meaning of the test of “misconduct”, and the way in which that test is applied. This test is fundamental to the Scheme, because it is what the facts and circumstances of every case are judged against.

For further information, please read the guidance and communications documents on the discipline section of our website, which are regularly updated and provide additional detail on specific sections of the Scheme. Case determinations are also published on our website. You should also feel free to contact staff at the IFoA with general or specific queries on the Scheme at any time.

We hope you find the FAQs helpful and would welcome any feedback. We would especially like to hear from you if there are any other questions and answers which you think we could usefully add.

Section A

General FAQs

1. What is the purpose of the Scheme?

As a body operating under a Royal Charter, our primary regulatory purpose is the regulation of our members in the public interest. This extends to assuring public confidence in the actuarial profession by maintaining its good standing in the public eye, the quality of actuarial work and the professionalism and integrity of our members.

Part of this regulatory purpose is met by the operation of our disciplinary procedures because the protection of the public is a paramount consideration in the determination of cases of alleged misconduct by any of our members. The Scheme also has a role to play in meeting our wider regulatory objectives by maintaining high standards and confidence in our members both with the general public and with our stakeholders.

2. How does the Scheme interact with other legal processes?

The Scheme operates alongside formal civil and criminal court processes. The facts and circumstances giving rise to a disciplinary complaint may also be the subject of an action in either the civil or criminal courts in the UK or elsewhere. The Scheme serves a separate purpose to such proceedings. If you are involved in a current action within the Scheme as well as a civil and/or criminal court case involving the same facts, you should declare this to all parties at the first opportunity.

The Financial Reporting Council (FRC) oversees the way in which the IFoA undertakes its regulatory responsibilities in the UK. The FRC also operates an investigation and disciplinary scheme for actuaries, in relation to matters involving members of the IFoA which raise or appear to raise important issues affecting the public interest in the UK. The FRC and the IFoA identify instances which are more appropriately dealt with under the FRC's Actuarial Disciplinary Scheme. More information on its disciplinary procedure can be found on the FRC's website: www.frc.org.uk

3. If a member is charged with a criminal offence, do they need to inform the IFoA?

The IFoA expects members to inform it if they have been formally charged with any significant offence. By this, we mean any offence which, if proven, is likely to amount to a breach of the Actuaries' Code, or which otherwise might reasonably be considered to risk bringing the profession into disrepute. An offence which involves dishonesty or raises a question of professional integrity is likely to be treated as "significant" under the Scheme. If in doubt, it is good practice for members to call us to discuss the best course of action. If the matter is one which falls to be considered under the Scheme, we expect members to ensure that we are kept informed about the progress and outcome of the case.

4. If I make a complaint, can I get financial compensation through the Scheme?

No. There is no power under the Scheme to award monetary compensation. The Scheme operates to serve the regulatory purpose of the protection of the public, as well as to uphold the confidence of the public in the actuarial profession, and in the IFoA as its regulator. Those people drawing allegations of misconduct to the attention of the IFoA, although critical to the operation of the Scheme, are not formally parties to the proceedings, which are brought in the name of the IFoA.

If you feel that you may have suffered loss or injury as a result of the actions of a member, and wish to make a claim for financial compensation, then you may wish to take independent legal advice. You may find the following bodies to be helpful:

- Financial Ombudsman Service: www.financial-ombudsman.org.uk
- The Pensions Ombudsman: www.pensions-ombudsman.org.uk
- The Pensions Advisory Service: www.pensionsadvisoryservice.org.uk
- International Actuarial Association: www.actuaries.org

5. What happens when the IFoA receives a complaint?

Our guidance for the general public on how to make a complaint and how we deal with an allegation can be read together with our guidance for members who may be the subject of a complaint. Throughout the disciplinary section of the website, guidance like this is available to assist.

6. Can a member be subject to any orders or restrictions before the disciplinary process is completed?

Yes. When investigating an allegation or during another stage of the disciplinary process the IFoA may decide that it is appropriate to seek an 'interim order'.

An interim order will either: (a) provide for a period of supervised practice; (b) suspend a practising certificate; or (c) suspend IFoA membership. They are effective immediately for up to six months from when they are granted, unless varied by the appropriate body (Adjudication Panel, Disciplinary Tribunal Panel or Interim Orders Panel).

Any application before an Interim Orders Panel will be considered in light of the seriousness of the allegations, whether there is *prima facie* ('on the face of it') evidence to support the allegations, the risk to the public and the effect of such an order on the member who would be subject to the interim order. Any member who faces an allegation of misconduct and is subject to the Scheme, is referred to as "the respondent" under the Scheme. The procedure allows for representations to be made by the respondent before a decision to grant or otherwise dispose of an application is made.

7. What standard of proof is applied?

In common with many regulatory proceedings, this Scheme applies the civil standard of proof, being the legal test of "the balance of probabilities." This means that there must be evidence that it is "more likely than not" that the conduct took place as alleged.

An Adjudication Panel will consider whether there is *prima facie* evidence that the standard of proof can be met. At a Disciplinary Tribunal, the case is tested with a substantive hearing of evidence and findings of fact will be made to determine whether the standard of proof has been met, and the case proved.

More guidance on this standard has been provided to our Panels and Tribunals who comprise a mix of IFoA members and lay persons, who are trained regularly on any salient legal and other developments. Panels are guided on the day by an independent Legal Advisor. A guide can also be found on our website.

Section B

Misconduct

8. Why is it important to understand what "misconduct" means?

The Scheme provides that, "A member shall be liable to disciplinary action... if he has been guilty of Misconduct." Understanding what "misconduct" means, and how it is applied, is critical to understanding the Scheme and our disciplinary processes overall. A sanction can only be imposed if a member is subject to a finding of Misconduct.

9. What is the meaning of "misconduct" in the Scheme?

The Scheme defines Misconduct as:

"any conduct by a Member, whether committed in the United Kingdom or elsewhere, in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity, competence or professional judgement which other Members or the public might reasonably expect of a Member, having regard to the Bye-Laws of the Institute and Faculty of Actuaries and/or to any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or, for so long as there is a relevant Memorandum of Understanding in force, by the FRC (including by the former Board for Actuarial Standards) in terms thereof, and to all other relevant circumstances."

It is not possible to describe exhaustively what may or may not amount to misconduct. The test is broad and requires all of the relevant facts and circumstances to be taken into account in determining whether the member has fallen short of the standard expected of him/her. This is why investigating the allegations is so critical before any view can be taken as to whether the acts are considered to be misconduct.

An example of a relevant fact or circumstance is whether there is evidence of a breach of the Actuaries' Code. Such evidence will not necessarily determine whether there has been misconduct, however. It will also be important also to consider the circumstances in which the breach occurred, its seriousness (in terms of its actual or potential impact upon the public), whether there is any evidence of a pattern of conduct, and the intent and state of mind of the respondent at the time.

Other relevant considerations might include the contractual relationships between the parties, background facts, the chronology, other parties' involvement, and the consequences of the allegations (if any). Any finding of Misconduct is a serious matter and will not be reached lightly by a disciplinary panel. In general, such a finding will usually require evidence of more than an isolated slip or error in judgement. The test is objective, in the sense that it refers to the behaviour etc reasonably to be expected of a member. It is not therefore intended to catch every instance of ordinary human error, although serious mistakes may amount to misconduct, particularly where these are indicative of an underlying concern, from a public interest perspective, as to the member's competence or professionalism.

10. Who decides if an allegation amounts to “misconduct”?

Each case is heard by one of our Panels. It is a matter for the Panel to determine whether or not the allegations amount (or might amount) to misconduct in light of the relevant circumstances of each case.

Adjudication Panels determine whether the circumstances give rise to a *prima facie* basis for a finding of Misconduct. They do this after considering the results of the IFoA investigation, and submissions from the Respondent.

In some cases consideration by an Adjudication Panel is enough to conclude the matter. In other cases, the matter is referred to a Disciplinary Tribunal Panel, which hears and weighs the evidence in order to make findings of fact and to reach a determination including, where necessary, resolving any contradictions or inconsistencies in the evidence. This process involves the careful exercise by Panels of judgement in assessing the individual cases. This means that it is not possible to state with absolute certainty that conduct does (or does not) amount to misconduct, until the Panel responsible for assessing all of the evidence in the case has reached its conclusion.

Panels are expected to be thorough in their method and approach, and to set out clearly the reasoning informing their decision. In particular, they must have a clearly reasoned evidential basis for their conclusions. It will be important in particular to consider what it would have been reasonable to have expected of the member at the time of the conduct or behaviour in question.

11. Does the Scheme deal with allegations about the standard of service received from an IFoA member?

Yes. We apply the same procedural rules to all allegations.

12. What type of behaviour might amount to misconduct under the IFoA Scheme?

This can be broken down into two main areas, although recognising that often there may be elements of both in any allegation:

- Technical competence.
- Ethical or professional conduct.

The following examples are illustrative only.

Technical Competence

Work may tend to exhibit a lack of technical competence if, for example, it involves:-

- a failure to comply with legislative requirements; and/or
- a contravention of any relevant technical standards where applicable; and/or
- inappropriate or incorrect use of data or assumptions; and/or
- inappropriate choice or application of actuarial models.

Ethical conduct

A complaint regarding a member's wider ethical or professional conduct may suggest a possible breach of the Actuaries' Code.

Illustrative examples might include:

- poor communication with clients or colleagues;
- acting where there is a conflict of interest or not properly managing a conflict of interest;
- undertaking work for which an actuary is not suitably qualified - for example, taking on Scheme Actuary roles without a Scheme Actuary certificate or acting as an expert witness without the required expertise. Both of these examples may of course also give rise to concerns as to technical, as well as unethical, conduct;
- breach of confidentiality; and
- dishonesty - for example, fraudulent use of client funds or cheating in a professional examination.

13. Is “misconduct” restricted to conduct at work?

No. The definition of misconduct applies to conduct “*in the course of carrying out professional duties or otherwise.*” Misconduct can be found therefore, not only in relation to conduct at work, but also in relation to a member’s personal life - in particular, where this is such as to demonstrate a lack of integrity (particularly in financial matters), poor judgement, or which might tend to bring the profession into disrepute.

This therefore includes criminal offences as mentioned above, and can also cover other ways in which a member might bring the profession into disrepute.

Examples of this might include, according to the circumstances:

- Bankruptcy;
- Adverse findings or judicial remarks in a civil court which raise issues in relation to the member’s honesty or integrity; or
- Antisocial behaviour in a public setting.

14. Does every breach of the Code, or of an APS or a TAS, amount to “misconduct”?

No. Minor breaches may, for example, not amount to misconduct. Ultimately, it is for a Disciplinary Panel to determine whether a breach amounts to misconduct, having regard to all the particular circumstances of the case.

Conclusion

These FAQs are intended as guidance only and do not constitute legal advice. They are not intended to restrict in any way the discretion of the disciplinary panels in the exercise of their role. In particular, they do not remove the need for those involved in the disciplinary process to take their own independent legal advice.

We hope you found this guidance helpful. We will review it from time to time to ensure it remains accurate and up to date.

We would be pleased to receive your comments on this guidance:

via email disciplinary.enquiries@actuaries.org.uk or telephone: **+44 (0)131 240 1300**

Further information and the documents referred to in this guidance can be found on the regulation section of our website: www.actuaries.org.uk