



Institute  
and Faculty  
of Actuaries

# Disciplinary Tribunal Panel-

Appearing as a witness

February 2018

## **Disciplinary Tribunal Panel – Appearing as a witness**

The purpose of this note is to provide helpful information to people who the Institute and Faculty of Actuaries (IFoA) ask to provide evidence at a Disciplinary Tribunal Panel (DTP) in connection with allegations against one (or more) of our Members. There are a number of notes like this on our website, dealing with different stages of our Disciplinary and Capacity for Membership Schemes (the Scheme). If you cannot find a note that deals directly with your query, please contact us for assistance.

It is open to the Case Manager, Investigation Actuary and/or the Respondent to apply for the matter to be considered under the Capacity for Membership provisions of the Scheme (capacity process) at any stage prior to a determination being issued. This may be relevant if the Respondent has significant and ongoing issues of health. The DTP, regardless of whether there is an application, also has the discretion to transfer to the capacity process. Please see the information note “The Capacity for Membership Process” that helps explain this separate process. This can be found on our website at: <https://www.actuaries.org.uk/documents/capacity-for-membership-process>.

### **Regulation**

In regulating our Members, the IFoA maintains and protects the standards, professionalism, reputation and the public perception of Members. Discipline is an essential part of this. Allegations of professional Misconduct are dealt with under the 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.

The public – clients, users, employers and all those whose finances are affected by actuarial decisions – must be confident that the Member they employ, or whom they trust with their finances, will observe standards of practice and conduct which justify that trust.

### **Witness Statements**

You will have been asked to appear as a witness by the IFoA, or a Solicitor working on our behalf. It is likely that we will have already met with you to obtain a written witness statement.

Witness statements are sometimes taken as part of the initial investigation by the appointed Case Manager, into any allegation of Misconduct made to the IFoA. The Case Manager and the Investigation Actuary investigating the matter may wish to take a witness statement from you. They are sometimes accompanied by a Legal Adviser. You are entitled to bring a support person and/or legal representative to the interview with you, if you want to.

If the Case Manager and Investigation Actuary do want to meet you for this reason, the Case Manager will contact you to agree arrangements for a suitable venue etc. The Case Manager will also be able to answer any questions you may have about the process.

### **What is the DTP?**

A DTP hearing broadly follows the procedures adopted in UK civil courts with each party (the IFoA and the Respondent) introducing their case, calling witnesses who may be cross-examined by the other party, and then having the chance to make a closing submission.

Each DTP consists of three or more people, at least one of whom shall be a Fellow of the IFoA and at least one shall be a Lay person who is not a Member of the IFoA. The DTP will make a decision as to whether the allegations against the Respondent amount to Misconduct and, if so, what the appropriate sanction (if any) would be.

The DTP are advised by an independent Legal Adviser. The secretary to the DTP also attends the hearing to advise on procedural matters but does not participate in the consideration of the facts.

### **The Legal Adviser**

The Legal Adviser is an experienced Solicitor, Barrister or Advocate who advises the DTP on points of law. Any advice the Legal Adviser gives to the DTP will usually be given in public. However the Legal Adviser will accompany the DTP when it is deliberating in private (but has no role in the decision making process). Where the DTP receives any legal advice during such deliberations, that advice will be repeated both to the Respondent and the IFoA when the DTP is back in public session. The IFoA, the Respondent and/or the representatives can then make submissions with regard to this advice.

### **Representation**

The IFoA are usually represented by external legal advisers during a DTP. Occasionally one of the IFoA's employees will present the IFoA's case. Respondents are usually legally represented but may choose to present their own case. Respondents can also be accompanied by a friend/colleague at the hearing.

### **Before the hearing**

The Case Manager and Investigation Actuary will prepare a Charge which will set out all of the allegations against the Respondent. The Charge will be supported by all evidence in support of the allegations and this may include any witness statement you have provided.

The Charge and supporting documentation will be sent to the Respondent, usually by the external legal advisers appointed to represent the IFoA in these proceedings. At the same time the Charge is sent to the Respondent, it is sent to the secretary to the DTP who will make arrangements for the DTP hearing. The Case Manager will contact you to find out when you are available to attend as a witness.

Once the date is arranged, you will be sent a notice of the date, time and location of the DTP hearing. The secretary will publish, on the IFoA website, the date, time and place of the Tribunal, as well as the Respondent's name and an indication of the nature of the Charge.

### **Role of the IFoA**

The IFoA will present the case against the Respondent. The case is normally presented on behalf of the IFoA by a Solicitor or Barrister/Advocate (although it may be presented by a suitably qualified member of the IFoA staff from time to time). Their role is to put the case to the DTP, examine and cross examine witnesses as appropriate and show how the case against the Respondent can be proved.

### **Where will the hearing be held?**

Hearings are normally held in an external location in London or Edinburgh. They are not held at the IFoA offices, but at neutral premises. The secretary to the DTP will send you a notice of the date, time and location of the DTP hearing.

If you have a disability, communication difficulties or other additional needs, please advise the secretary before the hearing, so necessary arrangements can be made.

### **Who will be at the hearing?**

The DTP members and their Legal Adviser will attend the hearing, as will the secretary to the DTP. The secretary is responsible for the administration of the hearing and may also advise the DTP on procedural matters.

The Case Manager will attend, and usually the Investigation Actuary attends. The IFoA is normally legally represented.

A stenographer will attend and they take a note of the hearing.

Hearings are usually held in public. This means that anybody can attend, including the person who made the complaint to the IFoA. Sometimes hearings, or part of hearings, are held in private due to the confidential nature of the matters involved.

### **On the day of the hearing**

You will have been notified you in advance of the start time of the DTP. You should inform the secretary to the DTP of your arrival and you will then be taken to a private meeting room to wait until you are called into the hearing. The room will be available to you through the day(s) of the hearing.

The hearing room will be laid out in an arrangement similar to that shown on the back of this document. If you would like to see the room before the hearing starts, please let the secretary to the DTP know when you arrive.

You will be asked to remain outside of the hearing room until you give your evidence. It is important that you do not discuss the matter with anyone prior to giving evidence. Once you have completed giving your evidence you may sit in and observe the proceedings in the public seating area.

### **The start of the hearing**

When the Tribunal is ready to hear your evidence, the secretary to the DTP will direct you to the hearing room and advise you where to sit.

The Chairman will introduce the DTP members, and briefly explain how the DTP will work.

Whoever has asked you to appear as witness will first ask you questions. It is likely that you will have met with their legal representative in advance and they will have advised of the type of questions you will be asked on the day. You may also refer to your witness statement if you wish to do so. The other side will then have the opportunity to cross examine you. You may then be asked further questions by the side who asked you to appear as a witness. Members of the DTP may also ask you questions directly.

Once you have given evidence, it is open to you to remain in the hearing room and observe proceedings as a member of public or you may leave. The Chair of the Panel will advise you at the end of your evidence whether or not you will be required to remain.

### **Giving Evidence**

The IFoA cannot compel you to give evidence unless you are a Member of the IFoA. Any assistance you are able to provide by giving evidence will help the IFoA prove its case against the Respondent. If you are willing to give evidence, you will sit at the witness desk throughout the time you are giving evidence. Please ensure that you speak clearly and slowly into the microphone so that all the parties can hear you. A stenographer will record the evidence you give. The transcription of the hearing will only be provided to the DTP and its Legal Adviser, the IFoA, the Respondent and representatives.

The IFoA will reimburse reasonable travel expenses in line with its travel and expense policy. The secretary to the DTP will be able to assist with any queries regarding expenses.

**When will the DTP make their decision?**

The time taken to make a decision will vary from case to case, but the DTP usually make a decision on the last day of the hearing and will announce it orally. If you do not stay for the whole hearing and are interested in the outcome, it will be published on the IFoA's website usually within 2 -3 weeks of the hearing.

**Is the determination of the DTP made public?**

Where the DTP makes a finding in relation to Misconduct the determination will usually be published on the IFoA website and in The Actuary magazine. Please see separate guidance note relating to publication.

**Can the Respondent appeal the determination of the DTP?**

Yes the Respondent does have a right of appeal if the Panel make a finding of Misconduct. A separate note is available about the Appeals process. The Appeal Tribunal Panel (ATP) has the power to hold an oral hearing and rehear any witnesses. The secretary will contact you if the ATP wishes to rehear your evidence.

**Can the IFoA or the person who made the allegation appeal the determination of the DTP?**

No, they have no right of appeal.

**Key relevant parts of the Scheme**

Paragraphs 2.22- 2.25, 2.45, 5.14 – 5.19, 6.1, 6.2, 6.4 – 6.15,section 8 and 9.

**Where can I get advice or support?**

The Case Manager or the secretary to the DTP are happy to provide factual information about each stage of the disciplinary process, but cannot advise you in relation to your legal rights or position. In speaking with people other than the IFoA or your legal representative, please remember that the investigation is not in the public domain.

**Further information**

If you have any further questions, please contact the secretary to the Disciplinary Tribunal Panel, whose contact details are;

Secretary to the Disciplinary Tribunal Panel  
Level 2, Exchange Crescent  
7 Conference Square  
Edinburgh  
EH3 8RA

Telephone +44 (0)20 7632 2189

Email: [clerk@actuaries.org.uk](mailto:clerk@actuaries.org.uk)

For general enquiries please email [disciplinary.enquiries@actuaries.org.uk](mailto:disciplinary.enquiries@actuaries.org.uk) or call +44 (0)131 240 1326.

Please note that this document is not legal advice. It is not intended to be a substitute for the Scheme.

## Disciplinary Tribunal – Sample Room Layout

