

SECTION I – GENERAL

Burden and Standard of Proof

- In all proceedings before a Capacity for Membership Panel or Appeal Tribunal Panel under the Capacity for Membership Scheme, the Party making the Application shall bear the burden of proving to the civil standard as applied by the Courts of England and Wales that the Respondent's capacity to be a member of the Institute and Faculty of Actuaries is impaired.

Capacity for Membership Panels

- Each Capacity for Membership Panel shall consist of three members, at least one of whom shall be a Lay Member and at least one of whom shall be a Fellow, appointed from members of the Disciplinary Pool, all as appointed by the Disciplinary Appointments Committee.
- A Lay member appointed to each Capacity for Membership Panel under rule 2.28 shall act as the Chair of the Capacity for Membership Panel.
- A Capacity for Membership Panel may, under the provisions of Section III, consider any matter transferred to it under Part 9 of the Disciplinary Scheme.
- Decisions of the Capacity for Membership Panel shall be made by simple majority.

SECTION II – DISCIPLINARY SCHEME RULES

Transfer to Capacity for Membership Panel

- At any stage prior to a determination being issued by an Adjudication Panel or Disciplinary Tribunal Panel under the Disciplinary Scheme, the Case Manager and/or Investigation Actuary, and/or the Respondent may apply to the relevant Adjudication Panel or Disciplinary Tribunal Panel for the matter to be transferred for consideration by a Capacity for Membership Panel under Section III.
- Upon receipt of an Application under rule 9.1, the Adjudication Panel or Disciplinary Tribunal Panel as the case may be, shall decide whether the matter should be appropriately heard by a Capacity for Membership Panel. The Adjudication Panel or Disciplinary Tribunal Panel may only grant such a request where it is satisfied that; -
 - (a) there is *prima facie* evidence of Misconduct;
 - (b) there is *prima facie* evidence that the Respondent's current capacity to hold membership of the Institute and Faculty of Actuaries may be materially impaired by reason of illness or other relevant health or medical condition and that any such impairment is directly relevant to the allegation or charge; and
 - (c) it is in the public interest that the request is granted.
- Where the Adjudication Panel or Disciplinary Tribunal Panel determines that a matter should be transferred for consideration by a Capacity for Membership Panel, the matter shall be considered as soon as practicable by a Capacity for Membership Panel in accordance with Section III and the Adjudication Panel or Disciplinary Panel considering the matter under this Part 9 shall stand down.

- The relevant Adjudication Panel or Disciplinary Panel shall provide written reasons to the Parties for its decision to grant or refuse an Application.
- Nothing in this Part 9 shall prevent an Adjudication Panel or Disciplinary Panel from exercising its discretion in determining in the absence of an Application that a matter should be transferred for consideration by a Capacity for Membership Panel, where it is satisfied that the conditions in rule 9.2 above are fulfilled.
- Nothing in this Part 9 shall prevent an Adjudication Panel from issuing an invitation to a Respondent in accordance with rule 6.6 of the Disciplinary Scheme.

SECTION III – CAPACITY FOR MEMBERSHIP SCHEME

General

- The rules set out in this section shall apply where a transfer is made pursuant to Part 9 of the Disciplinary Scheme.
- Upon the transfer of a matter under Part 9 of the Disciplinary Scheme, the Capacity for Membership Panel shall consider all of the relevant evidence before it and shall decide whether the facts of the allegations are proven and whether the current capacity of the Respondent to be a Member is materially impaired by reason of illness or other relevant health or medical condition, such impairment being directly relevant to the allegation or charge.

Pre Hearing Matters

- Where a matter is transferred under Part 9 of the Disciplinary Scheme a Capacity for Membership Panel shall be convened in accordance with rule 9.3.
- The Capacity for Membership Panel may, in accordance with rule 3.5 of these Schemes, receive and consider evidence, including expert medical evidence, presented to it by the Parties. The Capacity for Membership Panel may separately request that the Institute and Faculty of Actuaries and/or the Respondent obtain any such evidence, expert or otherwise, as it considers most suitable for the clarification of the issues and generally for the just handling of the proceedings before it. Any such evidence shall be disclosed to the Parties. The Capacity for Membership Panel shall have discretion over what documents it considers admissible as evidence, and what weight to accord evidence accepted as admissible, however the following shall normally be relevant to proceedings under the Capacity for Membership Scheme: the Respondent's medical records, expert medical reports and reports from any medical adviser or health professional involved in the treatment of the Respondent.
- At any stage the Capacity for Membership Panel may appoint a member of the Legal Advisers Pool to assist in any matters of law or procedure. Such adviser may be present at any hearing. Any advice given to the Capacity for Membership Panel must be made available to the Parties, who shall be given the opportunity to comment upon such advice.
- The Respondent shall be given at least 21 days' notice of any hearing date.

Interim Orders

- Where there is alleged Misconduct the Case Manager and/or Investigation Actuary may at any time up to a hearing by the Capacity for Membership Panel submit to an Interim Orders Panel an application for an Interim Order together with the Allegation and/or a Case Report and/or any relevant material in support of the application.

- The procedure and rules for an application for an Interim Order under this Part 16 shall be consistent with the procedure and rules under Part 5 of the Disciplinary Scheme. Rules 5.26 to 5.42 shall be read accordingly in that light and references to Disciplinary Tribunal Panels, in this context, shall be read as references to the Capacity for Membership Panel.
- Where a Respondent has been made subject to an Interim Order prior to her or his case being transferred to the Capacity for Membership Scheme, the Interim Order shall continue to have effect until such time as any of the events set out in rule 5.27 of the Disciplinary Scheme takes place.

Consent Orders

- At any stage after a matter has been transferred to the Capacity for Membership Scheme under Part 9 of the Disciplinary Scheme, the Case Manager may invite the Respondent to agree a provisional consent order to conclude proceedings.
- The provisional consent order shall be drafted by the Case Manager and shall propose one or more of the outcomes available to the Capacity for Membership Panel under Part 19 below.
- The Respondent shall be invited to agree the provisional consent order and she or he must confirm her or his agreement in writing.
- Once agreed, the provisional consent order shall be put before the Capacity for Membership Panel. The Capacity for Membership Panel shall meet in private to consider the provisional consent order and determine whether to approve or reject the order in whole or in part.
- After a full consideration of the provisional consent order the Capacity for Membership Panel may determine the matter by:
 - (a) Approving the provisional consent order; or
 - (b) Rejecting the provisional consent order and directing that the matter should proceed as normal under the Capacity for Membership Scheme; or
 - (c) Varying the consent order with the consent of the Parties.
- The Capacity for Membership Panel shall provide written reasons to the Parties for its decision to grant, reject or vary the provisional Consent Order.
- Nothing in this Part 17 shall delay the convening of a Capacity for Membership Panel to hear a substantive matter under the Capacity for Membership Scheme rules.

Hearings

- Hearings of the Capacity for Membership Panel shall be in private.
- Where a Respondent fails to attend in person or be represented at a hearing, the matter may be heard in the Respondent's absence provided that the Capacity for Membership Panel is satisfied that it is in the interests of justice to do so.

Outcomes

- After full consideration of all of the relevant evidence before it, the Capacity for Membership Panel will make findings on the facts and the Respondent's current capacity to hold membership and then may direct one or more of the following outcomes:
 - (a) No action is appropriate under the Capacity for Membership Scheme;
 - (b) Membership of the Institute and Faculty of Actuaries to be suspended for any period the Capacity for Membership Panel thinks appropriate up to a maximum of two years;

- (c) Membership of the Institute and Faculty of Actuaries to continue but to have special conditions attached to it for a specified period; or
 - (d) The matter in whole or in part should be considered under the Disciplinary Scheme. In these circumstances the Capacity for Membership Panel shall make any directions that it sees fit.
- The decision of the Capacity for Membership Panel shall be communicated to the Respondent and the Institute and Faculty of Actuaries forthwith after the hearing. This shall be done in writing, and shall include a statement of the Capacity for Membership Panel's reasons for the conclusions it has drawn.
 - The effective date for the purposes of any appeal shall be the date the decision of the Capacity for Membership Panel is served on the Respondent in writing.

Review Hearings

- Before the expiry of any order made under Part 19 above, a Capacity for Membership Panel shall review the order and may, subject to rule 20.5 below, direct any one or more of the following outcomes:
 - (a) Confirm the existing order;
 - (b) Extend or reduce the remainder of the term for which the existing order has effect;
 - (c) Vary the terms of the existing order or replace the order for a specified period with any one or more of the outcomes falling under Part 19 above;
 - (d) Revoke the existing order in whole or in part either with immediate effect or on expiry of the term of the order;
 - (e) Set a recommended period before the expiry of which no early review application can be made.
- On cause shown, a review hearing may take place after the expiry of any order made under Part 19 above, provided that the Respondent has been notified of the date of the review hearing prior to the expiry of the order.
- The Respondent or the Institute and Faculty of Actuaries may apply to the Judicial Committees Secretary for a review of the suspension, conditions or other order made by the Capacity for Membership Panel under this Part 19 above at any time prior to the expiry of that order, provided that:
 - (a) Either Party is able to demonstrate that new information relevant to the substantive order has come to light or that there has been a material change in circumstances that warrants an early review of the order; and
 - (b) Subject to rule 20.3 below, no review hearing has taken place in the previous 6 months.
- Where there is evidence that the Respondent has failed to comply with the terms of the substantive order made by the Capacity for Membership Panel, the Institute and Faculty of Actuaries shall be entitled to apply to the Judicial Committees Secretary for an early review of the order.
- The Capacity for Membership Panel may not extend an order by more than two years at any time.
- The Capacity for Membership Panel shall give written reasons for its decision.

Appeal against the outcome of a Capacity for Membership Panel hearing

- The Respondent may by notice in writing seek leave to appeal against the decision of the Capacity for Membership Panel, such notice to be served upon the Judicial Committees Secretary no later than 28 days after the decision appealed against is deemed served on the Respondent.
- The Chair of the Appeal Tribunal may grant permission to appeal if supportable grounds are made in writing.
- The Notice shall state the grounds of appeal. The grounds so stated may only be amended, reasonable cause having been shown, with the permission of the Appeal Tribunal Panel appointed to decide the appeal. If no such panel has yet been appointed, the Chairman of the Appeal Tribunal shall decide this point.
- The Respondent may appeal on any one or more of the following grounds:
 - (a) that the decision of the Capacity for Membership Panel was manifestly unreasonable, or wrong in law; and/or
 - (b) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Capacity for Membership Panel; and/or
 - (c) that significant and relevant new evidence has come to light which was not previously available to the Respondent and could not have become available to him on the making of reasonable enquiry.
- The procedure and rules for any appeal under the Capacity for Membership Scheme shall otherwise be consistent with the procedure and rules for appeal against a determination of the Disciplinary Tribunal Panel under the Disciplinary Scheme. Rules 11.1 to 11.35 shall be read accordingly in that light and references to Disciplinary Tribunal Panels, in this context, shall be read as references to the Capacity for Membership Panel.
- The Appeal Tribunal Panel shall have discretion to appoint hearings and conduct the appeal in such a manner as it considers appropriate consistent with the principles of natural justice.
- The Appeal Tribunal Panel may decide the appeal by;-
 - a) Refusing the appeal; or
 - b) Granting the appeal in whole or in part, imposing such other decision or directions as it sees fit, provided that such decision or directions are consistent with the powers which would have been available to the Capacity for Membership Panel originally seized of the matter under rule 19.1.
- The appeal shall be conducted in private. The Appeal Panel shall have discretion in deciding whether to publish its decision, and in what form.