



Disciplinary Board

26 September 2018, Time: 13:00 – 16:00

Law Society, Edinburgh

Attending:	Keith Oliver OBE, (lay member and Chair (KO)) Athene Heynes (lay member) (AH) Gordon Sharp (actuary member) (GS) George Russell (actuary member) (GR) Kevin Doerr (actuary member) (KD) Simon O'Regan (actuary member) (SO)
Apologies:	Simon Lofthouse, QC (lay member) (SL) Simon Martin (actuary member) (SM) Jim Webber (actuary member) (JW) Michael Scott (MS), Head of Disciplinary Investigations
In attendance:	Jacqui Reynolds, Chair of the Pool of Investigation Actuaries (JR) (Items 0 and 1)
Executive Staff:	Fiona Burrough (FB), Secretary Pauline Wharton (PW), Judicial Committees Secretary Sarah Borthwick (SB), Case Manager (Items 0, 1 and 9) Kirsten Mavor, (KM), Case Manager Catherine Mouat, (CM), Disciplinary Investigations Coordinator

Item	Title	Action
	<p>Welcome and Apologies</p> <p>The Chair opened the meeting and welcomed the board members, including the new actuary board members, Kevin Doerr and Simon O'Regan.</p> <p>KO advised the board members that this was FB's last meeting as Secretary. On behalf of the Board, KO thanked FB for all her assistance. KO advised the members that KM would be taking up the role as Secretary to the Disciplinary Board.</p> <p>Apologies were noted from Simon Lofthouse, Simon Martin, Jim Webber and Michael Scott.</p>	
0.	<p>Discussion with Jacqui Reynolds, Chair of the Pool of Investigation Actuaries</p> <p>For the benefit of the new board members JR gave a brief summary of her background and experience in the IFoA's disciplinary process, both as Investigation Actuary and now as Chair of the Investigation Actuaries' Pool.</p> <p>JR advised that she sees her current role as Chair of the Investigation Actuaries' Pool as having five key responsibilities: -</p> <p>(1) as one of the decision makers in the Executive Referral process;</p>	



Item	Title	Action
(2)	Providing oversight of Investigation Actuary appointments to particular investigations;	
(3)	Considering whether a case should be referred to the Financial Reporting Council;	
(4)	Providing an independent review of reports from the Disciplinary Investigation Team;	
(5)	Providing ad hoc input on matters relating to the Investigation Actuary role to the Disciplinary Investigation Team.	
	JR advised how she approached her role in relation to each of these five key responsibilities.	
	The Board discussed the recent training provided to Investigation Actuaries and Disciplinary Pool members. JR advised that she considered it was worthwhile to continue having the mix of Investigation Actuary members and Disciplinary Pool members at training sessions as it provided an opportunity to discuss different approaches and to understand other roles/needs in the process. It was agreed that a copy of the training feedback would be provided to JR, for information.	KM
	JR responded to various questions raised by Board members, these included discussions around balancing the integrity of the IFoA's Disciplinary Scheme against costs and the speed of dealing with CPD cases. JR was asked if she considered that the number of Investigation Actuaries on the pool was sufficient. JR confirmed that she did.	
	The Board agreed a request should be made to the Disciplinary Appointments Committee (DAC) to consider whether the geographical diversity of the Investigation Actuaries Pool is adequate. PW advised that she would pass this on to the DAC, noting the DAC's ongoing commitment to diversity.	PW

1. Case Update Report

In MS's absence, KM provided an update on cases at the investigation stage, explaining that since the last Board meeting on 26 June 2018, four new cases had been referred and there were 15 cases in total under investigation.

KM advised that there was an unusual increase in the number of cases that had been referred to the Tribunal stage of the process (in the context of generally low case numbers). KM explained that this was due to there being a number of cases involving allegations of dishonesty which had been referred directly to Tribunal. Also, some Respondents had not engaged in the process or did not accept the invitation from the Adjudication Panel to accept its determination and end the matter at that stage.



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	<p>KO advised that at a pre-meeting he had made suggested changes to KM about the layout of the Case Update Report. This included simplifying the table at section 3 and ensuring that determinations are appropriately cross-referenced. The rest of the Board agreed that this would make the Case Update Report easier to follow.</p> <p>PW advised that the Board were provided with the determinations when they were published. PW asked whether they still needed to be included in the papers noting that unpublished determinations (dismissed cases at Adjudication stage) would continue to be in the Board papers. It was agreed that PW would continue to place determinations in the box folder for Board members to see as and when they were available, rather than include copies with the papers. It would still be helpful for a list of determinations, as opposed to the full narrative to be provided to the Board with the papers, along with Case Reference numbers.</p>	KM
	<p>The Board noted that some cases ended up at Tribunal due to the non-engagement of the Respondent in the disciplinary process. The Board agreed that part of the Scheme Review should look at whether it was proportionate for such cases to be automatically referred to the Tribunal stage when there was no engagement.</p>	SB
	<p>There was a discussion around the number of CPD cases within the Scheme and whether such cases could be dealt with outside the Scheme or at least never go beyond Adjudication Panel; the Executive would consider this highlighting the costs involved in these cases.</p>	SB
	<p>The Board noted that there had been some difficulty in appointing an expert in one of the cases and this had resulted in some delay in the process. The Board would like this highlighted as a potential risk within the disciplinary process.</p> <p>KO asked if FB's departure as Senior Disciplinary Lawyer would result in an increase in costs for external resources. SB advised that the arrangements put in place should continue to allow for appropriate cases to be prosecuted in-house, but that resource would not be in place until later in the year.</p>	
	<p>The Board noted that in some cases, the reasoning for the cost element of a determination was not clear. The Board agreed that it was reasonable for the Profession to expect some recovery of costs and for this to be applied consistently in all geographical regions.</p>	
	<p>The Board noted that it was not their role to question the decision made but they were interested to hear about any feedback received on the perception of the particular determination under discussion amongst the profession.</p>	MS
	<p>The Board also agreed that the current guidance on costs should be reviewed and a paper on this should be presented at the next board meeting.</p>	MS



Item	Title	Action
2.	Minutes	
	<p>FB provided a summary of the minute approval process for the benefit of the new members including the redacting process, recognising that the minutes are published.</p> <p>The Board approved the draft minute of the meeting of 26 June 2018 and this will be published with one redaction, for reasons of confidentiality, as agreed by the Board.</p>	
3.	Action List	
	<p>The Board noted the Action List and the oral updates from the Executive staff. It was noted that the consultation in respect of the monitoring proposal referred to in item 3 ended on 28 September 2018. With reference to item 7 there was discussion as to the differentiating rate paid to Chair of Panels/Tribunals as opposed to the other panel members.</p>	
4.	Chair's Update	
	<p>The Chair provided an update on key developments since the last Board Meeting.</p> <p>(a) He outlined the ongoing consultation process relating to the monitoring proposal, closing on 28 September 2018 (see 3).</p> <p>(b) He confirmed that notification had been made of the first (private) hearing under the Capacity for Membership process. A paper reporting back on that process will be put to this Board at the conclusion of this process.</p> <p>(c) He attended a recent event attended by all Chairs of IFoA Board and Practice Boards noting the commitment of the volunteer chairs and the pride they have in their profession but expressing concern as to the reliance of the profession on volunteers, it being fundamental that employers encourage the volunteer process.</p>	<p>PW/KM</p>
5.	2018 Objectives	
	<p>The Board noted the cover paper, project plan (Board priorities) and traffic light report. FB provided specific updates on each of the objectives. An assessment of the work overseen by this Board will be received at its December meeting, in anticipation of a full report in its 2018 Annual Report.</p>	
6.	Disciplinary Board Training Review	
	<p>FB presented this paper. The Board noted the attendee feedback and, in particular, the specific feedback on the length of the training and the suitability of the London venue. The Board asked the Executive to consider this feedback when planning the next training session.</p>	



Item	Title	Action
	<p>There was a general discussion about increasing the engagement of volunteers in the process by making training a requirement. The Board agreed that it should be made clear to all Investigation Actuaries and panel members that it is a requirement of their role that they attend training. PW noted that this accorded with the DAC view and undertook to flag the Board's position to DAC.</p>	PW
	<p>The Board agreed the Executive's proposal to develop online training for panel members which would supplement the bi-annual training day. The Board agreed that panel members should be expected to carry out some form of training every year.</p>	PW/KM
7.	Disciplinary Process Feedback proposal	
	<p>As part of the Board's process improvement objective, KM presented a paper covering two areas (1) extending formal feedback to 'users' of the Scheme (eg the person who made the allegation) and (2) setting up a Determinations Review Group.</p> <p>The Board approved the proposal in relation to extending the formal feedback process and provided some detailed comments on the suggested questions and approach.</p> <p>The Board approved the instigation of the Determination Review Group and made the following comments: -</p> <ul style="list-style-type: none">(a) The Terms of Reference should specifically include the appeal, interim order and Capacity for Membership process.(b) The Terms of Reference should specify who the Chair will be.(c) The Board was happy with the proposed structure of the Determination Review Group but considered that the Group should be able to ask for an Actuary member to 'opt-in' for determinations which are highly technical.(d) Two board members expressed an interest in joining this group. The opportunity to join the Group should be extended to all the board members, including those that were absent from today's meeting.	KM
	<p>The disciplinary section of the IFoA's website should be updated to provide information about the Determination Review Group, once it is up and running.</p> <p>The Executive will make any required changes and progress the extending of the formal feedback process and setting up of the Determination Review Group. There was discussion as to whether the Determination Review Group should be referred to as part of the Scheme Review. As it had been discussed earlier in the meeting (see 1) there was a further discussion on shortening CPD cases as well as the question of recovering costs, including mentioning in costs guidance that the Respondent needs to be aware that costs might be awarded and procrastination is likely to lead to such an action.</p>	KM/PW



Item	Title	Action
8.	Communications Campaign Development	
	FB presented this paper which included a Communications Plan. The Board welcomed the suggestion of a more structured approach to the Board's communication strategy structured around the Board's Annual Report publication. It was agreed that the Head of Communications should be asked to attend the next Board Meeting. The Board would be interested in hearing his views on the benefits of a focussed communication week. Also, the Board would like to discuss gaining insight from the end users (eg 'clients') of actuarial services.	KM
FOR NOTING		
9.	Scheme Review Development	
	The purpose of this noting paper was to keep the Board informed about the Scheme Review 2019. The Board reviewed the draft Terms of Reference (to be finalised by the Working Party, when appointed) and made the following suggestions: - (a) There should be an introductory paragraph which sets out the context and rationale for the Scheme Review including specific consideration of expectations of 'users' of the Scheme (b) Paragraph 2c should be split into two points. It was agreed that SB would present a high level project plan at the next Board meeting.	SB SB
10.	Independent Examiner Reports	
	None	
11.	AOB	
	<i>* redaction due to confidential discussion*</i>	
12.	Disciplinary Appointments Committee Update	
	The Board noted the oral updated given by PW on the work by the DAC since the last meeting. In particular, the Board noted that the DAC is currently recruiting for lay panel members and will recruit for actuary panel members at the end of this year. It was also confirmed that the advertisement for the Chair of the Disciplinary Board was currently open.	
13.	Management Board update for Chairs	
	The Board noted the two updates.	



Minutes

Item	Title	Action
14.	Regulation Board update for Chairs	
	The Board noted the update.	
15.	Board Remit	
	The Board noted its own terms of reference.	
	There being no further business the meeting closed at 16:00	

Confirmed:
Keith Oliver, Chair