



Disciplinary Committee

30 September 2021, Time: 13:30-16:30

By video conference

Attending:	Stephen Redmond (lay member and Chair) (SR) Velia Soames (lay member) (VS) Kevin Doerr (actuary member) (KD) George Russell (actuary member) (GR) Roselyn Hayles (lay member) (RH)
In attendance:	Ian Farr, Chair of Scheme Review Working Party (IF) (Item 6) Jacqui Reynolds, Chair of Investigation Actuaries' Pool (JG) (Items 11 and 12)
Apologies:	Jim Webber (actuary member) (JW)
Executive Staff:	Kirsten Mavor, Secretary to the Committee (KM) Michael Scott, Head of Disciplinary Investigations (MS) Julia Wanless, Judicial Committees Secretary (JSW) Sarah Borthwick, Case Manager (SB) (item 6) Catherine Mouat, Disciplinary Investigations Coordinator (CM) (note taking) Jenny Higgins, Senior Disciplinary Lawyer (JH) (Item 10 onwards)

Item	Title	Action
	Welcome, apologies and conflict check	
	<p>The Chair welcomed Roselyn Hayles to her first meeting as a lay member of the Disciplinary Committee. An apology was noted from Jim Webber.</p> <p>The Chair advised that Ian Farr, Chair of Scheme Review Working Party and Jacqui Reynolds, Chair of Investigation Actuaries' Pool would be joining for the relevant agenda items.</p> <p>Committee Members were asked to raise any conflicts arising from the agenda. GR referred to potential conflicts with some of the cases that may be discussed under items 11 and 12. It was agreed that GR would leave the meeting if these cases are discussed.</p>	
1 & 2	Chair and Executive Updates	
	<p>The Chair provided an update on his activities since the last meeting and advised that he hoped to hold at least one in-person Committee meeting in 2022 in either London or Edinburgh.</p> <p>KM referred to the Executive Update and advised that the Annual Report is likely to be published in the first half of October. KM also advised that if any Committee members wished to attend the Tribunal next week (5 – 7 October 2021) they should let JSW know.</p> <p>The Committee noted the remainder of the updates from both the Chair and the Executive.</p>	

Item	Title	Action
3.	<p>Minutes and Action List</p> <p>The Committee approved the June minutes and agreed that they should be published in full.</p> <p>The Committee noted the action list.</p>	
4.	<p>Risk Register</p> <p>KM referred to discussions at the June meeting and advised that the Risk Register had been updated to include a new risk and different classifications. It was suggested that it would be worthwhile including an arrow next to each risk to highlight whether the risk was increasing or decreasing so that the Committee could see any shifts. It was agreed that the Risk Register will be updated with this approach.</p>	KM
5.	<p>2021/22 Objectives</p> <p>The Board noted the cover paper, project plan (Board priorities) and traffic lights report. KM advised that two objectives had been carried over to this reporting year and the Committee is on track to meet the Committee's objectives for the period 1 June 2021 – 28 February 2022. It was agreed that once the IFoA's Diversity, Equity and Inclusion strategy has been approved by Council that it will be shared with the Committee.</p> <p>MS provided an update on resourcing within the Disciplinary Investigation Team to the Committee.</p>	KM
6.	<p>Scheme Review</p> <p>IF and SB joined the meeting to present the update paper to the Committee.</p> <p>IF advised that as the Scheme Review Working Party has now been disbanded, there are a couple of items that it was appropriate to bring to the Committee's attention. It has been agreed that there should be provision in the new Scheme for the IFoA to apply to a Tribunal panel to discontinue proceedings if it is appropriate to do so. Also, only the final determination of a case should be shared with referrers once the whole process is complete not at interim stages. The Committee agreed that these changes were appropriate and should be incorporated in the new Scheme and underpinning regulations.</p> <p>SB advised that significant progress has been made with the drafting and she will be in a position to share a sample of the Scheme and regulations in October. This is slightly later than anticipated but the project was still on track. The complete Scheme and regulations will be presented at the December meeting.</p> <p>IF advised that as the Scheme Review Working Party has now disbanded he would like to share some of his observations. He believes the new Disciplinary Scheme will be a significant improvement and fit for purpose for the foreseeable future. IF considers integrity to be right at the heart of the profession and it is important that this is backed up by a disciplinary process which has integrity at its core. Lastly, it is important that the new Scheme, both before and after Council approval is sought, is carefully promoted to the IFoA's global membership.</p>	SB

Item	Title	Action
7	<p>Determinations Review Sub Committee Report</p> <p>VS presented this paper and advised that eleven determinations were considered at the 8 September meeting. VS is pleased to report that the overall quality of determinations remains consistently high and the first determination from the Convener of Disciplinary Tribunal Panels was well written.</p> <p>The Committee discussed all of the recommendations and agreed with the approach proposed by the Sub Committee. In particular, it was agreed that the constructive feedback should be provided to the Conveners.</p>	
8.	<p>Indicative Sanctions Guidance</p> <p>KM advised that the Determinations Review Sub Committee has previously made a number of recommendations in relation to the Indicative Sanctions Guidance. These recommendations have been summarised in paper 8.2 and have been accepted by the Disciplinary Board/Committee at various meetings.</p> <p>KM has proposed some changes to the Indicative Sanctions Guidance but suggested that the Committee should first consider the timing of any changes. The Committee discussed this and agreed that a complete review of the Indicative Sanctions Guidance was required and the appropriate timing for this was once the Scheme Review was complete. It was further agreed that the recommendations of the Sub Committee and earlier suggestions made by KD/JW should be incorporated into this substantive review. It was agreed that no interim changes should be made to the Indicative Sanctions Guidance at this stage.</p>	
9.	<p>Training Programme</p> <p>KM presented this paper and advised that the proposed training programme had been updated to reflect recent observations from Jules Griffiths, Convener of Adjudication Panel, and other developments. It was agreed that the training should be as interactive as possible and the main event will be the interactive webinar. The Committee approved the proposed approach to delivery of training.</p>	
10.	<p>Costs Guidance</p> <p>MS presented this paper and advised that a comprehensive paper on Costs Guidance was previously considered at the June Committee meeting. At the June Committee meeting, it was agreed that clarification should be sought from the Executive Leadership Team (ELT) as to whether or not the IFoA wished to continue the 'polluter pays' approach to costs recovery. The ELT confirmed that polluter pays is the approach that should be implemented by the IFoA.</p> <p>It was noted that it was the original view of the Scheme Review Working Party, as accepted by the Disciplinary Board, that the IFoA should seek to recover full costs at the Adjudication Panel stage. On further reflection and after discussions with the Convener of Adjudication Panels, it is suggested that a fixed amount for costs rather than full costs should be applied for at the Adjudication Panel stage. This alternative approach would simplify the process and should assist with more cases being concluded at the Adjudication Panel stage.</p>	

Item	Title	Action
	<p>The Committee had an extensive discussion about the advantages and disadvantages of the fixed amount versus full recovery approach. It was noted that the current rules do not allow for cost recovery at the Adjudication Panel stage unless the case goes to Tribunal, where the IFoA can seek investigation costs in their costs application. It was agreed that a fixed fee approach is a step in the right direction of implementing the polluter pays approach at the Adjudication Panel stage, regardless of whether or not the matter is referred to Tribunal. For the avoidance of doubt, this proposed approach to recover a fixed fee towards costs only applies when the new Scheme is implemented.</p>	
	<p>The Committee agreed that the fixed amount approach should be adopted in the new Scheme and, once implemented, a risk should be added to the risk register to ensure the Committee is alert to any unintended adverse consequences of this approach. After one year of implementation, the Committee should review this new approach to establish how it is working in practice.</p>	MS
	<p>The Committee, while agreeing to the principle of recovering a fixed amount of costs at the Adjudication Panel stage, was not in a position to agree what this figure should be. The Executive will provide more information to facilitate the Committee's decision on what the fixed amount should be and this should be presented to the Committee prior to the new Scheme being implemented.</p>	MS
	<p>Overall, the Committee agreed that the Costs Guidance reflected the current position and no further changes were required. It was agreed that the Executive should ensure that possible costs implications are clearly signposted to the Respondent at the early stages of the investigation.</p>	MS
11.	Case Update Report	
	<p>JR joined the meeting.</p>	
	<p>JH and JSW presented the Case Update Report. JH advised that six new allegations had been received since the last Report and there are 14 live cases. With regard to Tribunals, one is scheduled for 5-7 October 2021 and a further charge has been served. The remaining charges will be progressed and served this calendar year.</p>	
	<p>JSW advised that 10 cases had been considered at the Adjudication Panel stage in the reporting period and one Tribunal has been held. JSW confirmed to the Committee that steps were being taken to try and recruit more panel members with general insurance expertise and asked the Committee to pass on details to any contacts they may have.</p>	
	<p>The feedback provided by referrers, panel members, legal advisers and Respondents was considered by the Committee. The Committee also considered the Executive's comments on the feedback.</p>	
	<p>The Committee referred to the specific feedback provided by one Respondent and the general concerns raised about the process. It was agreed that while the points raised were interesting and helpful it was not appropriate for the Committee to comment on the outcome of a particular decision. The Committee was satisfied with the response provided by the Head of Disciplinary Investigations. It was agreed that the Respondent should be advised that their comments had been considered by the Committee.</p>	KM

Item	Title	Action
12	<p>Discussion with Jacqui Reynolds, Chair of Investigation Actuaries' Pool</p> <p>JR thanked the Committee for the opportunity to provide her observations on how the process operates. JR advised that her role as Chair gives her the opportunity to see all Executive Referrals and Case Reports. JR noted that there has been an increasing number of social media cases and this is a trend that seems to be continuing. JR also referred to there being some particularly challenging cases with some individuals challenging the process at various stages. From her point of view, JR is satisfied that the appropriate checks and balances are in place to ensure that the process is as fair and transparent as possible.</p> <p>The Committee discussed the rising number of social media cases and it was confirmed that the Regulatory Board was aware of this developing trend.</p> <p>JR provided her overall views on three related cases that are currently in the system and whether there are wider issues raised by these cases. Whilst these observations were helpful it was noted that it was not appropriate for the Committee to discuss these cases in detail while they were still 'live'. (One Committee member left the meeting while these discussions took place due to a potential conflict)</p> <p>SR and the rest of the Committee thanked JR for her observations.</p>	KM
13.	<p>Maximum level of Fine</p> <p>KM presented this paper and advised that it is part of the Disciplinary Committee's remit to review the maximum level of fine that can be imposed at the adjudication panel stage. It was noted that the last review was carried out in 2015.</p> <p>A benchmarking exercise had been carried out to establish what the maximum level of fine was for other regulators. After considering this, the majority of the Committee agreed that there was no compelling reason to increase the level of fine at this stage. Feedback from the Convener of the Adjudication Panels suggested that the current level was 'fit for purpose'. The Committee agreed that it may be appropriate to consider whether or not there should be an inflationary increase in the maximum level of fine when the new Scheme is implemented. It was agreed that the Executive should provide more information on the impact of inflation at this time to enable the Committee to make a decision when the new Scheme is implemented.</p>	KM/MS
14.	<p>Review of Guidance/Regulations</p> <p>KM presented this paper and referred to the Committee previously agreeing that a 'light touch review' of all regulations and guidance should be carried out on the basis that a full review will take place once the new Scheme is implemented. KM advised that this review has now been carried out and some minor changes are proposed at this stage. The Committee agreed that these changes should be made with a substantive review of all guidance and regulations taking place prior to the new Disciplinary Scheme being implemented.</p>	KM
15.	<p>AOB</p> <p>SR advised that the 2022 dates have now been confirmed. As referred to earlier, at least one meeting will be held in Edinburgh or London in 2022.</p>	

Item	Title	Action
16.	Approach to Monitoring The Committee noted the summary of information available to it at each meeting to enable it to carry out its overseeing role. Any comments on the approach should be sent to KM.	
17.	Internal Review GR advised that due to work commitments he has not been able to complete this. He confirmed that this work will be available for the December 2021 meeting.	GR
18.	Regulation Board update The Committee noted the update from the last meeting of the Regulatory Board. SR asked Committee members to consider observing a Regulatory Board meeting as part of their development. Committee members are to advise KM if they are able to attend a meeting as an observer.	All
19.	Committee Remit The Committee noted its terms of reference.	
20.	Schedule of term times The Committee noted this and that recruitment will commence for an actuary member.	
21.	Forward Planning Schedule The Committee noted this and that the approach taken to remote hearings will be discussed at the December 2021 meeting.	
22.	Schedule of Guidance The Committee noted that the guidance will be updated as agreed under agenda item 14.	

- **Dates of next meetings:** 8 December 2021, 23 March, 22 June, 21 September and 14 December 2022