



Disciplinary Board

12 March 2020, Time: 12:00-17:00

Holborn Gate, London and Exchange Crescent, Edinburgh

Attending:	Stephen Redmond (lay member and Chair) (SR) Athene Heynes (lay member) (AH) Velia Soames (lay member) (VS) Kevin Doerr (actuary member) (KD) Simon Martin (actuary member) (SM) Simon O'Regan (actuary member) (SO) (via video conferencing (vc)) George Russell (actuary member) (GR) Gordon Sharp (actuary member) (GS) Jim Webber (actuary member) (JW)
In attendance:	Ian Farr, Chair of Scheme Review Working Party (IF) (item 5) Paul McHugh, Project Associate, FRC (PM) (observing)
Apologies:	Jacqui Reynolds, Chair of Investigation Actuary pool
Executive Staff:	Kirsten Mavor, Secretary to Board (KM) Michael Scott, Head of Disciplinary Investigations (MS) Julia Wanless, Judicial Committee Secretary (JSW) Sarah Borthwick, Case Manager (SB) (items 1-5) Jenny Higgins, Senior Disciplinary Lawyer (items 5-7) Catherine Mouat, Disciplinary Investigations Coordinator (CM) (note taking) Judith Joy, Regulatory Lawyer (item 9)

Item	Title	Action
	Welcome, apologies and conflict check	
	<p>The Chair opened the meeting and welcomed the Board Members. The Chair also welcomed Ian Farr, Chair of the Scheme Review Working Party and Paul McHugh, from the FRC who was observing the meeting.</p> <p>All Board Members were in attendance.</p> <p>Board Members were asked to raise any conflicts arising from the agenda. GR advised that he had previously raised conflicts in relation to cases referred to at item 6. It was agreed that GR would leave the meeting when the Case Update Report was discussed.</p>	

Item	Title	Action
1.	<p>Chair's Update</p> <p>The Chair updated the Board on developments since the December Board Meeting. This included the following: -</p> <ul style="list-style-type: none"> • A further meeting took place between the Chairs of the Regulation Board, Lifelong Learning Board and this Board. SR advised the Board that discussions about the governance of both the Regulation Board and this Board were progressed. • As advised in earlier email, SR met with representatives of the FRC on 21 February 2020. This was a useful meeting and from SR's point of view, constructive. SR will ensure notes from this meeting are finalised and circulated. • SR had a productive meeting with Ben Kemp, General Counsel where various issues were discussed. SR will ensure that the Board is kept apprised of key matters. • GS and SM have both agreed to extend their terms until the end of September. SR thanked them for this. 	SR
2.	<p>Minutes</p> <p>The Board approved the draft minute of the meeting of 11 December 2019 and agreed that no redactions were required.</p>	
3.	<p>Action List</p> <p>The Board discussed the action list, noting that most of it was covered into today's Agenda. The Board confirmed that it was satisfied with progress against the action list.</p>	
4.	<p>Discussion with the Chair of the Investigation Actuaries' Pool</p> <p>This Agenda item has been postponed due to illness. The Executive will try and find an alternative date for Jacqui Reynolds, Chair of Investigation Actuaries' Pool to present to the Board.</p> <p>MS advised that a note of observations had been provided by Jacqui Reynolds. Details will be provided under agenda item 6.</p>	
5.	<p>Scheme Review Update</p> <p>Ian Farr FFA (IF), Chair of the Scheme Review Working Party presented this item. He provided a brief background on the Working Party for the benefit of PM.</p> <p>SB advised the Board that the timetable for completion of the Scheme Review has shifted due to a decision being taken that the rules and regulations should be drafted by the Project Manager. The Board agreed that this was the best approach and approved the shift in the timetable.</p> <p>IF presented to the Board on the following (i) definition of Misconduct (ii) disciplinary orders and (iii) costs.</p>	

Definition of Misconduct

At the December meeting, the Board agreed, in principle, to the new definition of Misconduct subject to some refinement. In particular, the Board had some reservation about the use of “private life” and whether this was sufficiently clear. The Board agreed that replacing this phrase with “professional and non-professional life” made the scope of the definition clearer and approved the revised definition.

SB

It was noted that the obligations listed in the current definition of Misconduct had been removed and an action would be raised with the Regulation Board to ensure that these obligations were made explicit elsewhere.

Disciplinary Orders

The Board agreed with the use of disciplinary orders as a way of effectively disposing of a case at an earlier stage of the disciplinary process. The Board considered the term ‘disciplinary orders’ as an improvement on ‘compliance order’ or other alternatives.

The Board was provided with detail of how disciplinary orders would work in practice. The Board questioned whether this process would be fair to the Respondent. It was noted that it was entirely a matter for the Respondent as to whether he/she wanted to consider a disciplinary order. It was further noted that the signing of a disciplinary order may, in some circumstances, benefit the Respondent as it should result in a quicker and less costly disposal of the case.

The Board also questioned whether this process could have the unintended consequence of being used for cases where it would be in the public interest for there to be a full, public hearing. The Board was reassured that the criteria for when a disciplinary order would be suitable and the independent oversight by a decision making panel should ensure that disciplinary orders are only used in appropriate cases.

Cost recovery would be on the basis set out below.

As this will be a new process, the Board agreed that the detail should be in regulations so amendments can be made as experience of this process develops.

Costs

The Board considered the proposals for costs recovery at the various stages of the disciplinary process. Whilst the Board noted that there is value in the general membership paying towards maintaining an effective enforcement process it agreed that all steps should be taken towards recovering costs, where appropriate. This is in line with the ‘polluter-pays’ principle.

The Executive advised the Board that Case Managers were currently recording time spent on new cases. So that the Board can obtain an understanding of the likely sums involved at the investigation stage, it was agreed that this information would be included in the Case Update Report.

MS

Item	Title	Action
	<p>The Board agreed, in principle, to the following: -</p> <ul style="list-style-type: none"> • A fixed sum of £300 would apply to all cases concluded at the disciplinary order stage. • However if the Respondent initially rejects the offer of a disciplinary order but agrees to sign one at a later stage, the actual costs incurred by the IFoA would form part of the order. • At the Adjudication Panel stage the actual costs incurred by the IFoA will be applied for. This would include the costs of investigation and the costs associated with the Adjudication Panel. • The IFoA, and Respondent, should be able to include costs associated with the investigation in a costs application to a Disciplinary Tribunal Panel. • For cases that are transferred to the Capacity for Membership process, costs will not be recovered. • The Respondent would have the right to apply for costs if a case was dismissed by an Adjudication Panel. The Board noted that the current case law makes it clear that costs are only awarded against regulators if they have acted negligently or recklessly. This position will be clearly set out in the guidance. <p>With regard to the costs associated with the investigation, the Board discussed whether or not it was appropriate to place a cap on the maximum amount of costs the IFoA could apply for. The advantages and disadvantages of setting a cap were discussed. The Board was satisfied that the Adjudication Panel and the Disciplinary Tribunal Panel would be in the best place to decide what the appropriate award would be for costs. The Panels would have the benefit of all information and this would allow for a fair award to be made after taking into account all the circumstances. It was, therefore, agreed that it was not necessary to explore the idea of setting a cap further.</p> <p>The Board noted that whether investigation costs should be recovered at the Disciplinary Tribunal stage would be discussed at item 7.</p>	
6	<p>Case Update Report</p> <p>GR left the meeting at the start of this item.</p> <p>Before considering the Case Update Report, MS provided the following information: -</p> <ul style="list-style-type: none"> • To address the pressures on resources it has been agreed that a Case Manager will be recruited on a 12 month fixed contract. • MS read out the observations Jacqui Reynolds, Chair of the Investigation Actuaries' Pool provided. It was agreed that Jacqui should attend a board meeting at a later date. • MS confirmed that he had discussed with the Convener of the Adjudication Panels the general approach to Case Reports. It was agreed that it would be helpful for the Panels if in technical cases the Investigation Actuary, who would have been appointed on basis of their experience provided a view from their own practical experience. This would not be an expert opinion but may helpfully guide the pool members on how matters work in practice. 	

Item	Title	Action
	<ul style="list-style-type: none"> Seven new Investigation Actuaries have been recruited including two Scheme Actuaries and some that are based internationally. <p>MS and JSW presented the Case Update Report. The Case Update Report provides details about the number and progress of investigations and also reports on the post investigation stage.</p> <p>Since the last Board Meeting on 11 December 2019, eight new allegations have been received and there are 20 'live' investigations. The Board noted that there were three ongoing cases (all inter related in respect of the same matter) with the FRC where the outcome was awaited. The Board expressed concern with the time being taken to progress these. MS advised that he will continue to liaise with the FRC and keep the Board updated in relation to these three cases.</p> <p>JSW advised that 18 cases had been considered at the Adjudication Panel stage in the reporting period. 16 of these cases related to the same subject matter. Of the 18 cases, 17 were dismissed and one was upheld.</p> <p>Two Tribunals were held within the reporting period with two findings of Misconduct being made. In addition the Tribunal held a procedural hearing regarding an application for costs.</p> <p>JSW advised the Board that the next scheduled Adjudication Panel hearings is on 18 March 2020.</p> <p>JSW confirmed that two determinations at the Adjudication Panel stage were referred to the Independent Examiner with the outcome being (1) referral not accepted and (2) referral accepted and Adjudication Panel determination affirmed. .</p> <p>The Board confirmed that they had accessed and reviewed the relevant determinations and Independent Examiner Reports.</p> <p>The Board reviewed associated feedback from the panel members and legal advisers. It did not consider that any action was required. It noted the first Report on direct feedback from Respondents. The Board was pleased to see this Report and asked the Executive to advise what process improvements it intends to implement as a result of this feedback. KM advised the Board that only one response had been received from the person who referred the allegation. A further report would be provided once a meaningful number of responses had been collated.</p> <p>The Board was pleased to note that two of its members had reviewed the papers relating to a Tribunal held last year. VS and SM reported back that the papers were comprehensive and easy to navigate. It was agreed that this exercise helped the Board meet its oversight obligations and should be carried out again this year.</p> <p>GR returned to the meeting.</p>	<p>KM</p>

Item	Title	Action
7	<p>Costs Guidance</p> <p>MS presented this paper. The Board was asked to approve the principle that investigation costs should be recovered at the Tribunal stage. MS explained that the current Disciplinary Scheme allows this and this could be implemented by changes to the guidance. A time recording system was already in place for new cases.</p> <p>MS confirmed that he was seeking approval of the strategic principle and he would work with KD, who had volunteered to assist, to refine the wording of the guidance. Final approval of the guidance would be delegated to the Chair.</p> <p>The Board discussed this approach and agreed with the principle that investigation costs should be applied for at the Tribunal stage. It was agreed that it was important that the schedule presented to the Tribunal differentiated between costs incurred at the investigation stage and at the Tribunal stage. The Board noted that it was ultimately a matter for the Tribunal Panel as to what costs are awarded taking into account the circumstances of the case. The Board agreed that the Tribunal Panel would be in the best position to assess what costs award is fair in the circumstances.</p> <p>The Board discussed timing and agreed that that there was no compelling reason to delay this approach until the Scheme Review was complete. It was agreed that once the guidance was published, this new approach would apply to all new cases after that date.</p> <p>If any of the board members have any comments on the suggested wording of the guidance they should contact MS by 21 March 2020. Once the wording of the guidance has been agreed, signed off by the Chair and implemented this new approach would commence.</p>	AII/MS
8.	<p>Draft Annual Report/Objectives</p> <p>KM presented this item and advised that the reporting year for the Annual Report has been adjusted so that it is in line with the IFoA's corporate reporting year. This was agreed at the Board's strategy day in November.</p> <p>KM advised the Board that an updated traffic lights report for the last period in included in the papers. Progress has made over the last period with the rolling out of the final online training sessions for panel members. KD confirmed that he was impressed with the last two sessions that had been uploaded to the training folder, particularly the session on unconscious bias.</p> <p>The Board considered the draft front section of the Annual Report and agreed that more should be done in relation to the communications objective for the year ahead. The Board is looking for the Executive to be more creative with what is delivered under this objective. It was agreed that this objective should be amended after KM has had the opportunity to discuss the approach to communications with the IFoA's Communications Team.</p>	KM

Item	Title	Action
	<p>AH questioned whether this year's training was going to be online or a face-to-face event. KM confirmed that the format has not yet been decided as the response to the current online training is yet to be evaluated. KM confirmed that a training proposal will be presented to the Board at the June meeting.</p> <p>The Board agreed with the current drafting of the front section subject to some changes being made, particularly to the communications principle. It was agreed that the way the Annual Report is presented could be improved and this should be explored further with the IFoA's Communications Team.</p> <p>KM confirmed that the Board would get the opportunity to approve the final version of the complete Annual Report before it is presented to Council in June. This would include the statistics section which the Executive are currently working on.</p>	
9.	<p>CPD Consultation</p> <p>JJ joined the meeting for this item and presented the paper. JJ provided an overview of the principles behind the suggested change to members' CPD.</p> <p>The Board agreed that there had been real progress in this area. The Board was particularly pleased to see that this change in approach would mean that less CPD cases would be referred as a disciplinary matter.</p> <p>The Board expressed some reservations about the removal of audit of compliance and noted there was the potential that some members would not meet their obligations. It was noted that the proposed approach relied on the integrity of the member.</p> <p>The Board thanked JJ for her presentation on CPD and advised that some actuary members would be responding to the consultation in an individual capacity.</p>	
10	<p>Board Governance/Composition</p> <p>KM presented this paper which provided the Board with an update after the Strategy Day in November.</p> <p>The paper provided background of how the regulatory landscape has changed since this Board had proposed a change to its composition in 2016/17. The Board was asked to consider, in light of the new regulatory landscape, what its current view was on the Board's composition.</p> <p>The benefits of lay representation were discussed and the Board agreed the following:</p> <ul style="list-style-type: none"> • It remained firmly of the view that a 4:4 actuary/lay composition with a lay Chair was the best approach for this Board. • It noted and agreed with the approach of presenting a joint proposal with the Regulation Board to Management Board. The Board noted that Regulation Board was heading in a similar direction. • The Board asked to be kept informed at each stage of the process and may consider 'going it alone' if appropriate. 	

Item	Title	Action
	<p>The Board considered the Risks Register and largely agreed with the content. Individual board members were asked to submit comments on the wording by 27 March 2020 and it was agreed that it should be reviewed at each board meeting.</p> <p>The Board considered the Masters List of Registers. Some changes needed to be made to some of the entries. Once these amendments had been made it was agreed that this Register should be published.</p>	All
11	<p>Capacity for Membership</p> <p>JSW presented this paper and referred the Board to the Lessons Learned Review attached to the cover paper. The Board confirmed that it found this approach to be both informative and useful.</p> <p>It was noted that a number of improvements were made throughout the process. It was further noted that it is likely that the next case that is transferred to this process will be more efficient as a result of the improvement in processes. The Board would like to ensure that more is done to manage the parties' expectations about what they should expect at each stage of the process.</p> <p>It was noted by the Board that process improvements that had been identified would be fed into the Scheme Review.</p>	SB
12	<p>Assessing Tribunal Effectiveness</p> <p>JSW presented this item and asked the Board to approve a form that had been created for when board members observe Tribunals. The Board approved the form but agreed that it should be developed into an online form.</p> <p>KD confirmed that he observed a Tribunal on 20 February and completed the feedback form. KD confirmed that form worked well. KD advised the Board that the Tribunal was professional and well run. He also confirmed that holding the Tribunal in Edinburgh seemed to work well and this approach could reduce the costs for both the IFoA and potentially the Respondent.</p>	JSW
13.	<p>Disciplinary Appointments Committee update</p> <p>The Board noted this paper. JSW asked for the Board to provide comments on the specification for the post of Convener of the Disciplinary Tribunal which will be recruited for shortly. It was agreed that board members should contact JSW directly.</p> <p>The Board was provided with a statistical breakdown of the number and type of cases each panel member sat on. JSW confirmed that this information is used when setting Panels to ensure that the appropriate appointments are made.</p> <p>JSW confirmed that seven new Investigation Actuaries had been appointed.</p>	All
14.	<p>Publication of Papers</p> <p>The Board, after considering the transparency principle, did not identify any papers that should be published. During further discussion after the meeting, the Chair and the Secretary of the Disciplinary Board confirmed this approach.</p>	

Item	Title	Action
15	AOB No matters were raised under AOB.	
16.	Management Board updates for Chairs The Board noted that there was no update on this occasion.	
17.	Regulation Board update for Chairs The Board noted this update. A further update will be provided from the Regulation Board's February meeting.	
18.	Lifelong Learning Board Update The Board noted this update.	
19.	Board Remit The Board noted its own terms of reference	
20.	Schedule of term times The Board noted this and noted that the two upcoming retirements had been extended until September 2020.	
21	Research and Thought Leadership Board Update The Board noted this update.	

Dates of next meetings:

- 9 June 2020
- 30 September 2020
- 9 December 2020 (Oxford)