



Institute
and Faculty
of Actuaries

Publication

Guidance policy (version 6.0)

by Disciplinary Board

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GUIDANCE ON PUBLICATION

The Disciplinary Board oversees the monitoring of the Institute and Faculty's (IFoA) Disciplinary Scheme ("the Scheme").

The Board considers that the objectives of publicising decisions of the judicial Panels and notices about the proceedings of the Scheme include:

- informing the public
- informing members of the IFoA
- reinforcing public accountability through openness, and educating members of the IFoA.

Rule 11.13 of the Scheme states that the Disciplinary Board shall prescribe such arrangements as it thinks fit for the manner in which certain decisions and determinations under the Scheme shall be published. These arrangements are set out below and publication will be as soon as reasonably practicable after the decision is made.

ADJUDICATION STAGE*

Determinations of an Adjudication Panel to refer to a Disciplinary Tribunal Panel (rule 4.4 (a)(ii)):

- i. Notice of the forthcoming Tribunal should be published on the IFoA's website forthwith, and should include the Respondent's:
 - name,
 - category, and
 - date(s) of Membership.

This notice should not however include the Adjudication Panel's reasoning or disclose how the case has come to be referred to a Tribunal.

- ii. After the charge of misconduct has been served on the Respondent a replacement notice should be published on the IFoA's website including the information in (a) above together with the following information:
 - date;
 - time;
 - venue details of the Tribunal Panel hearing, and;
 - an indication of the nature of the allegations.

Determinations of an Adjudication Panel to refer to a Disciplinary Tribunal Panel where the Respondent has not accepted the findings of the Adjudication Panel (rule 4.11):

- a) Notice of the forthcoming Tribunal should be published on the IFoA's website forthwith, and should include the Respondent's:
 - name,
 - category, and
 - date(s) of Membership.

This notice should not however include the Adjudication Panel's reasoning or

disclose how the case has come to be referred to a Tribunal.

- b) After the charge of misconduct has been served on the Respondent a replacement notice should be published on the IFoA's website including the information in (a) above together with the date, time and place of the Tribunal Panel hearing and an indication of the nature of the charge.

Determinations (with reasons) of an Adjudication Panel where the Respondent has accepted that there has been misconduct and, where appropriate, a reprimand, fine or period of education/retraining/supervised practice (rule 4.4(a)(i)):

- iii. These should be published in full, except where confidential details are withheld at the discretion of the Panel if there is good reason to do so, on the IFoA's website, and should include the date of publication; the Respondent's name, town (village/city) of residence, and country if outside the UK; category and date(s) of Membership; and either any sanction accepted, including its length, or a determination that no sanction is appropriate. The names and details of the Adjudication Panel member are not published.
- iv. The determination should also, subject to its length, be published in full, except where confidential details are withheld at the discretion of the Panel if there is good reason to do so, in the next available edition of *The Actuary* magazine;
- v. Where the determination is deemed too long to be published in full a summary should be published including the Respondent's name, category and date(s) of Membership, and a reference to the full report on the website, giving its date.

***Note:** The Scheme does not provide for publication of the Adjudication Panel's determination when it decides under rule 4.4 (b) no disciplinary action should be taken against the Respondent because it has found that the Case Report does not disclose a prima facie case of misconduct. *The Actuary* may, at the request of the Respondent, publish the determination. The person making the allegation will be advised of this. The determination will not appear on the website unless it is part of an anonymised report. General Counsel of the IFoA may, however, respond factually to inquiries arising from publication, in the terms of the Panel's determination report.

INTERIM ORDERS STAGE

Interim Orders, and the rescission or variation of those Orders (rule 3.26):

The fact of the making, rescission and/or variation of an Order, including the Respondent's name, category and dates of membership, should be set out in a notice on the IFoA's website and in *The Actuary* magazine.

TRIBUNAL STAGE

The elections by a Respondent to refer a matter to a Disciplinary Tribunal Panel (rule 3.18), and the election by the Case Manager and Investigation Actuary to refer directly to a Disciplinary Tribunal Panel (rule 3.13):

- a) These should be published on the IFoA's website forthwith, and should include the Respondent's name, category and date(s) of Membership, an indication of the nature of the allegations and a statement that it was the Respondent's election to proceed to a Disciplinary Tribunal Panel rather than an Adjudication Panel or that the Case Manager and Investigation Actuary referred the matter directly to a Tribunal with the Respondent's agreement, or at the discretion of the Convenor of the Adjudication Panel where the Respondent did not agree.
- b) After the charge of misconduct has been served on the Respondent a replacement notice should be published on the IFoA's website including the information in a above together with the date, time and place of the Tribunal Panel hearing and an indication of the nature of the charge.

Determinations (with reasons) of a Disciplinary Tribunal Panel (rules 6.22, 6.23 and 6.25):

- a) These should be published as soon as practicable after they are made, and in full, except where confidential details are withheld at the discretion of the Panel if there is good reason to do so, on the IFoA's website. They should include a statement making it clear that the Respondent has until (date) to make an application for an appeal.
- b) They should include the date of publication; the Respondent's name; town (village/city) of residence, and country if outside the UK; category and date(s) of Membership; and either any sanction imposed, including its length and the amount of any fine, with any costs award, or a determination that no sanction is appropriate.
- c) They should also, subject to their length, be published in the next available edition of the Actuary magazine without the names of the parties other than the Respondent.
- d) Where they are deemed too long to be published in full there should be published a summary including the Respondent's name, category and date(s) of Membership, such brief details as the Disciplinary Tribunal Panel deems appropriate as to the

nature of the case, and a reference to the full report on the website, giving its date.

- e) If, at any time before publishing a final determination, the Disciplinary Tribunal Panel make any pronouncement orally at a public hearing they will supply a brief summary of the position for immediate posting on the IFoA's website in order that the public at large can obtain an accurate statement of the situation not just those attending the hearing.
- f) At the end of the appeal period; if no appeal is lodged, the determination should be amended to report that the Respondent had not appealed the decision. If an appeal is lodged then the determination should be amended to state that. (The determination would be removed from the website if the appeal were successful)
- g) If an appeal is lodged before the copy date for publication in *The Actuary* magazine the determination should be replaced in that publication with a brief notice indicating the decision, sanction (and costs order if any) and a statement that the Respondent has appealed the decision and an appeal hearing will be set in due course.

APPEAL STAGE

Referrals to an Appeal Tribunal Panel (rule 8.10):

- a) These should be published on the IFoA's website after the hearing of the appeal has been appointed, and should include the date, time and place of the Appeal Tribunal hearing, the Respondent's name, category and date(s) of Membership, and whether the appeal is against an Interim Order or a determination of a Disciplinary Tribunal Panel.
- b) Where the Notice of Appeal is withdrawn by the Respondent the notice will be removed forthwith from the website, and the copy of the determination on the website amended accordingly.

Determinations (with reasons) of an Appeal Tribunal Panel (rule 8.16, 8.31, and 8.44):

- a) These should be published as soon as practicable after they are made, and in full, except where confidential details are withheld at the discretion of the Panel if there is good reason to do so, on the IFoA's website.
- b) They should include the date of publication; the Respondent's name; town (village/city) of residence, and country if outside the UK; category and date(s) of Membership; and either any affirmation, variation or rescission of any determination of a Disciplinary Tribunal Panel or Interim Orders Panel, or any substituted determination, and any costs award. The names and details of the Appeals Tribunal Panel members, as well as the legal adviser to the Panel and the lawyers representing the Respondent and Faculty or Institute, are also published with the determinations.
- c) In respect of appeals against refusal of readmission to membership following disciplinary expulsion or exclusion the determination should include the date of publication; the Respondent's name; town (village/city) of residence, and country if outside the UK; category and date(s) of Membership; and either any affirmation of any determination of a Disciplinary Tribunal Panel to expel or exclude the membership, readmission granted, or decision to remit the matter back to a Disciplinary Tribunal Panel.
- d) They should also, subject to their length, be published in the next available edition of *The Actuary* magazine without the names of the parties other than the Respondent.

- e) Where they are deemed too long to be published in full there should be published a summary including the Respondent's name, category and date(s) of Membership, such brief details as the Appeal Tribunal Panel deems appropriate as to the nature of the case, and a reference to the full report on the website, giving its date.

- f) If, at any time before publishing a final determination, the Appeal Tribunal Panel make any pronouncement orally at a public hearing they will supply a brief summary of the position for immediate posting on the IFoA's website in order that the public at large can obtain an accurate statement of the situation not just those attending the hearing.

GENERAL MATTERS

Date(s) and place of any public hearings to be held under the Scheme:

The date, place and number of cases to be heard should be published on the IFoA's website at least one week before the relevant hearing.

Publication date:

All published notices will bear a publication date and will remain on the IFoA's website until whichever occurs last of the expiry of 2 years from the date of publication, and the ending of any period specified in the sanction.

Third parties:

The published determinations do not name the person making the allegation, Investigation Actuary or any other third parties referred to in the complaint, such as a Pension Scheme or insurer, although these are known to the Respondent.

Additional Publicity by IFoA:

Where it is considered appropriate, in order to inform the public about a case of particular public interest, then a brief press release will be issued by direction of the Chief Executive, containing such information from the Disciplinary Tribunal Panel or Appeal Tribunal Panel as the press office chooses to include.

Additional Publicity by Panels:

Where it is considered appropriate, a panel may exercise its discretion to make such additional orders relating to publication of determinations (such as within trade journals) on cause shown.

Further Disclosure

The IFoA may release details of a published determination where a specific request is made for disclosure after the determination has been removed from the website in accordance with paragraph 13.

Anonymised Reports

In order to fulfil the duty of educating the IFoA, anonymised reports giving examples of the type of cases considered by Adjudication, Disciplinary Tribunal, Interim Orders and Appeal Tribunal Panels may be published as prescribed by the Disciplinary Board.

Usual practice ought to be publication of a decision of misconduct in full. This is an important part of maintaining the reputation of the profession and declaring and upholding professional standards. Panel decisions assist in drawing professional standards to the attention of the whole profession, when published.

However, there may be cases where personal mitigation, particularly for someone no longer in practice, may be sufficiently strong to overcome that starting point, and the balance of the public interest may change. In preparing a determination, Panels may wish to provide specific direction in relation to publication, and do have discretion within the Rules to do so. Consideration should also be given to any relevant circumstances of others mentioned in a case, as to whether publication should be anonymised. Those facing allegations which are proved should not normally be anonymised, and if it is decided that a member is to be anonymised in any decision the reasons should be set out with clarity¹.

Where a Panel is considering anonymising a report regard should be had to the principles set out in **JIH v News Group Newspapers LTd (Rev 1) [2011] EWCA Civ 42** whereby:

“...any order for anonymity or any other order restraining the publication of the normal reportable details of a case is a derogation from the principle of open justice and an interference with the Article 10 rights of the public at large...Accordingly, where the [court] is asked to make any such order, it should only do so after closely scrutinising the application, and considering whether a degree of restraint on publication is necessary, and, if it is, whether there is any less restrictive or more acceptable alternative than that which is sought.

...An order for anonymity or for reporting restrictions should not be made simply because the parties consent: parties cannot waive the rights of the public.”

Where a panel considers that anonymisation is appropriate, consideration ought to be given as to the effectiveness of the measures being considered including the use of a cypher to avoid the risks of “jigsaw identification”.

¹ SRA v Spector [2016] EWHC 37 (Admin)

Disciplinary Board Publications

The Disciplinary Board will also publish twice yearly reports to the Councils and annual reports to the members giving general information about the operation of the Scheme and the nature of the cases.

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