



Disciplinary Committee

17 January 2023, 09:15 – 12:15 via MS Teams

Attending: Nicola Williams, Chair Kevin Doerr Robert Garvin Rosalyn Hayles Velia Soames	Executive Staff: Sarah Borthwick, Secretary to the Disciplinary Committee Jenny Higgins, Head of Disciplinary Investigations Catherine Mouat, Disciplinary Investigation Coordinator (note taker) Sarah Drummond, Head of Legal Services Alison Simpson, Case Manager (Items 10 – 12) Karen Nicol, Disciplinary Lawyer (Items 7, 10 and 11) Lisa McPhee, Judicial Committee Team Co-ordinator (Item 10 only)
Apologies: None	

Item	Title
1.	Welcome and apologies <p>There were no apologies. It was noted that Julia Wanless, the Judicial Committees Secretary, was unable to attend and Jenny Higgins would speak to the full case update. NW welcomed Sarah Drummond, Head of Legal Services, to the meeting.</p>
2.	Declaration of Conflicts of interests <p>None declared.</p>
3.	Chair's update <p>NW advised that there were three Regulatory Board matters to advise the Committee of;</p> <ul style="list-style-type: none">Proposed changes to the Actuaries' Code concerning Diversity, Equity and Inclusion. These would be going out to consultation in January 2023.A thematic review of equity release mortgages was being carried out.A proposal that the Regulatory Board look at liability driven investments to see if further guidance was needed in this area. <p>NW further advised that she would be visiting Edinburgh in June 2023 to meet the Executive and hoped to meet with Richard Jones KC, Chair of the Regulatory Appointments Committee, by early February 2023.</p>
4.	Executive's Update <p>SB introduced the paper and highlighted that there had been several new appointments across the Executive, as set out in the section on resourcing.</p> <p>KD asked about the job specification for the Convener of Adjudication Panels and questioned whether the commitment of about 10 days a year was realistic. SB advised she would raise this with the Judicial Committees Secretary and find out how many days the current Convener works per year. VS suggest that the current Convener be asked to look at the job description so they can provide their insight.</p> <p>Action: SB to raise suggestions about the Convener of Adjudication Panels job description with the Judicial Committees Secretary</p>
5.	Minutes and Actions <p>The Committee approved the minutes of the 21 September 2022 meeting and agreed with the suggested redaction. The Committee noted the action sheet.</p> <p>Action: SB to arrange publication of redacted minutes.</p>



Item	Title
6.	<p>Scheme Implementation</p> <p>JH presented the paper and highlighted;</p> <ul style="list-style-type: none">• The successful member vote which took place over September/October 2022.• Not many queries had been received from members during the vote and all had been fully responded to.• The suggested implementation date of June 2023. <p>The Committee questioned whether the proposed implementation date was realistic, given the amount of work to be done for implementation. JH advised that they would work towards a June 2023 implementation date and would keep the Committee updated as to progress. RH highlighted that it was important for the Panel members to have sufficient time to become familiar with the new Scheme and Guidance before they started having to use it.</p>
7.	<p>Guidance for approval</p> <p>JH introduced this paper which set out the various topics which it was anticipated that Guidance would be prepared to cover, and presented the Committee with the following Guidance from that list, for use under the new Disciplinary Scheme, for approval;</p> <ul style="list-style-type: none">• Assessment of Complaints• Publication• Standard and Burden of Proof• Capacity for Membership <p>JH had requested detailed drafting comments from the Committee and some had already been provided, which she was working through. JH requested that any further detailed drafting comments be provided as soon as possible after the meeting.</p> <p>JH noted that a DEI consultant had been appointed to draft guidance for use by the Executive and Panels in decision making. This would be brought to the Committee for approval in April, along with several other Guidance documents, as set out in the paper.</p> <p>It was noted that hyperlinks to the Scheme, Regulations and any other Guidance referred to in the documents would be added once all of the documentation supporting the Scheme had been finalised. A glossary would also be added.</p> <p>The Committee approved the Assessment of Complaints Guidance, Standard and Burden of Proof Guidance and Capacity for Membership Guidance in principle, subject to any further amendments to be made following the meeting (to be approved by two members, as noted below).</p> <p>There was some discussion around the draft Publication Guidance and whether it was appropriate to publish determinations for five years. It was agreed that JH would consider the approach of other regulators and would share this with the Committee to allow them to consider whether the length of publication should be changed. It was agreed that, subject to the length of publication, the approach to publication should remain as set out in the draft Guidance. The Publication Guidance was approved on this basis, subject to any further amendments to be made following the meeting. It was agreed that an in-depth review of the policy on publication should be considered later in the year and this would be added to the Committee's work plan for post implementation of the new Disciplinary Scheme.</p> <p>JH asked that one or two members of the Committee be nominated to finalise and approve the Guidance following the meeting. It was agreed that RH and KD would do this.</p> <p>Actions: Committee members to send any further detailed drafting comments to JH. Revised Guidance to be approved by KD and RH. JH to provide Committee with details of the length of publication by other regulators. SB to add publication policy to Committee work plan.</p>



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8.	<p>Training plan</p> <p>SB introduced the paper and set out that the Committee had a responsibility to approve a training plan, on recommendation by the Executive, and to oversee delivery of that training.</p> <p>It was noted that the training plan had been developed by considering feedback from the last training programme, requesting input from the Conveners to the Adjudication Panels and Disciplinary Tribunal Panels and considering points raised by the Determinations Review Sub Committee.</p> <p>The introduction of the new Disciplinary Scheme would be the focus of the training and this would be done through focussed online sessions for Disciplinary Pool members and Legal Advisers and separate sessions for Investigation Actuaries. It was noted that there would be an earlier session run for the Conveners and some Legal Advisers so they would be able to deal with cases under the new Scheme as soon as it was implemented. The sessions would be run by the Executive.</p> <p>The Committee agreed with the suggestion that they attend at least one training session to refresh/expand their knowledge of the new Scheme and in their role to oversee delivery of the training.</p> <p>The training plan proposed the continuation of the Convener drop-in sessions as they have been an effective way to share updates and have informal discussions on guidance and policy.</p> <p>The Committee noted that further proposals on training for the Charing Pool needed under the new Scheme would be presented at a later date, as would a proposal on DEI training.</p> <p>The Committee approved the training plan which SB would now implement.</p> <p>Action: SB to implement training plan.</p>
9.	<p>Complaints</p> <p>SB introduced the paper and explained that the purpose of the complaints statement was to manage all stakeholders' expectations about what the Committee would and would not consider. SB thanked RH for her input.</p> <p>The Committee agreed with the overall approach but acknowledged that there was some confusion around the other routes of complaint available. SB agreed to investigate this further and produce a further draft for the Committee. SB had received written comments from KD before the meeting and asked that if any other Committee members had comments, they should provide them to SB by 10 February 2023.</p> <p>Actions: SB to progress drafting of complaints statement. Other Committee members to provide comments by 10 February 2023.</p>
10.	<p>Case Update Report</p> <p>JH introduced the report and reminded the Committee that she would speak to the Panel section of the report in the absence of the Judicial Committees Secretary. JH provided an overview of the cases that had been investigated and hearings that had taken place in the previous quarter.</p> <p>JH highlighted that since the last report in September 2022 only one allegation had been received. The Committee noted the over the last quarter 11 investigations had been completed and passed to Adjudication Panels, all within the required timescales. JH noted that one of the current cases would not meet the timescales but explained the reasons to the Committee who noted it was out with the IFoA's control.</p> <p>On the Panel section of the Report JH highlighted that five cases had been considered by Adjudication Panels over the last quarter. All of these had been heard by the Panel within the required timeframes except for one, which was because of a Respondent requesting an extension for commenting on the Case Report.</p>



Item	Title
	<p>It was noted that there were 11 cases awaiting an Adjudication Panel. Due to limitations on availability, including holidays, the scheduling of some of these cases had been postponed to the next available diet. This was in agreement with the Convener of the Adjudication Panels.</p> <p>The Committee noted that two Disciplinary Tribunal Panel hearings, including a successful application for readmission, had taken place over the last quarter.</p> <p>KD requested that the report indicate whether a case had been referred to a Disciplinary Tribunal Panel by the Respondent or the Adjudication Panel.</p> <p><i>[redacted]</i></p> <p>NW thanked JH for the update and acknowledged all of the work of the Executive in this area.</p> <p>Action: Judicial Committees Secretary to update report to indicate how a case was referred to a Disciplinary Tribunal Panel.</p>
11.	<p>Feedback</p> <p>SB introduced the paper which provided the Committee with the feedback received from Panel members, Legal Advisers, a Respondent, a referrer of a complaint and a Disciplinary Committee member who had observed a tribunal. SB explained that she had presented the feedback in a different format to try and allow the Committee to assess the feedback more easily.</p> <p>The Committee noted the feedback provided and advised that they liked the new style of presentation.</p> <p>The Committee considered the email from the Respondent about the publication of the Adjudication Panel's determination. The Committee confirmed its view that, other than in exceptional circumstances, publication of Adjudication Panel determinations is in the public interest and should be continued. The Committee noted that the Respondent had been made aware of the publication policy prior to submitting comments on the Case Report. The Committee noted that, in light of the Respondent's concerns, some changes had been made to the Case Report covering letter to highlight publication further. It was agreed that, to increase awareness of the publication policy, the text included in the covering letter should be further expanded and the statement of facts form sent to Respondents should include space for a comment about publication. It was also agreed that the last communication with Respondents before the Adjudication Panel should be reviewed to consider whether any additional wording was helpful.</p> <p>Actions: JH to amend covering letter and statement of facts form. SB to speak to Judicial Committees Secretary about last communication before Adjudication Panel.</p> <p>It was agreed that SB would send an email to the Respondent, on behalf of the Committee, reminding him that he had been made aware of publication prior to submitting his comments on the Case Report. The communication should also advise the Respondent of the changes that had been made as a result of his comments. The email should clarify that the Committee is not able to remove or alter the determination relating to his case, as the decision on publication was taken by the independent Adjudication Panel. NW would approve the email.</p> <p>Action: SB to send email to Respondent once approved.</p>



Item	Title
12.	<p>Determinations Review Sub Committee</p> <p>VS presented the paper and confirmed that the quality of the drafting of determinations continued to be high. She highlighted three issues that were discussed by the Committee;</p> <ul style="list-style-type: none">• Whether the Sub Committee should be made aware of any response the Conveners give to the Sub Committee's feedback. The Committee agreed that this would be beneficial and SB agreed to raise this point with the Judicial Committees Secretary.• The approach of the IFoA to anonymise determinations where it concerns a third party. It was agreed this would be added to the discussion on publication later in the year.• Whether there was any need to raise members' awareness of conflicts of interest. It was agreed by the Committee that this may have been an issue for the particular member who had queried whether the need to avoid conflicts of interest was highlighted sufficiently as there was a wealth of information available on the IFoA website and it is a core part of the Actuaries' Code. <p>The rest of the paper was noted by the Committee.</p> <p>Action: SB to raise issue of feedback with Judicial Committees Secretary.</p>
13.	<p>Objectives update</p> <p>The Committee noted the table setting out progress of the Committee's objectives for 2022/23. As discussed elsewhere on the Agenda, the Scheme implementation was progressing well. The Committee also noted the workplan and SB advised she would update this to include the work, later in the year, on the publication guidance.</p> <p>Action: SB to update future workplan</p>
14.	<p>Risk Register</p> <p>SB presented the risk register and the simple chart which tracked the movement of residual risks. It was noted there had been no movement over the last quarter.</p> <p>In discussion it was agreed that SB would consider whether the risk assessments used were correct based on the risk matrix and whether risk DC02 could be clarified.</p> <p>Action: SB to complete further work on risk register.</p>
15.	<p>Matters to raise with Regulatory Board</p> <p>There were no suggested matters to escalate to Regulatory Board. NW noted that the next Regulatory Board meeting was on 21 February 2023, which she would be attending.</p>
16.	<p>Schedule of Guidance</p> <p>This was noted.</p>
17.	<p>Schedule of term times</p> <p>This was noted</p>
18.	<p>AOB</p> <p>None.</p>

Dates of Next Meetings:

- Wed 26 April 2023
- Tues 20 June 2023
- Wed 11 October 2023
- Tues 16 Jan 2024