



Institute
and Faculty
of Actuaries

Writing Determinations and Orders

Guidance

by the Disciplinary Committee of
the Institute and Faculty of Actuaries

Writing Determinations and Orders

1. Introduction

- 1.1 This Guidance has been issued by the Disciplinary Committee of the IFoA.
- 1.2 It is for use by:
 - (a) Panels, to provide further detail on their powers and procedures to be followed;
 - (b) any other party, so they are aware of the powers of the Panel and procedures to be followed; and
 - (c) IFoA staff.
- 1.3 This Guidance aims to promote transparency and consistency in the approach of Panels and the IFoA staff.
- 1.4 This Guidance applies to all Complaints and applications being considered under the Disciplinary Scheme of the IFoA (effective 1 August 2023) (the Scheme). For Complaints that are being considered under a former version of the IFoA's Disciplinary Scheme, the version of the Guidance applicable to the former version of the Disciplinary Scheme should be applied to the extent that it is possible to do so, otherwise this Guidance will apply.
- 1.5 This Guidance should be read alongside:
 - (a) the Scheme of the IFoA; and
 - (b) any Regulations issued by the Disciplinary Committee; and
 - (c) any other relevant Guidance published by the Disciplinary Committee.
- 1.6 Where there is any conflict or inconsistency between the Scheme and this Guidance, the Scheme shall be followed. Where there is any conflict or inconsistency between Regulations and this Guidance, the Regulations shall be followed.
- 1.7 Definitions of defined terms used in this Guidance are set out in the Scheme and Regulations.
- 1.8 This Guidance should not be treated as legal advice. When appropriate, the Legal Adviser will advise the Panel on questions of law and/or procedure, which may include advice on the use of this Guidance.
- 1.9 The Disciplinary Committee will review this Guidance every three years or earlier if needed.

2. Aim

- 2.1 This Guidance:
 - (a) explains the principles and procedures to be followed by a Panel when drafting its Order or Determination.

3. General Principles

- 3.1 The following general principles should be applied when a Panel is drafting the written Determination or Order.
- 3.2 Panels are responsible for the content of their Determinations and Orders. Only the Panel members, with assistance from the Legal Adviser (if assigned), can be involved in the drafting of a Determination or an Order.
- 3.3 The Legal Adviser to the Panel is not part of the decision making Panel. Their role is to advise the Panel on the application of the law, rules and processes.
- 3.4 The Panel must provide clear, written reasons for every decision (including decisions on sanction, costs and publication). This is to ensure that any reader (such as the Parties, members of the IFoA, and the public) can understand how the Panel arrived at each decision in the Determination or Order. This applies whether or not the Determination or Order will be published. Determinations and Orders may be subject to scrutiny by a subsequent decision maker, therefore clear reasons should be provided to allow each decision to be understood.
- 3.5 Determinations and Orders should be drafted in accordance with the Diversity, Equity and Inclusion Guidance. Plain language should be used wherever possible.
- 3.6 If the evidence includes conflicting accounts of events, the Panel should explain if they have preferred one account over the other. For example, the Panel should explain which witness's account (or part of that account) they have relied upon in reaching their decision in relation to each aspect of the case, and the reasons why it may have been considered to be more credible or reliable.
- 3.7 The Panel should set out any Rules, Regulations, Guidance, standards or case law that they have relied upon when making their decision. If the Legal Adviser has given legal advice, the Panel should summarise this.
- 3.8 If the Panel does not follow Guidance or case law, they should explain their reasoning.

4. Drafting of Determinations and Orders

- 4.1 At the conclusion of Panel discussions, Panel members should agree who should complete the first draft of the determination or order. The first draft of the written reasons is normally completed by the Chair, but in some cases the Panel may agree that another Panel member should prepare the first draft based on the expertise of the Panel members.
- 4.2 Each issue that needs to be considered should be addressed separately in the allegation with clear reasons for each decision.
- 4.3 Determinations should normally follow the following structure:
 - (a) the Allegation, Charge or application;
 - (b) a summary of the Panel's main findings and outcomes;
 - (c) any decision and reasoning on preliminary issues that have been raised;
 - (d) a brief summary of the background to the case and the evidence provided to the Panel;
 - (e) where relevant, a summary of submissions from Parties and any legal advice;

- (f) whether or not each of the facts alleged are proved and how those decisions were reached;
 - (g) the Panel's decision and reasoning on Misconduct, capacity to hold membership, a Disciplinary Order, readmission, imposition of an Interim Order, an Appeal and/or any other matter a Panel is required to determine (as applicable);
 - (h) where appropriate, decision and reasoning on sanctions or outcomes, having regard to the applicable Guidance;
 - (i) the Panel's decision and reasoning on costs (if applicable), having regard to the Costs Guidance; and
 - (j) the Panel's decision and reasoning on publication (if applicable), having regard to the Publication Guidance.
- 4.4 All Panel members are required to approve the final determination/ order before it is served on the parties.
- 4.5 Where a Panel imposes an outcome that needs to be reviewed at a later date, for example in Capacity for Membership proceedings or Interim Orders, it should provide a clear indication of what information may be helpful for the reviewing Panel, including relevant timeframes as appropriate.
- 4.6 Where a Panel needs to adjourn proceedings, it should provide brief reasons for adjourning and, where appropriate, clear expectations of what is needed for the resumed hearing including relevant timeframes.
- 4.7 The format suggested in this Guidance is not prescriptive and, in every case, Panels must satisfy themselves as to what is appropriate.
- 4.8 Rule 23.1 of the Scheme allows for any accidental errors or omissions in determinations and orders to be corrected.

5. Service and Publication

- 5.1 Determinations and Orders will be sent to parties by the Judicial Committees Secretary in accordance with the Scheme, applicable Regulations and the Disciplinary Committee's Timeframes Guidance note.
- 5.2 The Judicial Committees Secretary will arrange for Determinations and Orders to be published as directed by the Panel.

Document control

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