

## PRACTICE NOTE

### Applying the Civil Standard of Proof

This Practice Note has been issued by the Institute for the guidance of Disciplinary and Appeal Panels and to assist those appearing before them.

#### Introduction

1. The standard of proof that applies in all proceedings before a Disciplinary Panel or an Appeal Panel is the civil standard of proof, i.e. on 'the balance of probabilities'.

#### Guidelines

2. Guidance as to 'the balance of probabilities' in the context of the civil standard of proof was provided by the House of Lords (in *Re H (minors)* [1996] AC 563). In summary, their Lordships' guidance provides that an event is proved on the balance of probabilities if the court or tribunal is satisfied that, on the evidence, the occurrence of the event is more likely than not. It does not require the court or tribunal to be certain that the event did occur.
3. The House of Lords sought further to clarify the application of the civil standard of proof in their judgements in *Re B (Children)* [2008] UKHL 35 and *Re Doherty* [2008] UKHL 33. The decisions make clear that:
  - 3.1. there is only one civil standard of proof, the balance of probabilities, and '[n]either the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied'; although
  - 3.2. in some cases, 'a court or tribunal has to look at the facts more critically or more anxiously than in others before it can be satisfied to the requisite standard...The standard itself is, however, finite and unvarying. Situations which might make heightened examination necessary may be the inherent unlikelihood of the occurrence taking place ..., the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a Tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been

established. The seriousness of consequences is another facet of the same proposition: if it is alleged that a bank manager has committed a minor peculation, that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing. These are all matters of ordinary experience, requiring the application of good sense on the part of those who have to decide such issues.'

4. In *R (Independent Police Complaints Commission) v Assistant Commissioner Hayman* [2008] EWHC 2191 (Admin), the High Court considered the application of the civil standard of proof in disciplinary proceedings in the light of the guidance set out by the House of Lords. Mr Justice Mitting cited Lord Carswell (in *Re D*) where he said:

'They [the inherent unlikelihood of the occurrence, seriousness of the allegation, seriousness of consequences] do not require a different standard of proof or especially cogent standard of evidence, merely appropriately careful consideration by the Tribunal before it is satisfied of the matter which has to be established'.

5. He went on to say:

'In that last sentence Lord Carswell, in my opinion, laid down the true proposition of law. Of course in disciplinary proceedings the Tribunal must look with the greatest care at accusations which potentially give rise to serious consequences. But in determining whether or not they occurred, it applies a single unvarying standard, the balance of probabilities. If satisfied it is more likely than not that the facts occurred, then it must find them proved and draw appropriate conclusions as to sanction'.

6. Hence, there are no general rules regarding weighing the strength of evidence presented to the relevant panel: it is a matter of common sense and logic based on the particular circumstances of each case.