Adjudication Panel Meeting

9 September 2022

Institute and Faculty of Actuaries

Held by Video Conference

Respondent:	Murat Enes Asiliskender FIA
Category:	Fellow since 31 December 2021
Region:	London, UK
Panel Members:	Jules Griffiths (Chair) Paul Jameson FIA (Actuary member) Simon Head FIA (Actuary member)
Legal Adviser:	Julian Weinberg
Judicial Committees Secretary:	Hinna Alim

Allegation:

The allegation against Murat Asiliskender (the Respondent) is:

A1 He worked on a project for Insurer B under a sub-consultancy agreement with Consultancy C, while employed on a full time basis for Insurer A.

A2 His actions in paragraph A1 above were in breach of his contract with Consultancy C.

A3 His actions in paragraph A1 above created a potential conflict of interest.

A4 His actions in paragraph A1 above were in breach of the Competence and Care principle of the Actuaries' Code (version 3.0).

A5 His actions in paragraphs A1 and/or A2 above were in breach of the Compliance principle of the Actuaries' Code (version 3.0).

A6 His actions in paragraphs A1 and/or A3 above were in breach of the Impartiality principle of the Actuaries' Code (version 3.0).

A7 His actions, in all or any of the above, constituted Misconduct in terms of Rule 4.2 of the Disciplinary and Capacity for Membership Schemes of the Institute and Faculty of Actuaries (Effective 1 June 2021).

Panel's determination:

The Panel considered the Case Report and appendices submitted by the Case Manager and Investigation Actuary (a total of 205 pages) and the Respondent's response to the Case Report (11 pages). The Panel also considered an email from the Respondent, dated 27 July 2022. The Panel heard advice from the Legal Adviser with regard to the definition of Misconduct.

For the reasons below, the Panel determined that the Case Report disclosed a *prima facie* case of Misconduct.

The Panel accordingly invited the Respondent to accept that there had been Misconduct and the following sanctions:

- Reprimand and
- Fine of £2,000 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation

Background:

The Respondent was employed as a Senior Pricing Analyst at Insurer A from October 2020. In January 2022 he signed a contract with Consultancy C, to provide services as a Specialist Pricing Analyst to Insurer B from 17 January to 17 July 2022.

On 14 February 2022 an employee at Insurer B raised concerns that the Respondent was still employed by Insurer A whilst contracted to her employer. His contract with Consultancy C was terminated on 15 February and Insurer B referred the Respondent to the IFoA on 10 March.

The Respondent admits that, whilst he was employed on a full-time basis by Insurer A, he worked on a project for Insurer B, but says that that he was providing services for a specific project only and was not a full-time employee or within the organisational structure. He denies all of the other allegations.

Decision and Reasons on the Allegations:

A1 He worked on a project for Insurer B under a sub-consultancy agreement with Consultancy C, while employed on a full time basis for Insurer A.

The Panel carefully reviewed the documentary evidence. With regard to his role with Insurer A, the Panel noted that his employment contract, dated 11 September 2020, gave a job title of Senior Pricing Analyst, and specified that normal working hours are 9am to 5pm. Monday to Friday; the notice period was 3 months; undertaking any other duties during working hours was not permitted unless prior written approval was given; and engaging in any business, trade or employment would also need prior written consent. The Panel also noted that at the outset of his employment the Respondent had informed Insurer A that he had an active Directorship in a company. In response to the question "the work you will be doing for that Company" he stated "*admin, accounts related to the company and adhoc actuarial work if it does ever come up*"; he said that he anticipated work to be "*outside of work hours extremely likely to be weekends only*" and "*there is no clear work planned or accepted in the near future*" adding "*I have a company and will leave it as it is. I should have the right to engage in my own work if I ever wanted not to say I will necessarily do this but I do not want to be bound by my employment if I was offered a small task that I can do during the weekend for example*." There was no evidence that Insurer A had objected to this.

The Panel noted that the Respondent has not disputed that he took on the work for Insurer B whilst still employed by Insurer A, but has maintained that his tax status and the lack of any specified hours in the contract for the project for Insurer B means that it was not a full-time role.

The Panel referred to the contract between the Respondent's company and Consultancy C. In particular the Panel noted that the Respondent was contracting to provide "*pricing analysis and actuarial services*" including "*a review and recalibration of existing pricing models, including Hull, Marine and Energy Liability*" between 17 January and 17 July 2022, at an agreed daily rate of £680, for a maximum of 125 days. A number of deliverables were described with target dates and chargeable amounts which appear to be a total of 6.25 days per month.

From the documentary evidence, the Panel was unable to determine whether Insurer B expected the Respondent to work up to the 125 days indicated or only the minimum of 6.25 days per month. However, even if it was only the minimum number of hours, the Panel was satisfied that that this supported the allegation that he was working on a project for Insurer B whilst employed on a full-time basis with Insurer A.

A2 His actions in paragraph A1 above were in breach of his contract with Consultancy C.

The Panel carefully reviewed the contract, and in particular clause 5(c), which states that the Respondent shall not: "*during the period of the Services engage in work for any third party or for your own benefit that is capable of being in conflict with our best interests or those of the Client and you agree to provide us sufficient details, to enable us to establish whether such a conflict may arise, of any work for a third party that you are doing or that you propose to do, whilst engaged to provide the Services".*

The Panel carefully reviewed the information available about the Respondent's role at both Insurer A and B and concluded that, by continuing in employment at Insurer A this was capable of being in conflict with the best interests of Insurer B (i.e. the Client). In considering the next question, that is, had he provided sufficient details to Company C for them to establish whether such a conflict may arise, the Panel noted that the Respondent had provided a reference letter to Consultancy C, dated 18 January 2022, which quite clearly stated that he was still employed by Insurer A. Consultancy C had not requested any further information, which, in the Panel's view, indicated that the Respondent may have complied with the requirements.

Furthermore, the Panel noted that when Consultancy C terminated the contract on 15 February they did so on the basis of client objections (under clause 7.1 c and d) after Insurer B became aware of the Respondent's continued employment with Insurer A.

The Panel therefore concluded that the Case Report did not support this allegation.

A3 His actions in paragraph A1 above created a potential conflict of interest.

In considering this allegation the Panel reminded itself of IFoA's Guidance on Conflicts of Interest, which gives as an example a situation where a Member has two separate clients whose interests come into conflict and the Member might then be tempted to act in the interests of one client in a manner which works against the other client. The Guidance is clear that Members should be alert to situations where others perceive that there may be a conflict or a possibility of conflict even when it does not exist.

The Panel noted that both Insurer A and Insurer B operate in the "London Market" and as such compete within certain classes of business, including the Marine and Energy lines of business. The Panel acknowledged that there does not appear to be explicit cross-over between the products the Respondent was working on at Insurer A and the business of Insurer B. However the Panel concluded that by working within the actuarial pricing function in both Companies the Respondent's actions posed a potential conflict of interest.

The Panel therefore concluded that the Case Report did support this allegation.

A4 His actions in paragraph A1 above were in breach of the Competence and Care principle of the Actuaries' Code (version 3.0).

The Panel concluded that, whilst it was questionable whether the Respondent would have been able to deliver work of the appropriate standard in a timely way for both his full-time role and his project for Insurer B, the Case Report did not provide sufficient evidence to support the allegation that he was not acting competently or with care.

The Panel therefore concluded that the Case Report did not support this allegation.

A5 His actions in paragraphs A1 and/or A2 above were in breach of the Compliance principle of the Actuaries' Code (version 3.0).

The Panel concluded that working for two organisations at the same time, which is the essence of Allegation A1, would not amount to a breach of the Compliance principle.

Having concluded that the Case Report did not support Allegation A2 the Panel concluded the Case Report could not support this allegation.

A6 His actions in paragraphs A1 and/or A3 above were in breach of the Impartiality principle of the Actuaries' Code (version 3.0).

Having made the findings in A1 and A3, the Panel referred to the full wording of the Impartiality principle , which requires Members to "take reasonable steps to ensure that they are aware of any relevant interests that might create a conflict" and "not act where there is an unreconciled conflict of interest".

The Panel also referred to the Guidance which supports this principle and provides advice on how to understand, recognise, reconcile or eliminate conflicts of interest, whether actual or potential.

The Panel had not had sight of any evidence that the Respondent's actions resulted in an actual conflict of interest. However, it is clear from the Code and the Guidance that he had a responsibility to avoid or mitigate the potential conflict that should have been clear to him. The Panel noted that he has some mitigation in that others (in both Insurer A and Consultancy C) were aware of the risk and did not address it. However that did not excuse the Respondent from complying with his professional obligations.

The Panel found this allegation proved.

Decision and Reasons on Misconduct:

The Panel then considered whether there was a *prima facie* case that the Respondent's actions, as found in Allegations A1, A3, and A6, amounted to Misconduct.

For the purposes of the Disciplinary and Capacity for Membership Scheme, Misconduct is defined as any conduct by a Member, whether committed in the United Kingdom or elsewhere, in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity, competence or professional judgement which other Members or the public might reasonably expect of a Member having regard to the Bye-laws of the Institute and Faculty of Actuaries and/or to any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or, for so long as there is a relevant Memorandum of Understanding in force, by the FRC (including by the former Board for Actuarial Standards) in terms thereof, and to all other relevant circumstances.

The Respondent had put himself in a position giving rise to a potential conflict of interest. The Panel considered that other Members and members of the public should be able to rely on IFoA Members to take responsibility for identifying and mitigating a potential conflict of interest. Failing to act as required calls into question the Respondent's impartiality. As such the Respondent's conduct fell significantly short of the standard expected of him.

The Panel therefore determined that there was a *prima facie* case that the Respondent's actions were sufficiently serious as to constitute Misconduct under the Disciplinary and Capacity for Membership Scheme.

Decision and Reasons on Sanction:

In reaching its decision, the Panel had regard to the Indicative Sanctions Guidance (November 2021). The exercise of its powers in the imposition of any sanction is a matter solely for the Panel to determine and it is not bound by the Indicative Sanctions Guidance.

The Panel was aware that the purpose of sanction is not to be punitive although it may have that effect. Rather, the purpose of sanction is to protect the public, maintain the reputation of the profession and declare and uphold proper standards of conduct and competence. The Panel is mindful that it should impose a sanction, or combination of sanctions necessary to achieve those objectives and in doing so should act proportionately, balancing the public interest with the Respondent's own interests.

In considering sanction, the Panel took into account that the Respondent has no other disciplinary matters recorded against him and he co-operated with the investigation.

However, the Respondent's actions were deliberate and he stood to benefit financially. Although the impact on his client (Insurer B) was limited (as they terminated the contract as soon as they became aware) they were inconvenienced and their project may have been delayed as a result. If the Respondent had continued as he planned there was a risk of harm due to his potentially competing priorities. The Respondent has not accepted responsibility for his actions or the impact on his client, and has shown limited insight.

The Respondent had not provided any information about his financial circumstances, other than to state that he has not been employed for the past 4 months.

The Panel considered whether this was a case that warranted no sanction, but concluded the lack of insight made such an outcome inappropriate.

The Panel then went on to consider whether a Reprimand would be sufficient to mark the Misconduct, and concluded that such an outcome was appropriate and proportionate.

The Panel was also concerned that the Respondent's failings suggested that he is not fully aware of how conflicts of interest can arise and how a potential conflict should be managed. This is especially relevant as he stated that he was looking to move away from a single employer into the consultancy field. The Panel therefore considered whether to impose a period of education, training or supervised practice. The Panel was unable to identify an appropriate sanction but recommends that the Respondent should reflect carefully on the shortcomings identified in the Case Report and take the opportunity to refresh his knowledge of the Actuaries Code and the supporting Guidance. He may benefit from discussing lessons he has learned in his reflective practice discussion and as part of his ongoing CPD.

Having decided that it was not appropriate to impose an education sanction, the Panel moved on and concluded that a combination of a Reprimand and a Fine would be appropriate and proportionate to reflect the Respondent's Misconduct. Taking account of all of the relevant factors, including the Respondent's salary when last employed and his daily rate at Insurer B, the Panel concluded that an amount of £2,000 would be appropriate.

The Panel did not consider it necessary to refer this matter to a Disciplinary Tribunal Hearing.

Publication:

Having taken account of the Disciplinary Board's Publication Guidance Policy (May 2019), the Panel determined that, if the Respondent accepted the findings of the Panel, this determination will be published and remain on the IFoA's website for a period of five years from the date of publication. A brief summary will also be published in the next available edition of *The Actuary* Magazine.

That concludes this determination.