



## Disciplinary Tribunal Panel Hearing

21 February 2022

### Online Hearing

<b>Respondent:</b>	Anupama Rathore Not present and not represented in absence
<b>Category:</b>	Student - Resigned
<b>Region:</b>	Rajasthan, India
<b>IFoA Case Presenter:</b>	Ayanna Nelson, barrister instructed by the IFoA.
<b>Panel Members:</b>	Catriona Whitfield (Chair/Lay member) Mike Aldred FIA (Actuary member) Wendy Yeadon (Lay member)
<b>Legal Adviser:</b>	Graeme Watson
<b>Judicial Committees Secretary:</b>	Julia Wanless

**Charge:**

Anupama Rathore being at the material time a student member of the Institute and Faculty of Actuaries (IFoA), the charge against you is that:

1. between around 26 February 2020 and around 9 March 2020, you sent emails to individuals employed by and/or associated with your employer/former employer, Company A, in which you used:
  - (a) offensive language;
  - (b) racist language.
2. on or around 28 April 2020 and/or 5 May 2020, you posted (a) review(s) on the website Quora in which you referred to Company A and/or individuals employed by and/or associated with Company A, using:
  - (a) offensive language;
  - (b) racist language.
3. your actions at paragraphs 1 and/or 2 above were in breach of the Integrity principle of the Actuaries' Code (version 3.0) in that you failed to show respect for others in the way you conducted yourself.
4. your actions at paragraphs 1 and/or 2 above were in breach of the Communication principle of the Actuaries' Code (version 3.0).
5. your 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 February 2018).

**Service of Charges:**

1. The Panel noted that the Respondent was not present and was not represented in her absence. Having considered the submissions of the IFoA's Case Presenter and having accepted the advice of the Legal Adviser, the Panel was satisfied that the charges had been served in accordance with the provisions of the Disciplinary and Capacity for Membership Schemes.

### **Proceeding in the Absence of the Respondent:**

2. In considering whether to exercise its discretion to proceed in the absence of the Respondent, the Panel had regard to the submissions of the IFoA's Case Presenter. The Panel considered the advice of the Legal Adviser who referred the Panel to the case of *R v Hayward, R v Jones, R v Purvis [2001] QB 862, [2001] EWCA Crim 168* and to the case of *GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162*.
3. The Panel also took account of the correspondence between the IFoA and the Respondent regarding the disciplinary process, in particular they noted the Respondent's email of 09 November 2021 saying "*I dropped membership of IFoA last year. I don't want to be part of this process anymore.*" Also the Respondent's email of 08 February 2022 which included "*I am unable to attend the hearing . . . I would be grateful if you send me your judgement by email . . .*" In response to an email from the IFoA on 09 February 2022, the Respondent replied that she was unable to confirm whether she would be able to attend the hearing if it was re-scheduled to another date. No application for an adjournment or re-scheduling was received from the Respondent.
4. The Panel noted that the discretion to proceed in the absence of a Respondent should be exercised with the utmost care and caution. The Respondent had indicated that she would not be attending this hearing and there was no request for an adjournment. Given her comments referred to above, there was no reason to think that an adjournment would achieve her attendance on a subsequent date. There is a public interest in the resolution of matters of professional misconduct. The guidance in paragraphs 19-21 of *GMC v Adeogba and GMC v Visvardis* was to proceed unless there was good reason not to do so. The Panel considered that there was no good reason to adjourn the hearing. The Panel considered that the Respondent had chosen not to exercise her right to be present and not to give adequate instruction to enable lawyers to represent her (*GMC v Adeogba and GMC v Visvardis* paragraph 15). The Panel was therefore satisfied that the Respondent had chosen voluntarily to absent herself. In the circumstances, the Panel determined that it was in the public interest in the expeditious disposal of the case and the Respondent's own interests to proceed in the absence of the Respondent.

### **Panel's Determination:**

5. The Panel found the charge of misconduct proved in all the particulars alleged. The Panel determined that the most appropriate and proportionate sanction was a reprimand and exclusion from IFoA membership. The Respondent may not apply for readmission for a period of one year.
6. The Panel also ordered the Respondent to pay to the IFoA costs of £5,899.08.

### **Background:**

7. The Respondent was a student member of the IFoA between January 2013 and August 2020.
8. On 19 December 2019 the Respondent was employed by Company A as an Actuarial Analyst. Company A's temporary office at the time was in Thiruvananthapuram, Kerala, India, but the intention was to relocate to Bangalore. On 9 December 2019 the Respondent moved into temporary accommodation in Thiruvananthapuram provided by Company A.
9. In February 2020 the Respondent raised concerns with the Referrer, who is the Chief Executive Officer of Company A, in relation to her living arrangements. She explained that, as a result of these difficulties she was working from home. The Referrer responded that the Respondent did not have permission to work from home and that this would be considered as "unpaid leave and gross insubordination". He also referred to concerns which had been raised by the Respondent's former employer and asked for information about this. The Respondent responded to say that she had no obligation to discuss her former employer's behaviour, and submitted her resignation.
10. Following her resignation on 26 February 2020, a number of emails were exchanged between the Respondent and the Referrer and others employed by or associated with Company A until 09 March 2020. The conduct of the Respondent in the email correspondence were the subject of an allegation sent to the IFoA on 09 March 2020 by the Referrer.

11. The Referrer also contacted the IFoA on 17 March 2020 alleging that the Respondent had written reviews online which targeted Company A's investor and the Referrer personally.

**Findings of Fact:**

12. The Panel was aware that the burden of proof rests on the IFoA, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the Panel was satisfied that it was more likely than not that the incidents occurred as alleged. There is no requirement for the Respondent to prove anything. If the Panel finds any factual allegation proved, the question of whether it breaches rules or is misconduct is a matter for the Panel's independent judgement.

13. The Respondent was not in attendance at this hearing and the Panel was satisfied that this absence was voluntary for the reasons set out above. The Panel has drawn no adverse inference as a consequence of the Respondent's absence.

14. From the Charge Response Form completed by the Respondent, the Panel understood the Respondent to be denying the charges.

15. The IFoA's Case Presenter made submissions on behalf of the IFoA and drew to the attention of the Panel the content of correspondence received from the Respondent regarding the charges against her.

16. Charge 1

*between around 26 February 2020 and around 9 March 2020, you sent emails to individuals employed by and/or associated with your employer/former employer, Company A, in which you used:*

*(a) offensive language;*

*(b) racist language.*

17. The Panel found Charge 1 proved on the balance of probabilities.

18. The Panel had before it copies of the Respondent's emails dated between 26 February 2020 and 09 March 2020 which followed from the Respondent's resignation from her

employment at Company A. The content of these emails is set out at paragraphs 14 and 16 of the Head of Disciplinary Investigations of the IFoA's witness statement. These emails had variously been addressed to the Referrer and others employed by, or associated with, Company A. A sample of the content of the emails is set out in the following paragraphs:

19. Email from the Respondent dated 26 February 2020 at 5.32pm:

*". . Anupama Rathore was not employed as the personal slave of [the Referrer] . ."*

20. Email from the Respondent dated 27 February 2020 at 12:16am:

*". . Hey fuckedup dude. . .Also stop bitching wrong stuff about me (I know you are a fuckedup indian shit) doesn't mean you have the right to say shit about anyone. How could you say things like "I sent Daddy messages to ex employer" Does you mother daughters do this kinda shit?? I AM SURE UR DAUGHTERS DOES IT SO YOU THINK EVERYONE ELSE IS SAME . . .You fuckedupass go get a life rather than bitching shit about everyone else . ."*

21. Email from the Respondent dated 29 February 2020 at 9:12pm:

*". . since [Referrer] (referred hereafter as Shitter) . .and you fuckedup shitter instead . .and its shitty firm . . .which is apparently run by another beggar ass . . .So Mallus dare you fuckers you try whatever you can to run away from the shit you spread around . . . Beggar ass you owe me . . .so fuck off to that dickhead sucker lawyer of yours"*

22. Email from the Respondent dated 03 March 2020 at 7:34pm:

*". . you dumb Fuckedup Kerala shitter! Go beg for money on the streets and pay off your dues!!"*

23. Email from the Respondent dated 04 March 2020 at 8:30pm:

*". . you shameless beggar shit ass team hasn't responded yet! #Animals are way better and responsible. than you Keralas fuckedup assholes!!"*

24. Email from the Respondent dated 09 March 2020 at 9:19pm to Company A's solicitor:

*". . you fucker assholes/ [Company A] whores!! . . .fucker assholes . . .Disgusting Shitters!"*

25. Charge 2

*on or around 28 April 2020 and/or 5 May 2020, you posted (a) review(s) on the website Quora in which you referred to Company A and/or individuals employed by and/or associated with Company A, using:*

*(a) offensive language;*

*(b) racist language.*

26. The Panel found Charge 2 proved on the balance of probabilities.

27. The Panel had before it copies of two online reviews. On 28 April 2020 an online review of Company A was published anonymously on the website Quora. This review contained offensive and racist language directed at the Referrer, Company A and its employees/associates. The review included the words ". . .if you want to work as kerelites slaves go join them else steer clear as you would from viruses. . . The team is even full of local dumbos who knows nothing about human advancement. so backward society with stupid conventional thoughts . . .A further online review was posted by "Ana" on 5 May 2020, directly below the review of 28 April 2020. This review contained offensive and racist language directed at the Referrer, Company A and its employees/associates. The review included the words "*Most disgusting \$hitty @sshole of kerala run this start up . . .along with his bunch of morons . . . this dumb idiot . . . SUCH PATHETIC INDIANS CAN ONLY BE AROUND IN SOUTH . . .mallu of south kerala are so dumb . . .DUm\$b mallu police also support these f###kers . . .NORTH PEOPLE SHOULD BE VERY CAREFUL ABOUT THIS CRAP. coz southies are anyway dum\$b s\$hit.*" The Panel had before it a copy of an email dated 04 February 2021 from the Respondent to the IFoA in which the Respondent stated that "Glassdoor is a website to write honest reviews for employers and so is Quora and I have every right to give honest feedback . . .". The Panel noted that in her Charge Response Form the Respondent stated that it could have been someone else who had written the reviews and "*Even if it was me, why can't I give a review on social media?*".

28. The Panel considered that the language used in the online reviews mirrored that in the emails known to have originated from the Respondent. The Panel noted the Respondent's correspondence with the IFoA that she had every right to give honest feedback and the comment in her Charge Response Form. In light of these facts, the

Panel found that on the balance of probabilities the Respondent had been responsible for the writing of the online reviews referred to in Charge 2.

29. Charge 3

*your actions at paragraphs 1 and/or 2 above were in breach of the Integrity principle of the Actuaries' Code (version 3.0) in that you failed to show respect for others in the way you conducted yourself*

30. The Panel found Charge 3 proved on the balance of probabilities.

31. The Panel reminded itself of the Integrity principle of the Actuaries' Code (version 3.0) specifically the requirement that "*Members must act honestly and with integrity*" and that "*Members must show respect for others in the way they conduct themselves.*"

32. The Panel also considered the "Guidance to support the principles and amplifications in the Actuaries' Code" (Version1 April 2019), ("the Guidance").

33. The Panel noted paragraphs 2.6 of the Guidance, where it states that the "*Code also applies to all Members' other conduct if that conduct could reasonably be considered to reflect upon the profession. This means conduct by a Member that may have an impact upon the reputation of the actuarial profession as a whole, even if that conduct occurs outside of a Member's actuarial professional life.*" The Panel noted that the email correspondence had occurred during an employment dispute and the recipients of the email would have known that the author was a member of the profession. Similarly the context of the reviews was such that readers could reasonably have assumed that the author was a member of the profession.

34. The Panel noted paragraphs 3.4 to 3.7 of the guidance which exhort Members to "*show respect for others in the way they conduct themselves*" and notes that the scope of this requirement extends to "*anyone with whom Members interact, including colleagues and the general public*". Paragraph 3.5 states that "*the same behaviour may have a different impact on different people; what one person may find offensive may not have any effect on another.*" Paragraph 3.6 states that "*Showing respect for others does not mean that Members cannot voice their opinions or disagree with others where they hold an opposing point of view. . . . It is expected however that where disagreements do arise, Members act with courtesy.*" Paragraph 3.7 states that "*The IFoA promotes equality and*

*diversity and the development of an inclusive profession that incorporates people from a range of backgrounds. Members are encouraged to behave in a way that recognises and respects diversity and different cultures."*

35. The Panel's Legal Adviser also referred the Panel to the leading authority on Integrity in relation to a professional person's actions, as set out in the case of *Wingate and Evans v SRA [2018] 1 WLR 3969*:

36. *"In professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards. Integrity connotes adherence to the ethical standards of one's own profession that involves more than mere honesty."*

37. The Panel felt that the content of the emails and online reviews, specifically the offensive and racist language in which they were phrased, did not demonstrate courtesy or respect and thus breached the requirements of the Integrity principle of the Actuaries' Code.

38. Charge 4

*your actions at paragraphs 1 and/or 2 above were in breach of the Communication principle of the Actuaries' Code (version 3.0).*

39. The Panel found Charge 4 proved on the balance of probabilities.

40. The Panel reminded itself of the Communication principle of the Actuaries' Code (version 3.0) specifically the requirement that "*Members must communicate appropriately*" and paragraph 8.3 of the guidance which gives examples of questions to ask about the communication including "*Is the communication courteous and professional?*". The Panel also had regard to paragraph 8.13 of the guidance which states that "*When engaging in online discussion, be aware that the views you express may provoke a response; it is important to be open to the opinions of others and to treat others with respect, even if they are disagreeing with your view.*"

41. The Guidance recognises social media to be a medium to "*communicate quickly and effectively*" (paragraph 8.8), which enables information to be "*copied and passed on*

*much more quickly than by any other means and potentially to a much wider audience"* (paragraph 8.10).

42. The Panel considered carefully whether the Respondent's actions had breached the Communication principle. The broad requirement of the Code that "*Members must communicate appropriately*" taken together with the guidance regarding communication being courteous and professional led the Panel to conclude that the Communication Principle of the Actuaries' Code had been breached.

43. Charge 5 - Misconduct Charge

*your 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 February 2018).*

44. The Panel found Charge 5 proved on the balance of probabilities.

45. The Panel considered whether the actions of the Respondent amounted to Misconduct. In considering this matter, the Panel took account of the definition of Misconduct, for the purposes of the Disciplinary and Capacity for Membership Schemes, which is:

*"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."*

46. The Panel therefore found that the conduct covered by charge 1 and 2 and the breaches covered by charges 3 and 4 constituted misconduct in terms of Rule 4.2 of the Disciplinary and Capacity for Membership Schemes of the Institute and Faculty of Actuaries.

## **Sanction:**

47. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter. The Panel considered the advice of the Legal Adviser. The Panel also had careful 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.

48. 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 so doing it must balance the public interest with the Respondent's own interests.

49. In considering sanction, the Panel took into account the following aggravating factors:

- the charges involve lack of integrity,
- the charges relate to a course of conduct,
- the charges involve the use of abusive and racist language in a public forum,
- the Respondent did not demonstrate any insight into her behaviour, nor remorse for it.

50. The Panel also took into account the following factors in mitigation:

- the Respondent had been a student member for a number of years and had no previous findings of misconduct on her record,
- the Respondent had an identifiable grievance with her employer,
- for a number of reasons, the Respondent found herself in a stressful situation.

51. The Panel considered whether this was a case that warranted no sanction but concluded that it was not such a case.

52. The Panel considered whether to impose a Reprimand on its own. This is the least sanction that can be imposed, and is appropriate on its own for cases where, for example, there was a single act, that act was an aberration, where harm is limited, or

where there are extensive mitigating factors, and no sign of a deeper attitudinal problem. The circumstances of this case do not fall within those parameters.

53. The Panel considered whether to impose a Fine. The Panel had before it some information about the Respondent means and circumstances, notwithstanding that information a fine would have been imposed had that been considered the appropriate sanction. Overall, the Panel was concerned about the aggravating factors and went on to consider all the sanctions available to it before concluding that it did not consider a fine to be an appropriate sanction in all the circumstances.
54. The Panel considered whether to impose a period of education, training or supervised practice but concluded that this was not appropriate as the Respondent was no longer a member of the IFoA.
55. The Panel considered whether to impose a period of suspension or the withdrawal of a Practising Certificate, this was not applicable in this case.
56. The Panel considered whether to exclude the Respondent from Membership of the IFoA. The Indicative Sanctions guidance states that expulsion or exclusion should be the sanction where, and only where, the Misconduct found proved is of such gravity that the reputation of the profession or the public interest requires that the Member is no longer able to practice or claim membership of the profession. Exclusion is the order where membership has already ceased; expulsion where membership is current.
- In deciding whether to exclude or expel a Member a Panel will consider the effect that allowing the Member's name to remain on the register will have on the public's trust in the reputation of the profession. Serious personal Misconduct may lead to expulsion or exclusion as well as Misconduct in practice.
57. The Panel decided to exclude the Respondent from membership for a period of one year. The language used by the Respondent was offensive and racist and persisted over a period of time, it was not the result of a momentary loss of control. Someone excluded from membership who wishes to re-join the IFoA must make an application to the IFoA which must be placed before a Disciplinary Tribunal Panel for approval or refusal. The Panel considered that if the Respondent so applied she would be required to explain what steps she had taken to ensure such conduct did not recur. The Panel considered that this required an exclusion order. The Panel decided upon a short period of exclusion

in recognition of the fact that the Respondent was a student member and this would provide an opportunity to make such an application for readmission if she wished. The Panel did not consider it proportionate to impose a fine in addition to excluding the Respondent.

**Costs:**

58. The IFoA made an application for costs of £5,899.08 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Case Presenter. The Panel considered the Guidelines for Disciplinary Tribunal Panels and Appeal Tribunal Panels on the award of costs. The Panel considered the costs sought to be at a reasonable level, and that the work done and costs incurred justified that amount of cost. The Panel therefore ordered the Respondent to pay the IFoA costs of £5,899.08.

**Right to appeal:**

59. The Respondent has 28 days from the date that this written determination is deemed to have been served upon her in which to appeal the Panel's decision.

**Publication:**

60. Having taken account of the Disciplinary Board's Publication Guidance Policy (May 2019), the Panel determined that 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.