Disciplinary Tribunal Panel Hearing

9 May 2023, 15-17 January and 26 March 2024
(the Panel also deliberated in private on 26 February 2024)

Online Hearing

Respondent:	Patrick Lee Mr Lee was in attendance and represented by Nicholas Leviseur, Barrister
Category:	Fellow - Resigned
Region:	UK
IFoA Case Presenter:	The IFoA was represented by Rachna Gokani, Barrister Jenny Higgins (Case Manager) was in attendance
Panel Members:	Peter Wrench (Chair/Lay member) Paul Rae (Lay member) Simon Head FIA (Actuary member)
Legal Adviser:	Sharmistha Michaels
Judicial Committees Secretary:	Julia Wanless

Preliminary Issues (1)

1. By agreement with the parties, the hearing on 9 May 2023 was limited to deciding a preliminary matter. Subject to the outcome of the consideration of that matter, the hearing would continue in December 2023. However, those later dates were subsequently rescheduled for January 2024. At the hearing on 9 May the charges were not formally put to the Respondent and no admissions were invited.

2. The preliminary issue had been raised in an application on behalf of the Respondent. The application was that these proceedings should go no further since there is no basis for disciplinary proceedings to continue once a Member had resigned their membership of the IFoA, as the Respondent had done. The IFoA argued that the clear intention underlying the Disciplinary Scheme is that former Members should continue to be liable under the Scheme for their actions and omissions during the time that they were Members. The IFoA further argued that the current wording of the Scheme gives effect to that intention.

Panel's Determination of Preliminary Issue (1):

3. The Panel rejected the Respondent's application and found that there is a valid basis in the Disciplinary Scheme for the current proceedings to continue.

Submissions on Preliminary Issue (1):

4. The basis of the Respondent's application is set out in his email of 2 February 2022 and an undated further submission prepared for a case management meeting held on 27 March 2023. The IFoA's response is set out in their submissions for that meeting, in a document dated 17 March 2023.

5. In his oral submissions Mr Leviseur made clear that his primary point was that the provision at rule 4.4 of the Disciplinary Scheme, which sought to define the term "*Respondent*" as including former Members, was ultra vires, since it had no basis in the Charter and Bye-Laws. He said that Bye-Law 59 provided for a Disciplinary Scheme that dealt with Members, but that did not extend to former Members. He highlighted that Bye-Law 27 provides that any Rule which is contrary to, or provides differently from, the Charter or Bye-Laws shall be "*invalid*". Mr Leviseur said that the

IFoA could not rely on the argument that the Disciplinary Scheme ought, as a matter of policy, to extend to former Members: if there was no power for it to be extended by virtue of the Charter or byelaws, there was no power.

6. Mr Leviseur went on to refer to the original application from the Respondent and his argument that the definition of "*Member*" in Rule 23 only extends to former Members in the limited case of a breach of the duty to co-operate, and that there was no such allegation in this case (the present case not dealing with an allegation of failure to co-operate).

7. In her oral submissions, Ms Gokani said that the Panel should focus on the provisions of the Disciplinary Scheme and whether its rules applied to the Respondent. The wider context might assist, but rule 4.4 was crucial in providing that references in the Scheme to "*the Respondent*" clearly included former Members who have resigned since the time of the conduct in respect of which an Allegation is made. She also highlighted that the definitions of terms in rule 23 are preceded by the proviso "*unless the context otherwise requires*". She went on to say that rule 8.22 specifically provides for a sanction of exclusion which is solely applicable to a "*former Member who is subject to the Disciplinary Scheme pursuant to rule 4.4*".

8. In addressing the wider context of the Charter and Bye-Laws, Ms Gokani said that the objects of the IFoA, as set out at paragraph 2 of the Charter, included the "*regulation*" of the profession in the "*public interest*". Paragraphs 3 and 12 then allowed the IFoA to do "*any lawful thing*" and to make rules, so long as this was not "*repugnant*" to any provision of the Charter and Bye-Laws. She argued that if anything would be repugnant to the Charter, it would be to allow a Member to walk away from disciplinary proceedings by resigning.

9. The Panel accepted the advice of the Legal Adviser.

Consideration and Decision on Preliminary Issue (1):

10. There was no dispute about the underlying facts of the timing of the instituting of proceedings in this case and the Respondent's resignation from Membership. He resigned on 30 September 2020. The allegation against him concerns his actions in the period between March and August 2020, when he was a member. The Panel noted that an executive referral was made on 1 September 2020 (during the currency

of his membership) and the Respondent was notified of this on 3 September. An Investigation Actuary was appointed on 4 September. Proceedings were already underway at the time he resigned.

11. The Panel considered carefully the argument that any provision for former Members to be subject to the Disciplinary Scheme is ultra vires, given the terms of the Charter and Bye-Laws. The Panel noted that the objects of the IFoA include the regulation of the profession in the public interest, and further notes that Bye-Law 59 provides that "*The Rules shall provide for a Disciplinary Scheme for dealing with members who are the subject of a complaint or whose professional conduct is otherwise called into question*". In the Panel's view, it is a proper interpretation of that provision for proceedings to be able continue, once there is a complaint or a Member's conduct has been called into question, even if the Member subsequently resigns. The complaint, or questions raised about the person's conduct, will still be there and will need, in the public interest, to be addressed. The Panel is satisfied that it would be contrary to the public interest if a Member were able to frustrate the disciplinary process simply by resigning from the organisation, leaving the alleged misconduct untested or challenged. The Panel considered that this would not be a just outcome.

12. The Panel recognised that the relevant provisions of the Disciplinary Scheme could have been drafted more clearly, and that the separation between what is contained in the definition section at rule 23 and in the preceding operative provisions is not straightforward. However, it was satisfied that the Scheme needs to be read as a whole and purposively, without taking individual provisions within it as necessarily conclusive in themselves.

13. The definition of "*Member*" in rule 23 makes reference to the term including former Members "*for the purposes of any Allegations of a breach of the duty of a Member to co-operate"*. However, this is in the case of former Members who "*are currently the subject of disciplinary action under the Scheme*". In other words, they need already to be the subject of disciplinary action before the extended definition can bite on them. In the Panel's determination, the second sentence of the definition of "*Member*" would be meaningless if the only former Members subject to disciplinary action were those in breach of the duty to co-operate. A more understandable reason for the definition to highlight the breach of the duty in this way is that rules 4.15 - 4.19 uniquely establish circumstances in which a former Member can be guilty of new Misconduct by virtue of behaviour <u>after</u> their Membership has ceased.

14. Rule 23 defines "*Respondent*" as the Member whose conduct is subject to disciplinary proceedings. It does not specifically state that the term can include former Members, but it must be read alongside rule 4.4 which says specifically that references to the Respondent include a former Member whose Membership has ceased since the time of the conduct in respect of which an Allegation is made. The Panel was satisfied that there is no inherent inconsistency between rules 4.1 and 4.4 and the definitions in rule 23. Rule 4.1 says that a Member is liable to disciplinary action if they have been guilty of Misconduct and Rule 4.4 establishes that, once disciplinary action is underway, ceasing to be a Member does not mean that they will cease to be dealt with as a Respondent. Furthermore, if, as a former Member, they breach their continuing duty to co-operate, they face an additional charge of Misconduct.

15. The Panel accepted that the provision at rule 8.22(b)(viii) of a specific sanction of exclusion for former Members is consistent with this reading and must assume that former Members may continue to be subject to disciplinary proceedings, and would have no purpose if that were not the case. However, this provision cannot of itself be determinative, nor can the various references in guidance documents and policy statements which have been quoted in the IFoA's submissions. The Panel has based its decision primarily on its reading of rules 4 and 23, in the wider context of the IFoA's objects and the public interest in the proper regulation of the profession.

Preliminary Issue (2)

16. At the start of the resumed hearing on 15 January 2024, the IFoA applied to amend the charge, as they had undertaken to do at an earlier case management meeting, by deleting subparagraphs (b) and (d) of charge 1. There was no objection on behalf of the Respondent. The Panel was satisfied that there would be no prejudice to him and so accepted the IFoA's application.

Charge (as amended):

Patrick Lee, being at the material time a member of the Institute and Faculty of Actuaries,
the charge against you is that:

1. between around 20 March 2020 and around 29 August 2020, you posted “tweets” and “retweets” on the Twitter social media platform regarding the Islamic religion, in which you used:
(a) offensive language; and/or
(b) ~~discriminatory language; and/or~~
(c) inflammatory language; and/or
(d) ~~language inciting discrimination; and/or~~
(e) language which was designed to demean or insult Muslims.

2. your actions at paragraph 1 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, in circumstances where your conduct could reasonably be considered to reflect upon the reputation of the actuarial profession as a whole.

3. 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).

Panel’s Determination:

1. The Panel found parts 1(a), 1(c), 1(e), 2 and 3 of the charge proved.

2. The Panel determined that the most appropriate and proportionate sanctions were:

- A reprimand.
- Exclusion from IFoA membership. The Respondent may not apply for readmission for a period of 2 years.

3. The Panel also ordered the Respondent to pay to the IFoA costs of £22,667.

Background:

4. The Respondent was a Fellow of the IFoA from 1989 until he resigned in 2020. He was a member of the IFoA's Council from 2012 until stepping down from it in September 2020. He was also a member of the IFoA's Management Board between 2016 and 2018.

5. The Respondent was active on the social media platform then known as Twitter from at least 2012. He initially posted using the handle "*actuary21c*" after his name and then, from 2015, as "*pjlee01*". For a period in 2020 he posted as "*Free Speech Actuary*". There was correspondence between the IFoA and the Respondent in the period 2012-2015 in which concerns were expressed about his postings about the religion of Islam. The implications of that correspondence was a matter of dispute in this hearing.

6. The Respondent was concerned about texts from the Quran and hadith (collected sayings of the prophet Mohammed) which he considered might encourage, or be used to justify, terrorism and other criminal acts. The charges concern tweets and retweets posted by the Respondent in the period from 20 March to 29 August 2020, many of which drew attention to the texts he considered problematic, often inviting moderate Muslims and Muslim organisations to disavow them. The IFoA has provided a schedule of 83 tweets and retweets posted by the Respondent in the period covered by the charge on which it has relied in making its case. The IFoA has also provided a more extensive Twitter bundle which includes some of the wider conversations in the course of which the postings were made.

7. An executive referral for investigation was made by the IFoA on 1 September 2020 alleging potential breaches of the Code from "*inappropriate and potentially offensive tweets and retweets*". On 25 November 2020 Company A (a not-for-profit company which seeks to encourage British Muslims to be more involved in British media and politics) wrote to the IFoA complaining about what they called the Respondent's "*Islamophobic hate speech*", attaching screenshots of 17 of his tweets.

Findings of Fact:

8. 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.

9. The Respondent made an admission to the stem of charge 1 and accepted that he had posted the tweets and retweets on which the IFoA were relying. He denied the particulars at charge 1(a), (c) and (e), and charges 2 and 3 in their entirety. In reaching its decisions on the disputed parts of the charges, the Panel took into account the oral and documentary evidence in this case together with the submissions of the IFoA's Case Presenter and those of the Respondent's Representative. The Panel accepted the advice of the Legal Adviser.

11. The Panel heard oral evidence from Mr 1, former General Counsel and current Interim Chief Executive of the IFoA, Mr 2, formerly the IFoA's Head of Disciplinary Investigations, and from the Respondent. The Panel found Mr 1 to be credible and reliable in giving his recollection of how earlier concerns about the Respondent's postings had been handled by the IFoA. The Panel found Mr 2 to be credible and reliable in his account of the investigation and the documentation obtained in the course of it. The Panel also found the Respondent to be credible and reliable, both in setting out his recollection of the earlier communications and accounting for his more recent posts.

12. The Panel also took into account the following documentary evidence:

From the IFoA:

1. Witness statement of Mr 1
2. Chronology of correspondence 2012-2014
3. Bundle of correspondence 2012-2014
4. IFoA Tribunal bundle (including witness statement of Mr 2)
5. IFoA Twitter bundle
6. Schedule of tweets linked to charge
7. IFoA response to case management directions, 5 January 2022

From the Respondent:

1. Respondent's witness statement
2. Email exchange between the Respondent and Mr 3 (IFoA President) in 2014
3. Respondent's note of telephone conversations with Mr 1 and Mr 4 (IFoA Chief Executive) in 2015
4. Respondent's note of a video call with Mr 5 (IFoA President) in 2020

5. Hyperlink bundle (printouts of material linked to the Respondent's witness statement)
6. Email exchange between the Respondent and Mr 6 (Chair of IFoA Management Board) in 2014

13. The Panel heard submissions from Ms Gokani and Mr Leviseur.

14. Ms Gokani said that the tweets spoke for themselves, and they were clearly offensive. She said that it did not matter whether some of what the Respondent had said could be supported by material available on the internet, the issue was the manner in which he expressed his views: controversial views and offensive language did not necessarily go together. She also said that, however the Respondent's earlier correspondence with the IFoA was read, it contained a clear and consistent message about the need for compliance with the Code.

15. Mr Leviseur said that the Respondent had strong views about Islam and that, however disagreeable those views might be, they were protected by the right to freedom of expression under Article 10 of the European Convention on Human Rights. He submitted that the only way in which the Code engaged with his expression of the Respondent's views was if it reflected on the profession as a whole, and there was no evidence of that. Mr Leviseur said that each and every assertion that the Respondent had made appeared to be factually correct, and the IFoA had not sought to dispute that. He went on to submit that the Respondent might have said offensive things but, if they were true, no-one had a right to be offended. Mr Leviseur said that charge 1(e) required an intention to demean or insult and the Respondent had no such intention: he wanted Islam to change. Mr Leviseur invited the Panel to consider each of the scheduled tweets individually in making its findings of fact.

<u>Charge 1</u>

16. In deciding this charge, the Panel has considered each tweet individually, as it was invited to do. In doing so, it has relied on the ordinary meaning of the descriptors alleged. It understood "*offensive"* as meaning likely to cause offence, not solely to individuals holding particular beliefs but also to a wider cross-section of society which holds that the beliefs of others should be treated with respect. It took "*inflammatory*" to mean likely to arouse anger or hatred. In the Panel's assessment there is a significant

overlap between these two descriptors. The Panel took "*designed to demean or insult*" as meaning choosing to have the effect of demeaning or insulting. The Panel did not consider it necessary or helpful to seek to analyse the Respondent's underlying intentions, or his view of Muslims, in general terms. Its focus has been on the specific language of the individual texts, and it has considered whether the particular choices of wording which the Respondent made would be bound to have had a demeaning or insulting effect.

17. The Panel was conscious that it had no expert evidence before it about Islam and the status of the texts which had been the focus of the Respondent's concern. It took at face value the Respondent's evidence of his finding of the texts in the course of his research and his understanding that they had been categorised as "*authentic*" in some way. The Panel was satisfied that he was acting in good faith in his stated aims of wishing to draw attention to them, as seeming to be problematic. The Panel also accepted his evidence that he felt obliged to speak out publicly about his concerns.

18. It was clear to the Panel that the Respondent's earlier correspondence and discussions with the IFoA can be read in different ways. It was satisfied that the Respondent genuinely believed at the start of the period covered by the charges that the IFoA had no fundamental objection to him engaging in public debate about Islam. But the Panel accepted Ms Gokani's submission that the earlier correspondence had emphasised the importance of continuing compliance with the Code. In the Panel's assessment, whatever green light the Respondent felt that he had been given could not absolve him from a continuing responsibility to act in accordance with the Code.

19. The Panel was also conscious that the Respondent had chosen to publicise his concerns through the medium of Twitter. Mr Leviseur described Twitter as being equivalent to the "*gutter press*" and a place for "*short, sharp and somewhat brutal statements*", which is "*the bludgeon of modern life*". In the Panel's assessment, however, not every Twitter user is expecting, or inured to, brutality. Twitter is also a medium for bland and innocuous content, but, by its nature, conversations on uncontroversial topics can be diverted suddenly into different areas, if that is what an individual user chooses to do.

20. The Panel assessed each of the scheduled tweets individually against the descriptors in the Charge. The Panel was satisfied that a significant number of tweets, particularly in the earlier part of the period covered by the charge, did not merit any of the three

descriptors and were consistent with encouraging debate and challenge. They were sometimes pithy and provocative, but were consistent with the Respondent's stated aims of drawing attention to the texts he considered problematic and encouraging debate about them. An example is the tweet of 20 March 2020 numbered 1 in the Twitter bundle:

> *Islam needs urgent reform (if possible?). The majority of its victims are Muslims who live under repressive, backward regimes. It still inspires far too much terrorism, child marriage, & hatred of Jews/gays. It is very sad that in 2020 it has barely changed for centuries*

It may well be that some readers might be uncomfortable to read this post, but in the Panel's assessment it does not cross the line into being generally offensive, inflammatory, or designed to demean or insult. It distinguishes Islam as a faith from individual Muslims.

21. However, other postings, particularly those later in the period, are different and involve unqualified assertions and labelling that, in the Panel's assessment, must inevitably be seen as not only offensive and inflammatory, but also designed to insult Muslims. The Respondent sometimes fails to refer specifically to particular hadith, presents what those hadith say as fact, and generalises his criticisms of Islam and Muslims. Increasingly, Islam is labelled as "*morally bankrupt*", a "*dangerous cult*", and a "*1300 year old con trick*". The prophet Mohammad is referred to as a "*monster*". Examples are the tweet of 7 July 2020 numbered 72 in the Twitter bundle:

> *Mohammed was a slaver and rapist, these women are either ignorant or incredibly naive. They have fallen for the con trick that Mohammed was a good man, and Islam is morally good; it can't be given that it praises Mohammed as a role model yet its own texts show he was a monster.*

and the tweet of 12 July 2020 numbered 77 in the Twitter bundle:

> *Islam and Islamic regimes cannot be reformed: at the heart of Islam is a monstrous lie: that Mohammed (a man who enslaved, raped, tortured, beat, and approved of stoning, female genital mutilation and child marriage) is an excellent role model. Islam is fundamentally evil.*

22. A particular issue is that the Respondent sometimes raises his concerns by replying to not obviously related posts in a way which forces his concerns in front of readers who would not be expecting them. An example is the tweet of 4 May 2020, numbered 11 in the bundle, made after a post by [Ms B], an MP, about having fasted for a day during Ramadan:

> *Has [Ms B] volunteered for ~FGM yet, after volunteering to undergo a day of Ramadan last week in support of #Islam, a religion that not only says #FGM is "obligatory", but that Mohammed had sex with 9 year old ,and that wife beating is OK? Virtue signalling LibDems*

It was submitted on behalf of the Respondent that he was asking a rhetorical question and that he was entitled to mock what he saw as virtue-signalling on the part of the MP, by fasting for a day during Ramadan, but not engaging with the foundational doctrines of the religion. In the Panel's assessment, any such motivation cannot justify the choice of such obviously offensive language in the context in which it was used.

23. After considering 83 tweets individually, the Panel concluded that 41 did not fall within any of the descriptors in charges 1(a), 1(c) or 1(e). However, the Panel was satisfied that the remaining 42 tweets were either offensive or inflammatory or both, and that 29 of those 42 tweets met all three descriptors: they were offensive and inflammatory and were designed to demean or insult Muslims. The Panel was satisfied that these were not occasional or isolated errors or misjudgements. On that basis, it found charges 1(a), 1(c) and 1(e) proved.

<u>Charge 2</u>

24. Given its findings in relation to paragraph 1 of the charge the Panel was satisfied that it is self-evident that the Respondent failed to show respect for others in the way that he conducted himself. The real question is whether his conduct could reasonably be considered to reflect upon the actuarial profession as a whole. The IFoA's guidance to support the principles of the Actuaries' Code says this in relation to the integrity principle and duties outside the profession:

> *3.8 The Code applies to all Members' "other conduct if that conduct could reasonably be considered to reflect upon the profession". This means that conduct outside of a*

Member's actuarial professional life that demonstrates a lack of respect towards others will be caught by the Code, but only to the extent that it may have an impact upon the reputation of the actuarial profession as a whole. In a personal context therefore, not all behaviour that demonstrates a lack of respect will be caught by the Code. Members are expected to use reasonable judgment in determining what behaviour is appropriate.

The Panel accepted the Respondent's evidence that he had used his judgment and that he remains satisfied that his behaviour was appropriate. It was submitted on his behalf that there was no evidence of any impact on the actuarial profession from the Respondent's expression of his private views.

25. In the Panel's assessment there was inevitably a real risk of the Respondent's conduct being seen as reflecting on the actuarial profession, despite his use of a disclaimer stating that he was speaking in a private capacity. His use of the handle "*Free Speech Actuary*" clearly exacerbated that. The Respondent's profession was also included in his Twitter biography before that period. Furthermore, as a member of the IFoA's Council, it was inevitable that there was a stronger likelihood that what he said in public would be taken as reflecting on the profession. Company A's letter of complaint to the IFoA of 25 November 2020 referred to their concern that the Respondent "*represents a professional body like the IFoA*".

26. Conversations contained in the wider Twitter bundle show that the fact that the Respondent was an actuary became a topic of discussion, and readers could have worked back from those discussions to link the Respondent's earlier posts to his profession. For example, in tweets on 26 August 2020 the Respondent referred to correspondence he was having with the IFoA following "*objections from 4 individuals including 2 anonymous ones*". He had asked the IFoA if members could "*criticise any religious text that advocates or condones any of the following: slavery, rape, child sex, wife beating, ordering the amputation or blinding of healthy people, burning people to death, stoning, crucifixion, FGM*". He commented that "*although in my situation I have made such criticisms in a personal capacity, given the seriousness of the crimes listed, there should be no problem with anyone criticising them in a professional or official capacity*".

27. The Panel was satisfied that, in all these circumstances, the Respondent's conduct could reasonably be seen as reflecting on the profession as a whole and appeared to

contravene the Integrity Principle as set out in the Code, and so it found paragraph 2 of the charge proved.

Misconduct Charge

28. 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 Scheme, 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*".

29. The Panel noted that the conduct found proved had continued over a lengthy period and that the posts became more seriously offensive during that period. This was not a one-off misjudgement but a sustained campaign involving a substantial number of unacceptable posts. The Panel was satisfied that members of the public and other members of the profession would consider that this behaviour fell well below what would be expected. It was satisfied that this was misconduct.

Sanction:

30. In considering the matter of sanction, the Panel had regard to the submissions of Ms Gokani and Mr Leviseur and accepted the advice of the Legal Adviser. The Panel also had careful regard to the Indicative Sanctions Guidance (January 2020). 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.

31. 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.

32. In reaching its decision on misconduct the Panel found that the Respondent's conduct fell well below what was expected. The misconduct had been serious and sustained and required a regulatory response. However, the Panel had also accepted that the Respondent had been acting in good faith and believed that what he was doing was justifiable. Given that he has now resigned from the IFoA, the Panel's primary focus in considering sanction was on declaring and upholding proper standards, rather than on protecting against a risk of repetition.

33. In considering sanction, the Panel took into account the following aggravating factors identified by Ms Gokani:
    - there had been a deliberate course of action over a period of months involving many individual tweets;
    - the Respondent had previously been warned to be careful in his postings and accepted that he had toned down what he said while he was a Member of the Management Board;
    - this was serious misconduct which breached the integrity principle; and
    - the Respondent had demonstrated very little, if any, insight, and had made no apology or remediation.

    In the Panel's view, there were further aggravating factors in that the Respondent had deliberately identified himself as an actuary in his use of Twitter, and the position of authority he had held within the IFoA meant that he was a well-known member of the profession. The Respondent had been written to in April 2013 by the (then) President of the IFoA concerning his use of social media. The Panel noted that the Respondent had been involved in the drawing up of social media training and relevant guidance for the IFoA and should have been aware from earlier discussions of the issues which might arise from his social media posts.

34. The Panel also took into account a number of mitigating factors:
    - there were no previous disciplinary findings against the Respondent;
    - he had been an upstanding member of the profession for many years, taking on positions of authority for the IFoA and being held in high regard;
    - he had quickly resigned from the Council once the investigation began; and

- he had engaged fully with the resulting proceedings despite having resigned his membership of the IFoA.

35. Mr Leviseur submitted that this had been a trailblazing case for the IFoA and said that, at the time covered by the charges, there had been no comparable social media cases before the Disciplinary Tribunal to make clear where a line should be drawn. The Panel accepted that this was the case, but noted that there had been clear guidance available to IFoA members on the risks of breaching the Actuaries' Code, particularly in respect of social media use.

36. The Panel, first, considered whether this might be a case that warranted no sanction. It might be argued that the findings of fact and misconduct against the Respondent gave a clear signal that his conduct had been unacceptable, and that, given his resignation from the IFoA, a heavier sanction was not required. However, the Panel concluded that to take no action would be incompatible with the seriousness and sustained nature of the proven misconduct in this case.

37. The Panel next considered a reprimand. It concluded that this could form part of an appropriate sanction but that a reprimand alone would not suffice, given its findings on seriousness.

38. The Panel considered whether to impose a fine and concluded that this would not be appropriate here. This was not misconduct involving any financial gain and the Panel concluded that, in all the circumstances of the case, a fine would be unduly punitive.

39. The Panel concluded that a period of education, training or supervised practice was not appropriate for someone who is no longer a member of the IFoA.

40. Similarly, the Panel was also unable to consider suspension of the Respondent's membership, as there is currently no membership to suspend.

41. The Panel therefore found little alternative to the heaviest sanction available to it of exclusion of the Respondent from membership of the IFoA. It was satisfied that more than a reprimand alone was necessary to mark the seriousness of the misconduct and concluded that exclusion for a period of 2 years would be proportionate in all the circumstances. Exclusion sends a clear message that, in the absence of any evidence of

insight and remediation, misconduct of the sort found proven is not compatible with membership of the IFoA.

42. The Panel noted Mr. Leviseur's submission that the Respondent has no intention of seeking to return to membership at any point. However, his intentions may change. The Panel should make clear that there would be no guarantee of a successful application after 2 years have elapsed. That is simply the minimum period before any application can be made: any application that might be made after that point will be considered on its merits, with the Respondent needing to satisfy the IFoA's applicable requirements and to show that he is a fit and proper person to be admitted to membership.

Costs:

43. The IFoA made an application for costs of £45,334 incurred in preparation for the hearing and attendance at the hearing by the Case Presenter. The Panel accepted the guiding principle of the guidance on costs, namely that a Respondent should pay all costs incurred, as the membership of the IFoA should not bear the costs of bringing disciplinary proceedings against Respondents who through their own failings have found themselves before a Panel. However, the Panel had a number of concerns about the level of costs sought here.

44. The Panel accepted the submission that this was in some ways a trailblazing case for the IFoA. It noted that there were some issues which had legitimately been raised at a preliminary stage about the particularisation of the charges and the applicability of the Disciplinary Scheme to former members. The Panel also noted that some of the IFoA's decisions on the handling of the case had contributed to the length and cost of the proceedings. These included the decision to instruct external Counsel to present the case and the particularisation of 83 tweets, which the Tribunal then needed to consider individually. Finally, the Panel took account of the information provided about the Respondent's financial circumstances, which showed limited disposable income or readily realisable assets.

45. Putting all these factors together, the Panel concluded that it would be fair and proportionate for the Respondent to pay one half of the IFoA's scheduled costs. The Panel therefore ordered the Respondent to pay the IFoA costs of £22,667.

Right to appeal:

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

Publication:

47. 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.

Publication date: 5 April 2024