



Institute
and Faculty
of Actuaries

Adjudication Panel Meeting

13-14 June 2022

Institute and Faculty of Actuaries

Held by Video Conference

Respondent: Peter Gatenby FIA

Category: Fellow since December 1988

Region: Spain

Panel Members: Andy Scott FFA (Chair/Actuary member)
Thomas Doubell FFA (Actuary member)
Catriona Whitfield (Lay member)

Legal Adviser: Graeme Watson

Judicial Committees Secretary: Julia Wanless

Allegation:

The allegation against Mr Gatenby (“the Respondent”) is:

- A1 He prepared an Actuarial Report on Pensions on Divorce for Person A and Person B (“the Report”), in which, when calculating the pension credit in the Principal Civil Service Pension Scheme (“PCSPS”), Nuvos Scheme pension, he:
- A1.1 used an incorrect pension factor;
 - A1.2 used an incorrect pension age.
- A2 In the Report, he did not adequately explain why he had used a pension age of 65 for calculating the pension credit in the PCSPS.
- A3 His actions in paragraphs A1 and/or A2 above were in breach of paragraph(s) 1, 3, 3.1, 3.2, 3.3 and/or 5 of TAS 100.
- A4 His actions in paragraphs A1 and/or A2 above were in breach of paragraph(s) 2.1 and/or 2.2 of APS X3: The Actuary as an Expert in Legal Proceedings.
- A5 When responding to Person A’s complaint about the Report he advised Person A that he had calculated the pension credit in the PCSPS correctly when he knew that the pension factor and/or the pension age he used was not correct.
- A6 His actions at paragraph A5 were misleading.
- A7 He did not respond appropriately to Person A when he was asked to confirm that he had notified his professional indemnity insurer of her complaint.
- A8 His actions at paragraphs A1, A2, A3 and/or A4 above were in breach of the Compliance principle of the Actuaries’ Code (version 3.0).
- A9 His actions in paragraphs A1, A2, A5 and/or A7 above were in breach of the Competence and Care principle of the Actuaries’ Code (version 3.0).
- A10 His actions in paragraphs A1, A2, A5, A6 and/or A7 above were in breach of the Communication principle of the Actuaries’ Code (version 3.0).

A11 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 and the Respondent's response to the Case Report. The Panel also considered the advice of the Legal Adviser. 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;
- Fine of £7,500 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation; and
- Period of education, training or supervised practice

Background:

In January 2021, the Respondent was jointly instructed by Person A, via her solicitor, and Person B (her then husband) to prepare an actuarial report in relation to the sharing of their pensions as part of their divorce proceedings.

The Respondent issued the report on 23 April 2021 and the pensions were eventually shared out under the divorce agreement in line with this report.

On 22 October 2021 Person A received a letter from Civil Service Pensions ("CSP") with details of the pension credit she would receive from them. On 7 November 2021 Person A emailed a complaint to the Respondent, as the information CSP sent her did not match what the Respondent's report had said she would receive.

After receiving Person A's complaint, the Respondent contacted CSP questioning the pension factors they had used and asking what late retirement factor should be applied to Person A's pension if she deferred payment to 65. CSP replied to the Respondent on 3 December 2021 and the Respondent sent them a further email in reply the same day asking for confirmation that a late retirement addition would be added to the pension.

The Respondent emailed an initial answer to Person A's complaint on 7 December 2021.

On 12 December 2021 Person A submitted the allegation to the IFoA.

Decision and Reasons on the Allegations:

Allegations A1 and A2

The Panel felt that these 2 allegations were best treated together, as they both relate to the contents of the Respondent's Actuarial Report.

The Panel noted that in that Report, the Respondent had carried out his calculations on the basis that Person A would receive pension credits in one or both of the Civil Service Pension Schemes. The Respondent had also stated in the Report that "Any pension credit in the PCSPS will be payable from age 65", even though pension credits in the PCSPS were normally payable from age 60 (and could be taken on request from any age after 55). No explanation was given in the Report as to why the Respondent had chosen 65 as the pension age for Person A's PCSPS pension credit.

In addition, when calculating the pension credits for Person A, the Respondent had stated in his Report that he had used factors that were "taken from publications from the Government Actuary's Department relevant to the Civil Service Pension Schemes". The Panel noted, however, that in an email to the Respondent dated 3 December 2021 CSP advised that the pension factors he had used were **not** correct, as they related to cash equivalent transfer value (CETV) factors, and that separate factors (available on request) should have been used for pension credits.

Based on the above evidence, the Panel felt that both Allegations A1 and A2 were capable of proof.

Allegation A3

The Panel agreed that the Respondent's Actuarial Report fell within the Technical Actuarial Standard (TAS) 100 definition of technical actuarial work and they also noted that in the Respondent's report, he had stated: *"I confirm that this report complies with the current professional standards appropriate to technical work, including TAS 100."*

The Panel were aware that the Financial Reporting Council (FRC) has also produced a Framework, which explains the authority, scope and application of the TASs and guidance. This Framework and TAS 100 (as well as all other TASs) were written to support an overarching objective, known as the '*Reliability Objective*'. This provides that *"users for whom actuarial information is created should be able to place a high degree of reliance on that information's relevance, transparency of assumptions, completeness and comprehensibility, including the communication of any uncertainty inherent in the information"*.

With specific regard to the allegations, the Panel noted that:

Paragraph 1 of TAS 100 states:

"Judgement shall be exercised in a reasoned and justifiable manner; material judgements shall be communicated to users so that they are able to make informed decisions understanding the matters relevant to the actuarial information".

The Panel felt that the actions in Allegations A1 and/or A2 were in breach of Paragraph 1 of TAS 100, in that the use of an incorrect factor and a pension age of 65 and failing to communicate in the report his reason for choosing this factor and age did not allow Person A or Person B to make informed decisions regarding the sharing of their pensions.

Paragraph 3 of TAS 100 states:

"3. Assumptions used, or proposed for use, in technical actuarial work shall be appropriate for the purpose of that work so that users can rely on the resulting actuarial information."

3.1 Unless set by the user, a third party or by regulation, assumptions used in technical actuarial work, shall be consistent with each other and shall be derived from as much relevant information as is sufficient or, if there is insufficient relevant information, as is available.

3.2 Assumptions used in technical actuarial work shall be documented.

3.3 Communications shall state the material assumptions and describe their rationale.”

Paragraph 5 of TAS 100 states:

“5. Communications shall be clear, comprehensive and comprehensible so that users are able to make informed decisions understanding the matters relevant to the actuarial information.”

The Panel also felt that the Respondent’s use of an incorrect pension factor and a pension age of 65, and/or not adequately explaining in his Report why he had used a pension age of 65, were also in breach of the other stated paragraphs of TAS 100.

As a result, the Panel agreed that Allegation A3 was capable of proof.

Allegation A4

The Panel noted that APS X3: The Actuary as an Expert in Legal Proceedings (“APS X3”) sets out principles for actuaries to apply when instructed as an expert in relation to existing or contemplated legal proceedings.

Paragraphs 2.1 and 2.2 of APS X3 state:

“2.1 When being instructed, and throughout their engagement, Members must establish clearly the nature and scope of their instruction, including whether they are instructed as an Expert Witness or an Expert Advisor or if the instruction is likely to involve them being instructed as both. Where appropriate, the instructions should be recorded in writing.

2.2 When being instructed, and throughout their engagement, Members must be satisfied that they have the necessary level of relevant knowledge and skill in order to fulfil all of the requirements of the instruction. This may include skills relating to the giving of oral or written evidence.”

After some consideration, the Panel felt that there was insufficient evidence to prove that the Respondent's conduct in allegedly using an incorrect pension factor and pension age and/or not adequately explaining in his report why he had used a pension age of 65 was in breach of paragraph(s) 2.1 and/or 2.2 of APS X3.

The Panel did not have evidence on whether the Respondent believed that his prior experience and previous engagements on this type of work qualified him to accept the appointment. The Panel therefore concluded that there was insufficient evidence to prove a breach of paragraph(s) 2.1 and/or 2.2 of APS X3 and allegation A4 was not made out.

Allegations A5 and A6:

The Panel felt that these two allegations would best be considered together, as they both referred to a complaint about the Respondent's Actuarial Report which Person A had sent to him on 7 November 2021.

In response to that complaint, the Respondent had emailed Person A on 7 December 2021, enclosing CSP's email of 3 December and trying to justify his rationale for the pension age used in his report. He also explained that once he had further information from CSP, he would be able to demonstrate that the pension quoted by CSP from age 60 was "equivalent in value" to the pension credit quoted in his Report.

The Panel agreed that, at the time of writing that email, the Respondent knew that he had used the wrong factors (as explained in CSP's email of 3 December) but did not address this in his response and thus his response was misleading.

Accordingly, the Panel felt that Allegations A5 and A6 were capable of proof.

Allegation A7

On 3 December 2021 and 8 December 2021, Person A asked the Respondent to refer the matter to his professional indemnity insurers and to confirm when he had done so. The Respondent did not address this matter in any of his responses to Person A. The Panel felt

that this was inappropriate and not conduct that the public would expect from a Member of the Profession.

The Panel therefore agreed that Allegation A7 was capable of proof.

Allegation A8

The Compliance principle in the Actuaries' Code (version 3.0 effective 18 May 2019) is as follows:

“Compliance

4. Members must comply with all relevant legal, regulatory and professional requirements.”

As the Respondent had not complied with professional requirements in TAS 100 (Allegation A3), he had automatically breached the Compliance principle of the Actuaries' Code and so the Panel agreed that Allegation A8 was capable of proof.

Allegation A9

The Competence and Care principle in the Actuaries' Code (version 3.0 effective 18 May 2019) is as follows:

“Competence and Care

2. Members must carry out work competently and with care.

2.1 Members must ensure they have an appropriate level of relevant knowledge and skill to carry out a piece of work.

2.2 [...]

2.3 Members must ensure their work is appropriate to the needs and, where applicable, instructions of user(s).

2.4 Members must consider whether input from other professionals or specialists is necessary to assure the relevance and quality of work and, where necessary, either seek it themselves or advise the user to do so, as appropriate.”

For the principle of Competence and Care, the Actuaries' Code Guidance says:

“Acting with competence and care

4.6 Generally, acting with competence and care will involve such things as:

- *ensuring that work is carried out accurately, in line with instructions and to any agreed deadlines;*

[...]

The Panel felt that the Respondent, by using incorrect factors, had not ensured that his work was carried out accurately or with care, and so he had breached the Competence and Care principle of the Actuaries' Code. As a result, the Panel felt that Allegation A9 was capable of proof.

Allegation A10

The Communication principle in the Actuaries' Code (version 3.0 effective 18 May 2019) is as follows:

“Communication

6. Members must communicate appropriately.

6.1 Members must communicate in a timely manner, clearly, and in a way that takes into account the users.

6.2 [...]

6.3 Members must take reasonable steps to ensure that any communication for which they are responsible or in which they have a significant involvement is accurate, not misleading, and contains an appropriate level of information.

6.4 Where Members identify that a user of their work has, or is reasonably likely to have, misunderstood or misinterpreted the information or advice provided by them in a way which could have a material impact, Members should draw the user's attention to this.”

For the principle of Communication, the Actuaries' Code Guidance says:

“General duty to communicate appropriately

8.2 Members are expected to present information in a way that is accurate, impartial and in accordance with relevant professional standards so that users who are relying on that information can both understand the context of the information and be clear about the message being conveyed. Communication is, therefore, a key part of a Member's role. In order for Members to ensure that their communications (both written and oral) are appropriate, understanding the purpose and nature of their instruction is key.

Judging what is appropriate

8.3 Appropriate communication is very often a matter of putting oneself in the place of the intended audience. For example:

- Is the communication courteous and professional?*
- Are recommendations or options to be considered and the implications of each set out clearly?*
- Is it clear what you are asking of the user where you are requesting something from them?*
- Will they be able to navigate easily to the sections that are most relevant to their needs?*
- Will they understand the basis on which estimates and calculations have been made, and the appropriate degree of confidence in the results?*
- Above all, is the document fit for purpose, and appropriate for the use to which it is to be put?”*

The Panel agreed, based on the determinations under Allegations A1, A2, A5, A6 and A7 that the Respondent's conduct breached the Communication principle of the Actuaries' Code and so Allegation A10 was capable of proof.

Decision and Reasons on Misconduct:

The Panel then considered whether there was a *prima facie* case that the Respondent's actions amounted to Misconduct.

For the purposes of the Disciplinary and Capacity for Membership Schemes, 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 Panel determined that there was a *prima facie* case that the Respondent's actions in all or any of the allegations (other than A4 which was not capable of proof) did not comply with the standards of behaviour, competence or professional judgement which other Members or the public might reasonably expect of a Member, and therefore were sufficiently serious as to constitute Misconduct under the Disciplinary and Capacity for Membership Schemes.

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 was 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.

Before considering the level of sanction, the Legal Adviser informed the Panel of a previous determination relating to the Respondent, which was carried out by an Adjudication Panel in March 2021 (one month before the issue of the Respondent's Report and involved background facts similar to the current allegations being considered here). In that determination, the Adjudication Panel had determined that the Case Report had disclosed a *prima facie* case of Misconduct and had invited the Respondent to accept that there had been Misconduct and the following sanctions:

- Reprimand
- Fine of £1,500 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation

Also in the light of the deficiencies in his report, that Adjudication Panel had suggested that the Respondent should reflect on whether he has the experience and resources to undertake work of this nature. In particular, the Adjudication Panel had directed the Respondent's attention to *APS X2: Review of Actuarial Work*, which requires members of the profession to consider whether to apply work review or independent peer review to actuarial work for which they are responsible.

This Panel's legal adviser confirmed to the Panel that the previous determination could be borne in mind as an aggravating factor when considering sanctions for this case, if they considered that the nature of the allegations in the previous determination were analogous to the allegations before this Panel and if the Respondent knew of that Panel's determination before the events which were the subject of this Panel.

The Panel accepted the advice of the Legal Adviser, and agreed that it was an aggravating factor in this case. It also took into account the following aggravating factors:

- The Respondent has a lot of experience and should be well aware of his professional requirements
- The Respondent failed to acknowledge that he had used the wrong pension factor or communicate with Person A regarding his PI cover (or absence of it)
- The calculations in the Report could have significant and far reaching effects on the divorcing partners and could affect their finances for the rest of their lives

- His responses to the allegation, as provided to Person A at the time and subsequently to the Panel, demonstrated a lack of insight.

In addition, the Panel took into account the following factors in mitigation:

- The previous determination was received after the Respondent had accepted instructions by Person A and Person B and he did not have a lot of time before he was due to issue this report
- The Respondent had complied with the investigation and there were no criminal offences in his actions

The Panel first considered whether this was a case that warranted no sanction, but was satisfied that the seriousness of the professional breaches and the previous determination required the imposition of a sanction in order that an appropriate message could be given to the Respondent, the profession and the wider public.

The Panel discussed whether to impose a Reprimand and determined that this should form part of the sanction, as there was evidence of serious breaches of the Actuaries' Code.

The Panel then considered whether to impose a fine and decided that it would be an appropriate sanction in this case. The maximum fine that can be imposed by an Adjudication Panel is £7,500 and there was some discussion as to whether this was sufficient, given the aggravating features of the case. However, the Panel concluded that the maximum fine of £7,500 would be appropriate in this case when taken together with the other sanctions applied.

Finally, the Panel considered whether to also impose a period of education, training or supervised practice. They noted that the Adjudication Panel in the previous Hearing was not able to identify an appropriate sanction of this type, based on the information available, and this was the reason behind their suggestions on behaviour to the Respondent.

The Panel also noted that, despite the suggestions by the previous Adjudication Panel, the Respondent had issued the Report relevant to this Hearing and they were concerned that the Respondent's failings suggested a lack of understanding of the application in practice of a number of the sections in TAS100 and in other professional requirements.

The Panel therefore concluded that, if the Respondent wished to continue acting as an Expert, he should undertake the following education and/or re-training

- Review the following documents and accompanying Guidance Notes:
TAS100, The Actuaries Code, APS X2: Review of Actuarial Work, APS X3: The Actuary as an Expert in Legal proceedings, APS X5: Compensation for Professional Shortcomings and any other relevant professional guidance;
- Consider carefully how they should be applied in practice to all stages of his work, including planning, undertaking, documenting, peer reviewing and reporting;
- The Respondent is encouraged to utilise the professional skills training available from the IFoA and other relevant providers, including the IFoA Buddy System. So far as reasonably practicable, he should undertake reflective discussions with peers on best practice regarding how professional standards and guidance should be applied to his work;
- No later than 30 September 2022, the Respondent must advise the IFoA's Head of Legal Services that he has complied with these requirements, including the ways in which he has complied with them and how he will incorporate them in his work.

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.