



Disciplinary Tribunal Panel Hearing

27 April 2023

Online Hearing

Respondent:	Nirav Shah Present and not represented
Category:	Lapsed member
Region:	London, UK
IFoA Case Presenter:	Jenny Higgins on behalf of the IFoA
Panel Members:	Stephanie Bown (Lay Chair) Simon Head FIA (Actuary member) David Alexander FIA (Actuary member)
Legal Adviser:	Elaine Motion
Judicial Committees Secretary:	Julia Wanless

Charge:

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

1. on or around 2 February 2021 you advised your employer, Company A, that you had passed the IFoA examination CS1 (Actuarial Statistics);
2. you knew the information you provided at paragraph 1 was incorrect;
3. your actions at paragraph 1 were dishonest by reason of paragraph 2;
4. on or around 25 March 2021, you provided Company A with details of the IFoA examinations that you had sat between 2018 and 2021 and the results of those examinations;
5. you knew the information you provided at paragraph 4 was incorrect;
6. your actions at paragraph 4 were dishonest by reason of paragraph 5;
7. on or around 2 August 2021 you sent a copy of an IFoA exam results letter to Company A which detailed the examinations you sat in the April 2019 examination diet and the results for those examinations;
8. you knew the exam results letter did not show the correct position in relation to the examinations you sat in the April 2019 examination diet and the results for those examinations;
9. your actions at paragraph 7 were dishonest by reason of paragraph 8;
10. your actions, in any or all of the above, were in breach of the principle of integrity in the Actuaries' Code (version 3.0);
11. 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 June 2021).

Plea:

The Respondent appeared at the hearing and represented himself. He confirmed that he had completed the Charge Response Form dated 1 March 2023 admitting the factual basis of the charges, that he had been dishonest, had lacked integrity, and that this breached the Code and was misconduct. He confirmed to the Panel that he accepted that he was guilty of all the charges.

Panel's Determination:

1. The Panel found all of the charges proved, on the Respondent's admissions and on the documentary evidence before it.
2. The Panel determined that the most appropriate and proportionate sanctions were:
 - A fine in the sum of £3,000.00.
 - Exclusion from IFoA membership. The Respondent may not apply for readmission for a period of 3 years.
3. The Panel also ordered the Respondent to pay to the IFoA costs of £2,547.00.
4. The Panel directed publication in accordance with the IFoA's guidance on publication of decisions: on the IFoA website for a period of five years with a summary published in the *Actuary* magazine.

Background:

5. The Respondent was a student member of the IFoA and between November 2018 and January 2023 and at the time of the alleged conduct was a Pricing Analyst at Company A.
6. On 2 February 2021 the Respondent sent an email to his line manager, stating that he had passed exams CS1, CB1, CB2, CB3. A printout of all of the examinations sat by the Respondent shows that, as at 2 February 2021, he had passed examinations CB1, CB2, CB3 and the Online Professionalism Awareness Test (OPAT) and that he was enrolled to take the CS1 examination in April 2019, but he was absent from the examination.
7. On 25 March 2021, the Respondent provided his employer with details of the IFoA examinations that he had sat between 2018 and 2021 and the results of those examinations. This information he provided was incorrect.
8. On 2 August 2021 the Respondent emailed his line manager attaching a document entitled "April 2019 results letter" which showed that the Respondent had failed examination CB1 with a mark of 58 and had passed examination CS1 with a mark of 64 during the April 2019 examination diet. When questioned about the accuracy of the letter, he emailed his line manager on 5 August 2021 attaching a results letter setting out the correct position, that the Respondent was absent for examinations CM1 and CS1 during the April 2019 examination diet and that his mark for both examinations was 0. A printout of all the examinations sat by the Respondent also shows that he did not sit the CB1 examination in the April 2019 diet.
9. During Company A's investigation into the matter the Respondent admitted to falsifying his IFoA exam certificate as he was embarrassed by his results and that he had failed. He also subsequently confirmed to the IFoA that he had provided Company A with an incorrect certificate and that a week or so later he had provided the true IFoA certificate

and had admitted to his mistake. He stated that he had quickly admitted that he had sent the wrong information due to embarrassment with his actual results. He stated that he did not try to obtain an increase in pay from a false pass and that he had lost his job as a result. He stated that he had made a rash decision without thinking it through and had paid for it.

Findings of Fact:

10. 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. However, there is no dispute of fact as the Respondent accepts the factual basis of the charges.
11. The Respondent attended the hearing and represented himself. He stated that he did not wish to give evidence or make submissions.
12. Witness statements were taken as read and no witnesses were called to give evidence.
13. The Respondent made full admissions to all of the charges. The Panel has accordingly found those charges proved in light of those admissions. In reaching its decisions on the various parts of the charges, the Panel took into account the substantial documentary evidence in support of the charges in this case together with the submissions of the IFoA's Case Presenter. The Panel considered the advice of the Legal Adviser, in particular as to the test for dishonesty set out in *Ivey v Genting Casinos (UK) Ltd (t/a Crockfords)* [2017] UKSC 67 and the concepts of both dishonesty and integrity set out in *Wingate v SRA* [2018] EWCA Civ 366.

Misconduct Charge

14. 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 Scheme, which is:

" 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."

15. The Panel considered that to knowingly provide incorrect information on a number of occasions over a period of some months and to falsify IFoA documentation about professional examination results to your employer is clearly dishonest, lacks integrity and constitutes Misconduct as defined in the Disciplinary Scheme.

Sanction:

16. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter. The Respondent told the Panel that he had no submissions in relation to sanction. 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.

17. 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.

18. In considering sanction, the Panel assessed the misconduct to be very serious taking account of the following factors:

19. The Respondent's culpability: the Panel determined that the Respondent's actions were not spontaneous, He provided false information on three occasions, both verbally and in writing over a period of 6 months. He falsified a document which would have required planning and preparation. Although the events were relatively early in his career, the Respondent had passed the Online Professionalism Awareness Test (OPAT) in 2018 and should have been well aware of the expectations of professional conduct including honesty and integrity. Aside from OPAT and in any event he should have known that to act in such a way was dishonest and lacking in integrity. Whilst the Respondent states that he was motivated by embarrassment at his results, this became a prolonged course of conduct. By providing false information about his exam results he was potentially able to access financial support for exams, tuition and study leave through his employer that he would not have been entitled to had he provided correct information.

20. The harm caused by the misconduct: whilst there was no significant financial loss, there were possibly financial consequences for the employer through funding additional study leave and exam or tuition fees, but no requirement for remedial work and no harm to clients. However, the falsification of a document and false representations (both in writing and oral) by a Member of the Actuarial profession amounts to a serious departure from professional standards and very serious harm to the reputation and trustworthiness of the profession. A number of people in Company A, including members of the profession, will be aware of the Respondent's dishonesty in this case.

21. Aggravating factors:

- The misconduct was deliberate and repeated on at least three occasions over a period of six months and included creating false documents.
- The misconduct involved dishonesty and a lack of integrity.
- The Respondent should have been well aware of the standards expected of a member of the IFoA, not least because he had passed the On-line Professional Awareness Test.
- The Respondent had many opportunities to rectify his behaviour and only admitted his conduct after repeated questions and probing by his employer between February and August 2021.
- The Respondent provided no further evidence to demonstrate his insight or remorse for his misconduct.

22. Mitigating factors:

- The Respondent has been fully cooperative with the IFoA in this matter.
- He made early admissions on the facts and charges.
- He sent a correct document to his employer 3 days after providing the false document.
- He had no previous disciplinary record.

23. In considering sanction the Panel was aware that The Respondent is a lapsed Member and that therefore some sanctions do not apply.

24. The Panel considered that the seriousness of the misconduct was such that this was not a case that warranted no sanction or a reprimand. A Reprimand 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. Dishonesty is too serious for a reprimand.

25. The Panel considered a period of education, training or supervised practice was not appropriate as this was not a failure in practice, but the result of actions that were attitudinal in nature and the Respondent's membership of the IFoA has lapsed.

26. The Panel considered that a period of suspension or the withdrawal of a Practising Certificate was not appropriate given the lapsed status of the Respondent's membership.

27. The Panel considered that the seriousness and circumstances of the Misconduct in this case warranted a fine. The Panel determined that a fine of £3,000.00 would be an appropriate sanction to reflect the serious departure from professional standards and the harm to the reputation of the profession.

28. In addition to a fine, the Panel went on to consider whether to exclude the Respondent from Membership of the IFoA would be disproportionate. The Indicative Sanctions Guidance suggests that this 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. 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.

29. Serious personal Misconduct may lead to expulsion or exclusion as well as Misconduct in practice. Dishonesty will usually lead to expulsion or exclusion, but it is important to bear in mind that there is a small residual category of cases where the particular circumstances are such that the well-informed member of the public would not regard dishonesty as a bar to continued membership of the profession. If a Panel so decides not to expel or exclude it will need to set out its reasons with particular clarity. When making an order that interferes with or terminates the right to practice, a Panel should consider the effect on the income of the Member when deciding on the level of any fine also imposed, and in considering costs.
30. In this case the Panel considered that to allow the Respondent to remain as a member of the IFoA would be inconsistent with the maintenance of the reputation of the profession. This is not one of the small residual category of cases where expulsion or exclusion does not follow a finding of dishonesty. The Panel is fully cognisant of the likely severe effect on the Respondent's income and livelihood, but the reputation of the profession and the maintenance of ethical standards are of greater weight than the effect of exclusion on the Respondent.
31. The Panel is required to specify a period during which the Respondent may not apply to be readmitted to the IFoA (8.22(b)(vii)). The Panel decided on a period of 3 years because this was premeditated and repeated dishonesty. The Panel considered that a longer period was not appropriate taking into account that the Respondent had cooperated with the IFoA, had admitted all charges at an early stage, that harm, although serious, was mainly limited to the reputation of the profession and there was no harm to clients.

Costs:

32. The IFoA made an application for costs of £2,547.00 incurred in preparation for the hearing and attendance at the hearing remotely by the IFoA's Case Presenter. The Panel noted that costs included administrative costs and costs incurred by the Panel and Legal Adviser. The Respondent provided no information in relation to his financial position and made no challenge to the detail of the IFoA's costs, simply asking for a short period over which to meet them. 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 £2,547.00.

Right to appeal:

33. 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:

34. Having taken account of the 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.