



Institute
and Faculty
of Actuaries

Adjudication Panel Meeting

12 and 13 September 2023

Held by Video Conference

Respondent:	Robert Birmingham FFA
Category:	Fellow since 26 June 1978
Region:	England, United Kingdom
Panel Members:	Catriona Whitfield (Chair, Lay member) Haroon Khan FIA (Actuary member) Hatim Maskawala FIA (Actuary member)
Legal Adviser:	Elaine Motion
Judicial Committees Secretary:	Bianca Andrade

Allegations

The allegations against Robert Birmingham FFA (the Respondent) are:

- A1 On appointment as Scheme Actuary for Scheme A in 2010, he did not review the cash commutation factors to consider whether they could be certified as reasonable.
- A2 Between 2010 and 2018, while appointed as Scheme Actuary for Scheme A, he did not review the cash commutation factors to consider whether they could be certified as reasonable until asked to do so by the Corporate Trustee in 2018.
- A3 Between 2010 and 2018, he did not advise the Trustee that he could not certify the cash commutation factors as reasonable until asked to consider the reasonableness of the cash commutation factors by the Corporate Trustee in 2018.
- A4 His actions in paragraph A1, A2 and/or A3 above were in breach of the Trust Deed Rules.
- A5 His actions in paragraph A1, A2 and/or A3 above were in breach of section 4.1 of APS P1 (versions 1.0 effective 1 April 2011 and 2.0 effective 1 July 2013, as applicable).
- A6 His actions in paragraphs A1, A2 and/or A3 above were in breach of the Competence and Care principle of the Actuaries' Code (version 1.0 effective October 2009 and version 2.0 effective August 2013, as applicable).
- A7 His actions in paragraph A1, A2, A3, A4 and/or A5 above were in breach of the Compliance principle of the Actuaries' Code (version 1.0 effective October 2009 and version 2.0 effective October 2013, as applicable).
- A8 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.

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

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

- Reprimand, and a
- Fine of £2,500 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation.

Background

Before retiring on 31 December 2018, the Respondent, an employee of Consulting Ltd B (also trading as Pensions Group B), had been the Scheme Actuary for Company A's Pension Scheme (Scheme A) ("the Scheme") since October 2010.

In late 2017, Company C was appointed as a director of the Corporate Trustee of the Scheme. When Company C was appointed, a valuation process that started in 2016 was still underway. As part of that process, Company C assert that they noticed that the cash commutation factors in place were much lower than anticipated and that the Scheme was being funded on the basis of an assumption that all members commuted the maximum allowable pension for cash. It appeared the factors had not been reviewed since the mid-1980s. The Respondent states that it was he who brought the low cash commutation factors to the attention of Company C.

Company C aver that they raised a concern about the cash commutation factors with the Respondent in 2018. As mentioned above, the Respondent states that it was he who brought the low cash commutation factors to the attention of Company C. When the Respondent was asked in July 2018 whether he would be able to certify the factors as reasonable, he confirmed he would not. Company C asked the Respondent to formally withdraw any actuarial certification, although it does not appear that there had been any

actuarial certification issued by the Respondent during his tenure as Scheme Actuary to Scheme A. The Respondent wrote to the Principal Employer on 03 September 2018 stating he could not at that time certify the cash factors in use as reasonable if asked to do so. Company C also instructed the Respondent to ask the Principal Employer to propose new factors which he also did in the letter to them on 03 September 2018. The Principal Employer proposed new factors on 30 November 2018 which the Respondent then certified as reasonable on 07 December 2018. These factors were higher than the previous factors meaning members would receive more cash for the same pension commuted.

The Scheme entered a Pension Protection Fund (“PPF”) assessment period in August 2019. Since then, all members who took cash commutation at retirement between 1 November 1988 and the time when the PPF factors were adopted have had their residual amounts revisited. They also, where appropriate, have received an uplift to their PPF compensation and back payments (including interest) to reflect underpayments of pension/compensation caused by this issue.

In April 2022 Person 1 (the Referrer), on behalf of Company C, submitted a complaint to the IFoA about the Respondent. Delays outwith the control of the IFoA, including the putting in place of Data Sharing Agreements, have been encountered throughout the investigation.

The Respondent has co-operated with the investigation that followed, and provided explanations for his actions. He disputes the Allegations.

Legal Advice

At the request of the Chair, the Legal Adviser reminded the Panel about the Civil Standard of Proof which is the standard of proof for this Jurisdiction. The Legal Adviser advised that proving an event on the balance of probabilities involves being satisfied that the occurrence of the event is more likely to have happened than not. The Legal Adviser also advised that the Burden of Proof lies with those raising the Allegations.

Decision and Reasons on the Allegations:

The Panel decided to consider Allegations 1 and 2 together as they involved consideration of the same evidence.

Allegation A1 - On appointment as Scheme Actuary for Scheme A in 2010, he did not review the cash commutation factors to consider whether they could be certified as reasonable.

Allegation A2 - Between 2010 and 2018, while appointed as Scheme Actuary for Scheme A, he did not review the cash commutation factors to consider whether they could be certified as reasonable until asked to do so by the Corporate Trustee in 2018.

The Panel noted the use of the word 'review' in both Allegation A1 and Allegation A2; these are not allegations about reporting or certifying, but about reviewing.

The Respondent became Scheme Actuary for the Scheme on 20 October 2010, the Panel has seen a Letter of Appointment of that date from Company A's Pension Trustee Limited, Appendix 104 to the Case Report.

The Referrer's position is that upon the Respondent's appointment as Scheme Actuary, and thereafter until the review instructed by them in 2018, the Respondent failed to proactively review the cash commutation factors to consider whether they could be certified as reasonable. The Referrer advised that the cash commutation factors in use at the time of the 2018 review had been in place and had not been reviewed since before the appointment of the Respondent. The Respondent does not dispute that the factors in place prior to the 2018 review had been in place since before his appointment.

The Respondent's position is set out in his productions. In his Response to the Allegations dated 07 August 2023, in respect of Allegation A1 the Respondent states that upon his appointment he "*reviewed the Scheme's governing documentation, including the cash commutation factors, and noted that the responsibility to set the cash commutation factors lay solely with the Principal Employer and that certification by him as only triggered after the factors were set by the Principal Employer. This was his reasonable interpretation of the Rule. It was incorrect to suggest he did not consider the factors - he did . . .*"

In response to Allegation 2 the Respondent states that "*In any event [the Respondent] did advise [Person 2] (and likely other members of the corporate trustee board) prior to 2018 that if asked to certify the then current cash commutation factors, he would not be able to do so.*" The Panel understood this response to indicate that the Respondent must have reviewed the factors in order to be in a position to render that advice.

In the letter of 07 August 2023 from the Respondent's Solicitors providing the Respondent's detailed response to the Case Report ("the 07 August letter"), at paragraph 2.2 it states, "*The cash commutation factors were considered/ reviewed by the Respondent following his appointment as Scheme Actuary in 2010 and during his tenure as Scheme Actuary.*"

In the Statement of Facts Form attached to the 07 August letter with reference to paragraph 2.12 of the Case Report, the Form states "*The Respondent has not been able to locate a record of his conversations regarding the reasonableness of the cash commutation factors given the passage of time and his subsequent retirement. However, the Respondent recalls raising this issue with the Trustees from time to time...*" The Panel understood this response to indicate that the Respondent must have reviewed the factors in order to be in a position to hold a conversation about the reasonableness of the cash commutation factors.

With reference to paragraph 2.22 of the Case Report the Respondent states "*The Respondent... does not accept that the two documents were the only times he discussed, raised, reviewed or consider[ed] the cash commutation factors.*"

The Panel looked for documentary evidence of a review being undertaken between the time of the Respondent's appointment and up to the 2018 review within the documents provided to it. In 2010 the Respondent prepared a Scheme Funding assessment (Appendix 55 to the Case Report) At page 58.2 of that document reference is made to cash commutation at the "*rates currently in force*". In 2012 the Respondent prepared an Actuarial Factor Review which contained a section on cash commutation factors (Appendix 27 to the Case Report, at page 220). That section highlighted a relevant extract from the Trust Deed Rules, together with an observation that this implied responsibility for setting cash commutation factors lay with the Company and concluded that no further action was required by the Trustee.

Appendix 34 to the Case Report is the minute of a meeting of Company A's Pension Trustee Limited dated 20 August 2018. The minute 18/49 states "*[The Respondent] has been Scheme Actuary since 2010 and said that he had indicated at various times to the Company and to [Person 2] that the factors were out of range. . .*". The Panel understood this minute to indicate that the Respondent must have reviewed the factors in order to be in a position to give an indication that the cash commutation factors were out of range.

The Panel noted that appendix 87 to the Case Report was a letter of 10 January 2020 from Company A's Pension Trustee Limited to Person 2 (formerly both chair of the Pension

Trustee Company and Managing Director of the Principal Employer) asking, among other things, whether Person 2 recalled discussions with the Respondent about cash commutation factors, in particular, whether they needed revision or re-certification. Appendix 88 to the Case Report was a telephone note of 21 May 2020 where Person 2 responds to questions within the 10 January 2020 letter. The telephone note states “[Person 2] confirmed that he had no recollection of any Scheme Actuary ([the Respondent] or earlier) raising the issue of numerical value of the commutation factors, only in the context of valuation assumption on how many people took cash. [Person 2] said the first time this was formally raised with him or the company was in 2018 when [the Respondent] confirmed that he could not certify Scheme factors.” The Panel noted that Person 2 was being asked about the matter being raised with him, not about whether he was aware of the Respondent undertaking a review.

The Panel noted that a ‘review’ being an action that the Respondent would undertake for himself, did not necessarily need to involve external documentation and the absence of such documentation did not necessarily imply an absence of the review.

The Panel summarised the evidence before them as being:

- There was no documentary evidence of a review of cash commutation factors; only of references being made to the existence of the factors and also of their treatment within the Trust Deed.
- Person 2 ‘had no recollection of’ the matter being raised with him by the Scheme Actuary. He, was not asked to comment upon whether he was aware of a review.
- The Respondent made reference in the minutes of 20 August 2018 to having raised the issue of cash commutation factors with the Trustee/ Principal Employer, implying that he must therefore have reviewed them.
- The Respondent in his Statement of Facts Response and his Response to Allegations / associated letter stated again that he reviewed cash commutation factors with the Trustee/ Principal Employer over the course of his time as Scheme Actuary.

Given the matters set out above, the Panel decided that Allegation 1 and Allegation 2 were not capable of proof on the balance of probabilities.

Allegation A3 - Between 2010 and 2018, he did not advise the Trustee that he could not certify the cash commutation factors as reasonable until asked to consider the reasonableness of the cash commutation factors by the Corporate Trustee in 2018.

The Panel noted that whilst Allegation 1 and Allegation 2 referred to 'reviewing' the cash commutation factors (an action that the Respondent would undertake for himself, not necessarily involving external contact or documentation); Allegation 3 referred to 'advising' the Trustee that he could not certify the cash commutation factors as reasonable (an action involving contact with a third party).

The Panel notes the Respondent's letter of 03 September 2018 (Appendix 48 to the Case Report) where the Respondent wrote to the Principal Employer on the instruction of the Trustee to inform them that he could not certify the cash commutation factors as reasonable were he to be asked to do so.

It is clear to the Panel from the Respondent's statements in his Response to Allegations, Statement of Facts Form and the letters of 6 June 2023 ('the 06 June letter') and 07 August letter (as set out in their consideration of Allegations A1 and A2) that the Respondent had concerns regarding the adequacy of the cash commutation factors at times prior to being asked to consider their reasonableness of the factors by the incoming Corporate Trustee in 2018.

In July 2018 the Respondent/ his Employer produced a report to the Trustee on cash commutation factors at the request of the Corporate Trustee (Appendix 61 to the Case Report at p 599). In the Background section the Respondent states "*The rules of the Scheme provide for pension to be commuted on terms determined by the Principal Employer and certified by the Scheme Actuary as reasonable. I understand this to mean that the Scheme Actuary has to certify that the terms are reasonable when the Principal Employer determines them. This is to say that the Scheme Actuary is not required to alert the Principal Employer if and when he or she (the Scheme Actuary) considers the commutation terms not to be reasonable. Even so, as Scheme Actuary I have from time to time made known to both Trustee and Principal Employer that had I to certify the commutation terms at these times, I would have found it difficult to do so.*"

In the minute of a meeting of Company A's Pension Trustee Limited dated 20 August 2018 (Appendix 34 to the Case Report), the minute 18/49 states "[The Respondent] has been

Scheme Actuary since 2010 and said that he had indicated at various times to the Company and to [Person 2] that the factors were out of range. . .”.

In his Response to Allegation (Appendix 14 to the Case Report), the Respondent’s response to Allegation A3 is *“In any event [the Respondent] did advise [Person 2] (and likely the other members of the corporate trustee board) prior to 2018 that if asked to certify the then current commutation factors, he would not be able to do so.”*

In the Statement of Facts Form (appended to the 07 August letter) the Respondent refers to *“his conversations regarding the reasonableness of the cash commutation factors”* and *“he recalls discussing the cash commutation factors with [Person 2]”*

In the 06 June letter (Appendix 111 to the Case Report) at paragraph 2.6.2 it refers to a time around 2016 and states that *“[the Respondent] recalls these discussions regarding the valuation of the PPF basis included advising [Person 2] that if [the Respondent] were asked to certify the commutation factors (as they were then) as reasonable , he would not have been able to do so.”*

In the 07 August letter at paragraph 2.5.8 reference is made to the Respondent *“recalling raising cash commutation factors with [Person 2] on a number of occasions”.*

The Panel found the differences (some referring to discussions regarding potential inability to certify and some referring to raising concerns, reasonableness or similar) between the Respondent’s comments in the July 2018 report, at the meeting of August 2018 and the Response to Allegations, Statement of Facts Form, the 06 June letter and 07 August letter confusing and somewhat inconsistent.

The Panel noted that Appendix 87 to the Case Report was a letter of 10 January 2020 from Company A’s Pension Trustee Limited to [Person 2] (formerly both chair of the Pension Trustee Company and Managing Director of the Principal Employer) asking, among other things, whether Person 2 recalled discussions with the Respondent about cash commutation factors, in particular, whether they needed revision or re-certification.

Appendix 88 to the Case Report was a telephone note of 21 May 2020 where Person 2 responds to questions within the 10 January 2020 letter. The telephone note states *“[Person 2] confirmed that he had no recollection of any Scheme Actuary ([the Respondent] or earlier)*

raising the issue of numerical value of the commutation factors, only in the context of valuation assumption on how many people took cash. [Person 2] said the first time this was formally raised with him or the company was in 2018 when [the Respondent] confirmed that he could not certify Scheme factors.” The Panel noted Person 2 “*did not recollect*” and understood this to be a neutral term; however, the Panel also noted that the second part of that note of Person 2’s recollections was an active statement in that “*[Person 2] said the first time this was formally raised with him or the company was in 2018.*”

The Panel thought it of note that, given the Employer’s and Trustee’s response to the Respondent’s letter of 3 September 2018 saying that he would be unable to certify the reasonableness of the cash commutation factors - as set out in the Background section above - it was surprising that a similar response had not been elicited in the past had the Respondent previously advised the Trustee that he would not be able to certify the reasonableness of the cash commutation factors if asked.

Within the documents provided the Panel cannot find documentary evidence that either the Trustee or the Principal Employer were notified by the Respondent that he would not be able to certify the cash commutation factors as reasonable if asked to do so, prior to his letter of 3 September 2018 referred to above.

In sharp contrast to Allegations A1 and A2 which (being potentially internal to the Respondent) do not necessarily indicate a need for external documentation; the Panel is of the opinion that, in their professional experience, advising the Trustees that he would not be able to certify cash commutation factors as reasonable should he be requested to do so would require some form of documentary communication. It would be an important step in the Respondent’s relationship with those who appointed him and the Panel would have expected it to be undertaken as a written communication.

Given all the above, the Panel decided that Allegation A3 is capable of proof on the balance of probabilities.

Allegation A4 - His actions in paragraph A1, A2 and/or A3 above were in breach of the Trust Deed Rules.

In determining their decision regarding this allegation, the Panel was only obliged to consider the Respondent's actions at Allegation A3 above, as that was the only one deemed by the Panel to be capable of proof and relevant to this allegation.

At the time the Respondent was appointed Scheme Actuary, the 1993 Trust Deed was applicable. Rule of 4.4 the 1993 Trust Deed (Appendix 21 to the Case Report) stated: "*The pension exchanged shall be converted to a cash sum at a rate decided from time to time by the Principal Company and certified by the Actuary to be reasonable.*"

In 2015 the Trust Deed was amended (Appendix 22 to the Case Report). Rule 26.6 of the 2015 Trust Deed stated: "*The rate at which any pension or annuity (or part of a pension or annuity) may be commuted for a cash payment payable under this Rule shall be determined by the Principal Employer and certified by the Scheme Actuary as reasonable.*"

It is the Referrer's position that by not reviewing the cash commutation factors until asked to do so in 2018, the Respondent breached the Trust Deed Rules.

The Panel considered whether the Scheme Actuary could be considered to be a party to the Trust Deed Rules, whether in terms of the Trust Deed(s) itself, or in terms of a requirement within his Letter of Appointment (Appendix 104 to the Case Report) to adhere to the terms of the Trust Deed.

The 1993 Trust Deed (Appendix 21 to the Case Report) at page 1 states that the Deed is between:

- "(1) [Company A] Holdings Plc ...
- and
- (2) [Company A] Pension Trustee Limited ..."

The 2015 Trust Deed (Appendix 22 to the Case Report) at page 1 states that the Parties to the Deed are:

- "(1) [Company A] Group plc ...
- (2) [Company A] Pension Trustee Limited ..."

There is no term within the Respondent's Letter of Appointment requiring the Respondent to adhere to the Trust Rules.

The Panel could not find any evidence that the Respondent is either a party to the Trust Deed Rules, nor any evidence to indicate that the Respondent is required to adhere to the terms of the Trust Deed. The Panel therefore considers that Allegation A4 is not capable of proof.

Allegation A5 - His actions in paragraph A1, A2 and/or A3 above were in breach of section 4.1 of APS P1 (versions 1.0 effective 1 April 2011 and 2.0 effective 1 July 2013, as applicable).

In determining their decision regarding this allegation, the Panel was only obliged to consider the Respondent's actions at Allegation A3 above, as that was the only one deemed by the Panel to be capable of proof and relevant to this allegation.

Section 4.1 of APS P1 version 1.0 (effective 1 April 2011) and version 2.0 (effective 1 July 2013) states:

"4.1. A Scheme Actuary should inform the Trustees on becoming aware of any significant matter which relates to his/her regulatory, contractual or other professional responsibility and/or might have an impact on the financing of the scheme, and which he/she considers might lead to the Trustees needing to request advice or further advice, either from the Scheme Actuary or another adviser."

The Panel applied its own professional experience and judgement to consider how the Respondent had approached his responsibility under section 4.1 of APS P1. The Panel considered whether the reasonableness of the level of the cash commutation factors was a significant matter and, if so, was the Respondent aware and did he inform the Trustee?

The IFoA issued a risk alert relating to Commutation Factors on 30 June 2016 (Appendix 112). Risk Alerts are noted on the face of the Alert as being "A series of email alerts drawing members' attention to specific issues where the IFoA asks members to think carefully about the consequences of actions they are taking." Within the section headed 'Considerations for Actuaries' are a series of points. Point 2 states that "Actuaries should consider including commutation factor advice as part of their initial funding valuation advice." Point 3 states "Communicate clearly to the client the consequences of changing, or retaining, commutation factors." Point 5 states "Record advice provided . . ." Thus, the Respondent was on notice

that his profession had concerns surrounding potential issues with cash commutation factors.

When raised in 2018 it resulted in a review of, and alteration of the cash commutation factors (Appendix 45 to the Case Report) and has led to the actions outlined in the Background above.

As noted under consideration of Allegation A3, the Respondent states that he considered issues with the reasonableness of cash commutation factors to be worthy of discussion with Person 2.

The Panel noted that the Respondent stated in both the minutes of August 2018 and in his responses to the Allegations and the Statement of Facts Form that he had raised the issue with Person 2 and possibly others indicating that he was aware of this issue.

The Panel did not consider that the information transfer referred to by the Respondent in his Response to Allegations and Statement of Facts Form was sufficient to *‘inform the Trustees on becoming aware of any significant matter . . .’*

In the professional experience of Panel, the Panel would expect a Scheme Actuary to highlight concerns regarding such matters in writing.

It has been decided by the Panel at A3 above that the allegation that *‘the Respondent did not advise the Trustee that he could not certify the cash commutation factors as reasonable’* was capable of proof.

It is this that the Panel considered would be necessary to inform the Trustee within the meaning of section 4.1 of APS P1.

In summary, the Panel considers that the issue regarding cash commutation factors was a *‘significant matter’* relating to the Respondent’s *‘regulatory, contractual or other professional responsibility’*, which might *‘have an impact on the financing of the scheme’*. The Respondent indicated in his responses that he reviewed the factors and raised them with various persons, so he had become aware.

The Panel did not consider that the discussions that Respondent says took place to be sufficient to constitute informing the Trustees as required by section 4.1 of APS P1.

The Panel therefore considers that Allegation A5 is capable of proof on the balance of probabilities.

Allegation A6 - His actions in paragraphs A1, A2 and / or A3 above were in breach of the Competence and Care principle of the Actuaries' Code (version 1.0 effective October 2009 and version 2.0 effective August 2013, as applicable).

In determining its' decision regarding this allegation, the Panel was only obliged to consider the Respondent's actions at Allegation A3 above, as that was the only one deemed by the Panel to be capable of proof and relevant to this allegation.

The Competence and Care principle of the Actuaries' Code version 1.0 (effective October 2009) and version 2.0 (effective August 2013) (Appendices 116 and 117) states:

"2. Competence and care: members will perform their professional duties competently and with care.

2.1 Members will consider who their advice and/ or services are being provided to (their clients). In many cases this may be their employer.

[...]

2.3 Members will consider whether advice from other professions and other specialists is necessary to assure the relevance and quality of their work.

2.4 Members will take care that the advice or services they deliver are appropriate to the instructions and needs of the client, including the legal and other rules which may govern the matter, having due regard to others, such as policyholders of an insurer, members of a pension scheme, or any analogous persons whose interests are affected by the work of the member.

2.5 Members will agree with the client the scope and nature of any appointment or instruction."

The Panel felt that the Respondent, by not advising the Trustee that he could not certify the cash commutation factors as reasonable until asked to consider the reasonableness of the cash commutation factors by the Corporate Trustee in 2018 (Allegation A3) and by breaching section 4.1 of APS P1 (Allegation A5), had not ensured that his work was carried

out competently or with care in this instance, and so he had breached the Competence and Care principle of the Actuaries' Code. As a result, the Panel felt that Allegation A6 was capable of proof.

Allegation A7 - His actions in paragraph A1, A2, A3, A4 and / or A5 above were in breach of the Compliance principle of the Actuaries' Code (version 1.0 effective October 2009 and version 2.0 effective October 2013, as applicable).

In determining its decision regarding this allegation, the Panel was only obliged to consider the Respondent's actions at Allegation A3 and A5 above, as these were the only ones deemed by the Panel to be capable of proof and relevant to this allegation.

The Compliance principle of the Actuaries' Code states:

"4. Compliance: members will comply with all relevant legal, regulatory and professional requirements."

As the Panel has found that Allegation A5 was capable of proof - that the Respondents actions were in breach of section 4.1 of Actuarial Practice Statement P1- it follows that he had breached the Compliance principle of the Actuaries' Code and so Allegation A7 was capable of proof.

Decision and Reasons on Misconduct:

The Panel then considered Allegation A8 whether there was a *prima facie* case that the Respondent's actions as found capable of proof in respect of Allegations A3, A5, A6, and A7 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, for all of the reasons set out above, that there was a *prima facie* case that the Respondent's actions as found capable of proof under Allegations A3, A5, A6 and A7 did demonstrate a failure to comply with the standards of competence or professional judgement which other Members or the public might reasonably expect of a Member; and were therefore 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 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.

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

- it was foreseeable that the use of cash commutation factors that appeared low could have a financial impact on retiring or retired members and also on the funding of the scheme.
- the Panel considered that the Respondent had been aware of issues surrounding the reasonableness of the cash commutation factors for some time.

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

- This was not a complaint that involved lack of integrity or dishonesty.
- The extent and swiftness of remediation once the Trustee requested the Respondent to take action.
- Recognition that the action or inaction of others may have contributed to the problem with the cash commutation factors.
- The Respondent has no prior history of disciplinary issues.
- The Respondent has co-operated with the Investigation.

The Panel considered whether this was a case that warranted no sanction but was satisfied that the seriousness of the professional breaches required the imposition of a sanction in order that an appropriate message be given to the Respondent, the Profession and the wider Public regarding the proper standards of conduct and competence.

The Panel considered whether to impose a Reprimand and determined that it should form part of the sanction as there was evidence of serious breaches of Actuarial Profession Standard P1 and of the Actuaries Code.

The Panel considered whether to impose a Fine. The Respondent had been invited to provide the Panel with information as to his current financial circumstances. He had not done so. Taking into account the breaches found capable of proof and the Guidance and factors referred to above, the Panel decided that a fine of £2,500 would appropriately reflect the seriousness of the conduct.

The Panel considered whether to impose a period of education, training or supervised practice. As the Respondent is a retired member, this was not deemed appropriate.

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

Taking all of the above into consideration, the Panel therefore decided to impose a Reprimand and a fine of £2,500.

Publication:

Having taken account of the Disciplinary Committee'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.