Adjudication Panel Meeting

10 & 17 December 2020

Held by video conference

Respondent:	Ian Sissons FIA
Category:	Fellow since 25 December 1979
Region:	Surrey, England
Panel Members:	Jules Griffiths (Chair/Lay member) Nylesh Shah FIA (Actuary member) Melissa D'Mello (Lay member)
Legal Adviser:	Graeme Watson
Judicial Committees Secretary:	Julia Wanless

Allegation:

The allegations against Mr Sissons (the Respondent) are:

A1 in or around October or November 2013, he advised Person A's prospective employer that they should enquire about Person A's health as Person A had taken time off due to a health issue, or words to that effect;

A2 he knew or should have known that the information he provided to Person A's prospective employer regarding her sickness absence record was incorrect;

A3 his actions at A1 and/or A2 were in breach of the terms of a compromise agreement between Person A and her former employer;

A4 his actions at A1 and/or A2 above caused the prospective employer to not offer the job to Person A;

A5 in November 2013, he advised Person A's former employer that Person A was not offered the job by the prospective employer as she did not have the underwriting experience required for the role when:

> A5.1 he knew or should have known that Person A did have the underwriting experience required for the role;
>
> A5.2 he had not spoken to the prospective employer regarding the reasons Person A was not offered the role;

A6 his actions at A5 caused the prospective employer to provide differing reasons as to why Person A was not offered the job;

A7 he did not advise his employer that he had met with Person A in May 2018 to discuss the allegations against him;

A8 his actions at A7 were in breach of an indemnity agreement between him and his employer;

A9 his actions at A1, A2 and/or A5 were dishonest;

A10 his actions at A1, A2, A3, A7 and/or A8 were in breach of the principle of compliance in the Actuaries' Code (version 2.0);

A11 his actions at A1, A2, A4, A5, A6, A7 and/or A9 were in breach of the principle of integrity in the Actuaries' Code (version 2.0);

A12 his actions at A1, A2, A5 and/or A7 were in breach of the principle of communication in the Actuaries' Code (version 2.0);

A13 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 February 2018).

Panel's determination:

The Panel considered a combined bundle of 563 pages, which included 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 with regard to the definition of Misconduct, the interpretation of derogatory and dishonesty and the application of the Sanctions Guidance. 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
- Fine of £7,500 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation.

Background:

From before 2012 until he retired in 2018, the Respondent held a senior position at Company B. Person A was a Client Manager at Company B, where she reported directly to the Respondent. She left the Company in September 2012 following a redundancy selection exercise which resulted in a compromise agreement which the Respondent signed on behalf of Company B on 5 October 2012.

In 2019 Person A made a complaint to the IFoA that in October 2013 the Respondent had given a reference to a prospective employer which contained incorrect sickness absence information and which led to a job offer being withdrawn. She explained that the delay in making the referral was because it had taken until 2019 to get information following Subject Access Requests and other personal matters that had taken her time and attention. During the course of the IFoA's investigation she raised further matters relating to the Respondent's conduct.

The background to the allegations is as follows:

In September 2013 the General Manager of Company C (GM) introduced Person A to Company C's Underwriting Director (UD) as she thought there may be an opportunity for her. Person A and UD met on 25 September and again on 16 October, and as requested Person A produced a strategy paper to demonstrate her abilities. She provided 2 referees. Although there was no formal job offer, Person A felt that the feedback was positive, and she expected that the next step would be a meeting with the Managing Director.

On 9 November UD emailed GM saying that he did not consider Person A to be the right candidate for the role and a job description was being drawn up to market the role. On 12 November GM informed Person A that she did not know where UD "is at with your appointment to meet (Managing Director)". After she had made several calls to ask for an update, on 15 November 2013 Person A was informed by UD that they would not be offering her a role as they had decided to change strategy. Person A challenged this explanation, and continued to press for information. Subsequently Company B disclosed detailed information including the scoring used in the redundancy exercise and an account of an exchange between the Respondent and UD in October 2013.

In May 2018 Person A visited Company B to confront the Respondent with regard to the redundancy and the lost opportunity at Company C.

As part of the IFoA investigation UD was contacted. He has advised that the role was not offered to Person A as he had changed his view about what was required to grow the business and that he wanted someone with more of an insurance background. He advised that, at the time, he had been considering various ideas to broaden the team and was introduced to Person A by a colleague. He has advised that he does not recall whether he was aware of Person A having health issues. He states that she may have mentioned something when they met, but he cannot be sure. He has confirmed that Company C did

not make an offer of employment to Person A and that he would only have obtained references after an offer had been made.

The Respondent has co-operated with the investigation. He has confirmed that the he did speak to UD in October 2013. He has advised that he was not asked for a formal reference. He states that UD specifically asked about Person A's health, and therefore he could not respond to this question without indicating that there were health issues. He says he did not provide details of the health issues to UD and told him he would have to contact Company B Human Resources to obtain a reference. The Respondent has advised that he was aware that Person A had a chronic condition and various adjustments had been made to assist with this, including working from home as necessary. The Respondent denies that he breached the terms of the compromise agreement as he did not provide details of Person A's health issues and he did not provide the UD with information that he did not already know.

Decision and Reasons on the Allegations:

A1 in or around October or November 2013, he advised Person A's prospective employer that they should enquire about Person A's health as Person A had taken time off due to a health issue, or words to that effect; and

A2 he knew or should have known that the information he provided to Person A's prospective employer regarding her sickness absence record was incorrect;

The Panel found allegation A1 proved as a matter of fact, noting in particular that in 2014, when Company B had agreed to indemnify the Respondent in the event of legal proceedings being brought against him, the Respondent had agreed the following text: "*2.3 The following is an accurate and full description of your only conversation with [UD] about [Person A]'s potential employment with [Company C]. UD asked you about Person A. You responded by saying that she was competent, had lots of experience as a underwriter but that he would need to enquire about her health, as she had had time off due to health issues".*

In considering A2, the Panel noted that:

1) in his response to the Panel the Respondent explains that he was responding to UD who "thought" there were health issues;

2) in his response during the IFoA investigation the Respondent said "*however she does suffer from […….] which she used as the basis for agreeing the following.*

a. Adjustment to her workstation in order to minimise any discomfort that she had as a consequence of her condition

b. Having an IT facility at home to enable her to work as comfortably as possible when her condition made travelling uncomfortable

c. The ability to travel to Client meetings the day before the meeting, and to stay overnight to minimise the discomfort in travelling whilst her colleagues would travel on the same day as the meeting

The Panel considered it to be significant that UD was not reported as specifying what health issues he was thinking of, but the Respondent had apparently readily agreed that there was a concern. The Panel reviewed the records of Person A's time off, which totalled 10 days sick absence over nearly 3 years, described as upset stomach (3 days), flu (5 days) and a foot injury (2 days). In the Panel's experience this is lower than the average and would not normally be seen as a concern by a manager. The Panel also considered that, as Person A's former Line Manager, the Respondent was aware that none of these absences related to the condition which had led to the adjustments being made, and that, with the adjustments in place Person A had, with the exception of the final year, always been appraised as close to or above 100% achieving. Whilst noting that, strictly speaking, the statement that she had had time off was correct, the Panel therefore concluded that it was misleading to suggest that further enquiries should be made as it would raise (or reinforce) a doubt about Person A's capability and to that extent was incorrect. Therefore allegation A2 is capable of proof.

A3 his actions at A1 and/or A2 were in breach of the terms of a compromise agreement between Person A and her former employer;

The Panel noted that the Respondent signed the compromise agreement on behalf of the Company; the Panel was satisfied that he was aware of the terms of the agreement, including Clause 13, which states that *"the company undertakes to use reasonable endeavours to ensure that the senior management does not make any derogatory comment or statement about Person A", subject to certain exceptions*. The Panel noted that, although the Respondent has argued that the exchange with UD was a chance encounter, he does

not dispute that it took place and that he made the statement as reported (or words to that effect).

The Panel considered the term “derogatory” and decided that it was to “express a low opinion” or “tending to lessen the reputation of a person”. The Panel concluded that the reference to health issues would be widely understood to be critical of Person A and had the effect of giving the prospective employer a warning. The Panel therefore found that the Respondent had breached the terms of the compromise agreement.

A4 his actions at A1 and/or A2 above caused the prospective employer to not offer the job to Person A;

The Panel carefully considered the documentary evidence, both during the active discussions between Person A, GM and UD about the possible job, and subsequent explanations provided by UD. The Panel noted in particular: Person A’s background, including her underwriting experience; the very positive tone both in feedback to Person A and in emails within Company C between 25 September and 16 October 2013; and UD deciding not to continue with the hire on 9 November. In addition, neither GM nor UD informed Person A until 15 November when she had been pressing for an update and then, having said that their strategy had changed and they needed underwriting skills (which they said Person A did not possess), they did not allow Person A a chance to discuss or “sell” herself for the changing role.

The Panel acknowledged that it is entirely appropriate for a hiring manager to consider different options for a role, and that the business environment can change. The Panel accepted that there was no guarantee that Person A would be offered the role, either as originally discussed or as it was reshaped. But taking all of the evidence into account, the Panel concluded that it was more likely than not that, by implying that there were concerns regarding Person A’s health, the Respondent materially contributed to UD deciding not to proceed with the job offer. Therefore the allegation is capable of proof.

A5 in November 2013, he advised Person A’s former employer that Person A was not offered the job by the prospective employer as she did not have the underwriting experience required for the role when:

> **A5.1 he knew or should have known that Person A did have the underwriting experience required for the role;**

A5.2 he had not spoken to the prospective employer regarding the reasons Person A was not offered the role;

This allegation relates to Company B HR Business Partner's report of a phone call in which she records that UD "*confirmed that the reason he did not hire A was due to her skills and experience for the position rather than anything [the Respondent] had said."* Person A has inferred that by using the word "confirming" the Business Partner is disclosing that she already knew the reason and that that information must have come from the Respondent. The Panel decided that there was no evidence before it on which it safely conclude that the Respondent had acted as alleged.

Allegation A6 (his actions at A5 caused the prospective employer to provide differing reasons as to why Person A was not offered the job) therefore falls.

A7 he did not advise his employer that he had met with Person A in May 2018 to discuss the allegations against him; and **A8 his actions at A7 were in breach of an indemnity agreement between him and his employer;**

This relates to discussions that took place when Person A attended the Respondent's retirement event unannounced and without invitation, intending to confront him both about the redundancy selection (which she described as "falsified" and "a façade") and his part in the loss of the role at Company C. The Respondent has not disputed the fact of allegation A7, other than to point out that it was not a meeting and he did not instigate the discussion.

The Panel noted Person A's detailed record of the discussion; the Panel also noted that the Respondent has not commented on what happened other than to say that Person A's behaviour was totally inappropriate. The Panel therefore accepted that Person A's note was likely to be an accurate account of what took place.

The Panel noted that in September 2014, when Company B agreed to indemnify the Respondent in the event of personal proceedings being brought against him, he in turn agreed that "*unless prohibited by law, any undertaking given with the agreement of the Company, court order or regulatory requirement, you will:*

3.1 immediately notify the Company in writing in the event that any Claim is issued, threatened, or raised;"

Having accepted Person A's account of the discussion, the Panel were satisfied that it did amount to a threat to issue a claim and so the Respondent was required to notify his employer. The Panel recognised that Person A had put the Respondent in a difficult situation. The Panel concluded that it would have been clear to the Respondent that Person A remained unhappy with both the outcome of the redundancy process and the loss of an opportunity. The Respondent has not explained why he did not think it necessary to make a file note for either his line manager or HR, nor why this was not a breach of his obligations.

The Panel therefore finds both allegation A7 and A8 proved.

A9 his actions at A1, A2 and/or A5 were dishonest;

In considering whether the Respondent's actions found in allegation A1 and A2 were dishonest, the Panel had regard to the legal test for dishonesty, as confirmed by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, and which requires the Panel to ascertain the state of the Respondent's knowledge or belief as to the facts and then consider whether ordinary members of the public would consider his actions to be dishonest. The Panel was reminded that dishonesty is different to a lack of integrity. The Panel concluded that there was insufficient evidence before it to support a finding of dishonesty.

A10 his actions at A1, A2, A3, A7 and/or A8 were in breach of the principle of compliance in the Actuaries' Code (version 2.0);

The relevant part of the Code is *"Members will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure they are not placed in a position where they are unable to comply……"* The Panel concluded that his actions in A1 and A2 were a breach of professional requirements; as an experienced senior manager the Respondent had a duty to take care not to disclose damaging or incorrect information. A7 was a clear breach of his professional duty to his employer by failing to alert them to the possible consequences arising from a former employee who, 6 years after leaving, attended (uninvited) a social event to confront her former manager. A3 and A8 relate to agreements which the Respondent himself had signed personally.

A11 his actions at A1, A2, A4, A5, A6, A7 and/or A9 were in breach of the principle of integrity in the Actuaries' Code (version 2.0);

The Panel found that by disclosing damaging or incorrect information, and being aware of the likely consequences, his actions in A1, A2 and A4 were in breach of the requirements to "*show respect for others in the way they conduct themselves in their professional lives"* and *"members will respect confidentiality……."*.

The Panel concluded that the Respondent's failure to recognise the need to alert his employer to the risks associated with an aggrieved former employee (A7) was a lack of judgement which is not consistent with the highest standard of integrity expect of Members.

It was not necessary to consider A5, A6 and A9 as they had been dismissed.

A12 his actions at A1, A2, A5 and/or A7 were in breach of the principle of communication in the Actuaries' Code (version 2.0);

The Panel concluded that A1 and A2 were not consistent with the requirement that communications should be accurate and not misleading. The Panel considered A7 to be a serious failure to communicate.

It was not necessary to consider A5 as it had been dismissed.

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 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 (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.

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.

The Panel noted that the Respondent had an otherwise unblemished record.
The Panel further noted that the Respondent has now retired and so the risk of repetition is low. The Respondent had been offered an opportunity to submit information about his financial situation but had not done so.

The Panel could find no mitigating factors but identified a number of aggravating factors:

- The Respondent was in a senior position and he was entirely responsible for the matters found.
- He had personally signed the two agreements found to have been breached, and his failure in this regard has an impact on the reputation of the profession.
- He would have been aware that his actions in disclosing information to the prospective employer may have consequences for Person A.
- The Respondent had co-operated with the investigation but had not acknowledged the impact of his actions.
- There was no evidence of insight or remorse.

The Panel did not consider that this was a case that warranted no sanction. Neither did it consider that a period of education, training or supervised practice would be appropriate.

The Panel considered whether to impose a Reprimand, but did not consider that this alone would mark the seriousness of the misconduct.

As the maximum Fine that could be imposed was £7,500, the Panel considered whether the imposition of a Fine up to that amount would be sufficient to mark the gravity of the breaches found, or whether matters should be referred to a Disciplinary Tribunal Panel where a greater range of sanctions would be available.

Having regard to all the circumstances, the Panel concluded that a Reprimand and Fine of £7,500 would be the appropriate sanction.

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.