



Institute  
and Faculty  
of Actuaries

## Adjudication Panel Meeting

2-3 December 2021

Held by Video Conference

**Respondent:** Ann Rosemary Kennell AIA

**Category:** Associate since 25 December 1977

**Region:** London, UK

**Panel Members:** Jules Griffiths (Chair)  
Bryan Chalmers FFA (Actuary member)  
Mark Jones FIA (Actuary member)

**Legal Adviser:** James Palmer

**Judicial Committees Secretary:** Hinna Alim

**Allegation:**

The allegation against Ann Rosemary Kennell AIA (the Respondent) is:

- A1 In her role as a Director of the Trustee of an occupational person scheme (“the Scheme”) from financial year 2014/15 to 11 March 2019 she failed to take all reasonable steps to comply with legal and/or statutory requirements, in that she:
- (a) did not take all necessary steps to secure compliance with the requirement to obtain audited accounts for each of the years ending 5 April 2014, 5 April 2015, 5 April 2016 and/or 5 April 2017, as required by regulation 2(1) of the Occupational Pension Schemes (Requirement to Obtain Audited accounts and a Statement from the Auditor) Regulations 1996;
  - (b) did not provide members of the Scheme with Statutory Money Purchase Illustrations (“SMPs”) for the Scheme for each of the years 2015 and/or 2016, as required by regulation 17 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013;
  - (c) did not report the breaches set out at (a) and/or (b) above to The Pensions Regulator (“tPR”) as soon as reasonably practicable as required by section 70 of the Pensions Act 2004.
- A2 Her actions set out in A1(a), (b) and/or (c) demonstrate a breach of the principle of Competence and Care in the Actuaries’ Code version 2.0, effective 1 August 2013.
- A3 Her actions at A1(a), (b) and/or (c) demonstrate a breach of the principle of Compliance in the Actuaries’ Code version 2.0, effective 1 August 2013.
- A4 Her actions, in all or any of the above, constitute misconduct in terms of Rule 4.2 of the Disciplinary and Capacity for Membership Schemes of the Institute of Faculty of Actuaries (effective 1 February 2018).

**Panel's determination:**

The Panel considered the Case Report and appendices submitted by the Case Manager and Investigation Actuary (a total of 200 pages) dated 28 September 2021 and the representations submitted by the Respondent in her response to the Case Report (86 pages) dated 27 October 2021. The Panel also considered the advice of the Legal Adviser, especially with regard to the application of Rules 6.4 and 6.5, which require that the Adjudication Panel should determine whether the Case Report, or one or more matters within it, discloses a *prima facie* case of Misconduct, having considered all of the materials identified above.

For the reasons below, whilst accepting the Trustee company of which the Respondent was a Director held the responsibility in law, nonetheless 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 in the sum of £5,000 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation

**Background:**

The Respondent has been an Associate member of the IFoA since 1977. She commenced her role as director of Company C on 20 September 2008. Company C was the Trustee of an occupational pension scheme ("the Scheme"). (In November 2017 the Respondent transferred under TUPE to a different employer, and then, by TUPE again, in July 2019 to her current employer. The changes to her employment are not relevant to the matters before the Panel). The Respondent took on the responsibility for the Scheme on behalf of the Trustee in 2014/15. At some point in 2016 the Respondent delegated day-to-day management of the Scheme to a non-Director colleague. When the colleague left in August 2017, the Respondent again took on the day-to-day management of the Scheme.

In August 2017, in a meeting with the Pensions Regulator ("tPR") it became apparent that the Trustee had failed to comply with the following statutory obligations:

- to obtain audited accounts;
- to send SMPs; and
- to report these breaches to tPR as soon as reasonably practicable.

On 2 November 2017, the Trustee submitted a report to tPR under section 70 of the Pensions Act 2004, the duty to report breaches of the law. All breaches were rectified by February 2018.

On 10 September 2018, tPR issued a Warning Notice to the Trustee. On 5 March 2019, tPR issued a Determination Notice which stated that tPR Determinations Panel had found there had been failures of the Trustee of the Scheme to obtain audited accounts; to send SMPs and to report these breaches as soon as practicable. At paragraph 118 the Notice states that *“These were breaches of several important statutory obligations, which had occurred over several years. While the breaches may not have caused identifiable financial detriment to members, they deprived members of information and a level of protection regarding their pension pots. The Panel would have expected better of a corporate professional trustee, particularly one that had been warned about breaches of one of the same obligations in 2011-12”*. A penalty notice in the amount of £73,750 was issued to the Trustee.

The Respondent reported tPR’s findings to the IFoA on 13 July 2019. After preliminary enquiries the IFoA began an investigation.

The Respondent co-operated with the investigation and provided further information and explanations when requested.

In her response to the Case Report, the Respondent has denied that her actions amount to Misconduct as defined by the Actuaries Code. Primarily she has argued that:

- the Trustee, as a corporate body, was responsible for the failings found by the Regulator and not the individual Directors;
- regulatory action has already been taken at the appropriate level;
- in her role as one of the Directors of the Trustee, she was not acting as an Actuary;
- her responsibilities with regard to the Scheme were limited in that prior to her taking on the scheme the approach had been to delegate administration to a subsidiary company which was trusted to discharge all of the functions it was contractually obliged to discharge; and
- it was quite normal for her to have no input into the audit process for a DC scheme such as this.

## **Decision and Reasons on the Allegations:**

The Panel took careful account of all of the material before it, including the explanations and responses provided by the Respondent.

The Panel concluded that there was no dispute that the failings identified by tPR had occurred. The Panel also noted that all the failings had been rectified by February 2018 and the Scheme was wound up in 2019. The failings had not led to a financial loss to the members of the Scheme.

The Panel first considered whether the Respondent's actions were covered by the Actuaries Code. In doing so the Panel noted that the Respondent had accepted that, when she applied for her role, her employer would have seen her actuarial qualification as an advantage. Her IFoA membership had always been paid for by her employer, by implication with her consent. She had indicated that her actuarial qualification was useful but was not necessary, and the job she did was also done by a lawyer, an investment consultant and an administrator (the Panel took this to relate to the other Directors of the Trustee).

The Panel accepted the Respondent's claim that very little of her work, including her acting as Director of the Trustee, constituted work of an actuarial nature, nonetheless the Panel concluded that she was at the material time carrying on that work whilst she was an Actuarial Associate. The Panel was satisfied that requirements of the Code did apply to the Respondent.

The Panel next turned to the question of responsibility for the failings found by tPR, which formed the basis of Allegation A1. The Panel accepted that the regulatory obligations which were breached were obligations of the Trustee, as a corporate body, and not that of the individual Directors. However, the Panel was satisfied that the Respondent had a personal responsibility to satisfy herself that the Company of which she was a Director was complying with its obligations. Under the Competence Principle of the Actuaries Code she was expected to carry out her duties, including those of a director of a limited company, "competently and with care", and the Compliance Principle required her to "comply with all relevant legal, regulatory and professional requirements....and challenge non-compliance by others".

The Panel applied its own professional experience and judgement to consider how the Respondent had approached her responsibilities at the relevant times noted below.

Looking first at what she described as "taking control" of the Scheme in 2014, the Panel noted that, during the investigation, the Respondent had explained that she would have had a "quick flick" through the documents file to see what it contained. She did not recall there

being much contained within the file. The Panel did not consider that this was a sufficient handover, and was not satisfied that the Respondent had exercised the due diligence required to satisfy herself that the statutory requirements of the Scheme were met at that time.

Moving on to her position during 2015-2016. The Respondent had described this as being the “contact point”, and explained that “*notionally the Scheme needed someone to sign things. Work on the Scheme was carried out by junior staff at Company C, who were “pensions people” but not directors.....A couple of the junior staff members would deal with any matters and liaise with [the Scheme administrators] . Occasionally they would seek the input of [Respondent] but generally they would operate the Scheme without her input*”. The Panel noted that the Respondent had relied on “exception reporting”, rather than satisfying herself personally of the state of affairs.

Turning to the allocation of the Scheme to a non-Director colleague from some point in 2016 until August 2017. The Panel noted that, during this time, the Respondent had asked him to proactively manage the Scheme and get it ready to wind up due to a lack of funds to pay fees meaning it could not continue. She considered the colleague to be experienced but he was not authorised to sign documents.

Upon taking control again in August 2017 the Respondent had to take a more active role in the Scheme as, before he left, her colleague was working on the proposed wind up and this brought the Scheme to tPR’s attention. The Panel noted that the Respondent describes her role at this stage as once again being the “contact point”, but it appears that she was working on the wind up and representing the Scheme in meetings.

In summary the Panel concluded that at each of these times the Respondent had been too willing to assume that legal requirements were being met. She had relied too heavily on a subsidiary company, to whom administration had been delegated, and expected “exception reporting” would alert the Trustee if anything was amiss. The Panel saw no evidence to show that the Respondent had satisfied herself, whether by enquiry or otherwise, that she could rely on the subsidiary company, her fellow Directors and /or other employees of Company C, nor had she undertaken any monitoring of her own; indeed her responses suggest that she minimised her work, which she justifies, in part, on account of the size of the Scheme and a desire to reduce the costs to the members. The Adjudication Panel considered that the Respondent's reliance on the structure of the management operation, and exception reporting as not only inappropriate delegation, but also abdication of the Trustee's responsibilities, which she should have brought to the attention of her fellow Directors.

For these reasons the Panel agreed that the Respondent's actions, as detailed in the Case Report, would amount to breaches of the Actuaries' Code.

**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. The Panel considered that, by failing to undertake due diligence when first becoming responsible for the Scheme, by assuming that the Scheme administrator was complying with all of the requirements, or would alert the Trustee to anything that needed attention, and not supervising or monitoring the work of the colleague to whom the day-to-day work on the Scheme was delegated, her actions fell seriously short of the standards which members of the profession, and the public, could reasonably expect. By taking a more active role from when she became involved in the Scheme in 2015, the Respondent would have been able to identify, resolve or prevent the failings which occurred.

### **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.

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

This case did not involve dishonesty or criminal behaviour. The Respondent had not made any direct financial gain from her actions (or lack of). There were no previous disciplinary findings against this Respondent. She had reported tPR Determination Notice to the IFoA and had co-operated with the investigation. Four professional colleagues had provided very positive character references.

Turning to aggravating factors: This was not an isolated act, there was a repeated failure to monitor, question or supervise those to whom the work had been delegated. Whilst there was no financial loss or other impact on the members of the Scheme, the failures have the potential to harm the profession. The Respondent has not accepted responsibility for her failings, relying instead on either not being subject to the Actuaries Code, or not being liable as the tPR determination relates to the corporate body and not to her. For this reason, the Panel could not be satisfied that there was not risk of repetition.

The Panel considered whether this was a case that warranted no sanction, or whether a Reprimand alone would be sufficient. Having identified the aggravating factors above the Panel conclude that neither would be appropriate.

The Panel reviewed whether a Reprimand and Fine would be sufficient to deal with the Misconduct, and provisionally agreed that it might be. At this stage the Panel also considered whether the Respondent was fully aware of her professional responsibilities and whether it would be appropriate to impose a period of training, education or supervised practice. Having carefully considered this, the Panel were unable to identify a suitable course or educational activity which would address the shortcomings, especially where the Respondent was unwilling to take responsibility.

The Panel considered expulsion and decided that, in the circumstances of this case, that would not be an appropriate sanction.

The Panel concluded that the appropriate sanction would be a Fine and Reprimand. In determining the level of Fine, the Panel noted that the Respondent had been invited to provide information about her financial circumstances but had not done so. Taking all of the available information into account the Panel decided that a Fine of £5,000 would mark the seriousness of the Misconduct.

**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.