



Institute
and Faculty
of Actuaries

Adjudication Panel Meeting

25 January 2022

Held by Video Conference

Respondent: Robert Henry Johnson FIA

Category: Fellow since 28 September 1992

Region: Ipswich, UK

Panel Members: Peter Wrench (Chair)
Simon Head FIA (Actuary member)
Paul Whitlock FIA (Actuary member)

Legal Adviser: Elaine Motion

Judicial Committees Secretary: Hinna Alim

Allegation:

The allegation against Robert Henry Johnson FIA (the Respondent) is:

A1 From 17 December 2019 until 9 June 2021 inclusive the Respondent acted as Chief Actuary to Company A without holding the relevant Practising Certificate; such failure and conduct constituting:

A1.1 A breach of the requirement of paragraph 2.1 of Actuarial Profession Standard G1: The Chief Actuary in Non-Life Insurance (version 2.0).

A1.2 A breach of the requirement of paragraph 1.1 of the Institute and Faculty of Actuaries' Practising Certificates Scheme (versions 1, 2, 3 and/or 3.2 as applicable).

A1.3 A breach of the Compliance principle of the Actuaries' Code (version 3.0).

A2 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. The panel also considered the advice of the Legal Adviser. The Panel determined that the Case Report disclosed a *prima facie* case of Misconduct.

There was clear evidence in the Case Report that the Respondent was required to hold a Practising Certificate during the period that he was Company A's Chief Actuary, from December 2019 to June 2021. There was also clear evidence that the Respondent did not hold a Practising Certificate at this time. He accepted that this was so in the earlier responses he provided to the IFoA during their investigation. However, in his formal response to the allegations against him, which he gave on 21 December 2021, he made no response to the factual allegations and disputed the charge of misconduct. The Panel did not know why he has now taken this position but determined that it does not throw into question the strong *prima facie* case against him which is set out in the material before it.

The Panel was satisfied that the requirement for Practising Certificates is an important part of the IFoA's regulatory regime. It was also satisfied that a sustained failure to seek and obtain a Practising Certificate, while acting in a role which required one, could be viewed as a significant lapse by other members of the profession, raising questions about the

Respondent's competence and professional judgement. It was a matter of record that the Respondent had held a Practising Certificate in 2016, while acting in an earlier Chief Actuary role, at the time when the requirement was introduced. It was consequently likely that the Respondent was familiar with the professional requirement. The Panel therefore determined that there was a *prima facie* case of Misconduct here.

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

- a reprimand; and
- a fine of £2000, to be paid within 28 days of the Respondent's acceptance of the Panel's invitation.

Background:

Robert Henry Johnson (the Respondent) has been a Fellow of the IFoA since 1992. The Respondent held a Lloyd's Syndicate Actuary Practising Certificate between 25 June 2002 and 28 May 2016 and a Chief Actuary Practising Certificate between 17 December 2015 and 16 December 2016.

In May 2021 a reconciliation exercise was carried out to confirm the name of the Chief Actuary acting for each of Lloyd's Managing Agents to ensure that any IFoA members carrying out the Chief Actuary role held the relevant Practising Certificate. It came to the attention of the IFoA that the Respondent was acting as Chief Actuary of Company A without the required Chief Actuary (non-Life with Lloyd's) Practising Certificate.

On 3 June 2021 the Respondent was emailed by the Practising Certificates Manager at the IFoA who advised him that a review of the FCA register had been carried out, that he had been noted as the Chief Actuary for Company A, that it was a requirement for a IFoA member carrying out the Chief Actuary role within the Society of Lloyd's or a Lloyd's Managing Agent to hold a Chief Actuary (non-Life with Lloyd's) Practising Certificate, but that the Practising Certificate that he had previously held had expired in December 2016.

The Respondent replied by email dated 8 June 2021 at which time he advised that he believed that he held a relevant Practising Certificate although he had not explicitly checked that it was still valid. He also advised that as his appointment had been approved by the PRA and Lloyd's he was surprised that they did not check and raise it at the time.

On 14 June 2021 the Respondent was emailed by the Practising Certificates Manager at the IFoA who advised him that his case would require to be considered through the IFoA's

Executive Referral Process to determine whether a referral to the Disciplinary Scheme was required.

On 11 August 2021 the Head of Disciplinary Investigations at the IFoA wrote to the Respondent asking the Respondent to provide a detailed explanation for the discrepancy between the IFoA and FCA records and how this occurred, including the details of any personal mistake or error. The letter also asked for a full account of the roles that the Respondent had held from December 2016 to date and evidence of the Respondent's experience to demonstrate that if he had applied for the relevant practising certificate on 17 December 2019 he would have met the criteria.

The Respondent replied by email dated 12 August 2021 acknowledging receipt of the letter and advising that he would send a longer reply. Having not received a further response from the Respondent the IFoA emailed him on 31 August 2021 providing a final opportunity to respond to the letter dated 11 August 2021 if he wished to do so within a period of two days.

The Respondent replied by email dated 1 September 2021 including sending the application form for the practising certificate completed as of August 2019. The Respondent advised:

"Regarding the questions in your letter, I do not have an explanation as such. When I started at [Company A] I applied to Lloyd's and the PRA for approval and this was granted. I did not stop to think about the separate matter of the PC. At Lloyd's I held the SAO Certificate, as I signed an equivalent return for the Corporation overall. At [Company A] there was no intention that I should sign the SAO and not requiring an SAO certificate, I did not consider renewing my Lloyd's certificate. This must have led me to overlook the need for a Chief Actuary certificate. As regards explaining the lapse, I do not have an explanation for myself or for you. I just did not think of it."

Decision and Reasons on the Allegations:

Allegation A1

The documentation described above sets out the IFoA's actions in establishing that the Respondent held the position of Chief Actuary at Company A in the relevant period and that he did not hold a Practising Certificate at that time. There was no evidence that the Respondent sought to dispute these alleged facts when the matter was initially raised with him. The Panel noted that the Respondent has not formally responded to the factual allegations against him, but has seen nothing to throw any doubt on the *prima facie* case set out in the Case Report. The Panel therefore concluded that there was a real prospect of finding proved the stem of Allegation A1.

Allegation A1.1

Paragraph 2.1 of Actuarial Profession G1 states that:

"Chief Actuaries must hold either a Chief Actuary (non-Life with Lloyd's) Practising Certificate or a Chief Actuary (non-Life without Lloyd's) Practising Certificate. If performing this function within the Society of Lloyd's or a Lloyd's managing agent, Chief Actuaries must hold a Chief Actuary (non-Life with Lloyd's) Practising Certificate."

This is a straightforward and mandatory requirement. If the stem of Allegation A1 was found proved it would follow automatically that there had been a breach of Paragraph 2.1. The Panel therefore concluded that there was a real prospect of finding Allegation A1.1 proved.

Allegation A1.2

Paragraph 1.1 of the appropriate Practising Certificates Schemes (versions 1, 2, 3 and/or 3.2 as applicable) states that:

"There are specific roles identified in legislative, regulatory requirements and/or guidance which are reserved for actuaries, or which are commonly held by actuaries. IFoA members who hold the following roles must hold the relevant Practising Certificate (PC):

- *Scheme Actuary to a pension scheme;*
- *Chief Actuary with accountability for the actuarial function under Article 48 of the Directive on Solvency II;*
- *Small Insurer Chief Actuary to a life insurance business;*
- *Reviewing Actuary, advising the auditor of a life insurance business;*
- *Appropriate Actuary to a life insurance business;*
- *With-Profits Actuary to a life insurance business; and*
- *The Actuary providing an Actuarial Opinion for a Lloyd's Syndicate."*

As before, this is a straightforward and mandatory requirement. If the stem of Allegation A1 was found proved it would follow automatically that there had been a breach of Paragraph 1.1. The Panel therefore concluded that there was a real prospect of finding Allegation A1.2 proved.

Allegation A1.3

The compliance principle is summarised in version 3.0 of the Actuaries Code as:

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

If the previous allegations were found proven, it would be inevitable that "relevant...regulatory and professional requirements" had not been met. The Panel concluded that there was therefore a real prospect of a finding that the compliance principle had been breached.

Decision and Reasons on Misconduct:

The Panel then considered whether there was a *prima facie* case that the Respondent's actions amounted to Misconduct, as set out in Allegation A2.

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 and omissions were sufficiently serious as to constitute Misconduct under the Disciplinary and Capacity for Membership Schemes. The Panel concluded that this was not so serious a matter as necessarily to require referral to a Disciplinary Tribunal Panel. The Respondent's previous experience and previous holding of a Practising Certificate will have reduced the risk of him having acted beyond his competence in fulfilling the role of Chief Actuary, with the potential for harmful consequences for his employer and the wider public. On the evidence before it, the Panel was satisfied that this was a case more concerned with upholding proper professional standards than with the risk of harm. However, there was no guarantee that if the Respondent had applied for a Practising Certificate in 2019 his application would have been successful, given the apparent gaps in his more recent experience. Overall, the Panel

was satisfied that there was sufficient evidence that the threshold for misconduct had been met, given the importance which the profession properly attaches to ensuring compliance with Practising Certificate requirements.

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 primary purpose of sanction is not to be punitive, although it may have that effect. Rather, the key focus of sanction is to protect the public, maintain the reputation of the profession and declare and uphold proper standards of conduct and competence. The Panel was mindful that it should impose a sanction, or combination of sanctions necessary to achieve those objectives and in so doing it must balance the public interest with the Respondent's own interests.

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

- the Respondent was a senior and experienced Actuary who had held and renewed Practising Certificates over a number of years and would have been expected to be familiar with the professional requirements;
- the Respondent had previously held a Chief Actuary Practising Certificate and there was evidence that he declined to renew it on the basis that he was intending to retire. It might have been expected that his earlier understanding and experience of the requirement would have led him to apply for a Practising Certificate before taking on a new Chief Actuary role three years later;
- the Respondent did not seem to have shown full insight into the seriousness of the alleged professional breach in his responses to the IFoA, referring to it as an oversight.

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

- there was no evidence of direct harm arising from the Respondent acting as a Chief Actuary while not holding a Practising Certificate;
- the Respondent cooperated with the IFoA's investigation and made admissions.

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

The Panel considered whether to impose a Reprimand and determined that this should form part of the sanction. There was evidence of a serious breach of professional requirements which continued for some eighteen months, and that needed to be marked. But this appeared essentially to have been a limited lapse which did not suggest any underlying attitudinal issue.

The Panel then considered whether to impose a fine and concluded that this should also form a part of the sanction it imposed. It would underline the seriousness of the professional breach, and it was appropriate to mark that there had been a financial advantage in avoiding the practising certificate fee. There was no evidence before the Panel as to the Respondent's means. The Panel concluded that a fine of £2,000 would be appropriate.

The Panel finally considered whether to impose a period of education, training or supervised practice and decided that it would not be appropriate in this case, which concerned a professional breach rather than any error or deficiency in the Respondent's work as an actuary.

Publication:

Having taken account of the Disciplinary Board's Publication Guidance Policy (May 2019), the Panel determined that, if the Respondent accepts 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.