Adjudication Panel Meeting

11 December 2020

Held by video conference

Respondent:	Rohit Siqueira FIA
Category:	Fellow since 11 August 2010
Region:	London, England
Panel Members:	Jules Griffiths (Chair/Lay member) David Lane FIA (Actuary member) Simon Head FIA (Actuary member)
Legal Adviser:	Graeme Watson
Judicial Committees Secretary:	Julia Wanless

Allegation:

The allegation against Mr Siqueira (the Respondent) is that while appointed as the Scheme Actuary to the [Redacted] Retirement Benefits Plan ("the Scheme") from 1 February 2016 onwards:

A1 in the triennial Actuarial Valuations as at 6 April 2015 and at 6 April 2018, the value he placed on the Scheme's shareholding in employer related investments (ERIs) was significantly over valued causing the contributions deemed payable to the Scheme to fund its substantial deficit to be understated;

A2 the actuarial valuation basis used in the Actuarial Valuation as at 6 April 2018 was too low and at the weaker end of a range of reasonability;

A3 the actuarial valuation basis used in the Actuarial Valuation as at 6 April 2018 for assessing what future contributions should be paid was weaker than that used in the FRS102 assessment of the liabilities of the Principal Employer;

A4 his actions at paragraph A2 and A3 were in breach of principles 1, 3 and the reliability objective as set out in TAS 100: Principles for Technical Actuarial Work (effective from 1 July 2017);

A5 his actions at paragraph A1, A2 and A3 above were in breach of the principle of competence and care in the Actuaries' Code (version 2.0 and 3.0);

A6 his actions at paragraphs A1, A2 and A3 above were in breach of the principle of compliance in the Actuaries' Code (version 2.0 and version 3.0);

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 382 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 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 sanction of Reprimand.

Background:

The Respondent has been a Fellow of the IFoA since August 2010. He was appointed as Scheme Actuary to the Scheme in August 2010 until April 2014 and reappointed from 1 February 2016 onwards.

In January 2020 Company A was appointed to advise the Directors of the principal employer, which was experiencing significant financial difficulties. On reviewing the actuarial report on the valuation of the Scheme as at 6 April 2018 (which had been prepared by the Respondent) three actuaries who were partners in Company A became concerned that the directors had been misled as to the true extent of the liabilities facing the company on an ongoing basis, and in the event that the Scheme was forced to wind up. This led them to make a referral to the IFoA, which in turn gives rise to the allegations.

The Respondent has cooperated fully throughout the investigation and has provided a substantive response to the allegations. The Respondent accepts allegation A1 and has taken steps to address the position. The Respondent does not accept allegations A2 and A3.

Decision and Reasons on the Allegations:

Allegation A1: in the triennial Actuarial Valuations as at 6 April 2015 and at 6 April 2018, the value he placed on the Scheme's shareholding in employer related investments (ERIs) was significantly over valued causing the contributions deemed payable to the Scheme to fund its substantial deficit to be understated.

This allegation is proved by admission. The Panel noted that Respondent has accepted that he should have limited the value of the ERIs as part of the actuarial valuation, such that the value represented 5% of the total assets. The asset value he used was based on the value quoted in the audited scheme accounts as at 6 April 2018, which amounted to around 23%; in 2015 it was 26%. He has explained that he had raised the high level of ERIs many times with the Trustees and that he mistakenly thought that the onus was on the Auditor to restrict the value of the ERIs. The Panel accepted that the Scheme's accounts were clear in terms of the value that had been placed on the investments in question, and that the Auditor had qualified the accounts at 5 April 2018.

The Panel referred to The Pensions Act 1995, and the Occupational Pension Scheme (Investment) Regulations 2005, which set out certain restrictions in relation to ERIs. Typically not more than 5% of the current market value of scheme assets can be invested in ERIs. The Occupational Pension Schemes (Scheme Funding) Regulations 2005 provide that any resources of a Scheme which are invested in breach of ERI restrictions should be excluded from the calculation of the Scheme's assets. The Panel concluded that the Respondent should have been aware of his responsibilities, and, being aware that the Scheme was not compliant with the Regulations, should have taken more care to ensure that his Actuarial Valuations were correct.

Having found Allegation A1 proved, the Panel concluded that the Respondent's actions amounted to a breach of both the Competence and Care and the Compliance principles of the Actuaries' Codes in place at the time which required Members to "carry out their work with competence and care" and "comply with all relevant legal, regulatory and professional requirements". **Therefore Allegations A5 and A6 (in so far as they relate to A1) are proved.**

Allegation 2: the actuarial valuation basis used in the Actuarial Valuation as at 6 April 2018 was too low and at the weaker end of a range of reasonability.

The Panel accepted that the valuation basis was within a reasonable range (albeit at the weaker end) and had been derived including a margin for prudence. Given that it fell in a reasonable range the Panel concluded that it could not, therefore, be considered to be too low. The Panel was satisfied that the Respondent had documented his reasoning.

Having concluded that this allegation was not capable of proof, the Panel did not go to on to consider **Allegations A4, A5 and A6 in so far as they related to A2**.

Allegation A3: the actuarial valuation basis used in the Actuarial Valuation as at 6 April 2018 for assessing what future contributions should be paid was weaker than that used in the FRS102 assessment of the liabilities of the Principal Employer.

The Panel considered the assessments of the Scheme's funding position for the purposes of the actuarial valuation as at 6 April 2018 and the FRS102 assessment as at 31 December 2018. The Panel concluded that although these assessments were carried out as at different dates, in all likelihood they did indicate that the actuarial valuation basis was weaker than that used in the FRS102 assessment. Therefore the Panel concluded that this allegation was proved.

However, the Panel noted that the two assessments were produced for different purposes and parties, and at different times, and the governing legislation and guidance (for instance in the setting of discount rates) differed between the two assessments. Therefore, as noted in the Case Report, it is not inconceivable that the actuarial valuation would place a lower value on the liabilities than the FRS102 assessment, and the Panel concluded that this of itself would not amount to misconduct. The reports provided by the Respondent were clear and transparent, and the assumptions adopted were spelled out clearly.

Using their professional judgement, the Panel concluded that the Actuarial Valuation and the FRS102 met the requirements of TAS100, in particular the Reliability Objective, which requires that "users for whom actuarial information is created should be able to place a high degree of reliance on that information's relevance, transparency of assumptions, completeness and comprehensibility, including the communication of any uncertainty inherent in the information". **Therefore Allegation A4 (in so far as it related to A3)** was not found.

The Panel also concluded that the assessments did not demonstrate any breach of the requirements to act with competence and care, or comply with legal and technical requirements. **Therefore Allegations A5 and A6 (in so far as they related to A3)** were not found.

Decision and Reasons on Misconduct:

The Panel then considered whether there was a *prima facie* case that the Respondent's actions admitted and found proved in Allegations A1 and A3, and in Allegations A5 and A6 (in so far as they related to A1) 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 did not consider that Allegation A3, although factually accurate, would amount to Misconduct for the reasons set out above. In respect of the remaining allegations, the Panel took account of the Respondent's role as a Scheme Actuary, with personal responsibilities to the Scheme's Trustees, who were entitled to rely on his work. He was aware that the Scheme had not been compliant with the employer related investment regulations for some time. This was an unusual situation but if he was not familiar with the detailed technical requirements he could and should have made enquiries. It was not difficult for him to produce the correct calculations. Although he had taken prompt action to put things right when his mistake was pointed out, and asserted (backed up by the Scheme's Independent Trustee) that his actions had very limited consequences, the Panel noted that any regulatory breach has the potential to undermine trust and confidence in the profession. The Panel therefore 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.

In considering sanction, the Panel identified the following mitigating factors:

- the Respondent has had no previous disciplinary history
- as soon as he became aware of the issues he took steps to understand the requirements and correct the situation
- his work had been peer reviewed
- it was probable that no direct harm was caused by his actions, as it was unlikely that higher contributions would have been affordable by the Scheme sponsor even if the valuations had disclosed a higher deficit
- he promptly updated his knowledge in this area
- he reviewed the other schemes for which he acts as Scheme Actuary to confirm they were compliant with the regulations
- he did not gain financially
- there was no criminal activity, dishonesty or lack of integrity
- the insight and remorse he has demonstrated are to his credit.

The Panel found the following to be aggravating factors:

- the Respondent was personally responsible for the Valuation Reports, and readers were entitled to rely on his knowledge and expertise
- having overlooked the requirement to limit the ERI value when producing the 2015 valuation, he repeated the mistake in 2018

The Panel considered whether this was a case that warranted no sanction and concluded that would not be appropriate, given the findings above. The Panel also concluded that this did not call for a period of education, training or supervised practice.

In considering whether to impose a Reprimand, the Panel had regard to the mitigating factors found. The Panel assessed the risk of repetition as low, given the Respondent's insight and the corrective steps he had taken.

The Panel considered whether to impose a Fine, but did not view the Respondent's actions, nor their impact, as so serious to warrant a financial penalty.

The Panel concluded that the appropriate sanction would be a Reprimand.

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.