



Disciplinary Tribunal Panel Hearing

5 - 6 October 2021 and 4 October 2022

Online hearing

Respondent:	Ian William Conlon FIA Present and not represented
Category:	Fellow since 1998
Region:	Belfast, UK
IFoA Case Presenter:	Ayanna Nelson, Barrister instructed by the IFoA
Panel Members:	Peter Wrench (Chair/Lay member) Darshan Ruparelia FIA (Actuary member) Ritchie Campbell (Lay member)
Legal Adviser:	Alan Dewar QC (now KC)
Judicial Committees Secretary:	Julia Wanless

Charge:

At the start of the hearing, and following preliminary discussions between the Respondent, the Case Presenter and the Legal Adviser, the IFoA made an application under rule 8.19 to amend the charge. The Respondent had no objection to the changes proposed. The Panel was satisfied that there would be no prejudice to the Respondent in making the changes proposed and that it would be right to do so.

As amended, the charge is as follows:

Ian William Conlon FIA, being at the material time a member of the Institute and Faculty of Actuaries, the charge against you is that:

1. when instructed to prepare an expert report in relation to divorce proceedings between Person A and Person B, you:
 - 1.1 did not provide the expert report within the agreed timescales;
 - 1.2 did not correspond with the instructing solicitors in a timely manner;
2. ...
3. your actions at paragraph 1 were in breach of the principle of competence and care in the Actuaries' Code (versions 2.0 and 3.0);
4. your actions at paragraph 1 were in breach of the communication principle in the Actuaries' Code (versions 2.0 and 3.0);
5. you failed to fully co-operate with the investigation of the allegations detailed at paragraphs 1, 3 and 4 above, under the Disciplinary Scheme of the Institute and Faculty of Actuaries, in that you failed to supply information, evidence and/or explanations when requested to do so by the Case Manager;
6. your actions at paragraph 5 were in breach of Rule 4.15 of the Disciplinary and Capacity for Membership Schemes of the Institute and Faculty of Actuaries (effective 1 February 2018);

7. your actions at paragraphs 5 and/or 6 were in breach of the compliance principle of the Actuaries' Code (version 3.0);

8. when instructed to prepare an expert report in relation to divorce proceedings between Person X and Person Y, you did not provide the expert report in a timely manner and/or within the agreed timescales;

9. your actions at paragraph 8 caused Court hearings on 29 July 2020, 23 September 2020 and/or 18 November 2020 to be adjourned;

10. your actions at paragraphs 8 and/or 9 were in breach of the principle of competence and care in the Actuaries' Code (version 3.0);

11. your 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:

1. The Respondent admitted the charge and the Panel found the charge proved in its entirety.
2. The Panel determined that the most appropriate and proportionate sanctions were:
 - A reprimand
 - A fine of £10,000
 - A period of supervised practice for one year.
3. The Panel also ordered the Respondent to pay to the IFoA costs of £13,606.86.

Background:

4. It will be helpful to make clear at this point the course that this hearing has followed. The hearing began on 5 and 6 October 2021. It was adjourned at a point after the Panel had found the alleged facts and the misconduct charge proved. The Panel went on to hear

submissions from the IFoA on sanction, but the Respondent then made an application for his case to be transferred to a Capacity for Membership Panel. There were listings for the resumption of the hearing on 25 February and then on 24 May 2022, but there were postponements from both dates. The hearing has been concluded on 4 October 2022, when the Panel decided not to transfer the case to a Capacity for Membership Panel and went on to reach its determination on sanction.

5. The Respondent has been a Fellow of the IFoA since 1998. He is a director of IWC Actuarial, which provides actuarial services for lawyers, financial advisers and individuals. IWC Actuarial routinely provides expert reports on pensions for use in divorce proceedings. The charge against the respondent arises from significant delays in the provision of expert reports in two separate sets of proceedings, and from his failure fully to cooperate with the IFoA in their investigation of the first of those matters.
6. The Respondent accepted an instruction to prepare a report in respect of Person A and Person B in November 2018. He requested certain information which the solicitors provided but which the Respondent states that he did not receive. Neither party contacted the other until March 2019, when the solicitors asked on 11 March if a report would be available for a hearing listed on 2 April. The Respondent did not reply until 5 April. He listed information he required and said that once it had been received a report could be provided within three weeks. After further correspondence, the Respondent has said that he had all the information he needed by 17 June.
7. The solicitors made frequent attempts to contact the Respondent in June and July. A password protected copy of the report was provided to the solicitors on 9 August 2019. The Respondent advised that the password would be provided upon payment of his fee. The fee was paid on 19 August and the password for the report was provided on 22 August. The subsequent Court hearing on 10 September 2019 was adjourned as the parties had not had sufficient time to consider the report and make proposals for settlement in advance of the hearing. On 23 September the IFoA received an allegation against the Respondent from Person A.
8. The allegations from Person A were investigated by the IFoA Case Manager. Following receipt of the allegation, the Case Manager requested certain information from the Respondent on 10 October 2019. While the Respondent acknowledged receipt of the correspondence, he did not provide a substantive response to the request until 12 December 2019 despite numerous emails from the Case Manager. The Case Manager requested further information from the Respondent on 14 January 2020. She sent further

reminder emails to the Respondent during January, February and March 2020. No response was received.

9. Meanwhile, in February 2020, the Respondent was instructed to provide an expert actuarial report in relation to the divorce proceedings involving Person X. The report was expected within 16 weeks of the instruction. The report was expected to be considered at a hearing on 29 July 2020, however the report was not provided in time for this hearing. The Respondent was required to provide his timescales to the Court within 7 days of the July 2020 review hearing and a further review hearing was listed for 23 September 2020. The Respondent did not provide the report in time for the September 2020 hearing. The Respondent assured Person X's solicitors that his report would be available by early November, however it was not provided in time for a Court hearing on 18 November 2020. At that hearing the judge advised that she would contact the Respondent to express her disappointment as the delay in providing his report was unacceptable. The Respondent provided his report on 4 December 2020.

Findings of Fact:

10. The Panel was aware that the burden of proof rests on the IFoA, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the Panel was satisfied that it was more likely than not that the incidents occurred as alleged. There is no requirement for the Respondent to prove anything.
11. In reaching its decisions on the various parts of the charge, the Panel took into account the documentary evidence in this case together with the submissions of the Case Presenter. The Panel accepted the advice of the Legal Adviser.
12. Once the amended charge was read out at the start of the hearing, the Respondent admitted the charge in full. Given that admission and the other material before it, the Panel was satisfied that paragraphs 1 - 10 of the charge had been proved.

Misconduct Charge

13. The Respondent also admitted that his actions constituted misconduct, but the Panel formed its own view on this question. In considering this matter, the Panel took account of the definition of misconduct, for the purposes of the Disciplinary Scheme, which is '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'.

14. The Panel was in no doubt that the Respondent's behaviour fell well below what fellow professionals and members of the public would expect. He repeatedly failed to complete two separate pieces of work to agreed timescales and did not communicate effectively with instructing solicitors. He also repeatedly failed to respond to requests for information from the IFoA when the first investigation was underway.
15. The failures in each of these three matters were prolonged and, in the Panel's judgement, each individually meets the threshold for misconduct. Taken together, there has been a clear pattern of behaviour and the Panel has no doubt that this was, cumulatively, serious misconduct of a sort which fellow professionals would find fell well below the expected standard.

Sanction (part one):

16. In starting to consider the matter of sanction the Panel heard submissions from the Case Presenter and from the Respondent.
17. The IFoA provided a sanction bundle which contained information about four previous disciplinary matters and one set of Capacity for Membership proceedings. In summary these were as follows:
 - 4 August 2009 - Disciplinary Tribunal imposed a suspension of 6 months, a fine of £1000 and a training requirement. The Respondent had acted as a Scheme Actuary for a number of pension schemes without holding the necessary practising certificate;

- 25 January 2011 - Adjudication Panel imposed a fine of £200 and a reprimand for CPD failures;
- 10 July 2013 - Adjudication Panel imposed a reprimand, a fine of £6000 and 40 hours of supervised practice, for not providing a pension report, or communicating with his client, in a timely manner;
- 19 August 2015 - Adjudication Panel imposed a reprimand and a fine of £7000, for not providing a pension report, or communicating with his client, in a timely manner;
- 9 November 2018 - Capacity for Membership Panel found impaired capacity for membership and imposed conditions including work with a business management expert for 6 months;
- 28 May 2019 - reviewing Capacity for Membership Panel continued conditions for a further 6 months;
- 25 November 2019 - reviewing Capacity for Membership Panel ended conditions.

18. The Capacity for Membership Panel determinations which were included in the sanctions bundle were summary public documents which did not include their full reasoning, which had been given in private. However, it was clear from the sanctions bundle that the Capacity for Membership proceedings had also involved consideration of medical evidence, because one redacted medical assessment from November 2019 was included in the bundle. This document described itself as an addendum to previous reports. [PRIVATE].

19. In her submissions on sanction, the Case Presenter said that the Respondent's misconduct did not go to his substantive ability as an actuary and that the issue was one of chronic mismanagement. She invited the Panel to consider the Indicative Sanctions Guidance and impose a proportionate sanction to protect the public and the wider public interest, given the cumulative effect of identical breaches. She noted that substantial fines had been imposed twice in the past and had not prevented repetition; nor had supervised practice or performance conditions. She submitted that there could be an attitudinal issue which was not remediable. She invited the Panel to consider the extent to which the Respondent's continued membership of the IFoA puts the reputation of the profession at risk. In identifying aggravating factors, the Case Presenter highlighted the impact of the delays on clients, including increased costs, which had been documented by Person X,

and adjourned hearings. She pointed in particular to the judge's intervention in the case of Person X. The Case Presenter also said that the previous findings of misconduct were an aggravating feature.

20. In response, the Respondent said that he was deeply sorry for letting people down and that he would make good Person X's additional costs. He said that he recognised his weaknesses in relation to communications and organisation. He described restructuring within his firm designed to improve matters, with an additional member of staff, who was an actuarial technician, joining in 2019.
21. The hearing then went into private session. [PRIVATE].
22. The Panel invited the Respondent to consider whether he wished to make an application under rule 9.1 for the current proceedings to be transferred to a Capacity for Membership Panel. After reflection, he said that he did wish to make such an application, [PRIVATE].
23. The Case Presenter opposed the application. [PRIVATE]. She submitted that it would not be in the public interest to transfer at this stage, given the four earlier findings of misconduct and the earlier Capacity for Membership proceedings.
24. Before taking legal advice and making a decision on the rule 9.1 application, the Panel made clear its concern as to whether it would be fair to proceed to a decision on sanction without a fuller understanding of the Respondent's current state of health and of the possibility that his health issues may have been intertwined with the previous and current findings of misconduct. The Panel suggested that an option open to it would be to adjourn before making a decision on the rule 9.1 application to allow time for the Respondent to [PRIVATE] provide further evidence of his current health, and also to provide further evidence about the changes which he said had been made in working arrangements at IWC Actuarial.
25. The Respondent expressed his readiness to provide further evidence if that were required. The Case Presenter urged the Panel not to adjourn at this stage. She said that the Respondent had repeatedly had the possibility of a rule 9.1 application brought to his attention and that he had failed to respond. She said that it would not be in the public interest to adjourn to allow for the provision of additional evidence which could have been provided at an earlier stage. The Respondent said that he had not simply failed to engage earlier, but had been unable to do so.

Decision in relation to adjournment before deciding the rule 9.1 application:

26. The Panel decided that it would be right to adjourn to allow further evidence to be submitted, before making a decision on the rule 9.1 application. It was satisfied that the basic requirements in rule 9.2 for granting such an application had been met, but was not yet ready to make a decision on whether the application should be granted in this case.
27. The requirement at rule 9.2(a) for prima facie evidence of misconduct was satisfied by this Panel's finding of misconduct.
28. The Panel was also satisfied that the requirement at rule 9.2(b) for prima facie evidence that current capacity may be impaired by a health condition has been met, given the Respondent's oral evidence and [PRIVATE] the addendum medical report of November 2018 [PRIVATE].
29. The second requirement in rule 9.2(b) is that any current impairment for health reasons is directly relevant to the current charge. In the Panel's determination, the evidence before it was more equivocal on this point, [PRIVATE]. However, it remained concerned that indications of a potential linkage between the Respondent's health and an apparent pattern of behaviour in failing to engage with difficult issues had not yet been satisfactorily explored.
30. In all these circumstances, it was satisfied that it should seek further information before reaching a firm conclusion on the requirement in rule 9.2(c) that granting a request for a transfer is in the public interest.
31. The Panel gave careful consideration to the IFoA's guidance note on The Capacity for Membership Process of April 2018. It noted the guidance at paragraph 6.5 that:

...where the allegation under investigation is so serious that it is likely to result in a Member's expulsion from the IFoA, it is unlikely that it would be considered to be in the public interest to transfer the case to the Capacity for Membership Process. In those circumstances, it is likely that the matter would remain within the disciplinary process for public interest reasons.

The Panel accepted that expulsion would be a possible outcome in the present hearing, given the Respondent's disciplinary history and the current findings against him. However, it was not satisfied at that point that it was the "likely" outcome, particularly given the concerns it had identified about the possible interconnections between the Respondent's misconduct and his health.

32. The Panel's decision was therefore to adjourn the hearing. It directed that by 6 December 2021 the respondent should provide to the IFoA:

- a. a medical assessment [PRIVATE], with the reporting doctor made aware of the findings that have been made against him and invited to comment on the extent to which [health] may have been a factor in the misconduct; and
- b. an independent report on the changed working arrangements at IWC Actuarial and an assessment of their effectiveness. (It may be that Core Impact Ltd, who worked with the Respondent in fulfilment of the conditions previously imposed by the Capacity for Membership Panel, would be well placed to prepare such a report.)

33. The Panel also required, in deciding to adjourn the hearing, that the Respondent should make a written undertaking to continue to engage with the IFoA in the submission of the additional evidence and in preparation for the resumption of the hearing. The Respondent indicated his readiness to make such an undertaking and it was left to the IFoA to draft its terms.

Decision regarding the rule 9.1 application:

34. At the resumed hearing the Panel had before it two letters from a doctor [PRIVATE], dated 16 December 2021 and 29 September 2022. It also had before it a further report from the business consultants Core Impact, dated 7 December 2021.

35. [PRIVATE].

36. The report from Core Impact described the way in which the Respondent now works with an office manager and a second actuary, engaged on a sub-contract basis. The consultant concluded by saying: "I feel that appropriate changes have been made to improve business outputs. I would recommend that [the Respondent] continues to review this formally with his team on a quarterly basis to receive their feedback and suggestions to achieve continuous improvement of these processes."

37. The Panel asked the Respondent if he wished to continue with his rule 9.1 application, given the latest medical information. The Respondent told the Panel that he [PRIVATE] did not want his case to drag on any longer than necessary. The Case Presenter relied on her earlier submissions opposing the rule 9.1 application and said that, on the latest

medical evidence, it would appear that the test for transfer to a Capacity for Membership Panel was not met.

38. The Panel noted that the Respondent had effectively withdrawn his application but went on to consider whether they should, nevertheless, exercise their power under rule 9.5 to decide to transfer on their own initiative. The Panel decided that the case should not be transferred. Rule 9.2(b) requires evidence that "...current capacity...may be materially impaired". The Panel was not satisfied on the basis of the latest evidence that, as at the current time, the Respondent's health could be seen to be having a material impact on his capacity to hold membership. The Panel therefore determined that the test for transfer could not be met and that they should go on to complete their interrupted consideration of sanction.

Sanction (part two):

39. In considering the matter of sanction the Panel had regard to the submissions of the Case Presenter and the Respondent. It accepted the advice of the Legal Adviser. The Panel also had careful 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.

40. The Panel was aware that the primary 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 the sanction, or combination of sanctions, necessary to achieve those objectives, and that in so doing it must balance the public interest with the Respondent's own interests.

41. At the resumed hearing on 4 October 2022, the Case Presenter adopted the submissions she had made earlier. She said that the issue was not whether the Respondent was a good actuary but one of "chronic mismanagement" over many years, which had caused both financial and emotional harm to clients. She invited the Panel to consider whether the Respondent's continued membership of the IFoA was damaging to the profession, and whether any sanction short of exclusion could effectively mitigate the risk of repetition. She highlighted that neither fines nor supervised practice had been able to do so in the past.

42. In his submissions, the Respondent said that he was embarrassed and humiliated by his disciplinary record, but said that it had not been a result of recklessness, but rather an inability to cope at times, coupled with poor management skills.

43. [PRIVATE].

44. The Respondent described his current working arrangements, with him having a new focus on ensuring initial instructions were properly agreed and realistically timetabled: his office manager then led on subsequent communications with clients and checking progress. The second actuary who worked for him on a contract basis produced two-thirds of the firm's reports. The Respondent said that he was no longer "chasing his tail". He was asked by the Panel about Core Impact's recommendation of a formal quarterly review with his team to ensure continuous improvement. The Respondent said that he did not have regular formal meetings within a small team, but that there were always ongoing discussions to improve what they did. He said that there had been no new communications concerns in the ten months since Core Impact had reported.

45. In deciding upon sanction, the Panel took into account the following aggravating factors:

- there had been a pattern of behaviour over a number of years, with similar misconduct resulting in the imposition of reprimands and fines by the Disciplinary Tribunal in 2014 and 2015, with a period of supervised practice also directed in 2014;
- there had been a subsequent period of support and monitoring under the Capacity for Membership scheme, with conditions continuing until November 2019.

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

- the Respondent had expressed remorse for his failings and accepted responsibility for them;
- the Respondent's health had clearly played a significant part in what had gone wrong, which he had recognised and had taken steps to address;
- he had also recognised the need to strengthen his working arrangements and had taken at least some steps to do so.

47. The Panel considered whether this was a case that warranted no sanction and was satisfied that it was not. The charges found proved amounted to serious misconduct which had caused both financial and emotional harm to clients. Other members of the profession and members of the public would expect there to be some regulatory consequence from this misconduct.

48. The Panel considered whether to impose a Reprimand and determined that this should be part of the sanction it imposed, helping to make a clear declaration of proper standards and to make clear that the Respondent's conduct fell well below what was to be expected in the circumstances.
49. The Panel considered whether to impose a Fine and again determined that this should form part of the sanction it imposed. It was conscious of the argument that substantial fines had been imposed on the Respondent in 2014 and 2015 but that this had not prevented similar issues from arising again. But, in the Panel's judgement, they could not properly have been expected to have a straightforwardly deterrent effect in that regard, [PRIVATE]. The Panel concluded that the health issues relevant to this case did not absolve the Respondent from responsibility for his failings, but that they did mean that it would be wrong to dismiss the option of including a Fine in a package of sanctions which could, in combination, mark the seriousness of the misconduct and help to minimise any risk of further repetition. The Panel decided that it would be wrong for a fine on this occasion to be at a level any lower than the fines which had already been imposed by earlier Panels. It concluded that a Fine of £10,000 would be appropriate.
50. The Panel considered whether to impose a period of education, training or supervised practice and decided that supervised practice should also form part of the package of sanctions on this occasion. The Panel was conscious that there is no concern about the Respondent's skills as an actuary; the issues have been with his management skills and the way in which he runs his business. The conditions imposed on the Respondent by the Capacity for Membership Panel in 2018 and 2019 clearly resulted in beneficial changes in his ways of working, even if they did not prevent the present issues arising. The latest report from Core Impact and the Respondent's oral submissions have provided persuasive evidence of further improvements over the last two years. However, the Panel has not been satisfied that further intervention is now unnecessary. It was disappointed to hear that the Respondent has not followed Core Impact's recommendation of a regular, structured pattern of review and improvement, and was not persuaded that any emerging issues would necessarily be picked up in the course of day-to-day interaction within a small team. The Panel was satisfied that the Respondent's working arrangements are a key element in mitigating the risk of further repetition of the issues which have led to disciplinary charges against him. It accordingly decided that some further monitoring of progress by way of supervised practice should form part of the sanction it now imposes.
51. The Panel has looked carefully at the IFoA's Guidance Note on Sanctions involving Education, Retraining and/or Supervised Practice (January 2020). The Panel requires one

year of supervised practice, with the supervision taking the form of quarterly reviews of the management of the Respondent's caseload, including the timely completion of reports and the effectiveness of communication with clients. The Panel directs that within 28 days of the issuing of this determination the Respondent should identify, to the IFoA, a senior actuary to be his supervisor. The proposed supervisor should submit a curriculum vitae to the IFoA's Head of Legal Services for approval before the appointment becomes effective. The supervisor should report to the IFoA after each quarterly review. The costs associated with this supervision are to be met by the Respondent. The supervisor should be advised that upon completion of the period of supervision a report should be submitted to the IFoA. The report should detail the supervision undertaken; specify how the areas of practice identified by the Panel had been addressed; and how the Respondent demonstrated his or her commitment to the sanction. Where compliance has not been met by the Respondent, the supervisor should detail the reasons in that report. A copy of the report should be provided by the supervisor, in writing, to the IFoA's Head of Legal Services 12 months after their appointment becomes effective.

52. The Panel considered whether to impose a period of suspension or the withdrawal of a Practising Certificate, but this is not a sanction which would be appropriate in the circumstances of this case and of the Respondent's current work.
53. The Panel considered whether to suspend or exclude the Respondent from Membership of the IFoA. Given the Respondent's disciplinary history and the seriousness of the latest misconduct, this was an option to which the Panel gave very careful consideration. It looked closely at the Case Presenter's submissions that this was the sanction which the proper protection of the public interest now required. The Panel concluded that it would be a disproportionately heavy sanction to remove the Respondent from membership at this point. The mitigating factors it had identified were significant: the Panel was satisfied that it cannot simply be concluded that the previous imposition of lesser sanctions than suspension or removal have been interventions which have been "tried and failed". The earlier conditions on the Respondent have helped him to achieve significant improvements in his working practices, and the Panel accepted that his health played an important part in the fact that the latest misconduct nevertheless occurred. [PRIVATE]. In all the circumstances, the Panel was satisfied that a fully informed member of the public would accept that a combination of reprimand, fine and further supervised practice could be an effective way of both marking the seriousness of the misconduct and mitigating the risk of repetition. Such a member of the public would not consider the outcome to be unduly lenient. Clearly, however, if there were to be any further repetition, it would be very difficult

to imagine circumstances in which the Respondent's membership could continue uninterrupted.

Costs:

54. The IFoA made an application for costs of £13,606.86 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Case Presenter. The Respondent raised no objection to the application. The Panel noted that this sum included administrative costs and costs incurred in relation to the Panel, Legal Adviser and three days of virtual hearings. The Panel considered the costs sought to be at a reasonable level, and that the work done justified that amount of cost. The Panel therefore ordered the Respondent to pay the IFoA costs of £13,606.86.

Right to appeal:

55. The Respondent has 28 days from the date that this written determination is deemed to have been served upon him in which to appeal the Panel's decision.

Publication:

56. Having taken account of the Disciplinary Board's Publication Guidance Policy (May 2019), the Panel determined that this determination will be published and remain on the IFoA's website for a period of five years from the date of publication. The Panel applied appropriate redactions to the published determination, to edit out reference to sensitive health information, in accordance with the Publication Guidance. A brief summary will also be published in the next available edition of *The Actuary Magazine*.

That concludes this determination.