



Disciplinary Tribunal Panel Hearing

19 May 2022

Online Hearing

Respondent:	Liyaquat Khan FIA Not present and not represented in absence.
Category:	Fellow since December 1973
Region:	Lucknow, India
IFoA Case Presenter:	Guy Micklewright, Barrister instructed by the IFoA.
Panel Members:	Paul Rae (Chair/Lay member) Julian Ellacott FIA (Actuary member) Stephanie Green (Lay member)
Legal Adviser:	Julian Weinberg
Judicial Committees Secretary:	Julia Wanless

Charge:

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

1. you failed to comply with the requirements of the CPD Scheme 2017/2018 in that you failed to provide evidence of the CPD activities you had completed during the 2017/2018 CPD year when asked to do so;
2. you did not fully engage with and/or adequately respond to communications from the Membership Department of the Institute and Faculty of Actuaries on the matter of providing evidence of CPD activities for the 2017/2018 CPD reporting year;
3. your actions at paragraphs 1 and/or 2 were in breach of the compliance principle of the Actuaries' Code (version 3.0);
4. you failed to comply with the requirements of the CPD Scheme 2018/2019 in that you failed to demonstrate that you had undertaken the appropriate minimum amount of Professional Skills Training, or submit a written request for exemption;
5. you did not fully engage with and/or adequately respond to communications from the Membership Department of the Institute and Faculty of Actuaries on the matter of complying with the requirements of the CPD Scheme 2018/2019;
6. your actions at paragraphs 4 and/or 5 were in breach of the compliance principle of the Actuaries' Code (version 3.0);
7. you failed to fully co-operate with the investigation of the allegations detailed at paragraphs 1 - 6 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;
8. your actions at paragraph 7 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);
9. your actions at paragraphs 7 and/or 8 were in breach of the compliance principle of the Actuaries' Code (version 3.0);

10. 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).

Application for Adjournment:

1. The hearing was listed for 19 May 2022 at 8.30am to accommodate the Respondent's attendance (being based in India). At the outset of proceedings, the Panel was presented with a seven-page adjournment bundle. In that bundle, the Panel's attention was drawn to various email correspondence sent by the Respondent to the IFoA on the morning of the hearing after the scheduled start time.
2. Notably, the Bundle contained:
 - a. An email time stamped 08:44:33 addressed to the Case Manager and copied to the Clerk. A further recipient with an "@keystone.law" email address was also copied in. That email read: "*I have asked for 10 more days for the hearing to take place. Earlier I had thought that I would be able to download the documents for going through but could not.*";
 - b. An email time stamped 08:44:36 again addressed to the Case Manager, copied to the Clerk and the same individual at "@keystone.law", which read "*Apology again, Due to illness combined with unavoidable travelling, I have not been able to download/read any of the documents. Request you please give me another 10 days.*"; and
 - c. An email time stamped 08:44:37 addressed to the same named individual at "@keystone.law", copying the Clerk and Case Manager which read "*The hearing is at IST 1pm today and I have not been able to have a look at any of the documents. Request you please seek more time to enable me to go through all the documents and then discuss with you*".
3. The Panel noted the document mentioned at 2(c) above appeared to be an instruction to someone at a law firm requesting they seek an adjournment. However, the Panel noted that no one had appeared at the hearing to represent the Respondent nor was there a legal representative on record.

4. The Panel treated the correspondence as an adjournment application and proceeded to consider it as such.
5. The Panel invited submissions from the IFoA's representative in respect of the application. The IFoA's Case Presenter opposed the application. He submitted, in summary, that: (i) the application had been received very late, indeed after the start of the hearing; (ii) there had been a failure to provide sufficient particulars in respect of what illness prevented the Respondent's attendance and the effect of such an illness on his ability to participate in the proceedings; (iii) no medical evidence had been provided and as such the Panel would be unable to determine the impact of any illness on the Respondent's ability to participate in the proceedings, or otherwise when the Respondent might be able to participate in the future; (iv) the Respondent had not made any attempts to view the materials in respect of the hearing or participate in the mock/test hearing events designed to support participation, and; (iv) against the context of the allegations - and how the Respondent had approached the proceedings to date - the Respondent had demonstrated a history of limited engagement.
6. The Case Presenter submitted that little weight should be given to the reasons requesting the adjournment, in the absence of more cogent evidence of any condition suffered (or otherwise) by the Respondent and its impact on his ability to participate in the hearing. The Case Presenter reminded the Panel of the lengthy period of time it had taken to reach the Panel stage and of the public interest in dealing with matters of professional regulation expeditiously and avoiding unnecessary cost. The Case Presenter submitted that, on balance, the interests of considering proceeding in absence outweighed the merits of the adjournment application.
7. The Panel invited advice from the Legal Assessor. The Legal Assessor reminded the Panel of the need to strike a proper balance between fairness to the Respondent and the public interest in the fair, economical, expeditious and efficient disposal of proceedings, having regard to the whole history of the proceedings: *Nabili v General Medical Council* [2018] EWHC 3331 (Admin). An adjournment is "not simply there for the asking" - *Hussain v General Pharmaceutical Council* [2018] EWCA Civ 22. Furthermore, the Panel was advised that applications for an adjournment, and any supporting evidence should be subject to proper scrutiny: *Awan v Law Society* [2002] EWCA Civ 1969. He advised the panel that the onus is on the applicant for an adjournment to prove the need for an adjournment: *Teinaz v Wandsworth London Borough Council* [2002] ICR 1471 CA. The

Panel should also take into account any relevant factors identified in the case of *CPS v Picton* [2006] EWHC 1108.

8. The Legal Assessor directed the Panel to the case of *Norton v. Bar Standards Board* [2014] EWHC 2681 (Admin) and the principle that in considering the application for an adjournment, the Tribunal should consider and apply the criteria as set out in the case of *R v Hayward, Jones & Purvis* in the Court of Appeal [2001] EWCA Crim 168.
9. The Panel was reminded of the case *General Medical Council v Ijaz Hayat* [2018] EQCA Civ 2796 which reaffirms the need for detailed medical evidence in the event of seeking an adjournment on health grounds. The Legal Assessor explained that medical evidence must “*be evidence that the individual is unfit to participate in the hearing.....must identify with proper particularity the individual’s condition and explain why that condition prevents their participation in the hearing [and]... that evidence should be unchallenged*”.
10. The Panel retired to consider the adjournment application. The Panel considered the submissions of the IFoA’s Case Presenter and the legal advice. The Panel had regard to: (i) the public interest in dealing with cases expeditiously balanced against the interest of the Respondent; (ii) the difficulties (and further delay) involved in reconvening a hearing with the various members and representatives; (iii) the costs associated with the same, and; (iv) the lengthy history of the case to the date of the hearing.
11. The Panel considered that there was insufficient evidence of ill-health that would persuade it to adjourn the proceedings. The Panel also considered there was insufficient evidence of the impact of travel on the Respondent’s ability to participate nor was it persuaded that travel was a good reason for non-attendance (particularly given the hearing was being held remotely).
12. The Panel further considered the proposition that the Respondent was looking to obtain legal representation. The Panel concluded there was no evidence before it of meaningful attempts to procure/engage legal advice/representation, at least until the morning of the hearing. The Panel had regard to the fact that there was no legal representation on record at the time of the proceedings, nor any apparent evidence of such engagement.
13. The Panel recognised that it was for the Respondent - in all the circumstances - to demonstrate why an adjournment should be granted, and that necessitated more than an email suggesting he was suffering from “ill-health”, had otherwise been travelling or been

unable to access the materials (despite them being made available well in advance of the hearing). The Panel was not persuaded that there was a sufficient quality of medical evidence (or otherwise) that it could rely on. The Panel was mindful that the Respondent had also showed limited engagement until the date of the hearing, having not attended the optional 'mock' technical test on 5 May 2022 nor attending a rescheduled 'mock' test scheduled specifically for the Respondent's benefit on 16 May 2022.

14. The Panel was mindful that it had the discretion to adjourn the proceedings to make further enquires of the Respondent, but it was not required to do so. The Panel determined that it was for the Respondent to persuade the Panel that the adjournment should be granted, and, furnish it with appropriate evidence in that regard. The Respondent had not done so.
15. After retiring to consider the position, the Panel decided to refuse the application to adjourn.

Service of Notice of the Charges:

16. The Panel next considered the question of service of notice of the hearing. Whilst the Panel was mindful that the Respondent was not present and was not represented, the Panel was aware that the Respondent was aware of the hearing and had been in touch with the Secretary in respect of the proceedings. The Panel had sight of the Proceeding in Absence bundle which contained a notice of hearing dated 8 April 2021 and confirmation of delivery of the same dated 27 April 2022. The Panel noted this information had also been sent by email. Having considered the submissions of the IFoA's Case Presenter and having accepted the advice of the Legal Adviser, the Panel was satisfied that the charges had been served in accordance with the provisions of the Disciplinary Scheme and that the Respondent had fair notice of the proceedings.

Proceeding in the Absence of the Respondent:

17. The Panel next considered whether it was appropriate to proceed in the absence of the Respondent. The Panel had particular regard to the advice of the Legal Assessor that, notwithstanding the refusal of the adjournment application aforementioned, circumstances *could* still exist that might warrant adjourning to secure the Respondent's attendance. The Panel reminded itself that the refusal of the adjournment application from the Respondent

did not mean that the hearing should automatically proceed in the absence of the Respondent.

18. In considering whether to exercise its discretion to proceed, the Panel had regard to the submissions of the IFoA's Case Presenter, which largely adopted the arguments advanced in respect of his objection to the adjournment application aforementioned.
19. The Panel considered the advice of the Legal Adviser who referred the Panel to the case of *R v Jones (No.2)* [2002] UKHL 5. The Panel's attention was also drawn to the case *GMC v Adeogba* [2016] EWCA Civ 162 in that "*there is a burden on...all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession*". The Panel had regard to these authorities.
20. The Panel noted that the discretion to proceed in the absence of a Respondent should be exercised with the utmost care and caution. The Panel must consider matters such as whether the Respondent has requested an adjournment (which, in this case he had), whether the Respondent would be likely to attend any adjourned hearing, or whether, in all the circumstances, the Respondent had absented himself voluntarily from the hearing.
21. The Panel was satisfied that the Respondent had chosen to voluntarily to absent himself from the proceedings. The Panel also took into account the potential prejudice to the Respondent in not having the opportunity to Respond to the charges in person. This was balanced with the public interest in dealing with cases expeditiously and avoiding the not insignificant costs associated with the hearing and challenges in convening a future hearing timeously. The Panel also noted that there were witnesses warned and ready to give evidence. In the circumstances, having retired to consider the position, the Panel determined that the public interest in proceeding outweighed the Respondent's interests in not proceeding in his absence.

Panel's Determination:

22. The Panel found parts 1 to 10 of the charge proved.
23. The Panel found that charges 1 to 10 taken **cumulatively** constituted misconduct. The Panel also found that particulars 2, 3 and 5 to 10 taken **individually** constituted

misconduct. Conversely, the Panel found that particulars 1 and 4, taken **individually** would unlikely be serious enough on their own to constitute misconduct.

24. The Panel determined that the most appropriate and proportionate sanction(s) was/were:

- Reprimand
- Fine of £2,000 (sterling)

25. The Panel also ordered the Respondent to pay to the IFoA costs of £4,114.

Background:

26. The Respondent is based in India and has been a member of the IFoA since 1964 (when he joined as a student) and became a Fellow in 1973. The Respondent is a fully regulated 'Category Two' member for the purposes of undertaking Continuing Professional Development (CPD), but does not hold a practising certificate.

27. In accordance with the CPD Scheme for the year 2017/18, having been randomly selected for an audit, the Respondent was required to provide evidence of his CPD activities for the year. Despite repeated requests from the IFoA, the Respondent did not provide the evidence within the timescales required.

28. Failure to comply with the CPD requirements (and indeed participate in the audit process) may engage the IFoA Disciplinary Scheme. As an alternative to matters being considered under the Disciplinary Scheme, the Respondent was offered the opportunity to pay a £750 'charge' and having the fact of default recorded in both the IFoA's Register of Non-compliers and the Actuarial Directory.

29. The Respondent was given until 11 November 2019 to make payment of the £750 charge. Despite the offer, the Respondent did not pay the charge by the deadline. This rendered the Respondent liable to the disciplinary proceedings set out in the Charge.

30. In respect of the 2017/18 audit, the IFoA sent numerous correspondence to the Respondent which were either ignored or otherwise replied to in unsatisfactory terms. The Respondent's lack of engagement in respect of the 2017/18 CPD year audit gave further rise to these proceedings.

31. Furthermore, the 2018/19 CPD rules required the Respondent to record CPD for that year in the online portal by 31 July 2019. Part of that requirement included recording 2 hours of Category 3 Professional Skills Training (PST). In the lead up to the deadline a number of reminders were sent to the Respondent. By the deadline the Respondent had not recorded the required amount of PST.
32. The PST deficiency was brought to the attention of the Respondent who was given the opportunity to have his record updated on payment of an administration fee of £50, payable by 30 September 2020. Despite repeated reminders of the impending deadline, the Respondent did not pay the administration fee by the required date and as such his record remained non-compliant.
33. In respect of the 2018/19 CPD year, the IFoA sent numerous correspondence to the Respondent which were either ignored or otherwise replied to in unsatisfactory terms. The Respondent's further lack of engagement in respect of the 2018/19 CPD year also gave rise to these disciplinary proceedings.
34. The matters referred to above were the subject of an Executive Referral under the Disciplinary Scheme dated 18 February. A Case Manager and Investigating Actuary were appointed. The Case Manager sought to engage with the Respondent in respect of the disciplinary matters advanced. Such correspondence was either ignored or replied to on unsatisfactory terms. The lack of co-operation gave rise to a further Executive Referral dated 10 August 2020 and further allegation of misconduct under the Disciplinary Scheme.
35. Having formulated the Charge set out above, these Disciplinary Tribunal proceedings were initiated, and this Panel convened.
36. It worth noting at this point that the IFoA has recognised from the outset of the proceedings that in respect of both 2017/18 and 2018/19 CPD years, the Respondent had indeed undertaken the required CPD. Matters being considered under the Disciplinary Scheme were confined to the Respondent's engagement and compliance with the 2017/18 audit; his administrative recording of the 2018/19 PST data, and; otherwise his engagement with the IFoA's disciplinary investigation into the same.

Findings of Fact:

37. 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.
38. The Respondent made no formal admissions in respect of the Charge or individual particulars thereof. The Panel accordingly considered the Charge as denied. In reaching its decisions on the various parts of the Charge, the Panel took into account the witness statements of: the IFoA's Head of Member Services (HoMS) dated 2 March 2022, and; the Case Manager (CM) dated 2 March 2022.
39. Given the absence of the Respondent, and the Panel having no further questions for the witnesses, the witnesses were not required to give oral evidence. Documentary evidence was also made available in the form of a substantive document bundle spanning some 339 pages. The Panel also had the benefit of a Case Summary prepared by the IFoA and various oral submissions from the IFoA's Case Presenter. The Panel also requested and considered the advice of the Legal Adviser throughout.
40. The Respondent was not in attendance at this hearing and the Panel was satisfied that this absence was voluntary for the reasons set out above. The Panel has drawn no adverse inference as a consequence of the Respondent's absence.

41. Charge 1

“you failed to comply with the requirements of the CPD Scheme 2017/2018 in that you failed to provide evidence of the CPD activities you had completed during the 2017/2018 CPD year when asked to do so;”

42. The Panel found Charge 1 proved on the balance of probabilities. The Respondent was first notified that he had been selected for the 2017/18 audit on 14 May 2019 by email from the Membership Co-ordinator. A deadline of 26 May 2019 was given. The Respondent acknowledged this request by email on the same day and undertook to reply in due course. The Respondent raised the matter that he had recently been audited, but accepted the process was random. By email, also on 14 May 2019, the Membership Co-ordinator confirmed that members are not selected for an audit in two consecutive years. On 15 May 2019 the Respondent acknowledged his last audit was 2015/16. The Respondent

ended that email confirming that he will "surely supply all the records for the year 2017 - 18 within the time limits specified by you".

43. Paragraph 4.5 of the 2017/18 CPD Scheme provides that when asked to participate in an audit, members "must produce that evidence to the IFoA upon request."

44. On 5 June a new deadline of 12 June was given. This deadline was also not met. Further deadlines were given and missed (as set out in the proceeding paragraphs below).

45. In respect of the Respondent having failed to meet the initial deadline, and the extended deadline, the Panel found charge 1 proved.

46. Charge 2

"you did not fully engage with and/or adequately respond to communications from the Membership Department of the Institute and Faculty of Actuaries on the matter of providing evidence of CPD activities for the 2017/2018 CPD reporting year;"

47. The Panel found Charge 2 proved on the balance of probabilities. Having noted that the Respondent did not reply by the first, or second, deadline, various further 'chasers' were sent and deadlines imposed, as summarised below:

- a) The initial deadline 28 May 2019 was not met. On 5 June 2019 a revised deadline of 12 June 2019 was given.
- b) That deadline was not met. On 15 June 2019 the Respondent requested more time and committed to provide the materials by 23 June 2019.
- c) The materials were not provided by the deadline set by the Respondent himself. A further chaser, and revised deadline of 5 July 2019 was set.
- d) No reply was received in respect of the 5 July deadline and as such a further deadline of 19 July 2019 was given.
- e) On 31 July 2019 and 2 August 2019, unsuccessful attempts to reach the Respondent by telephone were made.

- f) On 2 August 2019 a further email was sent imposing a deadline of 9 August 2019. The Respondent was warned that failure to provide the requested materials would be considered non-compliance with the CPD Scheme and may be considered a disciplinary matter. No response to that email was received.
- g) On 21 October 2019, HoMS wrote to the Respondent inviting him to pay a £750 charge and have his name included in the 'register of non-compliers' as well as having his non-compliance noted in the online Actuarial Directory. This was as an alternative to making a disciplinary referral. A deadline of 11 November 2019 was given to pay the Charge.

48. The Respondent did not pay the Charge by 11 November 2019, nor did he reply to HoMS' letter.

49. On or around 23 September 2020 (almost one year later) the Respondent sought to pay the Charge along with his annual membership subscription.

50. The IFoA Membership Manager replied to the Respondent on 26 September 2020 explaining that an overpayment had been made and requesting bank details to remit the funds.

51. On 11 November 2020, the Registrant sought to explain the £750 overpayment was in respect of the penalty and that representations in respect of both 2017/18 and 2018/19 CPD years were underway. The Panel found that at the time of this email, the Respondent had missed the deadline for payment of the £750 charge. The opportunity to pay the charge had expired.

52. It is not known whether the Respondent has yet provided bank details to the IFoA to enable him to be put back in funds in respect of these monies.

53. Charge 3

“your actions at paragraphs 1 and/or 2 were in breach of the compliance principle of the Actuaries’ Code (version 3.0);”

54. The Panel found Charge 3 proved on the balance of probabilities. The Panel had regard to the Actuaries' Code which provides, inter alia, that "*Members must comply with all relevant legal, regulatory and professional requirements.*".

55. Having regard to the Panel's findings of fact in respect of charges 1 and 2 (detailed above) the Panel concluded that the Respondent was indeed in breach of the Compliance principle of the Code.

56. Charge 4

"you failed to comply with the requirements of the CPD Scheme 2018/2019 in that you failed to demonstrate that you had undertaken the appropriate minimum amount of Professional Skills Training, or submit a written request for exemption;"

57. The Panel found charge 4 proved on the balance of probabilities. The Panel found that the 2018/19 CPD Scheme required the Respondent both to complete the required PST **and** to record it on the online portal by 31 July 2019. The Respondent had not met the recording requirement by the due date.

58. The Panel had regard to the fact that general reminders of the requirements and the 31 July 2019 deadline were sent to the Respondent on 7, 19 and 27 June 2019. All of these alluded to the requirement to complete 2 hours of PST CPD.

59. On 24 July 2019, HoMS sent a reminder to the Respondent explaining that his CPD record was non-compliant and that he had until 31 July 2019 to remedy that. The Respondent was reminded of the PST requirements. The Respondent was informed that if his record was not up-to-date by 31 July 2019, it could be amended for an administration fee of £50. This extension was only available until 30 September 2019.

60. Whilst satisfied that eventually the Respondent was able to demonstrate that he had indeed undertaken the relevant PST training, he had not recorded it by the 31 July 2019 deadline nor the extended deadline of 30 September. The Panel accordingly found the charge proved.

61. Charge 5

“you did not fully engage with and/or adequately respond to communications from the Membership Department of the Institute and Faculty of Actuaries on the matter of complying with the requirements of the CPD Scheme 2018/2019;”

62. The Panel found charge 5 proved on the balance of probabilities. The Panel had regard to the factual matrix in respect of charge 4 and the number of reminders provided to the Respondent before the 31 July 2019 deadline.

63. After the 31 July 2019 deadline, the Panel noted the following correspondence:

- a. On 5 August 2019, the Respondent was advised by the IFoA that the recording year had now closed and that he had the option of having his record updated by 30 September 2019, for a £50 administration fee. The Respondent was invited (as in similar correspondence) to contact HoMS with any questions.
- b. On 23 August 2019, a further reminder was sent, on similar terms to the 5 August correspondence, reminding the Respondent of the 30 September 2019 deadline.
- c. On 2 September 2019 the Respondent emailed HoMS, explaining that he did not agree that his record was not up-to-date. The Respondent suggested he had recorded more than the required number of CPD hours. The Respondent undertook to send the detail to HoMS by 3 September 2019. One of the IFoA's Membership Co-ordinator's (MC), responded to the Respondent on 2 September 2019, highlighting specifically the defective PST record.
- d. On 13 September 2019 HoMS again wrote to the Respondent reminding him that his record remained non-compliant and of the extended deadline of 30 September 2019.
- e. On 27 September 2019 a further reminder was sent by MC to the Respondent detailing the 30 September 2019 deadline.
- f. The deadline of 30 September 2019 came and passed and the Respondent's record remained non-compliant, despite the repeated reminders.

- g. On 10 October 2019 (Exhibit 27) MC again asked the Respondent to provide the information needed to demonstrate compliance. No reply was received in this regard.

64. The Panel determined that, based on the findings above, the Respondent had indeed failed to fully engage and/or respond to the IFoA in respect of his 2018/19 CPD compliance

65. Charge 6

“your actions at paragraphs 4 and/or 5 were in breach of the compliance principle of the Actuaries’ Code (version 3.0);”

66. The Panel found charge 6 proved on the balance of probabilities. The Panel had regard to the Actuaries’ Code (Exhibit 68) which provides, inter alia, that *“Members must comply with all relevant legal, regulatory and professional requirements.”*

67. Having regard to the Panel's findings of fact in respect of charges 4 and 5 (detailed above) the Panel concluded that the Respondent was indeed in breach of the Compliance principle of the Code.

68. Charge 7

“you failed to fully co-operate with the investigation of the allegations detailed at paragraphs 1 - 6 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;”

69. The Panel found charge 7 proved on the balance of probabilities. On 18 February 2020, the IFoA's General Counsel, made an Executive Referral to the Head of Disciplinary Investigations. That referral addressed the failures to meet the requirements in respect of the 2017/18 CPD audit requirements *and* the 2018/19 CPD recording requirements.

70. CM was appointed as the IFoA's Case Manager. CM wrote to the Respondent on 26 February 2020 explaining that a disciplinary allegation had been made an inviting him to respond by 12 March 2020. A copy of the Disciplinary and Capacity for Membership Scheme was also attached. The Respondent was asked to respond to specific questions and requests for information. CM referred the Respondent to the requirements to cooperate under Rules 4.15 to 4.19 and 5.11 of the Disciplinary Scheme.

71. The Respondent did not reply by the 12 March 2020 deadline. Thereafter the following correspondence ensued:

- a. CM, having not received a reply from the Respondent, again emailed him on 18 March 2020, inviting a reply to her questions by 30 March 2020 and reattaching the relevant correspondence.
- b. A further chaser email was sent by the Case Manager on 1 April 2020, imposing a deadline of 15 April 2020. The Respondent was also reminded of his duty to co-operate.
- c. A further chaser email was sent by the Case Manager on 17 April 2020, imposing a deadline of 1 May 2020. The duty to co-operate was again alluded to.
- d. On 17 April 2020, the Respondent emailed CM: "*please accept my apology for the delay. Since 15th March, 2020, I am stuck at a place which is neither my office, now residence by default due to LOCKDOWN arising out of COVID 19; am in India. It is extended now till 3rd May, 2020. However, I will try to respond based on info/data on my laptop during the next few days... request you to please bear with me*",
- e. CM responded on 17 April 2020, reattaching her previous letter.
- f. On 1 May 2020, CM again wrote to the Respondent chasing a reply. She reminded the Respondent of his co-operation duties and went on to warn the Respondent that an additional allegation of misconduct (for non-co-operation) may be added. A deadline on 26 May 2020 was imposed.
- g. The Respondent did not reply. On 28 May 2020, CM again requested the relevant information and imposed a deadline of 4 June 2020. CM again (in bold text) warned the Respondent that failure to reply may see a further allegation of misconduct added in respect of non-cooperation.

h. On 5 June 2020, CM again wrote to the Respondent requesting the information urgently. CM went on to explain that the allegation of lack of cooperation would be added to the case report.

72. On 10 August 2020, the IFoA's General Counsel made a further Executive Referral in respect of the Respondent's cooperation.

73. On 11 August 2020 the Respondent was informed of the additional allegation being added and asked for his comments in respect of the same by 25 August 2020.

74. On 24 September 2020 the Respondent eventually replied. His response read "*Me, very careless indeed. I opened today only hence opening the 'large files' is timed out. Request you please send it again*". The Respondent went on to explain that he had paid the £750 'fine' (in respect of the 2017/18 matters) on 23 September 2020.

75. On 24 September 2020 CM replied repeating her previous requests for information / documents and imposed a deadline of 9 October 2020.

76. On 24 September, the Respondent replied to CM thanking her for her reply and explaining "*...Delay in response is certainly the charge I can not defend. there are reasons which are very personal indeed, hence I paid the monetary fine which I did when I noticed. I am not guilty of non-compliance in both the COD years [...] and will respond in detail latest by 9th October...*".

77. The Respondent did not meet his own self-imposed deadline.

78. On 10 October 2020, the Respondent provided a substantive reply to matters relating to the **2017/18** CPD year. The Respondent ended that correspondence stating, "*I must add that I do appreciate the rigour by which the rules of the profession are enforced for compliance and thus the professional integrity of IFOA is maintained*".

79. On 12 October 2020 the Respondent provided substantive responses to the matters relating to the **2018/19** and non-compliance allegations. In that correspondence the Respondent states that he "*simply got fatigued by not being able to convince the IFOA and stopped responding after a point besides having got deeply involved in [other] Institute matters...*". The Respondent went on to say that he considered the IFOA's approach had

been *"too legalistic"* but that otherwise he appreciated that the *"rigour of required compliance which does make the IFOA a professional body of integrity and repute"*.

80. On 12 October 2020 CM wrote to the Respondent inviting further representations in respect of the non-co-operation allegation and inviting further representations. CM alluded to the Respondent's mention of *"personal circumstances"* and invited further representations and evidence. A deadline of 26 October 2020 was set.

81. On 25 October 2020 the Respondent replied with 'in line' comments (appearing as replies besides CM's questions). Notably the Respondent again stated *"I did respond up to a date, after which as explained I got a bit fatigued and coupled with the lack of time and other circumstances, I stopped responding"*.

82. Thereafter there appeared to be further engagement from the Respondent in respect of evidencing his actual CPD compliance (correspondence dated 26 October 2020; 27 October 2020 and otherwise his provision of evidence/certificates demonstration completion of the required CPD).

83. The Panel found that the above indeed constituted a failure to co-operate with the disciplinary investigation, as set out in the charge.

84. Charge 8

"your actions at paragraph 7 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);"

85. The Panel found charge 8 proved on the balance of probabilities. The Panel had regard to rule 4.15 of the Disciplinary and Capacity for Membership Schemes which provides *"Every Member has, at all times, a duty to co-operate fully with any investigation, process or procedure under the Disciplinary Scheme. This duty includes providing such written or oral information and/or evidence as may be required by the Case Manager or Investigation Actuary under rule 5.11."*

86. Having regard to the Panel's findings of fact in respect of charges 6 and 7 (detailed above) the Panel concluded that the Respondent was indeed in breach of the co-operation rule.

87. Charge 9

“your actions at paragraphs 7 and/or 8 were in breach of the compliance principle of the Actuaries’ Code (version 3.0);”

88. The Panel found charge 9 proved on the balance of probabilities. The Panel had regard to the compliance principle set out in Principle 4 of the Actuaries’ Code in the context of its findings detailed above concerning cooperation with the disciplinary investigation. The Panel found that the relevant section was both engaged by the Respondent's conduct and breached by his lack of compliance.

89. Charge 10: Misconduct Charge

“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).”

90. The Panel considered whether the actions of the Respondent detailed in charges 1 to 9, individually and/or cumulatively amounted to misconduct. In considering this matter, the Panel took account of the IFoA’s 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”*.

91. The Panel found that the cumulative effect of the Respondent's: (i) repeated failures to comply with the CPD requirements; (ii) failures to respond to reasonable requests / enquiries from the IFoA, and; (iii) failure to properly respond to/engage with the disciplinary investigation, all fell short of the standards expected by both other members of the profession and members of the public generally. The Respondent's failures were repeated, persistent and required unnecessary administration on the part of the IFoA's staff.

92. Whilst the Panel found that charges 1 and 4 taken alone would not of themselves be so serious such as to constitute misconduct individually, the cumulative effect of the Respondent's non-compliance and lack of engagement fell far below the standards expected such that they represented a breach of the compliance principle contained in the Actuaries' Code. The Panel also determined that charges 2, 3 and 5 to 9 individually also constituted misconduct and breached the Actuaries Code.

93. Accordingly, the charge of misconduct was found proved.

Sanction:

94. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter and the advice of the Legal Adviser. The Panel also had careful regard to the Indicative Sanctions Guidance (January 2020) and the Supplementary Guidance on the Imposition of Sanctions in CPD Infringement Cases. The Panel noted that 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.

95. 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.

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

- a. There were failures to meet the CPD Scheme requirements in two consecutive years (2017/18 and 2018/19).
- b. No good reason for the Respondent's non-compliance has been advanced.
- c. The Respondent's failures to reply, respond or engage with the IFoA were sustained and extensive, despite requests for engagement by senior members of the IFoA's staff.

- d. The Respondent's conduct of the proceedings and engagement in respect thereof did not demonstrate meaningful insight into seriousness of the compliance matters before the Panel

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

- a. The Respondent had indeed completed the CPD required for both years, this was a case related to recording and evidencing. Accordingly, the actual CPD failures were administrative in nature.
- b. The Respondent had attempted to pay the £750 charge levied in respect of the 2017/18 audit, albeit this was paid late and so was no longer available. This demonstrated *some* engagement with the process.
- c. The Respondent had an otherwise clean disciplinary record over a number of years' membership with the IFoA. There were otherwise no concerns over his conduct.
- d. The Respondent had made limited attempts to engage or respond, albeit these were sporadic and inconsistent.
- e. From March 2020 onwards, the Pandemic may have caused challenges, particularly in India. The Respondent being locked down and away from home may have had an impact on his ability to engage. However, the Panel noted that such challenges were confined to *after* the disciplinary investigation had commenced and *after* the first two allegations had already been put to the Registrant for response.
- f. The Respondent demonstrated limited insight into his failings, particularly in recognition of his emails: 24 September 2020, suggesting he had been “*very careless indeed*”, and; 24 September 2020 where the Registrant acknowledges “*Delay in response is certainly the charge I cannot defend. There are reasons which are very personal, hence I paid the monetary fine which I did when I noticed. I am not guilty of non-compliance in both the CPD years; 2017-18 and 2018-19 and will respond in detail latest by 9th October 2020*” albeit despite a further request for details of the “*personal*” reasons, no further information is provided.

98. The Panel first considered whether this was a case that warranted no sanction. The Panel considered that given the repeated failures and ongoing nature of the matters before it, this was not a case that warranted no sanction.

99. The Panel considered whether to impose a Reprimand. The Panel considered that a Reprimand would, at the very least, be a proportionate and appropriate outcome in respect of the matters before it, but considered that a Reprimand alone would be unlikely to address the failings and maintain confidence in the regulatory process.
100. The Panel considered whether to impose a Fine. The Panel considered that a Fine, and Reprimand, taken together ought to be able to address the misconduct in question, educate the Respondent of the IFoA's compliance expectations and send an appropriate message to other Members of the IFoA's in respect of their high standards and expectations in respect of CPD recording and cooperation / engagement with the IFoA's officers.
101. The Panel considered the quantum of a Fine. The Panel had regard to the CPD Sanctions Guidance. The Panel was mindful that the Respondent had already been offered a £750 charge in respect of the 2017/18 failures which he had indeed paid, albeit late and as such it had been rejected. The Respondent had also been offered a £50 administration charge in respect of the 2018/19 matters, which was not pursued. The Panel recognised that failures in respect of two years had been made.
102. The Panel also considered the seriousness of the Respondent's failures to properly engage with the Membership Team and Disciplinary Case Manager.
103. The Panel considered £2,000 to be a proportionate fine in the circumstances. For the avoidance of doubt, this sum was arrived at on the basis that the 2017/18 £750 charge has either been refunded or taken as a credit towards that fine, the sum arrived at is not in addition to the fine.
104. The Panel considered whether to impose a period of education, training or supervised practice. Noting the Respondent's actual compliance with the CPD requirements this sanction did not appear appropriate. The Panel also considered whether to impose a period of suspension, this also appeared disproportionate.
105. The Panel considered that the matters requiring attention could best be addressed with a Reprimand and Fine and were proportionate in protecting the public and upholding the reputation of the profession.

Costs:

106. The IFoA made an application for costs of £4,114 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Case Presenter. The Panel had regard to the submission from the IFoA case presenter that the actual costs were likely to be more than those sought and were indeed conservative and reasonable given the case and its complexities. The Panel considered the costs sought to be at a reasonable level, and that the work done and costs incurred justified that amount of cost. The Panel therefore ordered the Respondent to pay the IFoA costs of £4,114.

107. The Panel did not have any information before it in respect of the Respondent's means or ability to pay costs, despite this information having been requested from the Respondent well in advance of the hearing. The Panel was persuaded by the submissions of the Case Presenter that, absent evidence otherwise, there should be a presumption that the Respondent can afford the reasonable costs. The Panel proceeded accordingly.

Right to appeal:

108. 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:

109. Having taken account of the Disciplinary Board's Publication Guidance Policy (November 2021), 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. A brief summary will also be published in the next available edition of *The Actuary Magazine*.

That concludes this determination.