Institute and Faculty of Actuaries

Disciplinary Tribunal Panel Hearing

26 November 2024, 23 December 2024 and 15 April 2025

(the Panel also deliberated in private on 21 January and 15 April 2025)

Online Hearing

Respondent:	Nicholas Burton Hudson FFA Present and represented by Francis Hoar (Barrister) Shayne Krige (Lawyer)
Category:	Fellow since 31 December 2003
Region:	South Africa
IFoA Case Presenter:	Rachna Gokani (Barrister instructed by the IFoA) Karen Nicol (IFoA Disciplinary Lawyer)
Panel Members:	Susan Ahern SC (Chair/Lay member) John Birkenhead FIA (Actuary member) Catriona Whitfield (Lay member)
Legal Adviser:	Graeme Dalgleish / Sharmistha Michaels
Judicial Committees Secretary:	Hinna Alim

Charge:

Nicholas Burton Hudson FFA, being at the material time a member of the Institute and Faculty of Actuaries, the charge against you is that:

1. between July 2020 and July 2021, you posted tweets and/or retweets on the Twitter social media platform which were offensive;

2. your actions at paragraph 1 were in breach of the principle of Integrity in the Actuaries' Code version 3.0 (effective 18 May 2019), in that you failed to show respect for others in the way you conducted yourself, in circumstances where your conduct could reasonably be considered to reflect upon the reputation of the actuarial profession as a whole;

3. Your actions at paragraph 1 were in breach of the principle of Communication in the Actuaries' Code version 3.0 (effective 18 May 2019);

4. 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 June 2021).

Panel's Determination:

1. The Panel found parts 1, 2, 3 of the charge proved in respect of 5 of the 24 Tweets which were the foundation of the Charge.
2. The Panel found part 4 of the charge proved in respect of 3 of the 24 Tweets which were the foundation of the Charge.
3. The Panel determined that the most appropriate and proportionate sanctions were:
   (a) A reprimand.
   (b) A fine in the amount of £2,000.
4. The Panel also ordered the Respondent to pay 50% of the IFoA costs, calculated to be £13,603.75

Background:

5. The Respondent, Mr. Nicholas Hudson, has been a Fellow of the Institute and Faculty of Actuaries ("IFoA") since 31 December 2003. He also holds dual membership status as a Member of the Actuarial Society of South Africa ("ASSA").

6. The Respondent was active on the social media platform, which was at that time called Twitter (now renamed 'X'). For the purposes of this Decision, reference will be made to "Twitter" which was the name of this social media platform at the time of the allegations. The Respondent posted using the handle *@NickHudsonCT* and within his Twitter biography described himself as an actuary.

7. The Respondent is a co-founder and chairman of Pandemics - Data & Analytics ("PANDA") which is based in South Africa and is an organisation which has campaigned for proportionality and a multi-disciplinary, open-science, evidence-based approach to the Covid-19 policy response. His contribution to the work of PANDA is pro-bono. The PANDA Twitter handle was *@PanData19* and was included as a link on the Respondent's personal Twitter account.

8. These proceedings relate to the period between July 2020 and July 2021, during which the Respondent posted a number of 'tweets' and 'retweets' about the Covid 19 pandemic and associated topics. His tweets included language directed at, or describing, named individuals or the arguments they were advancing on these topics. The IFoA provided a schedule of 24 tweets and retweets posted by the Respondent in the period covered by the charge. It has relied upon these postings in presenting its case.

9. The Respondents tweets/retweets from his personal Twitter account, prompted complaints in June 2021 and in November 2021 from members of the profession.

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. The Respondent made admissions to parts of the charge, namely that he had tweeted or re-tweeted each of the scheduled 24 tweets before the Panel. He denied the particulars of Charge 1, 2, 3 and 4 in their entirety. He submitted that the tweets were all made, without exception, in discussions about Covid-19, lockdowns and other restrictions. He submitted that some of the tweets used offensive phrases about public figures but that they were "*emotive, but they are a small selection from around 11,000 tweets that I have published, and are not at all representative of the overall tone of them*". From a context perspective, the Respondent submitted that:

> "….*by abstracting a miniscule portion of the totality of my output, and the portion that attracted barely any impressions, a false impression of my general tone and the nature of my interactions on Twitter is created. As argued, the impressions on the bundle Tweets are so low that they functionally constitute private communication*."

12. The Panel has accordingly found those parts of the charge proved in light of those admissions. In reaching its decisions on the various parts of the charge, the Panel took into account the oral and documentary evidence in this case together with the submissions of Counsel for the IFoA and Counsel for the Respondent. The Panel considered and accepted the advice of the Legal Adviser.

13. The Panel received written and heard oral evidence from the Respondent. Certain documents sought to be introduced by the Respondent were excluded by the Panel during the course of the preliminary application on the first day of hearing, as they related to issues considered by previously constituted panels which were entirely irrelevant to the task of the current Panel which was to determine if the Charge, in some or all of its parts, is made out. The Panel found the Respondent to be credible and reliable in his account and that he was acting in good faith in his stated aims to speak up and draw attention to what he believed was the need for a more proportionate and a multi-disciplinary, open-science, evidence-based approach to the Covid-19 policy response. He noted that "*The Tweets were made in the context of a travesty perpetrated on the public that resulted in the loss of lives and livelihoods*."

14. The Panel also took into account the following documentary evidence:

From the IFoA:

- IFoA Tribunal Bundle
- IFoA Twitter Bundle

- IFoA Submissions on the inclusion of material in the Respondent's Bundle

From the Respondent:

- Written Submissions of the Respondent
- Witness Statement of the Respondent (Annex 5)
- Respondent's Supplementary Bundle (with redactions)

15. The Panel heard submissions from Ms Gokani and Mr Hoar.

16. Ms Gokani said that the tweets spoke for themselves, and they were clearly offensive. She said that the issue was not with the Respondent holding or discussing controversial or challenging topics but rather the manner in which he expressed his views and that controversial views and offensive language did not necessarily go together. There was a core duty on professional to act with honesty and integrity and it was submitted that the nature of the tweets by the Respondent made in a public domain by a regulated person is enough to affect the standing of the profession in the eyes of the public and other members of the profession.

17. Mr Hoar said *inter alia* that the Respondent had strong views about the Covid-19 pandemic and was a leading campaigner against lockdowns, vaccine mandates and other restrictions on personal liberty. And that, however disagreeable those views might be, they reflected a philosophical belief on the part of the Respondent and were protected under Article 9 and under Article 10 of the European Convention on Human Rights ("ECHR"). It was the Respondent's position that the case against him interfered with his political rights and free speech.

Charge 1 - Offensive

18. There is no definition in the Actuaries Code of what constitutes "offensive". Therefore, the Panel applied its understanding of what constituted "offensive" (words) as meaning (words) likely to or capable of causing offence, not solely to individuals holding particular beliefs but also to a wider cross-section of society which holds that the beliefs of others should be treated with respect.

19. In deciding this charge, the Panel has considered each tweet individually and the specific language employed. In doing so, it has relied on the ordinary meaning of the words employed and made an objective assessment of those words and considered whether the particular choice of words used would be bound to be offensive. Thereafter the Panel considered all of the surrounding circumstances in which the words were used in order to reach their conclusion.

20. The Panel noted that the context in which the words were used was during the height of the Covid-19 pandemic. It was a matter of public record that the public debate about lockdowns and other restrictions had been intense, at times extremely hard fought and was highly divisive, not just in South Africa but globally. The Panel was aware that during this time many discussions around Covid were highly emotive in various fora.

21. Counsel for the IFoA emphasised that it was not objecting to the subject matter of the discussions nor in bringing the charges was it in any way targeting or seeking to interfere with the Respondent's beliefs, which he fully had the right to hold and express, their concern was solely the manner in which he express those views. That was done in an offensive manner when he could have done so in another way which was not offensive. Reference was made in particular to the Respondent's tweets which the IFoA highlighted as including inappropriate language directed at, or describing, named individuals, including *inter alia*: "*a bigoted nutcase*", "*would love to get the lying little shit into a witness box*", "*a spineless fool*", "*these morons*", "*I'd forgotten about that turd*", "*she's dense*", "*is indeed a psycho*" and "*oh yes, a complete fraud*".

22. Counsel for the Respondent submitted that the Respondent was very exercised by what as going on in South Africa, to the extent that he set up a specific body (PANDA) to present an alternative, data supported, viewpoint in the Covid debate. It was accepted that while some of the terms the Respondent used in expressing his views on the subject may have been described in "exuberant terms" or been offensive, that they were exponentially political in nature and it is the very nature of political debate that it can become aggressive. Further, that the comments were directed about public figures including the "*Secretary of State for Health, the Prime Minister of the UK, the President of South Africa, in one instance, and the Chief of the South African equivalent of the CDC*" and such political engagement is protected as an expression of freedom of speech under Article 10 ECHR.

23. The Panel was cognisant that the Respondent had chosen the very public medium of Twitter in which to publicise his views and/or comment on the views of others. Twitter is a platform which is accessible to every spectrum of society and every conceivable topic can be discussed. The range of discourse can range from the innocuous to the extreme but not all participants engage in the same manner. It is also a forum where the flow of a conversation can begin neutrally and where it is not unusual for an interaction to go down tangential routes which may take on an unsavoury tone.

24. The Respondent described Twitter as being "*a very epigrammatic kind of environment and so you have to work out effective and concise ways of saying things*" and that his expressed views were "*opinions, part of the rough and tumble of political debate, clear hyperbole or not specifically against any particular person*". He submitted that where he did criticise public figures or civil servants or big political entities it was for the role they were playing, the debate was highly emotive and "*in many cases merited harsh words*". While upon reflection he might have changed some of the words he used, they were not directed at "*an Actuary or a member of the public or somebody who doesn't have the platform that I have. This is David throwing stones at Goliath*."

25. The Respondent did acknowledge that a regulated person does not have free license to be as offensive as they liked and that "*there would be a limit and some kind of reasonability would have to apply*". But he submitted that a distinction had to be made for the political sphere and public persons in contrast to what was expected inside the Actuarial profession or between professionals. Given the context, "*in the theatre of a very intense political discussion*"; the consequences of the actions of the senior political persons he was referencing; supported by the fact that none of them had complained about him; the Respondent did not accept that the language in any of his tweets was offensive, or reflected poorly on and/or endangered the reputation of the Actuarial profession.

26. In assessing this case, the Panel was cognisant that the use of the language was a highly relevant factor, which needed to be considered in the context of the facts and circumstances of this particular case. As the Court determined in the case of *R (on the application of Ngole) v University of Sheffield [2019] EWCA Civ 1127, a case taken by* Mr Ngole, a former social work MA student at the University of Sheffield, who brought judicial review proceedings to challenge the decision of his university to remove him from his course, following comments he posted on a website. The Court drew a distinction

between the freedom to make an argument and the manner in which that argument is expressed, noting that:

> "[105] …*the obligation to maintain confidence cannot extend to prohibiting any statement that could be thought controversial or even to have political or moral overtones. No social worker could be sanctioned for arguing in public that social work was under-funded. The expression of such views in offensive language, however, might well damage confidence. The prevention of the latter would fall within the legitimate aim of the system of professional regulation, prevention of the former would not. …In our view it cannot extend to preclude legitimate expression of views simply because many might disagree with those views: that would indeed legitimise what in the United States has been described as a "heckler's veto*".
>
> [106] *On the other hand, the legitimate aim of such regulation must extend so far as to seek to ensure that reasonable service users, of all kinds, perceive they will be treated with dignity and without discrimination…. The use of aggressive or offensive language in condemnation of (here it is referenced) homosexuality, or homosexual acts, would certainly be capable of undermining confidence and bringing the profession of social work into disrepute*….."

27. While there were many instances where the Panel considered the language of the relevant tweets from the Respondent could be objectively offensive, when the circumstances in which they were made were applied by the Panel, it found that they did not meet the threshold of being offensive. However, the Panel did find that there were five tweets (none of which are retweets) which did traverse the threshold and the Panel concluded they were offensive in nature. These were (utilising the numbering in the IFoA Twitter Bundle):

T4: "…*The man has gone off the reservation. You should see his hospital "study"… The man's a bigoted nutcase*"

T21 "*Yes. I've had him tagged as a chief villain for many months. You can see he is a deeply dishonest and corrupt man*"

T22 "*As I dwell on this, I struggle to find a lower point in human history. The conflicted scientists who ushered this in, the politicians who perpetuated it, the media who turned a blind eye. All must be extirpated*".

T23 "*Yes @ProfAbdoolKarim has been lying through his teeth...He's an enemy of our nation*"

T24 "*It is not possible that he does not know this, so this statement makes Prof Karim a coward, an intellectually dishonest lackey, and a menace to our society. Sorry it has to be said*."

In reaching its determination, the Panel did take account of the specific submissions and explanations of the Respondent in respect of each of these five Tweets (hereinafter the "Established Tweets").

28. The language the Respondent employed in expressing his views went too far in the view of the Panel. It was entirely possible for him to address the issues he wanted, still in strong but more appropriate language which was not offensive. The nature of the language used, in particular in T22, T23 and T24 was particularly offensive and escalating in nature as time progressed (read in reverse order to reflect when they were published) and was targeted at named individuals or generic groups of individuals from specific professions.

29. The Panel observed that the other 19 tweets presented by the IFoA, which it was not satisfied had met the threshold of being offensive, were in many instances unpleasant, petty and/or unbecoming of a professional. It was due in no small part to the context in which they were being communicated, in the unique circumstance of a global pandemic where everyone had strong opinions and everyone was accustomed to seeing contentious conversations being played out in the media, social and otherwise, that the Panel determined they did not reach the threshold of being offensive.

30. The Panel was satisfied that the Respondent was acting in good faith in his stated aims of wishing to draw attention to his views, that they were his genuinely held views and that he was not acting merely as a 'devil's advocate'. The Panel also accepted his evidence that he felt obliged to speak out publicly about his concerns. However, in the Panel's view, that did not relieve the Respondent of his obligations as a professional under the Actuaries Code and it was satisfied that the Established Tweets amounted to a breach of the Code pursuant to Charge 1.

Charge 2 - Integrity Principle

31. The Actuaries Code includes six principles which Members must observe to support the profession in acting in the public interest. These principles are supported by amplifications that clarify specific requirements of the principles for some particular issues. The principles and amplifications, together, form the Actuaries Code and Members "must" comply with both the principles and the amplifications.

32. The scope of the Actuaries' Code is such that it "*applies at all times to all Members' conduct in relation to an actuarial role [And] The Code also applies to all Members' other conduct if that conduct could reasonably be considered to reflect upon the profession."* Conduct outside of the profession is explained in Section 2.8 as applying where it is:

> *"conduct outside of a Member's actuarial professional life that demonstrates a lack of respect towards others will be caught by the Code, but only to the extent that it may have an impact upon the reputation of the actuarial profession as a whole. In a personal context therefore, not all behaviour that demonstrates a lack of respect will be caught by the Code. Members are expected to use reasonable judgment in determining what behaviour is appropriate*."

33. Under the heading of 'Voicing Opinions' in Section 3.6, the Guidance also makes clear that there is no prohibition in the Code on discussing controversial or challenging topics robustly - "*legitimate challenge and constructive comment are to be encouraged both in a professional setting as well as in other contexts*" - as such prohibition would be an unjustifiable restriction on a Member's freedom of expression. However, any exercise of those freedoms remains subject to more general professional duties such as the duty to act with courtesy, honesty and integrity.

34. It was alleged by the IFoA that the Respondent's actions at paragraph 1 of the Charge were in breach of the Integrity principle of the Actuaries' Code (version 3.0) in that he failed to show respect for others in the way he conducted himself, in circumstances where his conduct could reasonably be considered to reflect upon the reputation of the actuarial profession as a whole.

35. The Integrity principle at Section 1.2 incorporates the duty to show respect for others in the way in which Members of the profession conduct themselves. The Guidance amplifies the meaning of respect for others in Section 3.4 which encapsulates conduct

which occurs outside of a Member's actuarial professional life. The Guidance also gives examples of other conduct that could fall within its ambit such as (Section 2.8):

> "…*doing something else that has nothing to do with actuarial work as such, but where they are clearly identifiable, or are subsequently identified, as actuaries and an observer might be inclined to take their behaviour as representative of actuaries more generally (for example where a Member is posting comments on social media that are bullying or threatening in the circumstances where they have identified themselves as an actuary, or could easily be identified as an actuary)*".

36. The Panel were assisted by the decision in *Wingate & Evans v SRA [2018] EWCA Civ 366* where the Court of Appeal settled the issue of what constituted a lack of integrity in the context of a solicitors disciplinary tribunal. Integrity it determined is:

> "*In professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards. Integrity connotes adherence to the ethical standards of one's own profession that involves more than mere honesty*."

37. The Panel considered that given the findings in Charge 1 it was self-evident that the Respondent had failed to show respect for others in the way he had conducted himself. The question the Panel had to grapple with was whether such conduct could reasonable be considered to reflect upon the actuarial profession as a whole.

38. The Panel noted the Respondent's evidence that he had used his judgement and that he remained satisfied that his behaviour was appropriate. It was submitted on his behalf that there was no evidence of any impact on the actuarial profession from the Respondent's expression of his private views. The Respondent did accept when it was put to him, that there is a difference between somebody who is commenting on Twitter and himself as a person (Actuary) who is regulated and subject to a code and guidance and rules.

39. The Panel was satisfied that the comments / words used by the Respondent did not have to be made in the course of exercising the profession of actuary. The Panel did consider the context in which the Tweets were made, and while they were not made in the course of the Respondent's profession the Panel was satisfied that they were made

in circumstances where he declared himself to be an actuary and did so to give credence and support to the statistical and data analysis he was presenting/supporting. The Respondent accepted when it was put to him that his use of the Actuary title in his Twitter profile was a badge of his ability to deal with the statistical matters and the data that he was posting and reflected that he was presenting himself as a person who is expert in this area:

> "…*my original emphasis when I initially though that there actually might be a real Public Health threat or something like that was on the statistics and data. So I was publishing a lot of charts and so on …I was doing research myself… So I guess I was explaining why I'm doing all these statistics. Who am I to be looking at population mortality and event studies and standard deviations and all that kind of thing. So I think I probably inserted the word "Actuary" there just to explain, "Listen, I'm a person who knows a little bit about data science and I'm telling you that what the newspapers are saying is nonsense", that was kind of the tone of it*."

40. In the Panel's assessment, there was a real risk of the Respondent's conduct being seen as a reflection on the actuarial profession as a whole as the Respondent was clearly identifiable as an actuary on his Twitter profile. By holding himself out as an actuary, as a badge of his qualifications / ability, it meant that he had actively invoked his profession to underscore the substance of the material he was producing. It mattered not that the tweets supporting the Charge were not directed at members of the profession and/or related specifically to actuarial work, it was sufficient that the tweets did not show respect for others as was mandated by the Respondent's professional standards e.g. by avoiding the temptation to publicly ridicule others ideas and/or using language which is not appropriate for a professional to use. By using offensive language, which the Panel interpreted (in the case of T22, 23 & 24) as a call to action or potential call to action of a threatening kind, against an identified individual or group of individuals (generic), the Respondent, in holding himself out as an actuary, brought himself into disrepute which in turn was sufficient to diminish public trust in the actuarial profession and/or to bring or have the potential to bring the reputation of the actuarial profession into disrepute.

41. The Panel was satisfied that, in all these circumstances, the Respondent's conduct through the posting of each of the Established Tweets could reasonably be seen as reflecting on the profession as a whole and contravened the Integrity principle as set out in the Code, and it found paragraph 2 of the Charge proved.

Charge 3 - Communication

42. It was alleged that the Respondent's actions at paragraph 1 of the Charge where in breach of the Communications principle of the Code which requires that Members must "*communicate appropriately*". Direction to Members is also provided in the Guidance in relation to what is appropriate in so far as the communication must be "*courteous and professional*" (Section 8.3). It also pays particular attention to the risks associated with social media which is placed on a par with communication via television or the printed press. While noting the benefits of social media it also highlights that this needs "*to be balanced against the risk that it can sometimes pose to a Member's professional reputation if used inappropriately*" (Section 8.8) and sets out an unexhaustive list of examples (Section 8.9).

43. The IFoA Guidance also puts Members on Notice that:

> *"8.11 … It is also worth remembering that the publication of information on social media carries the same obligations as for other types of communications and you therefore need to take care not to engage in any conduct online that threatens your ability to comply with your requirements under the Code or impact on any of your other professional obligations…*
>
> *8.13 When engaging in online discussion, be aware that the views you express may provoke a response; it is important to be open to the opinions of others and to treat others with respect, even if they are disagreeing with your view*."

44. The language the Respondent employed was self-admittedly hyperbolic to reflect the "*rough and tumble*" of the Twitter medium when trying to get a message across. The Respondent did acknowledge that upon reflection he could have rephrased some of the tweets or written them in a less objectionable manner, but also emphasised that the highlighted tweets in this case were but a small percentage of the many thousands of tweets and retweets he produced none of which were problematic.

45. However, the Respondent's principle argument in relation to this Charge was that he was expressing his own opinion, primarily in relation to politics about matters of intense political controversy, which is protected as exercises of free speech. He submitted that the IFoA must recognise and respect his rights under the ECHR including his right to freedom of conscience and expression protected by Articles 9 and 10 of the Convention. He elaborated that the IFoA was taking this action against him "*because of opinions*

about intensely political matters wholly unrelated to accountancy or actuarial services". The Respondent also elaborated upon the philosophical beliefs he had developed and how he believed they fulfilled the *Grainger plc v Nicholson [2010] IRLR 4* criteria.

46. The Panel considered the fact that the Respondent had labelled himself as an actuary was a key feature and invoked the clear and obvious link to his profession. The linking of the PANDA website to the Respondent's personal Twitter account was considered as a further reinforcing link to his profession. While the Panel did not consider that the Respondent had to be a paragon of virtue or use dainty language in expressing his opinions, the language that he did employ in the Established Tweets was entirely inappropriate, unprofessional and offensive. Such language was employed in the face of what were clear Guidelines around communication and in particular on social media. In the view of the Panel, these Guidelines were ignored by the Respondent. Further, the comments were made on Twitter which is a public domain and therefore they represent public posts which are accessible to anybody.

47. The Panel considered the advice of the Legal Adviser with regards to Article 9 and Article 10 and the case law advanced by the IFoA and by the Respondent. The Panel noted that the right to manifest one's beliefs and freedom of expression are qualified rights and that regulatory actions may be justified in circumstances where the conduct arising from the manifestation of a protective belief or the views and opinions expressed are potentially in breach of the standards.

48. In considering the Respondent's position that the case against him interferes with his freedom of conscience and free speech rights, the Panel were equally cognisant of the arguments made by the IFoA that it was not contesting the Respondents right to have his beliefs and express his opinions, rather it was *the way* in which those opinions were expressed, in offensive language, that put him in breach of the Actuaries Code. This was akin to the case in *Diggins v The Bar Standards Board [2020] EWHC 467* where the court in reviewing the findings of a Disciplinary Panel of the Bar Standards Board relating to a racist and sexually explicit post by Mr. Diggins, found that "*quite properly their focus was not so much on the message as the likely effect of the florid language employed to express that message*".

49. The Panel bore in mind the high threshold for any interference with these Article 9 and 10 ECHR rights and considered the case of *Adil v. General Medical Council* [2023] EWHC 797 (Admin) §30:

> "*The position does not change when considered from the perspective of the article 10 right to freedom of expression. The article 10 right is a qualified right. Exercise of the right to freedom of expression may be restricted when necessary in the interests of public safety, and for the protection of public health, and for the protection of the rights of others. Each of these legitimate objectives was material to the Tribunal's consideration of Mr Adil's YouTube videos. The requirement that any restriction must be necessary sets a high bar, but the decisions of this Tribunal (a) that what Mr Adil had broadcast amounted to misconduct, (b) that by reason of that misconduct his fitness to practise was impaired, and (c) that his registration should be suspended for six months, were not disproportionate interference with Mr Adil's article 10 rights.*"

50. The Panel noted that the matters raised by this case were not about what beliefs or views the Respondent may hold, but about the limits on the public expression of those beliefs or views. It was cognisant that regulatory actions are justified where the conduct arising is potentially a breach of the professional standards. Moreover, maintaining the good-standing of the actuarial profession is, for the purposes of Article 10(2) ECHR, the pursuit of a legitimate objective on the part of the IFoA. As expressed by the court in *R (on the application of Ngole) v University of Sheffield:*

> "*The right to freedom of expression is not an unqualified right: professional bodies and organisations are entitled to place reasonable and proportionate restrictions on those subject to their professional codes; and, just because a belief is said to be a religious belief, does not give a person subject to professional regulation the right to express such beliefs in any way he or she sees fit.* "

51. Having considered the Guidance generally, the Panel concluded that the Established Tweets constituted the posting of inappropriate comments about others, using inappropriate and offensive language and that in particular the comments in T22, T23 and T24 bore the hallmarks of communications which were bullying or threatening nature, both towards and individual and a generic group of persons. Whether or not the threat could or would be executed was immaterial.

52. The Panel took particular note of the guidance to Members in Section 8.13 and had no difficulty in concluding that the Respondent's communications showed little or no respect for the views of others with whom he disagreed, they were offensive and were neither courteous nor professional in light of the findings in paragraph 1 of the Charge and above. In balancing the competing rights as between the Respondent's freedoms and the IFoA's obligation to regulate the profession, the Panel has found that the expressions in the Established Tweets go beyond the Respondent's Article 10 ECHR rights and it found paragraph 3 of the Charge proved.

Misconduct Charge

53. In assessing whether Misconduct had occurred in this case the Panel were mindful of the decision of the Privy Council in *Roylance v GMC No.2 [2001] 1 AC311* which identified the essential elements of the concept of Misconduct:

> "*A word of general effect involving some act or omission which falls short of what would be proper in the circumstances. And that the standards of propriety may often be found by reference to the rules and standards ordinarily required to be followed in the particular circumstances*."

54. In particular, the Panel considered whether the actions of the Respondent amounted to Misconduct having regard to the definition of Misconduct, for the purposes of the IFoA Disciplinary and Capacity for Membership Scheme of 1 June 2021 (under Rule 4.2), which is:

> "A*ny 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*."

55. While three breaches of the Code have been found by the Panel in this case, the Panel was equally cognisant that not all breaches of the Code would necessarily amount to Misconduct and it was incumbent upon the Panel to take into account the threshold for Misconduct and particular circumstances of this case in assessing whether a breach(es) amounted to Misconduct.

56. The IFoA submitted that the Respondent's actions in each and all of the paragraphs of the Charge constituted Misconduct in terms of Rule 4.2 of the Disciplinary Scheme, in that this conduct constituted a failure to comply with the standards of behaviour which other members or the public might reasonably expect of a Member.

57. The Respondent's position was that his actions did not constitute Misconduct: *"I don't agree that when it comes to the most momentous events in human history, that a degree of emotion and hyperbole is not consistent with professionalism… So heated, yes. A little bit too far, yes. Professional misconduct, no."* In assessing whether his behaviour was below the standard set out in the Guidance, he emphasised that the Panel must find that it amount to serious professional misconduct - relying upon *Nandi v GMC [2004] EWHC 2317*.

58. In order for the Panel to make a finding of Misconduct it must determine that the conduct in question is serious by using its own skilled judgement on the facts and circumstances of the case in light of the evidence. By way of guidance, the Panel had regard to the legal advice and the guidance in the jurisprudence including; the Court in *Nandi v GMC* (at para 31 & 32) found that 'serious' must be given its proper weight and should fall far short of the standard that is considered appropriate by the profession; the Court in *Remedy UK Ltd. V GMC [2010] EWHC 1245 (Admin)* (at para 37) which elaborated that Misconduct "*can involve conduct of a morally culpable or otherwise disgraceful kind, which may, and often will, occur outside the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession*"; and the Court in *Holbrook v The Bar Standards Board 25 March 2022 Unreported* which found that at a minimum the relevant speech in order to diminish the trust of the public in the particular (barrister) or in the profession as a whole will require something more than the mere causing of offence. At the very least the relevant speech would have to be "*seriously offensive*" or "*seriously discreditable*" and establish "*that the speech had gone beyond the wide latitude allowed for the expression of a political belief*".

59. The Panel noted that the conduct found proved in paragraphs 1, 2 and 3 of the Charge had involved multiple instances continued over a lengthy period, and that the posts which were plainly offensive, became more seriously offensive over time. This was not a one off misjudgement but a sustained campaign involving a reasonable number of unacceptable Twitter posts. The Panel was satisfied that members of the public and other members of the actuarial profession would consider that this behaviour fell well below what would be expected of a professional. It was satisfied that there was Misconduct in relation to Tweets T22, T23 and T24, which the Panel considered to be the most seriously offensive as in addition to being rude, inflammatory and offensive, they represent an escalating call to action against a category of persons including against one named individual, (and it matter not that he was a public figure) by a person who was a regulated professional easily identifiable as an Actuary.

Sanction

60. In considering the matter of sanction, the Panel had regard to the written and oral submissions of Ms. Gokani and Mr. Hoar and accepted the advice of the Legal Adviser. The Panel also had careful regard to the Indicative Sanctions Guidance Note (November 2021). The Panel notes that every case is fact specific and in the exercise of its powers in the imposition of any sanction, it is solely a matter for the Panel to determine and it is not bound by the Indicative Sanctions Guidance Note or by any previous panel determination.

61. The Panel is cognisant that the purpose of sanction is not aimed at being punitive, although it may have this effect. Rather, its purpose is to protect the public, to maintain the reputation of the profession and to declare and uphold proper standards of conduct and competence. Further, the Panel is mindful that it should impose a sanction or combination of sanctions which are necessary to achieve those stated objectives and in doing so it must balance the public interest with the Respondent's own interests.

62. In reaching its decision on misconduct the Panel found that the Respondent's conduct fell well below what was expected of a member of the actuarial profession. The misconduct had been serious and sustained and required a regulatory response. However, the Panel equally accepted that the Respondent had been acting in good faith in drawing attention to his genuinely held views.

63. The Panel heard submissions on sanction from the Parties;

64. It was argued *inter alia* on behalf of the Respondent that this was an 'unusual' case as while it involved insulting and offensive comments they were about public figures whose decisions had exceptionally serious consequences, were made in a period of intense and often high spirited debate, and where the comments would not have come to the attention of the IFoA but for an investigation into the unsustained allegations of misinformation. And in any event, the tweets were visible to a small number of people within a short period. It was also submitted that no individuals who were the subject of the offensive language had complained, that the disciplinary process has itself had been exceptionally long and demanding and that the Respondent's reputation will be affected by the publication of this finding.

65. While the IFOA did not make any specific submissions on what the sanction should be in this matter, the attention of the Panel was drawn to what the IFoA considered to be aggravating features and in doing so drew heavily upon the factual findings of the Panel. These included *inter alia* that the Respondent had used his actuary title as a badge of ability, had failed to show respect for others, that the language employed in the offending tweets had gone too far and variously breached the fundamental Integrity principle, were threatening and/or bore the hallmarks of bullying in contravention of the Communication principle, and there were multiple instances reflecting a sustained campaign which was targeted and escalating in nature.

66. In assessing the seriousness of the Respondent's offending in the context of sanction, the Panel first had regard to his culpability. It was evident that the Respondent had a firm belief underpinning his expressed views which was research based and therefore would result in pre-planned messaging. However, the Panel were satisfied that the medium and language he used in the offending tweets were spontaneous in nature, but nonetheless occurred over a sustained period. As a Fellow of the IFoA for over two decades, the Respondent is a senior actuary who should have been familiar with the Actuaries Code and the limits within which he needed to operate as a professional. On this basis the Panel determined that the Respondent's culpability for his own actions was at the medium range of offending.

67. In assessing the harm caused by the misconduct, the Panel took into consideration that there was no professional work being conducted and there was no demonstrated loss to any individual nor did any of the individuals who were the subject of the comments make

a complaint. However, it was foreseeable that there could have been harm caused to the profession and a diminution of public trust in the profession by the Respondent holding himself out as an actuary while simultaneously using offensive language and being disrespectful of others in direct contravention of the Actuaries Code. On this basis the Panel determined that the behaviour of the Respondent caused harm to the profession at the lower end of the scale.

68. While noting the entirety of the findings of the Panel above, the Panel was of the view that for sanctions purposes, the most significant aggravating feature of this case that involved a lack of integrity, was the escalating nature of the tweets (in particular T24, T23 and T22 when read in that order).

69. The Panel considered that in mitigation the following features should be taken into account;

    - There were no previous disciplinary findings against the Respondent;
    - The Respondent had engaged fully and respectfully with the proceedings and co-operated entirely; and
    - The Respondent had acted in good faith to action his genuinely held beliefs and when questioned by the Panel, had shown insight with regard to the intemperate and offensive language he had employed while expressing those views

70. The Panel, first, considered whether this might be a case that warranted no sanction. It might be argued that the findings of fact and misconduct against the Respondent give a clear signal that his conduct was unacceptable. The Respondent argued that this was an 'unusual' case, however the Panel has concluded that this case was not unusual in nature, nor was it one where a finding of no sanction would be appropriate, as this would be incompatible with the seriousness and sustained nature of the proven misconduct in this case.

71. The Panel, next considered whether this might be a case that warranted a reprimand. It concluded that this could form part of an appropriate sanction but that a reprimand alone would not suffice, given its findings on seriousness.

72. Thereafter the Panel considered whether to impose a fine and concluded that a fine would be appropriate here given the potential for harm to the profession and the fact that the Respondent remains steadfast in his views and is likely to continue to express them (as is his right), and an appropriate level of admonition and future deterrence as to

means of expression of these and other such views, in financial form, was appropriate. The Panel have set the fine at the level of £2,000.

73. The Panel did not consider that any further sanction beyond the reprimand and fine as determined above was necessary. It considered this sanction to be appropriate to the level of seriousness of the Respondent's offending.

Costs

74. The Parties made a joint submission on costs to the Panel. The Parties agree that, given its findings, the Panel should make a determination that a costs award should be made in favour of the IFoA and that the costs incurred by the IFoA are reasonable and were properly incurred. Having regard to paragraph 7.2 of the Costs Guidelines, the Parties agreed that it would be appropriate to reduce the costs award by 50% to reflect the Panel's finding that not all of the tweets detailed in the Charge were in breach of the Actuaries' Code and that a costs award of £13,603.75 should be made in favour of the IFoA.

75. The Panel noted with favour the proactive engagement of the Parties with one another on the matter of costs and could find no reason not to agree with the proposal. Finding that it was fair and proportionate, the Panel consequently has determined that a costs award in the amount of £13,603.75 should be made in favour of the IFoA, to be paid by the Respondent.

Right to Appeal

76. 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

77. The Panel noted that the Disciplinary Board's Publication Guidance Policy (May 2019) applied at the time of the Respondent's misconduct, but that the prevailing policy is the Publication Guidance (1 August 2023). The material difference between the two policies is that the cap on the period of publication of a Disciplinary Panel's determination has reduced from 5 years (General Principle (c)) to 3 years (Clause 9.4). Applying the

principle of *lex mitior*, that if a law relating to an offence is enacted or amended after the offence is committed, the more lenient law applies, the Panel has decided to apply the 2023 Publication Policy in this matter.

78. The Panel has determined that this determination will be published and remain on the IFoA's website for a period of 3 years from the date of publication. A brief summary will also be published in the next available edition of *The Actuary* magazine.

79. This concludes this determination.

22 April 2025
Susan Ahern SC (Chair)

Date of Publication: 24 April 2025