



Institute  
and Faculty  
of Actuaries

**Adjudication Panel Meeting**

**31 January, 2 and 4 February 2022**

**Institute and Faculty of Actuaries,**

**Held by Video Conference**

**Respondent:** Philip N D Berman FIA

**Category:** Fellow since 31 December 2012

**Region:** United Kingdom

**Panel Members:** Jules Griffiths (Chair/Lay member)  
Navin Ghorawat FIA (Actuary member)  
David Lane FIA (Actuary member)

**Legal Adviser:** Sharmistha Michaels

**Judicial Committees Secretary:** Julia Wanless

**Allegation:**

The allegation against Mr Berman (the Respondent) is:

A1 While he was employed as an Actuary by Company 1, the Respondent co-wrote an Executive Validation Report dated 25 September 2019 for Syndicates A and B (the Validation Report) which was not compliant with the Reliability Objective within Technical Actuarial Standard 100 (TAS 100), in that:

- (a) adjustments made outside of the core capital model for Syndicate A were not communicated to users of the Validation Report;
- (b) the reason for the adjustments to Syndicate A not being applied to Syndicate B was not communicated to users of the Validation Report;
- (c) the reason for the one year Solvency Capital Requirement for Syndicate A being high relative to the ultimate Solvency Capital Requirement was not communicated to users of the Validation Report;
- (d) the Validation Report states that Currency Risk is explicitly modelled, but this did not contribute to the filed Solvency Capital Requirement.

A2 His actions at A1 (a) and/or (b) and/or (c) and/or (d) were in breach of paragraph(s) 1 and/or 3.2 and/or 3.3 and/or 3.4 and/or 3.5 and/or 5 of TAS 100.

A3 His actions at A1 (a) and/or (b) and/or (c) and/or (d) were in breach of the Competence and Care principle of the Actuaries' Code (version 3.0).

A4 His actions at A1 (a) and/or (b) and/or (c) and/or (d) were in breach of the Communication principle of the Actuaries' Code (version 3.0).

A5 His actions, in all or any of the above, constituted misconduct in terms of Rule 4.2 of the Disciplinary and Capacity for Membership Schemes of the Institute and Faculty of Actuaries (Effective 1 February 2018).

**Panel's determination:**

The Panel considered the Case Report and appendices submitted by the Case Manager and Investigation Actuary (a total of 383 pages) and the Respondent's response to the Case Report, and Statements of Facts and Response to Allegations Forms (a total of 10 pages). The panel also considered the advice of the Legal Adviser.

For the reasons given below, the Panel determined that the Case Report disclosed a *prima facie* case of Misconduct. The Panel accordingly invited the Respondent to accept that there had been Misconduct and the following sanctions:

- Reprimand and
- Period of education, training or supervised practice

**Background:**

The Respondent is a member of the Institute and Faculty of Actuaries (IFoA). He was employed as an Actuary by Company A, until the Company was acquired by Company B in November 2019. He was Head of Reserving Validation in Company A, where he was responsible for writing an Internal Model Executive Validation Report, dated 25 September 2019. This Report was signed off by Company A's Chief Actuary.

On 13 October 2020, the IFoA received information from a member of the Institute who was a user of the report at Company B. The member raised concerns about whether there had been adequate disclosure of important judgements, methodology and limitations to the Board of Company A and to Lloyds regarding work performed in connection with the Lloyds Capital Process for Year of Account 2020. The modelling and reporting was performed mainly in Q3 2019, before Company B took ownership.

These matters were considered through the IFoA's Executive Referral process and an allegation was referred to the Disciplinary Scheme by the General Counsel on 11 January 2021.

The Respondent has co-operated with the investigation that followed, and provided explanations for his actions. He disputes the allegations.

## **Decision and Reasons on the Allegations:**

The Panel analysed each of the sub-allegations in turn, before turning to the stem of the allegation and considering the Respondent's actions against the "Reliability Objective" of TAS100.

For **Allegation A1(a)** the Case Report refers to four specific adjustments made outside the core capital model, which reduced the modelled number in relation to the number filed with Lloyds in the LCR forms by a total of 5% overall. The absolute value of the changes is said to be equivalent to 8.2%. The adjustments were detailed in the case report but not reproduced here to maintain confidentiality.

The member who raised concerns alleged that these adjustments were not documented, and there was no evidence that they were known to Lloyds or the Board/Risk Committee of Company A. It is said that the adjustments do not appear on any model change logs, model limitations/development logs or expert judgement logs. The member acknowledged that it was not possible to say whether, if known, these issues would have made a material difference, and that the outcome might well have been the same.

The Respondent has stated that the majority of the validation tests undertaken for his report focused on the calculations within the core model ("calculation kernel") as opposed to the population of the Lloyds Capital Return (LCR) forms, and as the adjustments were made outside the core model he was not aware of them. He has explained that validation was performed on the submitted LCR forms to validate that the submitted figures were reasonable and the SCR was not materially misstated. He has accepted that there was no validation of the detail behind the figures, and states that, if that had been done he would have been aware of the adjustments made. However he considers that they were not material enough to change the opinion of the users of the report and so it would have been reasonable to not discuss them in the Report. The Panel noted that no evidence was provided that the Respondent had enquired about the existence of out of model adjustments.

The Panel accepted that the adjustments made were made outside of the core model. But the Panel did not accept that this was a reasonable explanation for excluding them from the Report. The Panel carefully reviewed the Validation Report, and noted that it clearly states that the one-year and ultimate SCRs for each of the syndicates is within scope (Page 1),

shows the SCR as subject to testing (page 3) and includes the submitted figures for Syndicate A (page 22). The Panel also carefully considered the nature of the adjustments, and in particular whether they could be assessed as material. The Panel had regard to the “Framework for FRC Technical Actuarial Standards” which states (sections 5.8 and 5.9) that “Assessing whether a matter is material is a matter for judgement which requires consideration of the users and the context in which the work is performed and reported..... Matters are material if they could, individually or collectively, influence the decisions to be taken by users of the related actuarial information.” The Panel observed that the users of the Report included Lloyds and Company B. The Panel concluded that they *could* have reached different conclusions if the judgements made had been documented and communicated appropriately.

The Panel concluded that it was reasonable for users of the Validation Report to assume that the validation exercise covered all calculations underlying the SCR including those that fall outside the core capital model.

The Panel therefore concluded that the Case Report contained *prima facie* evidence to support this allegation, and that the adjustments could have been material.

**Allegation A1(b)** arises from the relationship between Syndicate A and Syndicate B, which took a proportionate share of Syndicate A’s recent underwriting years. The Report states that the underlying methodology and assumptions for Syndicates A and B are consistent but failed to communicate that the adjustment applied to Syndicate A's SCR were not applied to Syndicate B's SCR, even though they might be relevant to Syndicate B as well.

The Respondent states that the validators were not aware of the different approach taken for the two syndicates and therefore could not have reported on them. He has explained that the testing focussed on the inputs, workings and outputs of the core model.

The Panel noted that the Validation Report scope included the final SCR number filed in the LCR form to Lloyds and hence could not accept the statement made by the Respondent. The Panel therefore concluded that the Case Report contained *prima facie* evidence to support this allegation.

In considering **Allegation A1(c)** the Panel noted that neither the member who had raised concerns, nor the Case Report, provide any detailed analysis to support the assertion that

the SCR for Syndicate A was high relative to the ultimate SCR. The Panel accepted the Respondent's statement that the ratio of the one-year SCR to the ultimate SCR was similar to the Lloyds market benchmarks for 2019. The Panel therefore concluded that the evidence in the Case Report did not support this allegation.

**Allegation A1(d)** refers to the Validation Report section that states currency risk was explicitly modelled but the filed SCR did not seem to be impacted by this. The Panel considered the response from the Respondent that stated "the treatment of exchange rates is noted as a limitation of the model in the validation report. I was not aware of the method used to calculate the figure on the LCR form as that was not within the validation tests. I understand that the approach taken within the LCR forms is consistent with Lloyds guidance". The Panel acknowledged that the Validation Report mentioned this limitation. The Panel therefore accepted the Respondent's explanation, which was reasonable in the circumstances, and concluded this allegation was not capable of proof.

Having concluded that there is *prima facie* evidence to support allegations A1(a) and A1(b), the Panel concluded that by failing to communicate both the adjustments made, and the reasons for the lack of consistency in the treatment of Syndicates A and B, the Report was not compliant with the Reliability Objective of TAS100, which requires that "*users for whom actuarial information is created should be able to place a high degree of reliance on that information's relevance, transparency of assumptions, completeness and comprehensibility, including the communication of any uncertainty inherent in the information*".

While the Panel noted there was no allegation regarding failure to include a statement confirming compliance with TAS 100 (as required by TAS 100) it nonetheless observed that the Validation Report did not contain such a statement.

## **Allegation 2**

The Panel also concluded that by failing to document and communicate the adjustments made and the reasons for the lack of consistency, the Respondent's actions were in breach of the following provisions of TAS100: paragraph 1 ("material judgements shall be communicated to users so that they are able to make informed decisions understanding the matters relevant to the actuarial information"); paragraph 3.2 ("Assumptions used in

technical actuarial work shall be documented”); paragraph 3.3 (“Communications shall state the material assumptions and describe their rationale.”); paragraph 3.5 (Communications shall state when assumptions are set by a user or third party”) and paragraph 5 (“Communications shall be clear, comprehensive and comprehensible so that users are able to make informed decisions understanding the matters relevant to the actuarial information”).

The Panel was not satisfied that it had evidence from which it could conclude that paragraph 3.4 was breached.

### **Allegations 3 and 4.**

The Panel concluded that the Respondent’s actions were in breach of the Actuaries Code, both the Competence and Care principle (which requires members to act competently and with care) and the Communication principle (which requires members to ensure that any communication for which they are responsible is accurate and not misleading, and contains an appropriate level of information).

### **Decision and Reasons on Misconduct:**

The Panel then considered whether there was a *prima facie* case that the Respondent’s actions under allegations A1(a) and A1(b) amounted to Misconduct.

For the purposes of the Disciplinary and Capacity for Membership Schemes, Misconduct is defined as any conduct by a Member, whether committed in the United Kingdom or elsewhere, in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity, competence or professional judgement which other Members or the public might reasonably expect of a Member having regard to the Bye-laws of the Institute and Faculty of Actuaries and/or to any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or, for so long as there is a relevant Memorandum of Understanding in force, by the

FRC (including by the former Board for Actuarial Standards) in terms thereof, and to all other relevant circumstances.

The Panel concluded that by his actions, which had been found to be a material breach of both technical standards and the Actuaries' Code, the Respondent had fallen below the standards which might reasonably be expected by a member of the profession.

The Panel therefore determined that there was a *prima facie* case that the Respondent's actions were sufficiently serious as to constitute Misconduct under the Disciplinary and Capacity for Membership Schemes.

### **Decision and Reasons on Sanction:**

In reaching its decision, the Panel had regard to the Indicative Sanctions Guidance (November 2021). The exercise of its powers in the imposition of any sanction is a matter solely for the Panel to determine and it is not bound by the Indicative Sanctions Guidance.

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

In considering sanction, the Panel took into account the following factors: There are no other disciplinary matters recorded against the Respondent. The Panel acknowledged that the Respondent had not been provided with relevant information by a colleague; nevertheless, as an experienced actuary who was undertaking an important piece of work he should have assured himself that he had all the information he would need to produce a reliable and comprehensive report. He was professionally responsible for its content alongside the co-signatory of the report. Whilst his actions had no long-term material impact and did not lead to a financial loss, they risk harm to the reputation of the profession. This case does not involve dishonesty, lack of integrity or criminal behaviour, and was not done for financial gain; however it does involve a breach of the technical standards which in itself is serious. The Panel also acknowledged that the Report was co-signed by a senior

colleague who had not taken the opportunity to ensure it was compliant with the requirements.

The Panel noted that the Respondent had shown some insight and had accepted that there was room for improvement. However the Panel was concerned that the Respondent had not provided any information about steps taken to improve his awareness and understanding of TAS100 and the associated guidance; the Panel was unable to conclude that there was no risk of repetition.

The Panel considered whether this was a case that warranted no sanction, or whether a Reprimand alone would be sufficient to mark the Misconduct, and concluded that the risk of repetition made both of those inappropriate.

The Panel was concerned that the Respondent's failings suggested a lack of understanding of the application in practice of a number of the requirements of TAS100. In addition to breaches found, the Panel was not satisfied that there was sufficient documentation recording peer review and compliance with TAS100.

The Panel consulted the IFoA's Guidance Note on Sanctions involving education, re-training and/or supervised practice. The Panel considered whether the Respondent's failings were so serious that a period of supervised practice was necessary to maintain standards and protect the public. The Panel concluded that, in the circumstances of this case, that was not required. The Panel therefore concluded that the Respondent should undertake the following education and/or re-training:

- Review TAS100, the Actuaries Code, APS X2 Review of Actuarial Work, and any other relevant professional guidance;
- Consider carefully how they should be applied in practice to all stages of his work, including planning, undertaking, documenting, peer reviewing and reporting.
- The Respondent is encouraged to utilise the professional skills training available from the IFoA website.
- He should undertake reflective discussion with peers on best practice regarding how professional standards and guidance should be applied to his work.
- The Respondent must undertake a minimum of 7 hours of training, separate and additional to the normal continuous professional development activities required of a Fellow, and complete this by 31 August 2022.

- No later than 31 August 2022, the Respondent must advise the IFoA's Head of Legal Services that he has complied with these requirements, including the ways in which he will incorporate this in his work.

The Panel considered whether a Fine or more onerous sanction would be appropriate but concluded that it was not needed.

**Publication:**

Having taken account of the Disciplinary Board's Publication Guidance Policy (May 2019), the Panel determined that, if the Respondent accepted the findings of the Panel, this determination will be published and remain on the IFoA's website for a period of five years from the date of publication. A brief summary will also be published in the next available edition of *The Actuary Magazine*.

That concludes this determination.