Adjudication Panel Meeting

27 & 28 January 2021

Held by Video Conference

Respondent:	Christopher John Mapp
Category:	Resigned
Region:	Gloucestershire, UK
Panel Members:	Jules Griffiths (Chair/Lay member) David Lane FIA (Actuary member) John Birkenhead FIA (Actuary member)
Legal Adviser:	Alan Dewar QC
Judicial Committees Secretary:	Julia Wanless

Allegation:

The allegation against the Respondent is, in his role as Scheme Actuary to Plan A:

A1 he knew or should have known that a Charge over property to be granted in relation to an Approved Withdrawal Arrangement (the Charge) had not been put in place and therefore could not be effective;

A2 he relied on the Charge being in place when advising the Trustees on the methods and/or assumptions to adopt for the 2009 actuarial valuation when he knew or should have known that the Charge was not in place;

A3 he did not advise the Trustees of the implications of the Charge not being in place on the 2009 actuarial valuation and/or the solvency position;

A4 he relied on the Charge being in place when preparing the Statement of Funding Principles dated June 2010, when he knew or should have known that it was not in place;

A5 he did not advise the Trustees that they were required to notify the Pensions Regulator that the Charge was not in place and/or that the Statement of Funding Principles dated June 2010 was incorrectly based on the Charge being in place;

A6 he did not advise the Pensions Regulator that the Charge was not in place and/or that the Statement of Funding Principles dated June 2010 was incorrectly based on the Charge being in place;

A7 in September/October 2011, he did not advise the Trustees that they should correct the Pensions Regulator's understanding of the Trustees' intentions regarding Property Development A;

A8 his actions at A1 - A4 above were in breach of the principle of competence and care in the Actuaries' Code (version 1.0);

A9 his actions at A5 - A7 above were in breach of the principle of the compliance principle in the Actuaries' Code (version 1.0);

A10 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 and the Respondent's response to the Case Report, a total of 653 pages. The Panel also considered the advice of the Legal Adviser, with regard, among other matters, to the definition of Misconduct and the approach to take when considering sanction. 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
- Fine of £5,000 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation

Background:

The Respondent was a Fellow of the IFoA from September 1990 until February 2019 when he retired. The Respondent was the Scheme Actuary to Plan A from 1 November 2007 until 11 November 2011.

A Section 75 debt arose on Plan A (the Plan) on 1 January 2006. It was agreed to put in place an Approved Withdrawal Arrangement (AWA) as an alternative to paying the Section 75 debt. This included an agreement that Company B would grant a charge over property it owned (the Charge). The AWA was approved by the Pensions Regulator (tPR) on 28 August 2008 with a condition the Charge was put in place within 7 days, but the Charge was never put in place. When the group of companies, including Company B, went in to insolvency in March 2013, the Plan did not benefit from the Charge.

In January 2020 the IFoA received a referral from a Director of Company C, which had become the sole Trustee of the Plan. Company C had brought legal proceedings against the Plan's former trustees and their professional advisers, including the Respondent, which

were ultimately settled out of court in 2019. The referral alleged that the Respondent was aware or should have known that the Charge was not in place and therefore that the basis for the 2009 actuarial valuation and the Statement of Funding Principles dated June 2010, which was drafted by the Respondent, was incorrect. The Referrer also stated that the Respondent should have advised the Trustees that he would be required to make a report to tPR regarding the Charge not being in place if they failed to do so.

The Respondent denies these allegations on the basis that he had understood that the Charge was in place and he was never advised otherwise by the Trustees. While the Respondent had an awareness of the Section 75 Debt and the AWA he states that he was not directly involved in the preparation of the AWA or the Charge, which was being handled by the Trustees and their lawyers. He states that it was appropriate for him to prepare the actuarial valuation and to draft the Statement of Funding Principles on the Trustees' behalf based on the Charge being in place. He does not accept that he was required to advise the Trustees that they were required to report to tPR that the Charge was not in place as he was not aware of the true position regarding the Charge.

It is also alleged that the Respondent should have corrected tPR's understanding in relation to the employer's intentions regarding the utilisation of cash from a property development. The Respondent asserts that he advised the Trustees that they should correct tPR's understanding and provided a draft letter for the Trustees. He was not aware that the letter had not been issued.

Decision and Reasons on the Allegations:

Allegation 1: He knew or should have known that a Charge over property to be granted in relation to an Approved Withdrawal Arrangement (the Charge) had not been put in place and therefore could not be effective.

The Panel reviewed the minutes of 10 Trustees' meetings between 13 November 2007 and 23 June 2011. The Section 75 Debt and the AWA were discussed in detail at the two meetings prior to the AWA (including the charge to be put in place within 7 days) being approved by tPR on 28 August 2008. The Panel noted that the AWA was discussed at each meeting and it was clear that the charge over Property B had not been finalised. For example, on 18 November 2009, the minutes record that Person 1 (a Trustee and the

employer's Finance Director) “advised the Trustees that the documentation relating to the second charges on [Property B] were still being finalised by the respective legal advisers, and the Regulator will be advised of progress. Person 1 agreed to write formally to the Trustees and then respond to the Pensions Regulator.” At the following meeting, 9 March 2010, the minutes record that Person 1 is still to finalise the documentation relating to the second charge on Property B. Subsequent minutes throughout 2010 and 2011 make clear that this matter remained unresolved, and legal issues appear to have emerged and developed.

The Respondent attended all bar one of these meetings and would have had sight of the minutes, and the Panel concluded that it should have been apparent to him that an important condition of the AWA approved by tPR had not been put in place despite being discussed for over 3 years. The Panel noted that in his response to the investigation the Respondent has said he challenged the Trustees, and was informed that the issues were not material and so, he said, satisfied himself that there were no concerns.

The Panel considers that the Respondent’s actions (or inaction), and his explanation, suggest an inappropriate unwillingness to question and challenge the approach taken by the Trustees, their Legal Advisers and/or the employer in relation to putting in place the charge, which was an important Scheme asset and a requirement of tPR in approving the AWA.

The Panel concluded therefore from all of the foregoing that the Respondent did know, or should have known, that the charge had not been put in place. Therefore the Panel was satisfied that there was sufficient evidence to support this allegation.

Allegation A2: He relied on the Charge being in place when advising the Trustees on the methods and/or assumptions to adopt for the 2009 actuarial valuation when he knew or should have known that the Charge was not in place;

Allegation A3: He did not advise the Trustees of the implications of the Charge not being in place on the 2009 actuarial valuation and/or the solvency position;

Allegation A4: He relied on the Charge being in place when preparing the Statement of Funding Principles dated June 2010, when he knew or should have known that it was not in place;

The Respondent did not dispute these allegations, indeed his defence rests on his explanation that he was satisfied that the Charge was in place, and that others, including the employer's Finance Director (who was also a Trustee) who signed off the Statement of Funding Principles and other documentation associated with the valuation on behalf of the employer, were in a better position than he was to understand the true position.

The Panel concluded that, as a matter of fact, the allegations are all made out. The Respondent was responsible for preparing statements based on information which he knew, or should have known, was incorrect. It was not sufficient for him to rely on others, especially when the Plan was in deficit and there were tensions between the employer and the Trustees in relation to funding a recovery plan.

The Panel reminded itself of the provisions of the Actuaries Code (version 1.0) in force at the relevant time, and concluded that the Respondent was in breach of the competence and care principle. The Panel noted that, in particular, section 2.4 requires Members to take care that the advice or services they deliver are appropriate, not just to the needs of the client, but also having due regard to others, such as members of a pension scheme. Section 2.2a says that members should not act unless they have an appropriate level of knowledge and skill. The Panel interpret this to include an expectation that members will make appropriate, and, if necessary, persistent enquiries, including requesting appropriate documentation to ensure that they are fully aware of the situation and record having done so.

The Panel concluded that the Respondent's actions upheld in Allegations A1, A2, A3, and A4 amounted to a breach of the Actuaries Code (version 1.0) and therefore Allegation A8 is proved.

Allegation A5: He did not advise the Trustees that they were required to notify the Pensions Regulator that the Charge was not in place and/or that the Statement of Funding Principles dated June 2010 was incorrectly based on the Charge being in place

The Panel accepts that, as a matter of fact, the Respondent did not advise tPR that the Statement of Funding Principles was based on an incorrect assumption. This is consistent with his position that he was content with the statement.

If the Respondent had chosen to highlight that the Charge was not in place, it would have been appropriate for him to suggest to the Trustees that they should inform tPR of this, but that is not the same as the Trustees being required to do so as the allegation states.

Therefore, the Panel is not satisfied that this allegation is capable of proof as it does not accept there was an obligation on the Trustees under law to notify tPR in respect of this matter.

Having so found it was not necessary to consider Allegation A9 in this regard.

Allegation A6: He did not advise the Pensions Regulator that the Charge was not in place and/or that the Statement of Funding Principles dated June 2010 was incorrectly based on the Charge being in place

The Panel reminded itself of the provisions of the Pensions Act 1995 which places specific obligations on a Scheme Actuary. The Panel was satisfied that, having determined that the Respondent knew, or should have known, that the charge was not in place, he had an obligation to notify tPR that the arrangement had not been finalised. The allegation is therefore made out.

The Panel concluded that the Respondent's actions found proved in Allegation A6 amounted to a breach of the Actuaries Code (version 1.0), section 4.2 of which requires Members to fulfil any obligations to report information to relevant regulatory authorities.
Therefore Allegation A9 is made out.

Allegation A7: In September/October 2011, he did not advise the Trustees that they should correct the Pensions Regulator's understanding of the Trustees' intentions regarding Property Development A

This allegation flows from a conference call between tPR and the Trustees, on 1 July 2011; the Respondent was also present. In a follow-up letter addressed to the Trustees, sent to the Respondent, on 5 September tPR misrepresented the position with regard to the development of, and income from, land owned by the employer. The Panel noted that this misunderstanding was raised at the next Trustee meeting, on 27 October 2011, and the Respondent provided a draft response for the Chair of the Trustees on 1 November 2011.

The Panel considered that they had no reason to conclude that this matter had not been handled appropriately or that the Respondent's actions were not reasonable. Therefore this allegation is not capable of proof.

Having so found it was not necessary to consider Allegation A9 in this regard.

Decision and Reasons on Misconduct:

The Panel then considered whether there was a *prima facie* case that the Respondent's actions as found in Allegations A1, A2, A3, A4, A6, A8 and A9 (part of) 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 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.

In particular the Panel noted that the delays in finalising the charge were reported to the Trustees, in the presence of the Respondent and recorded in the Trustee meeting minutes (to which he had access), on at least seven occasions, between 2008 and 2011. During the investigation the Respondent reported that he had challenged the Trustees and had been reassured; he says that the tone of the meetings was that the Charge had been finalised and, save for some formalities, all was in order. The Panel concluded that by accepting this,

without effective challenge, the Respondent's actions did fall below the standard of competence that other Members or the public would reasonably expect, and that his reluctance to probe further or report to tPR was a failure of professional judgement.

Decision and Reasons on Sanction:

In reaching its decision, the Panel had regard to the Indicative Sanctions Guidance (January 2020). The exercise of its powers in the imposition of any sanction is a matter solely for the Panel to determine and it is not bound by the Indicative Sanctions Guidance.

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

The Panel noted the Respondent had been a Member of the IFoA for over 30 years, with an otherwise unblemished record. The Panel also noted that the Respondent had retired in 2019. The Respondent had co-operated with the investigation. He had not provided any information about his financial circumstances. The Panel also recognised that the period of time between the events in question and concluding these complaints was unfortunate and could have been a source of pressure for the Respondent.

Having dealt with mitigating factors, the Panel identified a number of aggravating factors as follows:

- the Respondent was a senior and experienced professional, in a regulated role;
- his failure to question and robustly challenge the Trustees, who were facing a relatively high risk situation including a significant deficit and a long recovery period, was a serious failure of his professional responsibility which ran the risk of seriously harming the reputation of the profession;
- his failure continued over a lengthy period of time with many opportunities for him to intervene;
- his failure demonstrated a lack of insight and a lack of competence as a Scheme Actuary;

- whilst there was no evidence of criminal or dishonest actions, the Panel considered this was a breach of the Pensions Act 1995.

Taking into account all of the above, the Panel concluded that this case was too serious for there to be no sanction, and also that a Reprimand alone would not properly reflect the degree of misconduct.

The Panel considered whether the Respondent's shortcomings could be addressed by a period of supervised practice. Had the Respondent still been in practice, the Panel was of the view that such a sanction would have been appropriate. That would have provided reassurance to the IFoA, and the wider public, that the deficiencies in the Respondent's actions and inactions would have been addressed. However, the Panel noted that the Respondent is not currently practising as a Scheme Actuary, and has resigned his membership of the IFoA. The Panel therefore concluded that it was not appropriate to impose a period of supervised practice. But it is to be noted that if the Respondent wishes to recommence work as a Scheme Actuary, he would need to rejoin the IFoA and apply for a relevant Practising Certificate. That would require him to demonstrate satisfactory recent relevant experience and disclose this finding of Misconduct.

Taking account of all of the circumstances, the Panel concluded while the maximum fine (open to the Adjudication Panel) of £7,500 was not merited, nevertheless a substantial fine of £5,000 was appropriate, in addition to a Reprimand, to mark the seriousness of the Respondent's failings.

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.