



Adjudication Panel Meeting

17 November 2021

Held by Video Conference

Respondent:	Gavin Rogaly FFA
Category:	Fellow since August 2004
Region:	Johannesburg, South Africa
Panel Members:	Jules Griffiths (Lay/Chair) Nylesh Shah FIA (Actuary Member) Rebecca Sardar FIA (Actuary Member)
Legal Adviser:	James Stythe
Judicial Committees Secretary:	Julia Wanless

Allegation:

The allegation against Mr Rogaly (the Respondent) is:

- A1 He failed to comply with the requirements of the 2019/2020 CPD Scheme in that he failed to complete the requisite 15 hours of CPD activity or submit a written request for exemption.
- A2 He did not fully engage with, and/or adequately respond to, communications from the Membership Team of the IFoA on the matter of his CPD activities for the 2019/2020 CPD reporting year.
- A3 His actions at A1 and/or A2 were in breach of the Compliance principle of the Actuaries' Code (version 3.0).
- A4 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 (over 200 pages). The Panel noted that, on 12 October the Respondent had been invited to submit a response to the Case Report, but had not done so. The Panel was satisfied that the Respondent was aware of the nature of the allegations against him, and had been given opportunity to add to the explanations he had provided during the investigation. The Panel considered the advice of the Legal Adviser, specifically with regard to proof of service and the approach to determining sanctions.

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

- Fine of £1500 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation; and
- A period of education, training or supervised practice: The Respondent must undertake the "reflective practice discussion", which is required under the current CPD Scheme, with a member of the IFoA's reflective practice discussion specialist team, by 30 September 2022.

Background:

Mr Rogaly (the Respondent) was admitted as a Fellow to the Institute and Faculty of Actuaries (the IFoA) on 3 Aug 2004. For the 2019/2020 CPD year, the Respondent was a Category 2 member and was required to complete at least 15 hours of CPD activities.

Between June 2020 and March 2021, the Membership Team emailed the Respondent on 15 occasions and tried to contact him by telephone 14 times in order to ascertain whether he had completed sufficient CPD. In late February 2021, the Respondent provided details of additional CPD he had completed, and which he had not previously reported. This would still not have met the minimum requirements. The Respondent did not reply to further attempts to contact him during March 2021.

When contacted as part of the IFoA's investigation, the Respondent accepted that he did not fulfil the requirements of the 2019/2020 CPD reporting year and also that he did not communicate effectively with the Membership Team on the matter.

The Panel paid regard to the 2019/2020 CPD Scheme (effective from 1 July 2019) and the FAQ's which the IFoA published to assist members with complying with the requirements. The Scheme set deadlines for completing CPD and for recording it. Originally the deadlines were 30 June 2020 and 31 July; in April 2020 the deadlines were extended to 31 August and 30 September respectively.

The Panel noted the emails sent to the Respondent in June, July and August 2020, which reminded him of the requirements, and provided various links to information which he might find useful to complete the required learning. On 30 September he was offered an opportunity to extend the deadline for reporting CPD, to 30 November, on payment of a £50 administration fee. On 16 December, having been informed that he had reported only 3 ¼ hours CPD, he replied stating "I will deal with this tomorrow".

He failed to do this, after further emails and phone calls from the Membership Team, in February 2021 he was offered a final opportunity to demonstrate he had complied. On 26 February he submitted a table which showed 4 “reading/research” activities and one Webinar. Combining this information and the CPD already recorded on the IFoA CPD recording system, he had completed 8 ¼ hours of CPD (against a requirement of at least 15 hours) and 4 ¼ hours of external CPD (against a minimum requirement of 5).

The Panel noted that a Member who does not comply with the CPD Scheme can avoid referral to the Disciplinary Scheme on payment of a charge of £750. This option is normally only available to members once in a 10 year period, and as the Respondent had previously paid a £750 charge due to non-compliance with the 2016/2017 CPD Scheme, it was not available to the Respondent for the 2019/2020 CPD year.

Decision and Reasons on the Allegations:

Allegations 1 and 2

The Panel noted that these allegations were supported by the evidence in the Case Report, and had been accepted by the Respondent.

In his letter dated 31 July 2021, the Respondent confirmed that he had not met the requirements of 15 hours of CPD, submitting that his failure was not due to a wilful default rather certain conditions that he found himself in. He conceded that his communication with the Membership team was poor.

Therefore the Panel found these allegations proved by admission.

Allegation 3

The Panel had no doubt that complying with the CPD Scheme, both in undertaking and recording CPD, as well as responding to enquiries from the IFoA, were professional requirements. The Panel was satisfied that both of the matters found proved in Allegations 1 and 2 would amount to a breach of the Compliance principle of the Actuaries’ Code which requires members to comply with all relevant legal, regulatory and professional requirements.

Therefore Allegation 3 is capable of proof.

Decision and Reasons on Misconduct:

The Panel then considered whether there was a prima facie case that the Respondent's actions 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. The Respondent was aware of his obligations as a member, having complied in previous years. Although the latter part of the CPD period was challenging due to the COVID pandemic, the IFoA had extended the deadlines and provided information about resources and events which he could have used to satisfy the requirements. There was no evidence before the Panel that the Respondent had recognised his failure or taken steps to replace the event which he normally relied on in order to maintain and increase his skills and knowledge. The Panel was satisfied that his actions (or inactions) fell short of the standards which would be expected by other members of the profession and the public.

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.

In considering sanction, the Panel noted that the Respondent has been a Fellow since 2004 and had a previously good disciplinary history. He had expressed some remorse for his actions and offered an undertaking to work with the IFoA in future. The Panel did not identify any other mitigating factors.

Turning to aggravating factors. This case did not involve any criminal matters, or allegations of dishonesty or a lack of integrity and there was no financial loss or other direct impact on clients. The Respondent is not in a regulated role. Nevertheless, not complying with the requirements of the CPD Scheme has the potential to undermine confidence in the profession. The Respondent was aware of the requirements, and this was the second breach in three years. Although he has explained that part of the failure was due to the disruption caused by the COVID pandemic, this arose only in the latter part of the CPD period, and he had taken no steps to investigate any of the alternatives offered by the IFoA at that time. He was entirely responsible for his actions, or lack of them. The Panel was concerned that there was a risk of repetition. These factors made the misconduct more serious.

The Panel considered whether no sanction was appropriate. It concluded that this was not the case.

The Panel considered whether a Reprimand would be appropriate, but concluded that a Reprimand alone would not be sufficient to mark the seriousness of the Misconduct.

The Panel moved on to consider a Fine. The Respondent had been invited to provide information about his financial circumstances but had not done so. The Panel took account of the mitigating and aggravating factors identified, and the administrative charge of £750 payable for the first non-compliance. The Panel also reviewed published outcomes of some

cases which appeared to be similar. The Panel concluded that, as this was the second instance of non-compliance, the appropriate fine would be £1,500.

The Panel considered whether the Respondent's failure should be addressed by a period of education, training or supervised practice. The Panel noted that, in line with the current CPD Scheme, the Respondent is required to carry out a reflective practice discussion with an appropriate person of his choosing. In order to provide confidence that the Respondent is fully complying with the spirit and the letter of the Scheme, the Panel directs that the "appropriate person" for the Respondent should be a member of the IFoA's specialist team. The Respondent must take responsibility to organise the discussion, which can take place at any time following completion of his 15 hours of CPD, but must be completed by 30 September 2022.

The Respondent must confirm he has complied by writing to the IFoA's Head of Legal Services and providing any relevant documentary evidence.

As required by the Indicative Sanctions Guidance, the Panel moved on to consider whether a more onerous sanction was appropriate and concluded it was not.

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.