Disciplinary Tribunal Panel Hearing

Institute and Faculty of Actuaries on-line hearing

9 May 2022

Respondent:	Adam Charles Brunskill FIA Present and represented by Jonathan Goodwin, Solicitor Advocate
Category:	Fellow since August 2004
Region:	Merseyside, UK
IFoA Case Presenter:	Fiona Horlick QC, Barrister instructed by the IFoA.
Panel Members:	Peter Wrench (Chair/Lay Member) Catriona Whitfield (Lay Member) Li Mei FIA FIAA (Actuary Member)
Legal Adviser:	Alan Dewar QC
Judicial Committees Secretary:	Julia Wanless

Charge:

Adam Charles Brunskill, being at the material time a member of the Institute and Faculty of Actuaries, the charge against you is that:

1. in or around December 2017 you provided calculations of the solvency capital requirement for Company A, to Company A's management, which were purportedly in accordance with the applicable Solvency II regulations;

2. in those calculations you did not calculate the solvency capital requirement for Company A as at 31 March 2018 in accordance with the applicable Solvency II regulations;

3. in those calculations you significantly understated the solvency capital requirement for Company A in the calculation of the solvency capital requirement as at 31 March 2018;

4. your actions at paragraphs 1, 2 and/ or 3 above were in breach of the principle of competence and care in the Actuaries' Code (version 2.0);

5. your the actions at paragraphs 1, 2 and/ or 3 above were in breach of the principle of compliance in the Actuaries' Code (version 2.0);

6. in or around February 2019, you did not communicate appropriately with Company A and/or their new actuarial advisers in that you did not provide information requested by them;

7. your actions at paragraph 6 above were in breach of the principle of communication in the Actuaries' Code (version 2.0);

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

Plea:

1. The Respondent attended the hearing and was legally represented. At the start of the hearing he admitted the charge in its entirety and the Panel therefore found that the charge was proved.

Panel's Determination:

2. The Panel found paragraphs 1-8 of the charge proved by admission.

   The Panel determined that the most appropriate and proportionate sanctions were:

- a reprimand; and
- a fine of £5,000.

3. The Panel also ordered the Respondent to pay to the IFoA costs of £15,000.

Background:

4. The Respondent is an experienced actuary and has been a Fellow of the IFoA since 2004. The Respondent was at the material times Managing Director of an actuarial consultancy ("the Consultancy"). In November 2017 the Consultancy was engaged by Company A, who were in the process of applying to the Prudential Regulatory Authority (PRA) for authorisation to write insurance business as a non-Solvency II Directive Firm (NDF).

5. Prior to the Respondent's appointment, the PRA had advised Company A that the minimum capital resources requirement for NDFs was £2,000,000 but it would be willing to support Company A's application to become an insurer with a waiver of its rules which would allow Company A's minimum capital resources requirement (CRR) to be equal to the Solvency II Solvency Capital Requirement (SCR) plus a Risk Margin (RM) ("the waiver"). It was against this background that Company A appointed the Consultancy for the purposes of assisting Company A calculate figures for its application for authorisation from the PRA.

6. The Consultancy's appointment included the following:
    - calculating the minimum solvency capital requirements of Company A based on Company A's Business Plan;
    - undertaking an in-depth review of the data and assumptions to ensure that a suitable audit trail and appropriate assumptions were used in the calculation of the minimum solvency capital requirements; and
    - drafting an Own Risk and Solvency Assessment (ORSA) for Company A.

7. The Respondent was the main contact at the Consultancy for Company A and was responsible for calculating the SCR and liaising with Company A on it. Between 27 November and 4 December 2017 the Respondent provided Company A with three iterations of the draft ORSA. These drafts contained the calculations needed for Company A's applications to the PRA. The final ORSA was provided by the Respondent

following further discussions about amendments with Company A. What was stated to be the 31 December 2018 SCR figure was calculated as £295,000 (rounded to the nearest £1,000).

8. In January 2018 the then Compliance Director of Company A applied for authorisation and the waiver from the PRA. The authorisation and waiver were granted in February 2018 and on 22 February the Respondent was appointed as the Small Insurer Senior Management Function (SIMF25) for Company A under the Senior Insurance Managers Regime. Company A commenced underwriting insurance-backed guarantees in May 2018.

9. On 11 October 2018 the Respondent resigned as SIMF25 for Company A. In February 2019 Company A's new actuarial advisers conducted a familiarisation exercise and calculated the 31 December 2018 SCR figure as £1,584,000, in contrast to the figure calculated by the Consultancy of £295,000. Some differences would be expected between the two figures since the later calculation would reflect business actually written by Company A to 31 December 2018, whereas the Consultancy's figure would reflect the business expected to be written by Company A during that period, as set out in its business plan. However, the significant difference between the two figures raised concerns for the new advisers. On 15 February 2019 Company A's advisers emailed the Respondent indicating that they had calculated components of the SCR that differed significantly from those calculated previously by the Consultancy, and requesting details of the inputs used by the Consultancy. The Respondent did not reply to this email.

10. Following a further series of emails, the Respondent replied on 20 February without providing the information requested and instead gave a detailed list of queries about the basis of the new calculations. Further emails were sent to the Respondent emphasising the urgency of the situation and querying aspects of the Consultancy's calculation.

11. On 21 February 2019 the Respondent replied to Company A to the effect that the professional relationship between them was over, and that they should take advice from their current advisers. The Respondent also repeated his offer to review the new calculations but reminded Company A that he would need to be provided with the relevant information requested. On 26 February 2019 a notification of a potential capital shortfall was made by Company A to the PRA. Company A's shareholders subsequently

injected £1,023,000 of new capital to ensure that the minimum capital requirements were met.

12. On 12 June 2019 Company A's new actuarial adviser submitted a complaint about the Respondent to the IFoA.

Decision and Reasons to Have Part of the Hearing in Private:

13. The Panel considered the Respondent's Legal Representative's application to have the parts of the hearing that related to matters of the Respondent's health and personal circumstances heard in private. The Panel accepted the advice of the Legal Adviser. The Panel determined that such matters should be heard in private and that the private nature of these matters outweighed the public interest in having the entire hearing conducted in the public domain.

Facts:

14. The Respondent admitted the charge in its entirety and the Panel therefore did not need to make any formal findings of fact. However, it will be helpful to set out some more detailed analysis of the matters covered by the charge, and the underlying evidence, before setting out the Panel's consideration of sanction, since the Parties' respective submissions have sometimes suggested different interpretations of what has been admitted.

15. There are two sections of the charge against the Respondent. First, the allegations relating to the Respondent's calculation of the SCR in the ORSA. Second, allegations about the Respondent's communication with Company A and their new advisers after concerns about his calculations were raised.

<u>Paragraphs 1-3 of the Charge</u>

16. After several previous iterations, the Respondent finalised the draft ORSA for Company A on 4 December 2017. The 31 December 2018 SCR figure was calculated as £295,000 (to the nearest £1,000). In early 2019 Company A's new actuarial adviser calculated the 31 December 2018 SCR figure as £1,584,000 (to the nearest £1000). She identified concerns that the Respondent:

- did not calculate the minimum SCR for Company A in accordance with the appropriate Solvency II regulations;
- materially understated the minimum SCR for Company A; and
- significantly understated the effect of applying the Solvency II rules to determine the minimum Solvency Capital Requirement for Company A by not including allowance for the present value of future earned premiums in the calculation (as required by Solvency II Delegated Act Articles 115 to 117).

17. On 14 May 2019 the Respondent advised Company A that he had appropriately applied the framework of the SCR and that it appeared the new advisers had a different interpretation of the guidelines. On 9 September 2019 the Respondent advised the IFoA that the £295,000 SCR figure was based on information available, and calculations performed, in December 2017. As part of this communication the Respondent provided a copy of the ORSA which showed that figure under the column heading "Dec '18".

18. On 18 October 2019 the Respondent responded to another letter from the IFoA as follows:

    "[the Consultancy] carried out the calculation in December 2017 (Calculation Date) to estimate the SCR as at March 2018 (Valuation Date)"

    and

    "Given the actual position as at the calculation date compared to the financial projections we made the assumption that the overstatement of Ps would be approximately equal to FP (existing, s)".

19. The IFoA obtained an opinion from an independent Expert who stated that when the Respondent calculated the SCR figure of £295,000 he set FP (existing, s) and FP (future, s) to zero. The Expert stated that the

    "FP (existing, s) is the expected present value of premiums to be earned by the insurance undertaking in the segment s after the following 12 months for existing contracts. In my opinion this should equate to the premium which is expected to be earned during 2019 and subsequent financial years in respect of business which was written during 2017. In my opinion this figure should therefore be the discounted value of £1,451,022 (i.e. the total written premium of £1,773,319 less the premium which was earned in 2017 and 2018, discounted using the EIOPA risk free rates). When discounted, I calculate this figure to be £1,231,775. This is

based on the EIOPA discount rates as at 31 October 2017, which I believe to be the ones used by the Respondent for the SCR calculation."

She went on to say:

"FP (future, s) denotes the expected present value of premiums to be earned by the insurance undertaking in the segment s for contracts where the initial recognition date falls in the following 12 months but excluding the premiums to be earned during the 12 months after the initial recognition date. In my opinion this figure should equate to the earned premium in respect of contracts which are bound during 2018 but excluding the premium which is earned during the first 12 months after each contract has been bound. I do not have this level of detailed information but I can calculate a reasonable lower-bound estimate by assuming that FP (future, s) equates to all business written during 2018, but excluding all premium earned during both 2018 and 2019. I believe this approximation is reasonable given the purpose of this report, since it will serve to reduce the SCR I calculate. This gives me an undiscounted figure for FP (future, s) of £1,451,022. When discounted, I calculated this figure to be £1,212.778."

20. As to the Respondent's position advanced on 18 October 2019 (referred to by the Expert as the Scenario 2 approach), that the SCR was based on a reduced written premium amount for financial year 2017, the Expert states that her calculations to replicate the Scenario 2 approach resulted in a significantly increased SCR figure of £713,582 relative to the £295,408 figure calculated by the Respondent.

21. As to the Respondent's assumption under the Scenario 2 approach that the overstatement of Ps would be approximately equal to FP (existing, s), the Expert confirms that it was not unreasonable for the calculation of the SCR as at 31 March 2018. However, the Expert went on to say:

"given that no business had been written by Company A prior to when the calculation was undertaken in December 2017, it is not clear why the projected figure in the ORSA for the SCR the following year, of £464,841, does not show a much more material jump in the nonlife underwriting risk to reflect the significant increase in FP (existing, s) which would be expected the following year. I estimate that the non-life underwriting risk would increase from the £207,221 calculated by the Respondent as at 31 March 2018 to around £650k one year later due to the inclusion of the projected business to be written in financial year 2018 within FP (existing, s) one year later and

assuming a zero amount for FP (future, s) (consistent with the Respondent's approach). This compares with the figure of £285k in the ORSA."

The Expert therefore considered that some figures shown in the ORSA suggest that the Respondent did not adopt the Scenario 2 approach.

22. In conclusion the Expert opined that even on the Respondent's account that the SCR was calculated as at 31 March 2018 (whether or not he adopted the Scenario 2 approach) the SCR was not calculated in accordance with the Solvency II regulations.

Paragraph 4 of the Charge

23. The Respondent has accepted that his actions as detailed in paragraphs 1, 2 and/or 3 of the Charge amounted to a breach of the principle of competence and care in the Actuaries' Code (version 2.0). This includes the requirement to take care to ensure that advice or services are appropriate to the instructions or needs of the client; to have the appropriate level or relevant knowledge and skill; to have due regard to others such as policyholders of an insurer, or any analogous persons whose interests are affected by the work of the member; and to keep their competence up to date.

Paragraph 5 of the Charge

24. The Respondent has accepted that his actions as detailed in paragraphs 1, 2 and/or 3 of the Charge amount to a breach of the principle of compliance in the Actuaries' Code (version 2.0) which requires Members to comply with all relevant legal, regulatory and professional requirements. The Respondent's client had no actuarial expertise and was a new business specialising in products which were not straightforward - namely insurance-backed guarantees for the quality of workmanship in home improvements. A single premium was paid at the start of policies which could run for up to 25 years. Company A was entitled to rely on the Respondent's advice to ensure it would have sufficient reserves to protect policyholders and satisfy the regulatory obligations. The Respondent's calculations within the ORSA did not comply with the Solvency II regulations. After it came to light that the requirement had been understated, the client had to inform the PRA and subsequently had to increase capital by over £1,000,000 in a short period of time.

Paragraph 6 of the Charge

25. On 15 February 2019 the new actuarial advisers emailed the Respondent indicating that they had calculated components of the SCR that differed significantly from those

calculated previously by the Consultancy, and requesting details of the premium volume inputs (i.e. P (last, s), FP (existing, s), P(s) and FP (future, s)) used by the Consultancy. The Respondent did not reply to this email.

26. On 20 February 2019 Company A emailed the Respondent asking if they could arrange an urgent call with their new actuarial advisers to ascertain why there was a discrepancy in the figures. The Respondent replied saying:

> "We had not expected nor scheduled time for the handover with [your new advisers] to be so protracted. There was a small amount of time in spent January that we have not charged for and were prepared to write off as we were hoping to bring things to a close. There will always be differences in opinion and interpretation when two or more actuaries are carrying out a similar assignment (as we have when we took on the role) and a forensic exercise to investigate could be quite time consuming and ultimately [your new advisers]'s view will now take priority. If you would like [the Consultancy] to proceed I would suggest in the first instance that [your new advisers] collate a detailed list of queries they have with all the relevant information, inputs and calculations so we can see how they have derived their figures and the variance to the figures calculated by [the Consultancy]. I can arrange for this to be reviewed while I'm away."

Company A then asked if the matter could be looked at urgently and noted that they appreciated that the Respondent may need to invoice them for time spent on this.

27. On 21 February 2019 the Respondent emailed Company A stating:

> "Our professional relationship has finished and we recommend that you take the direction from your current actuarial advisors. My offer to review some of your current workings is still valid but we would need to be provided with all the relevant information."

<u>Paragraph 7 of the Charge</u>

28. The Respondent has accepted that his actions in failing to assist in resolving the concerns that his former client and their new advisers had raised amounted to a breach of the principle of communication in the Actuaries' Code. The Communication principle includes an obligation on members to show that they take responsibility for their professional findings. There is also an obligation to ensure that any communication with which a member is associated is accurate and not misleading, and contains sufficient information to enable its subject matter to be put in a proper context.

Paragraph 8 - Misconduct Charge

29. The Respondent has accepted that his actions amounted to Misconduct. Misconduct is defined for the purposes of the Disciplinary and Capacity for Membership Schemes 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.

30. The Panel was satisfied that the admitted failures both to calculate in accordance with the relevant regulatory requirements, and then to communicate appropriately with the client when those issues came to light, were serious. It was satisfied that other members of the profession and the wider public would consider that they fell well short of what was expected of the Respondent in the circumstances.

Sanction:

31. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter and the Respondent's Legal Representative, both of whom had provided written submissions in advance of the hearing. The Panel accepted the advice of the Legal Adviser. The Panel also had careful 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.

32. 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.

33. The Case Presenter did not suggest a particular sanction, but said that the charges relating to both the calculation and communication were serious. She emphasised the reliance which Company A had placed on the Respondent's expertise; and the practical difficulties, reputational damage and expense which had been caused when Company A had had to report matters to the PRA and to inject additional capital. She said that this had not been a one-off error: it had been part of the Respondent's job to keep the SCR under review and he had advised Company A's board in September 2018 that the SCR he had calculated remained appropriate. She submitted that the Respondent's failure to make any admission until very recently showed that his insight was limited.

34. The Respondent's Legal Representative submitted that this might be a case in which the Panel could decide that no sanction was necessary. He said that the Respondent offered a sincere and genuine apology for his actions. He also stated that the Respondent had been a Fellow of the IFoA for some eighteen years, with an otherwise unblemished record, and would never knowingly do anything to damage his professional standing. He had provided an extensive series of character references from professional colleagues and personal friends. The Respondent did not seek to diminish the impact that his actions had had on his clients and on the profession, but these proceedings, over a three-year period, had also had a profound impact on him. The Respondent had provided extensive documentary evidence of matters relating to his health and to his financial situation. The Respondent's Legal Representative submitted that the Respondent had insight into his the actions and that there was no risk of repetition in the future.

35. [redacted]

36. [redacted]

37. The Panel was satisfied that the Misconduct was serious. The Respondent failed properly to apply the regulatory requirements in making what was a fundamental calculation for the establishment of his clients' new business. The evidence showed that the SCR should have been calculated at a level at least over two times, and possibly as much as five times, higher than the Respondent's calculation. It was a serious issue for Company A to have to disclose matters to the PRA and to recapitalise. It was also serious that the Respondent failed to respond helpfully to the queries raised with him by

Company A and their new advisers. He had a duty to answer the straightforward questions that were asked about his own methodology, but sought instead to question theirs. These were actions which were clearly liable to bring the actuarial profession into disrepute.

38. In considering aggravating factors, the Panel noted that there had been a breach of the PRA's regulatory requirements as result of the Respondent's failure to apply the Solvency II regulations correctly in making his calculations. There was a breach of trust, in that Company A had placed considerable reliance on his expertise in making the calculations and that he then failed to respond adequately to the queries they legitimately raised with him. However, the Panel accepted that there was no suggestion of any dishonesty, lack of integrity, or any ulterior motive for the respondent's actions.

39. In considering mitigating factors, the Panel accepted that there had been a severe impact on the Respondent from these protracted proceedings.

40. The Panel considered whether this was a case that warranted no sanction. It was satisfied that this would not be appropriate here. The Panel was satisfied that the Respondent now has sufficient insight into what went wrong, although it has clearly taken time for that insight to emerge. Taken together with the impact that these proceedings have had, this insight means that there is now a minimal risk of any similar issue arising in the future. Nonetheless, the Panel recognised that it was important, in deciding upon sanction, to ensure that a message was effectively given to the profession and to the wider public about the seriousness of the Respondent's actions.

41. The Panel considered whether to impose a Reprimand and was satisfied that this was appropriate. However, the Panel did not consider that a Reprimand alone would suffice as the sanction in this case. This was not a single act, causing little harm, which could properly be seen as an isolated aberration. The Panel accepted that there was no wider question about the Respondent's professional competence and that there had been no other comparable issues in an otherwise unblemished career. But he made a seriously flawed calculation in a key area, stuck by that calculation in the months that followed, and then failed to respond constructively to straightforward queries about his methodology. A Reprimand alone might have been a sufficient response to either of the calculation or communication matters in themselves, but not when they are taken together in the Charge as a whole.

42. The Panel then considered whether to impose a Fine and was satisfied that, in conjunction with a Reprimand, this could meet the need to declare proper professional standards and uphold the wider public interest. Taking account of the information it had been given about the Respondent's financial circumstances, it determined that a fine of £5,000 was appropriate.

43. The Panel also considered whether any further sanction might be appropriate but was satisfied that this would be disproportionate. There was no indication that training or supervised practice was needed following the particular calculation error, while a period of Suspension of membership would involve an unnecessarily severe restriction of the Respondent's right to practise his profession.

Costs:

44. The IFoA made an application for costs of £149,417.58 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Case Presenter. Within the total, a sum of £83,471.24 related to the expert reports obtained by the IFoA. The Case Presenter submitted that the costs could not have been avoided or reduced, and they were not excessive in the circumstances of this case. It had been the Respondent's decision not to accept the allegations against him at an earlier stage and so it had been necessary to obtain expert reports. The experts' hourly fees had been charged at the going rate for the work. The Respondent's Legal Representative described the costs claimed as extraordinary and disproportionate to the charges that had been admitted. He invited the Panel to take account of the Respondent's health and financial means and submitted that this might be a situation in which no costs should be ordered.

45. The Panel noted the IFoA's position on the hourly rates charged for the expert reports. It considered that charges in ranges of up to £875-960 per hour were objectively high and that the costs incurred had not been adequately broken down in the schedule provided. Furthermore, the Panel noted that the Respondent had not been warned at an earlier stage in proceedings about the level of costs which were accumulating. However, the Panel put most weight in its consideration of the costs application on the Respondent's ability to pay, given his health issues and their impact on his financial circumstances, as discussed earlier in this determination. The Panel was satisfied that this was an exceptional case and concluded that, in all the circumstances of the case, it would be both oppressive and disproportionate to the seriousness of the charges found proved to order anything approaching the full costs claimed. Nonetheless, it was right that the

Respondent should contribute to the costs that had been incurred, to an extent which the Panel assessed should be manageable for him, if he is able to put this case behind him and return to work as an actuary. The Panel therefore ordered the Respondent to pay to the IFoA costs of £15,000.

Right to appeal:

46. 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:

47. Having taken account of the Disciplinary Board's Publication Guidance Policy (November 2021), the Panel determined that this determination will be published and remain on the IFoA's website for a period of five years from the date of publication. The Panel has made appropriate redactions to the published version of the determination to protect sensitive material. A brief summary will also be published in the next available edition of *The Actuary* Magazine.

That concludes this determination.