



Institute
and Faculty
of Actuaries

Disciplinary Tribunal Panel Hearing

23 April 2024

Institute and Faculty of Actuaries Online Hearing

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| Respondent: | Liyaquat Khan FIA Not present and not represented in absence |
| Category: | Fellow since 25 December 1973 |
| Region: | Mumbai, India |
| IFoA Case Presenter: | Matthew Corrie (Counsel) instructed by the Institute and Faculty of Actuaries |
| Panel Members: | Paul Brooks (Chair/Lay member) John Birkenhead FIA (Actuary member) Pradeep Khuti (Lay Member) |
| Legal Adviser: | Valerie Paterson |
| Judicial Committees Secretary: | Hinna Alim |

Charge:

Liyaquat Khan FIA being at the material time a member of the Institute and Faculty of Actuaries, the charge against you is that:

1. In or around January 2015, you formed a Partnership (Partnership B).
2. Your actions at paragraph 1 presented a conflict of interest with your role as Director of Company A, which you failed to disclose or seek to reconcile.
3. In or around February 2015, you caused, instructed and/or allowed emails to be sent from Partnership B to clients of Company A claiming that their actuarial services would now be provided by Partnership B.
4. During your actions at paragraph 3, you used contact details which you had obtained for another purpose, namely in your role as Director of Company A.
5. You did not inform Company A that you would contact Company A's clients for the purpose described at paragraph 3.
6. You did not have any agreement that actuarial services would be transferred from Company A to Partnership B.
7. You knew the statements contained in the emails described at paragraph 3 to be untrue by reason of paragraph 6.
8. Your actions at paragraph 3 were dishonest, by reason of paragraphs 4, 5, 6 and/or 7.
9. When you were contacted by a fellow Company A Director in or around February 2015, asking for an explanation of your actions in relation to paragraph 3, you did not respond to any of this correspondence.
10. Your actions at paragraphs 1 and 2 were in breach of the principle of **impartiality** in the Actuaries' Code (version 2.0).

11. Your actions at paragraphs 3, 4, 5, 6, 7 and/or 8 were in breach of the **integrity** principle in the Actuaries' Code (version 2.0).
12. Your actions at paragraphs 3, 5 and/or 9 were in breach of the **communication** principle in the Actuaries' Code (version 2.0).
13. You failed to fully co-operate with the investigation of the allegations detailed at paragraphs 1-12 above, under the Disciplinary Scheme of the Institute and Faculty of Actuaries, in that you failed to supply information, evidence and/or explanations when requested to do so by the Case Manager.
14. Your actions at paragraph 13 were in breach of Rule 1.18 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 June 2016);
15. Your actions at paragraphs 13 and 14 were in breach of the **compliance** principle of the Actuaries' Code (version 2.0);
16. Your actions, in all or any of the above, constituted misconduct in terms of Rule 1.6 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 June 2016).

Service of Charge:

1. The Panel noted that the Respondent was not present and was not represented in his absence. Having considered the submissions of the Institute and Faculty of Actuaries (IFoA's) Case Presenter, and having accepted the advice of the Legal Adviser, the Panel was satisfied that the charge had been served in accordance with the provisions of the Disciplinary and Capacity for Membership Schemes of the Institute and Faculty of Actuaries (Effective 1 June 2016) and it also had regard to Guidance for all Disciplinary Events on the Service of Documents.

Proceeding in the Absence of the Respondent:

2. In considering whether to exercise its discretion to proceed in the absence of the Respondent, the Panel had regard to the submissions of the IFoA's Representative,

who referred the Panel to the cases of R v Jones 2002 UK HL 5; General Medical Council v Adeogba; and General Medical Council v Visvardis [2016] EWCA Civ 162.

3. The Respondent had provided no explanation as to why he was not present today, nor had he requested that the hearing be adjourned to allow him to attend.
4. The Panel considered and accepted the advice of the Legal Adviser including the reference to the cases of General Medical Council v Adeogba; and General Medical Council v Visvardis [2016] EWCA Civ 162; R v Jones [2002] UKHL 5 and Tait v RCVS [2003] UKPC 34.
5. The Panel noted that the discretion to proceed in the absence of a Respondent should be exercised with the utmost care and caution. The Panel must consider matters such as whether the Respondent has requested an adjournment, whether they would be likely to attend any adjourned hearing, or whether, in all the circumstances, the Respondent had absented himself voluntarily from the hearing. No adjournment was sought by the Respondent and there was no reason to suppose that an adjournment would secure the attendance of the Respondent. The Panel was therefore satisfied that the Respondent had chosen voluntarily to absent himself. The Panel also took into account that there were witnesses, including a witness in India, ready and willing to give evidence today and that any further delay may adversely affect their recollection of events. In all the circumstances, including that the alleged misconduct occurred almost 10 years ago, the Panel determined that it was in the public interest in the expeditious disposal of the case to proceed today in the absence of the Respondent.

Panel's Determination:

6. The Panel found all 16 paragraphs of the charge proved.
7. The Panel determined that the most appropriate and proportionate sanction was that the Respondent be expelled from membership for a period of five years.
8. The Panel also ordered the Respondent to pay to the IFoA costs of £15,080 (Fifteen thousand and eighty pounds sterling).

9. The Panel also ordered that this determination should be published for a period of three years.

Preliminary Matters:

10. Before proceeding, the Clerk read the charge in full.
11. The IFoA's Representative made an application that an email from the Respondent to the IFoA dated 6 December 2023, which had not been included in the IFoA's hearing bundle, should be admitted in evidence today. Although it was not in the hearing bundle, the Respondent was aware of the email, because he wrote it, and the IFoA asserted that it may assist his case. Having sought and accepted the advice of the Legal Adviser, the Panel was satisfied it was in the interests of justice to include this document in which the Respondent provided his account to the IFoA.

Background:

12. The Respondent has been a Fellow of the IFoA since 25 December 1973.
13. He was the Chief Actuary of Company A from around February 2010 and became a director of that company in October 2011; he continued as a director until January 2017.
14. Whilst he was a director of Company A, in or around January 2015, he formed a partnership, Partnership B, the formation of which created a conflict with Company A and its clients which he failed to disclose or seek to reconcile.
15. In or around 2015, on the Respondent's instructions, emails ("the 2015 emails") were sent by Witness Z, the Respondent's Executive Assistant, to certain clients of Company A telling them that their actuarial services would, henceforth, be provided by Partnership B and that the Respondent would continue to hold all professional responsibility as actuary.
16. The Respondent knew, prior to causing the 2015 emails to be sent, that there was no agreement in place that the actuarial services provided to clients of Company A would be transferred to Partnership B, nor did the Respondent inform Company A that the 2015 emails had been, or would be, sent.

17. The Respondent acted dishonestly by causing the 2015 emails to be sent and in not informing Company A that he intended to send them, nor obtaining its agreement to do so.
18. On becoming aware that certain of Company A's clients had received the 2015 emails, Witness Y, the founding director and majority shareholder in Company A, repeatedly contacted the Respondent in February 2015. He made clear that he was unaware that Company A's clients had been contacted and requested that the Respondent explain his actions and intentions. The Respondent failed to respond to any of Witness Y's communications.
19. On 11 January 2018, Witness Y referred allegations in respect of these matters to the IFoA.
20. The referral of Witness Y's allegations to the IFoA caused the IFoA to investigate these matters, the outcome of which resulted in the charge, as set out above, being brought against the Respondent, including that the Respondent had failed in his duty to co-operate with the investigation of these matters.

Findings of Fact:

21. The Panel was aware that the burden of proof rests on the IFoA, and that the standard of proof is the civil standard, namely on the balance of probabilities ("the requisite standard"). This means that the facts will be proved if the Panel was satisfied that it was more likely than not that the events occurred as alleged. There is no requirement for the Respondent to prove anything.
22. The Panel had seen no evidence that the Respondent had, prior to this hearing, admitted any part of the charge brought against him. Therefore, following submissions made by the IFoA's Representative, and having sought and accepted the advice of the Legal Adviser, if the hearing were to proceed today, it would do so on the assumption that the Respondent had denied each and every part of the charge against him.
23. In reaching its findings on each of the 16 paragraphs of the charge, the Panel took into account:

- a. a written witness statement of the IFoA's case manager, Witness X, together with her bundle of documents, which included the written witness statements of Witness Y and Witness Z;
 - b. oral evidence from Witness Y and Z;
 - c. submissions made by the IFoA's Representative;
 - d. the Respondent's correspondence with the IFoA during the investigation of these matters and which was included in the IFoA's hearing bundle, together with an email from the Respondent to the IFoA dated 6 December 2023;
24. The Panel heard and accepted the advice of the Legal Adviser and took account of the rules in the Disciplinary Scheme 2016, Actuaries' Code and the guidance including the Actuaries' Code -amplifications.
25. The Panel having regard to the documentation and the evidence regarding it from Witnesses X, Y and Z it found their evidence to be cogent, consistent, strong and credible. It therefore found their evidence to be compelling.
26. The Respondent, having failed to appear at the hearing, gave no oral evidence and had not produced a witness statement, nor made any submissions. The only evidence that the Panel was able to consider was his limited correspondence with the IFoA during its investigation of these matters, including his emails to the IFoA dated 11 March 2018 and 6 December 2023. The IFoA's Representative submitted that the correspondence amounted to hearsay evidence and the Panel should afford it little weight in assessing that evidence.
27. The IFoA's representative made a submission that, the Respondent, having voluntarily failed to appear at this hearing, and having been properly warned that such a failure may cause the Panel to draw an adverse inference, invited the Panel to do so. The Panel had regard to all the information before it including the Disciplinary Scheme. It was satisfied that:
- A prima facie case to answer has been established;
 - the Respondent has been given appropriate notice and warning that, if he does not give evidence, then an adverse inference may be drawn;

- the Respondent has been given an opportunity to explain why it would not be reasonable for him to give evidence;
- the Respondent has given no reasonable explanation having been an given an opportunity to do so;
- there was no reasonable explanation for the Respondent not giving evidence; and
- there were no other circumstances which would make it unfair to draw an adverse inference.

Therefore the Panel determined that it would draw an adverse inference.

28. In the Respondent's email to the IFoA dated 6 September 2023, he stated *"All the actuarial reports that I signed were in my capacity as Fellow Member of the Institute of Actuaries of India and not as an FIA, hence for the purpose of disposal of the Complaint by [Witness Y] the IFOA has limited jurisdiction under Actuaries' Code and applicable Disciplinary Scheme"*.
29. Before considering the IFoA's charge against the Respondent, the Panel considered whether the IFoA had the jurisdiction to lay the charge. The Panel heard submissions from the IFoA's Representative that the Actuaries' Code (version 2) applies to all members of the IFoA and the Guidance which supports the principles and amplifications in the Code states in paragraph 1.1 that *"Members of the IFoA must comply with those standards as a condition of membership."* Further, he made submissions that at paragraph 2.2 of the Guidance it makes clear that *"The Code has no geographic restrictions"*.
30. The Panel noted the IFoA's submission and had regard to the provisions referred to. It accepted the advice of the Legal Adviser and was satisfied that the IFoA and the Panel has jurisdiction in accordance with the provisions of the Disciplinary Scheme 2016 and the Actuaries' Code. The Panel was satisfied that the Respondent as a member of the IFoA was subject to its regulation and governance.
31. The Panel's findings in respect to each of the paragraphs of the charge against the Respondent are as follows:

Paragraph 1

32. Witness Y exhibited documentary evidence of the formation of Partnership B on 6 January 2015 in Mumbai, which shows the Respondent as a Managing Partner.
33. In the Respondent's email to the IFoA dated 6 December 2023 he describes himself "as *Managing Partner of [Partnership B] a Partnership Actuarial Consulting Firm*".
34. The Panel was satisfied that in or around January 2015 the Respondent formed Partnership B and therefore found, to the requisite standard, paragraph 1 of the charge is proved.

Paragraph 2

35. Witness Y exhibited documentary evidence that, at the time Partnership B was formed by the Respondent, he was a director of Company A.
36. Witness Y's witness statement includes the following statements:

"In around late 2014 a contact told me that Mr Khan had formed a partnership with [redacted] and they had started an actuarial firm called [Partnership B]. Mr Khan hadn't told me about this, but I didn't question him because I assumed that Mr Khan would ensure there were no conflicts of interest with his role in [Company A]".

"The emails from clients in February and March 2015 showed that [Partnership B] were engaged in a similar business to [Company A] and I therefore considered that it posed a direct conflict of interest in terms of Mr Khan's position of Director of [Company A]".

37. In his oral evidence today, Witness Y said that he had formed the view that Partnership B had been set up as a direct competitor to Company A.
38. In the Respondent's email to the IFoA dated 6 December 2023, he accepts that he was "*Chairman and Shareholder of [Company A]*".

39. The Panel found that, at the time the Respondent formed Partnership B he was also a director and a shareholder in Company A. It further found that the business Partnership B was undertaking, or proposing to undertake, was the same as or similar to Company A's, and that created a conflict of interest which the Respondent failed to disclose or seek to reconcile. The Panel therefore found, to the requisite standard, paragraph 2 of the charge proved.

Paragraph 3

40. Witness Z's witness statement includes the following statements:

"I worked at [Partnership B] for about six months, from 20 January 2015 until 12 June 2015. During that time I was employed as Executive Assistant to the Respondent, the Managing Partner of [Partnership B].

Between around 3 - 9 February 2015 I contacted certain individuals by email, on the Respondent's instruction (Exhibit 1). The email addresses of these recipients were provided to me by the Respondent and the content of the emails was as instructed by the Respondent.

Before I sent these emails, I recall being present during discussions between the Respondent and [Redacted] where the sending of these emails was discussed. It was my understanding that the purpose of these emails was to advise the recipients that their actuarial services would continue to be provided by the Respondent going forward.

The Respondent had advised me that he was Actuary for these clients when he was Chief Actuary and Director of [Company A] The Respondent advised me that [Company A] was not able to carry on actuarial services, as it was a company incorporated the Indian Companies Act. The Respondent advised me that he remained actuary for these clients and would carry out actuarial work for these clients. My understanding was that these clients needed to be informed of the Respondent's new business address and other details, given that [Company A] could no longer provide actuarial work."

41. Witness Y exhibits seven emails, sent between 3 February 2015 and 9 February 2015. All were sent by Witness Z in his capacity as Executive Assistant to the Respondent. All assert that Company B will now be providing the recipients of the email with actuarial services and that the Respondent will continue to hold all professional responsibility. All are copied into the Respondent's email address and appear to contain the Respondent's telephone number, which, for the purpose of this hearing, has been redacted.
42. Witness Y also exhibits an email dated 13 February 2015 from the Respondent to Person L which says *"I am indeed your Actuary for the reporting under Indian Accounting Standard and the last report is attached. I was Chairman of [Company A] and so far the work had been processed within [Company A]. The work will henceforth be processed within [Partnership B], an Actuarial Firm located in Mumbai, of which I am the Managing Partner."*
43. In his oral evidence today, Witness Y said that, during the period the 2015 emails were sent on behalf of the Respondent, Company A had not ceased trading and that it was continuing to provide actuarial services to its clients.
44. In the Respondent's email to the IFoA dated 6 December 2023 he accepts that he did write emails to Company A's clients but asserts the emails he sent were sent *"on closure of [Company A]"*. He further asserts that it was *"my responsibility to inform such clients and any client could decide to appoint a new Actuary or continue with the same"*.
45. The Panel found:
- a. that the Respondent instructed Witness Z to send the 2015 emails to certain clients of Company A;
 - b. all the emails claimed that actuarial services which had been provided by Company A would now be provided by Partnership B;
 - c. the Respondent himself sent an email on 13 February 2015 making the same claim;
 - d. the emails were sent whilst Company A was still trading and providing actuarial services whilst the Respondent was still a Director of Company A and therefore he had professional duties to the company and to its clients;

- e. no evidence that, at the time the 2015 emails were sent, the Respondent had any legal or regulatory duty to write to the clients of Company A in the manner in which he did.

46. It therefore found, to the requisite standard, paragraph 3 of the charge proved.

Paragraph 4

47. Witness Y, in his witness statement, gives evidence that the Respondent, in or around January 2014, agreed to assist Company A with a complaint it had received from the Institute of Actuaries of India (“IAI”). In April 2014, the Respondent asked Witness Y to provide access to information from the company’s online database. The Respondent said the information was to assist him in countering the complaint from the IAI and for his personal records as Chief Actuary. On 1 June 2014, by email, Witness Y gave the Respondent a link which gave full access to all the actuarial assignments carried out by Company A. He made clear in that email that the Respondent should keep the link *“absolutely confidential as anyone having this link would be able to access all our files.”* The data included, *inter alia*, the clients’ contact details, reports, and commercially sensitive information such as quotations and invoices. Witness Y says in his witness statement that *“I considered the request [made by the Respondent] was made in good faith”*.
48. In his oral evidence today, Witness Y said that if he knew that the Respondent had intended to write to Company A’s clients in the manner in which he did, he would not have given him access to the company’s online database.
49. The Panel found that the Respondent had obtained the contact details of Company A’s clients on the pretext that, in his capacity as a director of Company A, he was assisting the company in dealing with a complaint from the IAI and he required them for his own records in his capacity as Company A’s Chief Actuary. It further found that the Respondent knew the data he obtained was highly confidential and it should not have been shared with anyone, which would have included Partnership B. It therefore found, to the requisite standard, paragraph 4 of the charge proved.

Paragraph 5

50. Witness Y, in his witness statement, gives evidence that he had no prior knowledge of the proposed formation of Partnership B and no prior knowledge of the 2015 emails which were sent to the clients of Company A informing them that Partnership B would now be providing actuarial services to them.
51. The Panel found that the Respondent had failed to inform Company A that he was proposing to contact Company A's clients stating that their actuarial services would now be provided by Partnership B. It therefore found, to the requisite standard, paragraph 5 of the charge proved.

Paragraph 6

52. Witness Y, in his witness statement, gives evidence that he had no prior knowledge of the proposed formation of Partnership B and no prior knowledge of the emails sent to the clients of Company A or their purpose. He refuted any evidence that, in his capacity as a director of, or the major shareholder in, Company A, he had agreed that actuarial services, or any services, would be transferred from Company A to Partnership B.
53. The Panel found that, because Witness Y had no prior knowledge of any proposed transfer of actuarial services from Company A to Partnership B, he, on behalf of Company A could not have agreed to such a transfer. Further, the Panel saw no evidence of any such agreement with any other authorised person(s) on behalf of Company A. It therefore found, to the requisite standard, paragraph 6 of the charge proved.

Paragraph 7

54. In the Respondent's email to IFoA dated 6 December 2023, he asserts that Company A had ceased trading by the time the 2015 emails had been sent and, in those circumstances, he had a duty to send the emails.
55. The Panel, having found proved that:

- a. emails were sent in February 2015 to certain clients of Company A, by Witness Z under the instruction of the Respondent, informing those clients that actuarial services had been or would be transferred from Company A to Partnership B (paragraph 3 of the charge); and
- b. the Respondent had no agreement with Company A that actuarial services would or could be transferred from Company A to Partnership B (paragraph 6 of the charge),

It found that the Respondent knew that the statements contained in the 2015 emails were untrue. The Panel therefore found, to the requisite standard, paragraph 7 of the charge proved.

Paragraph 8

56. The Panel, having found proved that:

- a. emails were sent in February 2015 to clients of Company A, by Witness Z under the instruction of the Respondent, informing certain clients of Company A that actuarial services had been or would be transferred from Company A to Partnership B (paragraph 3 of the charge);
- b. the Respondent obtained Company A's clients' contact details for a purpose other than in his role as a director of Company A (paragraph 4 of the charge);
- c. the Respondent had failed to inform Company A that he was proposing to contact Company A's clients stating that their actuarial services would now be provided by Partnership B (paragraph 5 of the charge);
- d. the Respondent had no agreement in place that actuarial services would be transferred from Company A to partnership B (paragraph 6 of the charge); and
- e. the Respondent knew the statements made in the 2015 emails were untrue (paragraph 7 of the charge),

It then considered whether the Respondent's actions amounted to dishonesty.

The IFoA's representative referred the Panel to the judgment of Lord Hughes in *Ivey v Genting Casinos* [2018] AC 391, which states, at paragraph 74:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

57. The Panel having considered all the documentation and the evidence it heard today applied the test in *Ivey v Genting Casinos* [2018] AC 391 in determining whether the Respondent’s actions were dishonest.

58. In finding that the Respondent had:

- a. deliberately caused emails to be sent to clients of Company A, containing information he knew not to be true;
- b. having obtained the clients' contact details purportedly to assist the company and for his own records as the Chief Actuary he used them for another purpose;
- c. caused them to be sent knowing that he had not informed Company A of his intention to send the emails and had no agreement with Company A to do so,

the Panel determined that, by the standards of ordinary decent people, the Respondent had acted dishonestly.

59. The Panel therefore found, to the requisite standard, paragraph 8 of the charge proved.

Paragraph 9

60. Witness Y gave evidence in his witness statement that, when he became aware in February 2015 that a number of emails had been sent on behalf of the Respondent to clients of Company A, he repeatedly contacted the Respondent by email requesting an explanation. The Respondent failed to respond to any or all of Witness Y’s emails.

61. The Panel found that, in all the circumstances, Witness Y's requests for the Respondent to explain his actions were reasonable and that the Respondent failed to respond to any or all of the requests. It therefore found, to the requisite standard, paragraph 9 of the charge proved.

Paragraph 10

62. The Panel reviewed the principle of impartiality in the Actuaries' Code (version 2) which states:

"3. Impartiality: Members will not allow bias, conflict of interest, or the undue influence of others to override their professional judgement.

3.1 Members will ensure that their ability to provide objective advice to their clients is not, and cannot reasonably be seen to be, compromised.

3.2 A conflict of interests arises if a member's duty to act in the best interests of any client conflicts with:

- a) the member's own interests, or*
- b) an interest of the member's firm, or*
- c) the interests of other clients.*

3.3 Members will take reasonable steps to ensure that they are aware of any relevant interest, including income, of their firm.

3.4 Unless they decide not to act, members will disclose in writing to their client any steps they have taken, or propose to take, to reconcile any actual or reasonably foreseeable conflict of interest.

3.5 Members will not act where there is a conflict of interest that has not been reconciled"

63. The Panel found that, by forming Partnership B, where he had a direct pecuniary interest whilst still a director of, and shareholder in, Company A, and in circumstances where Partnership B offered or intended to offer similar or the same services to clients of Company A, the Respondent placed himself in a situation where his objectivity

towards Company A's clients and prospective clients was compromised and created a real conflict of interest.

64. It further found that in failing to disclose the conflict of interest to Company A or its clients, he failed to take steps to reconcile the conflict.
65. The Panel therefore found that the Respondent breached the principle of impartiality in the Actuaries' Code (version 2) and so found, to the requisite standard, paragraph 10 of the charge proved.

Paragraph 11

66. The Panel reviewed the integrity principle of the Actuaries' Code (version 2.0) (Exhibit 36) which states:

"1. Integrity: Members will act honestly and with the highest standards of integrity.

1.1 Members will show respect for others in the way they conduct themselves in their professional lives.

1.2 Members will respect confidentiality unless disclosure is required by law, or is permitted by law and justified in the public interest.

1.3 Members will be honest, open and truthful in promoting their business services."

67. The Panel found that:
- a. in causing the February 2015 emails to be sent (paragraph 3 of the charge);
 - b. having obtained the clients' contact details purportedly to assist the company and for his own records as the Chief Actuary he used them for another purpose (paragraph 4 of the charge);
 - c. by failing to inform Company A of his intention to send the 2015 emails and their purpose (paragraph 5 of the charge);
 - d. by failing to agree with Company A that actuarial services would be transferred to Company B (paragraph 6 of the charge);

- e. in knowing that the statements made in the 2015 emails were untrue (paragraph 7 of the charge); and
- f. in acting dishonestly (paragraph 8 of the charge);

the Respondent breached the principle of integrity in the Actuaries' Code (version 2). In finding the breach the Panel had regard to the case of *Wingate v SRA* [2018] EWCA Civ 366.

68. The Panel therefore found, to the requisite standard, paragraph 11 of the charge proved.

Paragraph 12

69. The Panel reviewed the communication principle of the Actuaries' Code (version 2.0) which states:

"5. Communication: Members will communicate effectively and meet all applicable reporting standards.

5.1 Members will ensure that their communication, whether written or oral, is clear (indicating how any further explanation can be obtained) and timely, and that their method of communication is appropriate, having regard to:

- a) the intended audience;*
- b) the purpose of the communication;*
- c) the significance of the communication to its intended audience; and*
- d) the capacity in which the member is acting.*

5.2 Members will, in communicating their professional findings, show clearly that they take responsibility for them.

5.3 Members will take such steps as are sufficient and available to them to ensure that any communication with which they are associated is accurate and not misleading, and contains sufficient information to enable its subject matter to be put in proper context"

70. The Panel found that:

- a. in causing the 2015 emails to be sent which were inaccurate, misleading and lacked sufficient information to allow clients to make informed decisions about the provision of their actuarial services (paragraph 3 of the charge);
- b. by failing to inform Company A of his intention to send the February 2015 emails and their purpose (paragraph 5 of the charge); and
- c. by failing to respond at any or all of Witness Y's reasonable requests that the Respondent should explain his actions (paragraph 9 of the charge),

the Respondent breached the principle of communication in the Actuaries' Code (version 2).

71. The Panel therefore found, to the requisite standard, paragraph 12 of the charge proved.

Paragraph 13

72. Witness X, the IFoA's case manager, gave evidence in her written statement that the IFoA notified the Respondent of the referral of allegations against him on 13 February 2018 and the Respondent provided an initial response on 11 March 2018. On 2 April 2018, the IFoA sent the Respondent a table of each of the allegations against him and requested a detailed response to each allegation. The Respondent failed to provide a substantive response, despite regular reminders and four deadline extensions from the IFoA.

73. In an email to the IFoA dated 1 May 2018, the Respondent states:

"I am aware, even apology is not enough to justify the delayed response. Have been very unwell and had to travel to Bangladesh inspite due to client call. It does not mean that the delay in response to you can be justified.

I am working on it today and by eod you will have the required response.

Regards and apology."

74. The Panel found that in the period following 2 April 2018 he failed to supply the IFoA with information, evidence and/or explanations when requested to do so by the case manager. It found no evidence that, during the period the IFoA was making its request, including reminders, the Respondent was medically unfit to respond. Nor did it find evidence of any other reason which may have prevented him from complying with the IFoA's requests. It therefore found, to the requisite standard, paragraph 13 of the charge proved.

Paragraph 14

75. The Panel reviewed Rule 1.18 of the Disciplinary Scheme (effective 1 June 2016), the version in force at the time of the complaint, which states:

“4.15 Every Member has, at all times, a duty to co-operate fully with any investigation, process or procedure under this Scheme. This duty includes providing such written or oral information and/or evidence as may be required by the Case Manager or Investigation Actuary under rule 3.11.”

Rule 3.11 of the Disciplinary Scheme states:

“3.11 The Case Manager and the Investigation Actuary shall have the power:

(a) to require copies or originals of any documents relevant to the investigation from any Member (whether or not such Member is the subject of the investigation);

(b) to require any further information from any Member relating to the subject matter of the investigation;”

76. The Panel found that because it had found paragraph 13 of the charge proved, in that the Respondent substantively failed to respond to the case manager's requests for information, evidence and/or explanations, he had breached Rule 1.18 of the Disciplinary Scheme (effective 1 June 2016). It therefore found, to the requisite standard, paragraph 14 of the charge proved.

Paragraph 15

77. The Panel reviewed Version 2.0 of the Actuaries' Code which states the following in relation to compliance:

"4. Compliance: Members will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure they are not placed in a position where they are unable to comply, and will challenge non-compliance by others."

78. The Panel found that by failing to supply information, evidence and/or explanations requested by the IFoA, and thereby breaching Rule 1.18 of the Disciplinary Scheme (effective 1 June 2016), the Respondent failed to comply with the regulatory and professional requirements of the IFoA in breach of the compliance principle of the Actuaries' Code (version 2). It therefore found, to the requisite standard, paragraph 15 of the charge proved.

Paragraph 16 - Misconduct

79. The Panel considered whether, having found the first 15 paragraphs of the charge proved, the Respondent's conduct amounted to Misconduct. In considering this matter, the Panel took account of the definition of Misconduct, as defined in Rule 1.6 of the Disciplinary Scheme which states:

"For the purposes of this Scheme, Misconduct means 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."

80. The Panel found that, in the course of carrying out his professional duties:

- a. the Respondent's formation of Partnership B caused a real and foreseeable conflict of interest with his role as a director of Company A which he failed to disclose or reconcile (paragraphs 1 and 2 of the charge);
- b. the Respondent obtained the contact details of certain clients of Company A on the pretext that they were required by him for different reasons, and then instructed his executive assistant to send the 2015 emails to those clients, without the knowledge or consent of Company A (paragraphs 3, 4, 5 and 6 of the charge);
- c. by reason that there was no agreement in place between Company A and Partnership B, the Respondent knew that the 2015 emails contained false and misleading information;
- d. the Respondent's actions in respect of paragraphs 3, 4, 5, 6 and 7 of the charge amounted to a course of conduct which was dishonest;
- e. the Respondent failed to respond to the reasonable requests for information from Witness Y (paragraph 9 of the charge);
- f. the Respondent failed in his professional duty to co-operate with his regulator, the IFoA (paragraphs 13 and 14 of the charge). The Panel noted Disciplinary Scheme rules 1.18 and 1.22 and that a failure to comply with rule 1.18 is prima facie evidence of Misconduct.
- g. the Respondent had breached four distinct principles of the Actuaries' Code (version 2.0), being each of impartiality, integrity, communication, and compliance (paragraphs 10, 11, 12 and 15 of the charge)

81. The Panel concluded that the Respondent's actions, as particularised in paragraphs 1 to 15 of the charge, did constitute Misconduct in terms of Rule 1.6 of the Disciplinary Scheme, in that his conduct constituted a failure to comply with the standards of behaviour which other members or the public might reasonably expect of a Member. It therefore, determined in the Panel's judgement that the conduct found proved in paragraphs 1-15 did constitute Misconduct as alleged in paragraph 16.

Sanction:

82. The Committee heard a submission from the IFoA's Representative who directed the Committee to the IFoA's Sanctions Guidance and to the need to protect the public. He remained neutral as to the particular sanction(s) to impose.
83. The Respondent has made no submissions in respect of any sanction which may be imposed if the charge were found to be proved.
84. The Legal Adviser reminded the Committee to consider the IFoA's Sanctions Guidance and to be mindful of the need to act proportionately. It should be mindful of the overarching objectives of the IFoA, in particular the need to protect the public, to maintain public confidence in the profession, and to uphold proper professional standards. The Committee should impose the least restrictive sanction that meets those objectives.
85. The Panel accepted the advice of the Legal Adviser and the Panel had careful regard to the IFoA's Sanctions Guidance. 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 Sanctions Guidance.
86. The Panel was aware that the purpose of sanction is not to be punitive although it may have that effect. Rather, the main objective of any sanction is to protect members of the public, to promote and maintain public confidence in 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.
87. The Panel first considered the seriousness of the Misconduct and it was assisted by the IFoA's Sanctions Guidance.
88. It started by assessing the Respondent's culpability. It found that:
- a. his actions were pre-planned in that he had deliberately set out to poach clients of Company A, when he was a director and the Chief Actuary of that company, with

the objective of luring those clients to his newly formed business, Partnership B, where he had a direct pecuniary interest;

- b. he had failed to engage with his regulator, the IFoA, in the investigation of these matters having given repeated assurances that he would and numerous reminders from the IFoA; and
- c. he is a very experienced actuary and so none of his actions or inaction could have arisen through inexperience.

89. The Panel then considered the actual or potential harm caused by the Respondent's Misconduct. It found that:

- a. the Respondent's actions, in poaching or attempting to poach Company A's clients, would have had the potential to cause financial loss to Company A and its director and shareholder, Witness Y;
- b. the clients of Company A, in receipt of the 2015 emails, were both misled and inconvenienced; and
- c. his Misconduct resulted in serious departures from professional standards which would be likely to damage the reputation of actuaries and the IFoA, and dent the public's confidence in the profession.

90. The Panel then considered if there were any aggravating factors which, properly, ought to be taken into account. It found the following factors to be seriously aggravating:

- a. The Respondent was in a position of trust as a director and the Chief Actuary of Company A;
- b. the Respondent had behaved dishonestly; and
- c. the Respondent has shown no remorse nor demonstrated any insight or offered any remediation.

91. After its finding that the charge had been proved in full, the Panel was informed by the IFoA's Representative that there had been an adverse finding made by the IFoA against the Respondent on 19 May 2022, in which the Respondent was reprimanded and ordered to pay a fine £2,000. The Panel, having determined that the adverse finding postdated the events of the current proceedings, decided that that finding did not amount to an aggravating factor. Equally, it determined that the Respondent could not be

afforded credit, at this hearing, for having no previous disciplinary record as a mitigating factor.

92. The Panel then considered if there were any mitigating factors which, properly, ought to be taken into account. It did not find any such mitigating factors.

93. The Panel determined that the finding of dishonesty, was of itself a most serious misconduct and recognised as such in the Guidance, as well as the breaches of the Actuaries' Code including impartiality, integrity, communication, compliance and co-operation.

94. The Panel considered the potential sanctions in ascending order, starting with the least severe. It was assisted by the flowchart in the IFoA's Sanctions Guidance.

95. It found that, because of the gravity of the Misconduct, it would be inappropriate to impose no sanction. Nor would the imposition of any one or a combination of the following sanctions address the gravity of the Respondent's Misconduct:

- a reprimand; and/or
- a fine; and/or
- a period of education, retraining or supervised practice; and/or
- a suspension or withdrawal of a practicing certificate; and/or
- suspension of membership.

96. The Panel determined that, taking into account the Respondent's culpability, the actual or potential harm resulting from his Misconduct, and the aggravating factors, Misconduct of this gravity necessitated his **expulsion from membership for a period of five years**, which, in all the circumstances, it considered to be both proportionate and achieved the overarching objectives of imposing a sanction.

Costs:

97. The IFoA made an application for costs of £15,980 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Case Presenter. The Panel noted that costs included costs of the Panel and the Legal Adviser.

98. The Respondent was given notice, in accordance with the requirements of the Disciplinary Scheme, of the IFoA's costs application ahead of this hearing and he has not challenged that application.

99. The Panel had regard to the Costs guidance (17 October 2022) and it heard and accepted the advice of the Legal Adviser. It was reminded of the need to consider proportionality in awarding costs against the Respondent.

100. The Panel considered the costs sought to be at a reasonable level, and that the work undertaken by the IFoA and costs incurred justified that amount of costs, save for the reduced costs in respect of the second day of the hearing, which is not now necessary. It also determined that the imposition of a costs order against the Respondent to be proportionate. The Panel therefore ordered the Respondent to pay the IFoA costs of **£15,080**.

101. In arriving at its decision to award costs, the Committee noted that the Respondent had declined to provide details of his financial circumstances and so, in accordance with the Costs guidance, the Panel determined that the costs should be paid in full within 28 days of the publication of this written determination.

Right to appeal:

102. 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:

103. Having taken account of the Publication Guidance and having heard no submissions from either party that the determination should not be published, the Panel decided that this determination will be published and remain on the IFoA's website for a period of three years from the date of publication. A brief summary will also be published in the next available edition of The Actuary Magazine.

104. That concludes this determination.

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