



Institute
and Faculty
of Actuaries

Adjudication Panel Meeting

15 and 17 May 2024

Institute and Faculty of Actuaries, Held by Video Conference

Respondent: Peter Crowley FIA

Category: Fellow since 25 December 1987

Region: UK

Panel Members: Stephanie Bown (Lay/Chair)
David Lane FIA (Actuary Panel Member)
Shane O'Dea FIA (Actuary Panel Member)

Legal Adviser: Sharmistha Michaels

Judicial Committees Secretary: Julia Wanless

Allegation:

The allegation against Peter Crowley FIA (the Respondent) is:

A1 He prepared a report into pension rights for Person A and Person B in which he:

- (a) incorrectly stated Person A's date of birth on more than one occasion;
- (b) made an incorrect statement regarding the pension increase to be applied to Person A's pension;
- (c) incorrectly stated the pensionable service date for Person A;
- (d) did not account for Person B's current workplace pension;
- (e) did not adequately explain how a redress payment Person A received during the marriage for a pension that was mis-sold to him prior to the marriage had been treated for the purpose of apportioning pension to the marriage/ cohabitation periods;
- (f) did not state in the report that it complied with TAS 100;
- (g) did not summarise and/or explain the rationale behind the methods and/or assumptions adopted;
- (h) did not explain the range of assumptions that could have been adopted and/or any impact of this on his conclusions;
- (i) did not explain the methodology used to allocate pensions between the marriage period and the period of cohabitation;
- (j) did not explain what data he used when apportioning pensions;
- (k) did not state the annuity rates that he used in his calculations;
- (l) used a retirement age of 65 when Person A and Person B's State pensions are not available until the age of 66 and did not raise this in the report;

(m) incorrectly made reference to a tax-free lump sum of £3,500.37 when the instructions referred to a tax-free lump sum of £1,500.37.

A2 His actions in paragraph A1(h) above were in breach of paragraph 9.1(g) of the Family Procedure Rules Practice Direction 25B.

A3 His actions in paragraph A1 above were in breach of paragraph(s) 1, 3.2, 3.3 and/or 5 of TAS 100.

A4 His actions in paragraph A2 above were in breach of paragraph(s) 4.1 and/or 4.2 of APS X3: The Actuary as an Expert in Legal Proceedings.

A5 He did not request clarification from the instructing solicitor in relation to:

(a) an inconsistency between instructions dated 12 August 2020 and a note dated 10 June 2020;

(b) the retirement age that should be used;

(c) the proposed apportionment method;

(d) the pension accrual scenario(s) that should be used in answering the question concerning the tax free lump sums taken;

(e) whether Person A and Person B could be described as being in reasonable good health for their ages;

(f) the date to assume for decree absolute.

A6 By reason of paragraph A1 and/or A5 above his report was inadequate and/or not fit for purpose.

A7 He corresponded solely with Person B, and/or Person B's solicitor, on more than one occasion when correspondence should have been sent to both parties.

A8 On 19 November 2021 he advised he could conclude his calculations despite not having up to date Cash Equivalent values.

A9 On 14 January 2022 he advised Person A that his date of birth was not incorrectly cited in the report, or words to that effect, when this was not the case.

A10 He did not correct and/or finalise the report in a timely manner after issuing it to the parties in March 2021.

A11 His actions in paragraphs A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A13 and/or A14 above were in breach of the Competence and Care principle of the Actuaries' Code (version 3.0).

A12 His actions in paragraphs A3 and/or A4 above were in breach of the Compliance principle of the Actuaries' Code (version 3.0).

A13 His actions in paragraphs A9, A12 and/or A13 above were in breach of the Communication principle of the Actuaries' Code (version 3.0).

A14 His actions, in all or any of the above, constituted misconduct in terms of Rule 2.1 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 August 2023).

Panel's determination:

The Panel considered the Case Report and appendices submitted by the Case Manager and Investigation Actuary, which included an Expert Report commissioned by the IFoA (the IFoA Expert Report), and the Respondent's response to the Case Report. The Panel also considered the advice of the Legal Adviser. The Panel determined that the Case Report established a *prima facie* case of Misconduct.

The Panel determined that paragraphs A1 (a,b,c,d,e,f,g,h,i,j,k,l,m), A3, A5 (a,b,c,d,f), A6, A8, A9, A11, A12, A13 and A14 were capable of proof.

In reaching this decision the Panel's view was that A11 incorrectly included reference to A11, A13 and A14 and that A13 incorrectly referred to A12 and A13. In making its findings the Panel disregarded these erroneous references.

The Panel determined that there appears to be sufficient evidence to find that the Respondent has fallen significantly short of the standards of competence and professional judgement which other Members or the public might reasonably expect of a Member.

The Panel accordingly invites the Respondent to accept that there had been Misconduct and to agree to the imposition of the following sanction:

- a Reprimand

The Panel noted the publication in April 2024 of the Actuarial Monitoring Scheme's report *Pensions on divorce: expert actuarial advice*. The Panel encourages the Respondent to reflect on the review findings and examples of good practice to enhance his work and alignment to standards.

The Panel also recommends that the Respondent take suitable measures to ensure his future reports are fully compliant with the latest relevant Actuarial Profession Standards (APSS), Technical Actuarial Standards, and The Actuaries' Code.

Background:

The Respondent was admitted as a Fellow of the Institute and Faculty of Actuaries ("IFoA") on 25 December 1987. The Respondent is an independent actuarial consultant, trading as Windsor Actuarial Consultants Ltd. Person A submitted an Allegation against the Respondent on 31 March 2023.

On 12 August 2020, the Respondent received joint instructions from solicitors acting for Person A and Person B in their divorce. The Respondent was instructed as a single joint expert to produce a report on Person A and Person B's pensions for the Court. The Letter of Instruction stated that the report must be prepared in accordance with Part 25 of the Family Procedure Rules 2020 and Practice Directions 25b, 25d and 25e.

The Respondent first received his instructions as a scanned PDF attached to an email from Person A's solicitor. The Respondent was advised in this email that a hard copy of the instructions was also being sent to him by post. The scanned version of the instructions received by email was missing pages. When the hard copy of the instructions arrived via post, the Respondent scanned in only the pages missing from the version received by email.

The Respondent sent his Pension Rights Valuation Report (the Respondent's report) to Person A and Person B's solicitors on 5 March 2021. Between March 2021 and January

2022, the Respondent was in correspondence with the parties regarding the Respondent's report and further information that the Respondent needed to be able to finalise his recommendations.

On 27 January 2022 Person A and Person B held a meeting together with their respective solicitors during which they reached a settlement. Person A and Person B then made a consent application to the Court, and the Court granted a Consent Order, finalising the divorce, on 1 April 2022.

On 28 January 2022 Person A's solicitor told the Respondent that an agreement had been reached and that Person A wanted to make a formal complaint against the Respondent. Person A sent the Respondent a complaint letter on 6 June 2022. The Respondent and Person A corresponded with each other regarding the complaint between June 2022 and January 2023.

Person A submitted an Allegation to the IFoA on 31 March 2023.

Decision and Reasons on the Allegations:

The Panel noted that pensions on divorce is a complicated subject often involving complex and multiple pension arrangements of divorcing parties. Expert advice is provided by a relatively small number of actuaries working in this field. The Panel considered that there were a number of significant challenges for actuaries working in this field including: obtaining relevant and timely information from multiple sources, commercial pressures and tight deadlines.

The Panel noted the IFoA Expert's view that this was a final report and the Respondent's assertion that it was not. The Panel deliberated over whether the Respondent's report issued on 5 March 2021 was a final report or a draft report. The Panel considered that it was important for a report to include clarity, when issued, as to whether it is final or draft to convey the extent to which it could be relied upon in its current state.

The Panel noted that:

- The Respondent's report is not marked as draft

- The covering letter sent by the Respondent with his report to the parties refers to a “signed, bound hard copy of the report”
- Person A referred to a draft report in correspondence with the Respondent, after the Respondent's report had been issued
- The Respondent referred to a draft report in correspondence with Person A and with the IFoA after the report had been issued
- The case report refers to it as the report
- The IFoA case manager's instructions to the IFoA Expert refers to a draft report
- The IFoA Expert opined that it was not a draft report and refers to the Respondent's report

The Panel determined that the Respondent's report was not a draft report at the time it was issued on 5 March 2021. Reference to it being a draft was retrospective. The Panel determined that in the absence of any reference to it being a draft or provisional report it would be reasonable to believe that it was a final report.

The allegations:

A1 He prepared a report into pension rights for Person A and Person B in which he:

(a) incorrectly stated Person A's date of birth on more than one occasion;

The Panel noted: the evidence in the letter of instruction, the Respondent's report dated 5 March 2021; and the Respondent's email to Person A on 2 February 2022. It noted there was an error in Person A's year of birth in the Respondent's report.

The Panel determined that the conduct described at A1(a) is capable of proof

The Panel considered that this was an error which could be attributed to the use of scanned documents.

(b) made an incorrect statement regarding the pension increase to be applied to Person A's pension;

The Panel noted: the evidence in the Respondent's report; Person A's letters to the Respondent on 6 June 2022 and March 2021; the letter to Person A from Scheme 1(A) which was provided to the Respondent in November 2020, before issuing his report; and, the opinion in the IFoA Expert Report .

The Panel determined that the conduct described at A1(b) is capable of proof.

(c) incorrectly stated the pensionable service date for Person A;

The Panel noted: the evidence in Person A's email to the Respondent on 25 January 2022; the documents provided to the Respondent by Person A's solicitor with the letter of instruction in August 2020, including details of Person A's pension history; the Respondent's letter to Person A dated 16 December 2022; the opinion in the IFoA Expert Report.

The Panel determined that the conduct described at A1(c) is capable of proof.

(d) did not account for Person B's current workplace pension;

The Panel noted: the Respondent's letter of 7 September 2020 summarising the pension information provided; Person A's solicitor's letter to the Respondent, copied to Person B's solicitor, dated 18 September 2020; Person B's solicitor's letter to the Respondent dated 21 September 2020; the Respondent's email to instructing solicitor's on 27 November 2020; the Respondent's response to the allegations submitted to the IFoA; and, the opinion in the IFoA Expert Report.

The Panel determined that the conduct described at A1(d) is capable of proof.

The Panel noted that the Respondent had not been informed of Person B's workplace pension (Pension 2(B)) before preparing the Respondent's report. The Panel considered that the Respondent could have checked why someone working did not have a pension but he could only opine on the information given to him.

(e) did not adequately explain how a redress payment Person A received during the marriage for a pension that was mis-sold to him prior to the marriage had been treated for the purpose of apportioning pension to the marriage/cohabitation periods;

The Panel noted that Person A's pension history, including details of the redress payment, was given to the Respondent with the letter of instruction and the Respondent's report made no reference to Person A receiving a redress payment. The Panel noted: the Respondent's response to the allegations submitted to the IFoA in relation to the redress payment; the Respondent's letter to Person A dated 16 July 2021; and the opinion in the IFoA Expert Report.

The Panel determined that the conduct described at A1(e) is capable of proof.

The Panel found that the Respondent had been told about the redress payment but made no reference to it in his report, addressing the issue in correspondence after the Respondent's report was issued. The Panel found that this was a significant omission.

(f) did not state in the report that it complied with TAS 100;

The Panel noted the opinion in the IFoA Expert Report. The Panel noted that Appendix B to the Respondent's report made reference to TAS 100 but then attempted to demonstrate compliance by referencing older out-of-date Technical Actuarial Standards.

The Panel determined that the conduct described at A1(f) is capable of proof.

(g) did not summarise and/or explain the rationale behind the methods and/ or assumptions adopted;

The Panel considered Appendix A to the Respondent's report which states three key assumptions. The Panel considered that this information was sufficient in the context of a limited report prepared for limited purposes given also that the Respondent was available to explain or answer questions. The Panel found that there was a lack of information about rationale behind the methods adopted. The Panel determined that the conduct described at A1(g) is capable of proof.

(h) did not explain the range of assumptions that could have been adopted and/or any impact of this on his conclusions;

The Panel noted the Respondent's report and Appendix A to the report.

The Panel determined that the conduct described at A1(h) is capable of proof.

The Panel took the view that the decision whether to include a range of assumptions is one of professional judgement and may not be included if they are, for example, deemed immaterial or to detract from the scope or readability of the report.

(i) did not explain the methodology used to allocate pensions between the marriage period and the period of cohabitation;

The Panel determined that the conduct described at A1(i) is capable of proof.

The Panel noted that there was an absence of any explanation of methodology used.

(j) did not explain what data he used when apportioning pensions;

The Panel determined that the conduct described at A1(j) is capable of proof.

Having considered the Respondent's report the Panel took the view that the Respondent did not adequately explain what data he was using when apportioning pensions.

(k) did not state the annuity rates that he used in his calculations;

The Panel determined that the conduct described at A1(k) is capable of proof.

The Panel noted that the Respondent's report did not include annuity rates used in the calculations and also noted that including excessive figures could detract from clarity and understanding by the intended audience for the report. Further, the Respondent said in his report that a full range of rates could be provided if required.

(l) used a retirement age of 65 when Person A and Person B's State pensions are not available until the age of 66 and did not raise this in the report;

The Panel determined that the conduct described at A1(l) is capable of proof.

The Panel considered that using a retirement age of 65 was not necessarily an unreasonable assumption in the circumstances.

(m) incorrectly made reference to a tax-free lump sum of £3,500.37 when the instructions referred to a tax-free lump sum of £1,500.37.

The Panel determined that the conduct described at A1(m) is capable of proof.

The Panel noted that there was no explanation from the Respondent for this apparent error and considered that it might be a consequence of using scanned documents.

A2 His actions in paragraph A1(h) above were in breach of paragraph 9.1(g) of the Family Procedure Rules Practice Direction 25B.

The Panel determined that there was not enough evidence to support Allegation A2 and that it is not capable of proof.

The Panel noted: the actions in paragraph A1(h) concern the range of assumptions; paragraph 9.1(g) of the Family Procedure Rules concern the range of opinion.

A3 His actions in paragraph A1 above were in breach of paragraph(s) 1, 3.2, 3.3 and/or 5 of TAS 100.

The Panel determined that Allegation A3 is capable of proof in respect of paragraphs 1 and 5 of TAS 100.

The Panel found that the Respondent's communication in his report fell short of the stated requirements in a number of respects. The Respondent's report did not explain the methodology used, see Allegation A1(i). Other examples of shortcomings in communication are set out in Allegations A1(e) and (j).

The Panel determined that Allegation A3 is not capable of proof in respect of paragraphs 3.2 and 3.3 of TAS 100.

The Panel found that the Respondent had documented and communicated key assumptions used in the Respondent's report.

A4 His actions in paragraph A2 above were in breach of paragraph(s) 4.1 and/or 4.2 of APS X3: The Actuary as an Expert in Legal Proceedings.

The Panel determined that since the actions in paragraph A2 are not capable of proof, it follows as matter of logic that Allegation A4 is not capable of proof.

A5 He did not request clarification from the instructing solicitor in relation to:

- (a) an inconsistency between instructions dated 12 August 2020 and a note dated 10 June 2020;**

The Panel determined that the conduct described at A5(a) is capable of proof.

The Respondent received no challenge or response to his written interpretation of his instructions. It would be reasonable for the Respondent to believe that his interpretation of his instructions was correct.

(b) the retirement age that should be used;

The Panel determined that the conduct described at A5(b) is capable of proof.

The Panel did not consider that this was an unreasonable assumption by the Respondent in the circumstances.

(c) the proposed apportionment method;

The Panel determined that the conduct described at A5(c) is capable of proof.

The Panel considered that this issue was a matter of professional judgement for the Respondent and that the conduct described was not unreasonable in the circumstances, but his approach should have been communicated in the Respondent's report.

(d) the pension accrual scenario(s) that should be used in answering the question concerning the tax free lump sums taken;

The Panel determined that the conduct described at A5(d) is capable of proof.

The Panel considered that this issue was a matter of professional judgement for the Respondent and that the conduct described was not unreasonable in the circumstances, but his approach should have been communicated in the Respondent's report.

(e) whether Person A and Person B could be described as being in reasonable good health for their ages;

The Panel determined that there was not enough evidence to support the allegation and that the conduct described at A5(e) is not capable of proof.

The Panel noted the Respondent's letter of 7 September 2020 clarifying instructions where he states, "*we assume that each party is in good health, if not provide details*". He also included a statement to this effect in Appendix A of the Respondent's report.

(f) the date to assume for decree absolute.

The Panel determined that the conduct described at A5(f) is capable of proof.

The Panel noted that this date was not known at the time that the Respondent wrote the report and that it would be understandable if the Respondent applied reasonable assumptions, informed by his experience, in preparing the Respondent's report.

A6 By reason of paragraph A1 and/or A5 above his report was inadequate and/or not fit for purpose.

The Panel determined that the conduct described at A6 is capable of proof in respect of paragraph A1.

The Panel considered the multiple errors and omissions identified in paragraph A1. Some were more serious than others. The Panel considered that taken together they rendered the Respondent's report inadequate and not fit for purpose. In mitigation, some errors and omissions were addressed after the Respondent's report was issued and when new information was provided. However, at the time that the Respondent's report was written there were errors and omissions in respect of the information which was available. The Panel found that the Respondent's report did not meet the requirements of TAS 100. The Panel concluded that many of the errors and omissions should have reasonably been identified and corrected.

A7 He corresponded solely with Person B, and/or Person B's solicitor, on more than one occasion when correspondence should have been sent to both parties.

The Panel determined that there was not enough evidence to support the allegation and that the conduct described at A7 is not capable of proof.

A8 On 19 November 2021 he advised he could conclude his calculations despite not having up to date Cash Equivalent values.

The Panel determined that the conduct described at A8 is capable of proof.

The Panel found that there was no inconsistency in the Respondent's approach with Person A. The Panel acknowledged that there are delays in obtaining up-to-date information. The Panel noted that the Respondent's conduct may be considered to be consistent with a pragmatic approach to achieve a successful solution for the parties in the circumstances.

A9 On 14 January 2022 he advised Person A that his date of birth was not incorrectly cited in the report, or words to that effect, when this was not the case.

The Panel determined that the conduct described at A9 is capable of proof.

The Panel noted that the Respondent asserted he applied the correct date of birth in his calculations.

A10 He did not correct and/or finalise the report in a timely manner after issuing it to the parties in March 2021.

The Panel determined that the conduct described at A10 is not capable of proof.

After issuing his report it became apparent that there were omissions in the information that the Respondent had been provided with, and that this information would need to be supplied to him and a revised report issued. The Respondent was advised of the expected Court timetable and there is no evidence that he was not going to provide his updated report on a timely basis.

A11 His actions in paragraphs A1, A2, A3, A4, A5, A6, A7, A8, A9, A10, A11, A13 and/or A14 above were in breach of the Competence and Care principle of the Actuaries' Code (version 3.0).

The Panel determined that the conduct described at A11 in respect of paragraphs A1, A6, and A9 are capable of proof.

The Panel's opinion was that A3 does not relate to Competence and Care principle, it applies to the Compliance principle as particularised in A12 below.

A5 and A8 were capable of proof but for the reasons provided in making their findings on those allegations the Panel did not consider the conduct to be a breach of the Code. Allegations A2, A4, A7 and A10 were not capable of proof and therefore do not apply. As noted in the background the Panel disregarded reference to A11, A13 and A14.

A12 His actions in paragraphs A3 and/or A4 above were in breach of the Compliance principle of the Actuaries' Code (version 3.0).

The Panel determined that the conduct described at A12 is capable of proof in respect of paragraph A3. Allegation A4 was not capable of proof and therefore does not apply.

A13 His actions in paragraphs A9, A12 and/or A13 above were in breach of the Communication principle of the Actuaries' Code (version 3.0).

The Panel determined that the conduct described at A13 is capable of proof in respect of paragraph A9.

The Panel took the view that the drafting of the allegation in relation to A12 and A13 was misconceived in that it was not clear what the Panel was being asked to determine. The Panel considered that reference to A13 within allegation 13 was an error.

Decision and Reasons on Misconduct:

Allegation 14

His actions, in all or any of the above, constituted misconduct in terms of Rule 2.1 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 August 2023).

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 Scheme, Misconduct is defined as any act or omission or series of acts or omissions by a Member, in their professional or non-professional life, which falls significantly short of the standards of behaviour, integrity, competence or

professional judgement which other Members or the public might reasonably expect of a Member (see Rule 2.1).

The Panel determined that when the allegations in paragraphs A1 (a,b,c,d,e,f,g,h,i,j,k,l,m), A3, A6, A9, A11, A12, and A13 as detailed above are taken together, A14 is capable of proof.

The Panel determined that there was a *prima facie* case that the Respondent's actions constituted Misconduct under the Disciplinary Scheme.

Decision and Reasons on Sanction:

In reaching its decision, the Panel had regard to the Sanctions Guidance (1 August 2023) 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.

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 to 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 considered that the Misconduct was not at the most serious level. The Respondent's culpability was moderate, the Panel noted the case concerned a single report and the Respondent has no previous regulatory history. His motivation after submitting his report appears to have been to help the parties find a pragmatic solution to achieve a conclusion. Whilst noting that Misconduct damages the reputation of the profession and confidence of the public, the Panel had no information to suggest that the Respondent's Misconduct gave rise to financial loss or remedial work by a third party. The more significant the departure from professional standards the greater the harm to the reputation of the Profession. The Panel considered that the degree of departure from professional standards was moderate.

The Panel determined that there were no aggravating factors.

The Panel also took into account the following factors in mitigation:

- no previous disciplinary findings
- the Respondent has cooperated with the Regulator

The Panel considered whether this was a case that warranted no sanction and determined this was not a case where no sanction was appropriate given the level of Misconduct.

The Panel considered whether to impose a Reprimand and determined that a Reprimand is appropriate. The case involved a single report, harm is limited and there are no signs of a deeper attitudinal problem.

The Panel considered whether to impose a fine (up to a maximum of £10,000) and determined that a fine would be inappropriate and disproportionately punitive in this case.

The Panel considered whether to impose a period of education, training and/or supervised practice and determined that this was not necessary in the circumstances of this case.

The Panel noted the publication in April 2024 of the Actuarial Monitoring Scheme's report *Pensions on divorce: expert actuarial advice*. The Panel encourages the Respondent to reflect on the review findings and examples of good practice to enhance his work and alignment to standards.

The Panel also recommends that the Respondent take suitable measures to ensure his future reports are fully compliant with the latest relevant Actuarial Profession Standards (APSS), Technical Actuarial Standards, and The Actuaries' Code.

Publication:

Having taken account of the Publication Guidance (1 August 2023), the Panel determined that, if the Respondent accepts the findings of the Panel, 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 of the determination will also be published in the next available edition of *The Actuary Magazine*.

Costs

In accordance with Rule 13.7 the Adjudication Panel may make an order for costs against the IFoA or the Respondent. The Panel took account of the Costs Guidance (1 August 2023) and determined that it was appropriate to make the fixed costs award of £1,500 against the Respondent, to be paid in full within 28 calendar days of acceptance by the Respondent of the Panel's determination.

That concludes this determination.

Date of publication: 17 June 2024