



Institute
and Faculty
of Actuaries

Adjudication Panel Meeting

7 May 2024

Institute and Faculty of Actuaries

Held by Video Conference

Respondent: Anthony Pepper (former Member)

Category: Former Fellow, now resigned

Region: Milton Keynes, UK

Panel Members: Catriona Whitfield (Chair/Lay member)
John Birkenhead FIA (Actuary member)
Hatim Maskawala FIA (Actuary member)

Legal Adviser: Graeme Dalglish

Judicial Committees Secretary: Hinna Alim

Allegations¹:

The allegation against Anthony Pepper (the Respondent) is:

- A1 He inappropriately submitted an allegation of Misconduct against Person X to the Institute and Faculty of Actuaries (“IFoA”) which was spurious and/or vexatious.
- A2 He provided the following incorrect and/or misleading information to the IFoA in support of his allegation against Person X:
- (a) that Mr and Mrs B were ‘cautious investors’ when their risk category was ‘balanced’;
 - (b) that Person X did not understand various regulatory or professional matters;
 - (c) that the Financial Services Authority (“FSA”) ordered Company A to review earlier sales going back further than 1993;
 - (d) that an FSA paper stated that the product provider had responsibility to monitor Independent Financial Advisor sales to ensure that its products were not being misused;
 - (e) that the right to refer a complaint to the Financial Ombudsman did not exist in 2007;
 - (f) That a decision made by the Financial Ombudsman Service (“FOS”) supported his claim against Company A;
 - (g) that Person X said it was not feasible to make a complaint about a surrendered policy;
 - (h) that Person X said that as FOS turned down Mr and Mrs B’s complaint it was therefore not meritorious.
- A3 He knew that the information he provided in paragraph A2 above was incorrect and/or misleading.
- A4 His actions at paragraph A2 were dishonest by reason of paragraph A3.
- A5 When submitting his allegation about Person X to the IFoA, he omitted the final page of Person X’s letter dated 6 June 2012.

¹ In accordance with Rule 5.15 of the Disciplinary Scheme, this Case Report contains, but is not limited to, a report on the allegation received from the referrer under Rule 5.2. The Allegations at Section 1 of the Case Report therefore reflect the concerns raised by the referrer. This Case Report may also contain references to matters which may amount to Misconduct outside the scope of the original allegation if that information has come to light during the course of the investigation. The Case Manager and Investigation Actuary are neutral, it is entirely a matter for the Adjudication Panel to determine whether the Case Report discloses a *prima facie* case of Misconduct.

- A6 He intentionally omitted the information in paragraph A5 as he knew that the information contained in the final page of Person X's letter dated 6 June 2012 did not support the assertion he made at paragraph A1(g).
- A7 His actions at paragraph A5 were dishonest by reason of paragraph A6.
- A8 His actions in paragraphs A1, A2, A3, A4, A5, A6 and/or A7 above were in breach of the Integrity principle of the Actuaries' Code (version 3.0).
- A9 His actions in paragraphs A1, A2, A3, A5 and/or A6 above were in breach of the Communication principle of the Actuaries' Code (version 3.0).
- A10 He did not adequately understand the roles of the Independent Financial Advisor and/or the Life Office, when advising Mr and Mrs B in 2012 and/or when submitting the allegation against Person X to the IFoA in February 2023.
- A11 His actions in paragraph A10 above were in breach of the Competence and Care principle of the Actuaries' Code (version 3.0).
- A12 His actions, in all or any of the above, constituted misconduct in terms of Rule 4.2 of the Disciplinary and Capacity for Membership Schemes of the Institute and Faculty of Actuaries (Effective 1 June 2021).

Panel's determination:

The Panel considered the Case Report and appendices submitted by the Case Manager and Investigation Actuary and the Respondent's responses to the Case Report. The panel also considered the advice of the Legal Adviser. For the reasons outlined below, the Panel determined that the Case Report disclosed a *prima facie* case of Misconduct.

The Panel accordingly invited the Respondent to accept that there had been Misconduct and to accept the following sanctions:

- Reprimand, and a
- Fine of £2,000 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation.

Background:

In 1993, Mr and Mrs B used the services of a firm of Independent Financial Advisors, Firm Y. The Independent Financial Advisor (“IFA”) recommended that Mr and Mrs B take out an interest only mortgage supported by a Company A endowment policy.

In 2007, Mr and Mrs B complained to the Financial Ombudsman Service (“FOS”) about Firm Y. Their complaint was about the advice they received from the IFA to take out the endowment policy. They complained that the IFA advised them to take out a policy that extended into their retirement and gave no advice about the last date they could change the maturity date of the policy to shorten the mortgage term. They also complained that the IFA made assumptions about Mr B’s retirement pension and did not establish whether it would be sufficient to repay their mortgage. They wanted Firm Y to pay them compensation to put them in the position they would have been in had taken out a repayment mortgage.

The FOS Adjudicator was unable to recommend that Mr and Mrs B’s complaint be upheld.

In 2012 the Respondent, on behalf of Mr and Mrs B, complained to Company D (formerly Company A) about the endowment policy. The Respondent sent his complaints to Person C FIA, who was the Actuarial Function Holder at Company D. Person C replied to the Respondent on 3 August 2011 and advised that he had no personal responsibility for the complaint and directed the Respondent to Company D’s Customer Relations Unit if he needed to contact them about the matter again.

Following the reply from Person C, the Respondent submitted two further documents to Company D; “16-10-11 Guarantees Mortgage Endowments” and “[Mr and Mrs B] Report March 2012”. Person X, the Referrer of this allegation, sent responses to these two documents to the Respondent in 2011 and 2012 on behalf of Company D. Person X rejected the Respondent’s complaint about the endowment policy.

In February 2023, the Respondent submitted an allegation to the IFoA about the letters Person X wrote on behalf of Company D in 2011 and 2012. It was the Respondent’s position that Person X erred in rejecting his complaint. The allegation made by the Respondent was investigated and was considered by an Adjudication Panel in June 2023. The Adjudication Panel determined that Prima Facie misconduct had not been established and the allegations were dismissed.

In July 2023, Person X submitted an allegation about the Respondent to the IFoA. The crux of Person X's allegation was that the allegation made about him (in February 2023 noted above) by the Respondent was "spurious and vexatious" and contained false and misleading assertions.

The Respondent has co-operated with the investigation that followed and has provided explanations for his actions. He disputes all of the Allegations.

Legal Advice

At the request of the Chair, the Legal Adviser reminded the Panel about the Civil Standard of Proof which is the standard of proof for this Jurisdiction. The Legal Adviser advised that proving an event on the balance of probabilities involves being satisfied that the occurrence of the event is more likely to have happened than not. The Legal Adviser also advised that the Burden of Proof lies with those raising the Allegations.

Decision and Reasons on the Allegations:

The Panel also noted that the allegations relate to times when the Respondent was a Member of the IFoA and his actions thus came within the ambit of the Disciplinary Scheme.

The Panel reminded itself that the matters before it related solely to the Respondent's actions in 2011 / 2012, when he submitted his complaint to Company D, and his actions in 2023 when he submitted his complaint about Person X to the IFoA.

Allegation A1 - He inappropriately submitted an allegation of Misconduct against Person X to the Institute and Faculty of Actuaries ("IFoA") which was spurious and/or vexatious.

The Panel considered that in order to assess this Allegation, they would need to have considered the allegations of fact and therefore decided that they would return to Allegation 1 after having considered Allegations 2 to 7.

Allegation A2 - He provided the following incorrect and / or misleading information to the IFoA in support of his allegation against Person X:

- a. that Mr and Mrs B were 'cautious investors' when their risk category was 'balanced';
- b. that Person X did not understand various regulatory or professional matters;
- c. that the Financial Services Authority ("FSA") ordered Company A to review earlier sales going back further than 1993;
- d. that an FSA paper stated that the product provider had responsibility to monitor Independent Financial Advisor sales to ensure that its products were not being misused;
- e. that the right to refer a complaint to the Financial Ombudsman did not exist in 2007;
- f. That a decision made by the Financial Ombudsman Service ("FOS") supported his claim against Company A;
- g. that Person X said it was not feasible to make a complaint about a surrendered policy;
- h. that Person X said that as FOS turned down Mr and Mrs B's complaint it was therefore not meritorious.

Allegation A3 - He knew that the information he provided in paragraph A2 above was incorrect and/or misleading.

The Panel decided to consider Allegations 2 and 3, together as they involved consideration of the same evidence and that they would consider the 8 parts of Allegation 2/3 sequentially, considering whether each piece of information was incorrect (Allegation 2) and / or misleading (Allegation 2) and whether the Respondent knew the information was incorrect and or misleading (Allegation 3).

Allegation A2(a)/ A3(a) - that Mr and Mrs B were 'cautious investors' when their risk category was 'balanced'

The Panel has seen an email sent by the Respondent to the Case Manager on 22 February 2023 as part of the investigation into the complaint (Appendix 9 to the Case Report). In that email the Respondent refers to Mr and Mrs B as 'cautious investors'.

The Panel has also seen a letter sent by the Financial Ombudsman Service to Mr and Mrs B and dated 30 August 2007 (Appendix 7 to the Case Report). In that letter the FOS states that *"The adviser recorded your "attitude to risk" as "balanced"; there were three options - cautious, balanced and adventurous."* The FOS letter further states that *"The document was signed by you [Mr and Mrs B] on 9 March 1993."*

In his Answers to the Complaint (Appendix 23 to the Case Report), the Respondent refers to the FOS letter. He states that he originally took Mr and Mrs B to be balanced investors but realised that they were cautious investors when they told him that they had just returned from France and he therefore 'knew' that they had the status of first time buyers. He then states that first time buyers have the status of cautious investors.

In the view of the Panel, the FOS letter provides evidence of a contemporaneous assessment of Mr and Mrs B's attitude to risk, clearly recorded as "balanced", recorded during a meeting with their IFA and which is countersigned by them. In his answers to the Complaint the Respondent makes a number of assertions to the contrary but does not provide any evidence to support them. He makes reference to the FOS letter, indicating that he knew of its' existence.

The Panel therefore considers that Allegation A2(a) and A3(a) are capable of proof as to the 'cautious investor' statement being incorrect, misleading and capable of proof that the Respondent knew that the statement was incorrect and misleading.

Allegation A2(b) / A3(b) that Person X did not understand various regulatory or professional matters

The Panel has seen an email sent by the Respondent to the Case Manager on 22 February 2023 as part of the investigation into the complaint (Appendix 9 to the Case Report). In that email the Respondent says *"He [Person X] does not seem to be aware that Company A had a duty not to sell unsuitable policies."*

The Panel has seen a report prepared by the Respondent in March 2012 titled 'Report of [Mr and Mrs B] Endowment case policy xxx' (Appendix 11 to the Case Report). In it the Respondent states *"[Person X] seems to have missed the point. Correct advice was for a*

repayment mortgage to avoid the low start risks and repayment mortgage was affordable and of comparable cost to the low start mortgage.”

In his complaint documents the Panel was satisfied that Person X has demonstrated their understanding of position of Life Offices and their responsibilities regarding those selling their policies. Thus, the Panel considered that the Respondent saying that Person X does not have such an understanding is both incorrect and misleading.

In his answers to the Complaint (Appendix 23 to the Case Report), the Respondent states that he did not make any assertions about what the Respondent did not know. The Panel noted that the language used by the Respondent in the email and report referred to above was not absolute, he uses the words ‘*seem*’ and ‘*does not seem*’ in the context of arguing a case and therefore the Panel was not convinced that the Respondent’s knowledge of the incorrectness or misleading nature of the statements could be demonstrated on the balance of probabilities.

The Panel therefore considers that Allegation A2(b) is capable of proof as to the ‘not understanding’ statement being incorrect and misleading, but that A3(b) is not capable of proof in that the Respondent may not have known that his statement was incorrect and misleading.

Allegation A2(c) / A3(c) that the Financial Services Authority (“FSA”) ordered Company A to review earlier sales going back further than 1993;

The Panel has seen a report prepared by the Respondent in March 2012 titled ‘Report of [Mr and Mrs B] Endowment case policy xxx’ (Appendix 11 to the Case Report). In it the Respondent states “*The FSA ordered [Company A] to review earlier sales going further back than 1993 - the year of commencement of the [Mr and Mrs B] endowment.*”

The FSA issued a final notice dated 04 March 2003 (extract at Appendix 8 to the Case Report). The Panel understands the final notice to refer to sales by Company A’s Appointed Representatives and not to cover sales by IFAs. The Panel notes that it is undisputed that Mr and Mrs B’s endowment was sold to them by an IFA.

In his answers to the Complaint (Appendix 23 to the Case Report), the Respondent refers to the FSA final notice, indicating awareness of it and its contents.

The Panel therefore considers that Allegation A2(c) and A3(c) are capable of proof as to the 'FSA' statement being incorrect, misleading and capable of proof that the Respondent knew that the statement was incorrect and misleading.

Allegation A2(d) / A3(d) - that an FSA paper stated that the product provider had responsibility to monitor Independent Financial Advisor sales to ensure that its products were not being misused

The Panel has seen a report prepared by the Respondent in March 2012 titled 'Report of [Mr and Mrs B] Endowment case policy xxx' (Appendix 11 to the Case Report). In it the Respondent states "*We only need refer you to FSA DP06/04 to demonstrate our point that the product provider has responsibility to monitor IFA sales to ensure that its products are not being [mis]used.*". It is a point of agreement between the Respondent and Person X that the final word in this quotation should read '*misused*'.

The Panel has seen the FSA Policy Statement referred to, which was dated 07-11 July 2007 (Appendix 16 to the Case Report). In that Policy Statement the FSA said "*It should also be apparent that firms are not being required to review or monitor (or 'police') the performance of individual distributors, nor are providers required to collect the same level of detailed MI as a distributor.*"

In his answers to the Complaint (Appendix 23 to the Case Report), the Respondent refers to the FSA Policy Statement, indicating awareness of it and its contents.

The Panel therefore considers that Allegation A2(d) and A3(d) are capable of proof as to the 'responsibility to monitor' statement being incorrect, misleading and capable of proof that the Respondent knew that the statement was incorrect and misleading.

Allegation A2(e) / A3(e) - that the right to refer a complaint to the Financial Ombudsman did not exist in 2007

The Panel has seen an email sent by the Respondent to the Case Manager on 22 February 2023 as part of the investigation into the complaint (Appendix 9 to the Case Report). In that email the Respondent says "[Person X] *has made a cardinal error in regard to an*

ombudsman referral. He says that did not exercise their right of an ombudsman referral. There was no such right in 2007."

In a report accompanying his complaint, Person X states that *"I contacted the Financial Ombudsman Service by email on 6 March 2023 and asked "...whether, in 2007, a complainant who was dissatisfied with the conclusion of an Adjudicator had the right to refer their complaint to an Ombudsman?"*". Person X goes on to state that the Financial Ombudsman Service's response, dated 6 March 2023, was *"Yes, our service operated the same two-tier process as we do now. So, if a consumer or business didn't accept an adjudicator's opinion, they'd be entitled to ask for a review and final decision by an ombudsman."*

In his answers to the Complaint (Appendix 23 to the Case Report), the Respondent states *"In 2007 there was a right to request a FOS adjudicator to grant an ombudsman review. But the adjudicator did not necessarily accede to the request. In the instance case, the request was refused."* The Panel viewed this comment as demonstrating knowledge that the statement made by him in his February 2023 email was incorrect.

The Panel therefore considers that Allegation A2(e) and A3(e) are capable of proof as to the 'did not exist' statement being incorrect, misleading and capable of proof that the Respondent knew that the statement was incorrect and misleading.

Allegation A2(f) / A3(f) - that a decision made by the Financial Ombudsman Service ("FOS") supported his claim against Company A

The Panel has seen an email sent by the Respondent to the Case Manager on 22 February 2023 as part of the investigation into the complaint (Appendix 9 to the Case Report). In the email, the Respondent refers to a decision of the Financial Ombudsman Service (reference number DRN0742677, Appendix 98 to the Case Report) and implied that the Ombudsman decision supported his claim that should be compensated by the Life Office.

The FOS decision is clear that the subject of the decision is a self-employed, first time buyer with no dependents and little or no experience of investments. The decision states that the policy was sold by an agent of the life company. In the Panel's view, this distinguishes that decision from the situation in which the Respondent was involved, Mr and Mrs B being a couple with dependents, classed as balanced investors who received advice from an IFA.

The Panel therefore believes that the incorrect and misleading aspects of this statement in the email are capable of proof.

In his answers to the Complaint (Appendix 23 to the Case Report), the Respondent explains his interpretation of the FOS decision. The Panel understood that the Respondent is putting forward his view as to the interpretation of the FOS decision in his February 2023 email and that this is not therefore a matter of 'knowing' whether or not that statement is incorrect and / or misleading. Consequently, the Panel was not convinced that the Respondent's knowledge of the incorrectness or misleading nature of the statements could be demonstrated on the balance of probabilities.

The Panel therefore considers that Allegation A2(f) is capable of proof as to the 'FOS decision supporting his claim' statement being incorrect and misleading, but that A3(f) is not capable of proof in that the Respondent may not have known that the statement was incorrect and misleading.

Allegation A2(g) / A3(g) - that Person X said it was not feasible to make a complaint about a surrendered policy

The Panel has seen the complaint made by the Respondent against Person X, dated 07 February 2023 and the accompanying letter (Appendix 4 to the Case Report). In the accompanying letter, the Respondent states "*[Person X] says that it is not feasible to make a complaint about a surrendered policy. This is a false assertion*". The Panel has not been pointed to any evidence of where Person X has said this.

In his own complaint and accompanying document (Appendix 2 to the Case Report) Person X says that he did not say this - "*I did not say that - indeed , I gave details of how [the Respondent] could pursue his complaint.*" He goes on to refer to his (Person X's) letter of 19 December 2011 (the Panel notes that the reference date should be 06 June 2012). The Panel has seen this letter (Appendix 99 to the Case Report), on the final page of the letter Person X states: "*If you are not satisfied with my response, you may now refer your complaint to the Financial Ombudsman Service. I enclose a leaflet showing their details.*" This letter is dated after Mr and Mrs B surrendered their policy in August 2011.

In his answers to the Complaint (Appendix 23 to the Case Report), the Respondent explains his understanding of Person X's position. He refers to Person X's letter of 19 December

2011 and quotes from it “*Mr and Mrs B subsequently surrendered their policy and a cheque in settlement was issued on 11 August 2011. I assume therefore that the encashment of the policy concludes the matter.*” The Respondent then adds “*I would take this to mean that they did not have a valid complaint because the endowment had been surrendered.*” It may therefore be that the Respondent did believe that his comment about Person X’s position was a correct interpretation of his correspondence.

The Panel therefore considers that Allegation A2(g) is capable of proof as to the ‘not feasible’ statement being incorrect and misleading, but that A3(g) is not capable of proof in that the Respondent may not have known that the statement was incorrect and misleading.

Allegation A2(h) / A3(h) - that Person X said that as FOS turned down Mr and Mrs B’s complaint it was therefore not meritorious

The Panel has seen the complaint made by the Respondent against Person X, dated 07 February 2023 and the accompanying letter (Appendix 4 to the Case Report). In the accompanying letter, the Respondent states “*[Person X] says that FOS turned down the complaint and, therefore, the complaint is not meritorious.*”. The Panel has not been pointed to any evidence of where Person X has said this.

In his own complaint and accompanying document (Appendix 2 to the Case Report) Person X says that he did not say this “*I certainly did not say that. I did not comment on the validity of his ‘complaint’ against the Financial Ombudsman Service Adjudicator or his ‘complaint’ against the Independent Adviser. Indeed, I did not rely in any way on the decision of the Financial Ombudsman Service in rejecting Mr Pepper’s 2011/2012 complaint against [Company A]/ [Company D].*” The letter by which Person X turned down the Respondent’s claim on behalf of Mr and Mrs B is dated 19 December 2011 (Appendix 5 to the Case Report). Within that letter is a paragraph where Person X comments on the FOS rejecting Mr and Mrs B’s complaint and stating that “*this appears to indicate that the FOS took the view that the risks associated with a potential shortfall had been properly disclosed at the point of sale and, hence, the policy was not mis-sold by the financial adviser.*” It is the Panel’s view that this paragraph sets out Person X’s interpretation of the FOS decision and it is not the same as Person X saying that the FOS’s refusal therefore means that Mr and Mrs B’s complaint does not have merit.

In his answers to the Complaint (Appendix 23 to the Case Report), the Respondent explains his understanding of Person X's position. He refers to Person X's letter of 19 December 2011 and quotes the paragraph referred to above. The Respondent then adds "*I take this to be saying that there is no merit in the complaint.*" It may therefore be that the Respondent did believe that his comment about Person X's position was a correct interpretation of his correspondence.

The Panel therefore considers that Allegation A2(h) is capable of proof as to the 'not meritorious' statement being incorrect and misleading, but that A3(h) is not capable of proof in that the Respondent may not have known that the statement was incorrect and misleading.

Allegation A4 - His actions at paragraph A2 were dishonest by reason of paragraph A3.

The Legal Adviser provided legal advice on the test for dishonesty as set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC67:

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 was genuinely held. When once his actual state of mind as to the knowledge or belief as to the 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."

The Legal Adviser provided legal advice that the test for dishonesty is two part; firstly, did the individual genuinely believe that what they were doing was honest. Secondly, the central test which is objective, would that conduct be viewed as dishonest/ honest by the objective standards of 'ordinary, decent people'.

The Panel has already decided that there is not a prima facie case that the Respondent knew that what he did was misleading in relation to Allegations A2(b), A2(f), A2(g) and A2(h). The Panel concluded that viewed objectively the conduct expressed in these parts of the Allegation would not be considered dishonest by ordinary, decent people.

The Panel applied the Ivey test to Allegations A2(a), A2(c), A2(d) and A2(e). The Panel has set out above its reasoning for deciding that there is a prima facie case for finding that the statements at these Allegations were incorrect, misleading and that the Respondent knew this to be so. The reasoning and evidence set out above led the Panel to conclude that this conduct would be viewed as dishonest by the objective standards of 'ordinary decent people'.

The Panel therefore considers that Allegation A4 is capable of proof in respect of Allegations A2(a), A2(c), A2(d) and A2(e).

Allegation A5 - When submitting his allegation about Person X to the IFoA, he omitted the final page of Person X's letter dated 6 June 2012.

The Panel has seen the complaint made by the Respondent against Person X, dated 07 February 2023 and the accompanying letter (Appendix 4 to the Case Report). The Respondent included a copy of a letter written by Person X dated 6 June 2012. That copy begins at page 35 of the Appendices to the Case Report and continues for 3 pages, that copy ends with the words "*is as described above*", there is no sign off on that copy of the letter.

The Panel has also seen a full copy of the 6 June 2012 letter subsequently supplied on 22 February 2023 by the Respondent at the request of the Case Manager (Appendix 99 to the Case Report). That copy begins at page 1347 of the Appendices to the Case Report and continues for 4 pages. Page 4 contains 3 further paragraphs of text and a sign off.

The Panel therefore considers that Allegation A5 is capable of proof.

Allegation A6 - He intentionally omitted the information in paragraph A5 as he knew that the information contained in the final page of Person X's letter dated 6 June 2012 did not support the assertion he made at paragraph A1(g).

The Panel has not been pointed to any evidence that the omission of the final page of the 56 June 2012 letter was intentional.

As set out under Allegation 5, the copy of the 6 June 2012 letter submitted with the Respondent's complaint of 07 February 2023 omitted the final page of the letter. As also noted under allegation 5, the Case Manager requested the final page of the letter from the Respondent (amongst other queries, in an email of 16 February 2023) and the Respondent replied by email on 22 February 2023 (Appendix 9 to the Case Report) enclosing the full letter.

The Panel was of the view that the lack of any evidence of intent, and the timely response by the Respondent to the Case Manager's query meant that the allegation of intent is not capable of proof.

The Panel therefore considers that Allegation A6 is not capable of proof.

Allegation A7 - His actions at paragraph A5 were dishonest by reason of paragraph A6.

The Panel found Allegation A5 capable of proof but that Allegation A6 was not capable of proof. The Panel therefore considers that Allegation A7 is not capable of proof.

Having considered Allegations 2 to 7, the Panel then returned to Allegation 1.

Allegation A1 - He inappropriately submitted an allegation of Misconduct against Person X to the Institute and Faculty of Actuaries ("IFoA") which was spurious and/or vexatious.

The Legal Adviser provided guidance regarding the definition of 'spurious' and 'vexatious'. The Legal Adviser drew the Panel's attention to the ordinary dictionary definitions of these terms, that is something that is without merit, baseless, groundless or unwarranted and involving the misuse of process and which could include an element of bad faith. Furthermore, vexatious is also something that may be done in order to cause annoyance and which could be viewed as frivolous.

The Panel was mindful of its' findings at A2, A3, A4, A5, A6 and A7 above. It has found allegations capable of proof that allege that in some respects what the Respondent did was not only incorrect but was also misleading and, significantly, that he knew that was so, and it was dishonest.

The Panel also considered the length of time which had occurred between the original happenings which led to the 2023 complaint and the fact that the Respondent appears to have chosen not to follow the established routes which may have been open to Mr and Mrs B at the time (2011 and 2012) and has instead waited until 2023 to make a complaint.

The Panel noted that the Respondent chose to make a much delayed complaint against an individual Member who was acting in his capacity of employment during which it was his job to make such decisions regarding complaints. The Panel noted that the documents supplied by the Respondent during the course of the original complaint and in response to the current complaint have been voluminous, not necessarily to the point and often appear to be trying to reopen and re-argue the original mis-selling claim from 2011/12 on behalf of Mr and Mrs B.

The Panel noted the Respondent's comment in his complaint document of February 2023 (Appendix 4 to the Case Report) that the reason for the delay in submitting his complaint was the *'improvement in his tools and knowledge'* in the intervening years. The Panel did not find this explanation sufficient to explain or offset the points set out above.

Given the above factors, Panel therefore considers that Allegation A1 is capable of proof.

Allegation A8 - His actions in paragraphs A1, A2, A3, A4, A5, A6 and/or A7 above were in breach of the Integrity principle of the Actuaries' Code (version 3.0).

In determining its' decision regarding this allegation, the Panel was only obliged to consider the Respondent's actions at Allegation A1, A2, A3 (in part) and A4 above, as they were the only ones deemed by the Panel to be capable of proof and relevant to this allegation.

The Panel reminded itself of the Integrity principle of the Actuaries' Code (version 3.0) specifically the requirement that "*Members must act honestly and with integrity.*" and that "*Members must show respect for others in the way they conduct themselves.*"

The Panel also considered the "Guidance to support the principles and amplifications in the Actuaries' Code" (Version1 April 2019), ("the Guidance"). Specifically with regard to the general principle of integrity that:

- *“3.1 Members are expected to demonstrate high standards of behaviour. This is reflected in the first principle of the Code, which states: “Members must act honestly and with integrity.”*

And with regard to Being Honest and Fair that:

- *“3.3 Acting with integrity in a professional setting will generally mean being straightforward and honest in your professional and business relationships and dealing fairly with those around you. This expectation extends to situations in which you are promoting your business services.”*

Given its' findings regarding dishonesty at Allegation A4, the Panel felt that this Allegation A8 regarding breach of the Integrity principle of the Actuaries Code must follow the finding at A4. An allegation which is capable of proof regarding a finding of dishonesty clearly means that a member has not acted honestly nor with integrity.

The Panel therefore considers that Allegation A8 is capable of proof.

Allegation A9 - His actions in paragraphs A1, A2, A3, A5 and/or A6 above were in breach of the Communication principle of the Actuaries' Code (version 3.0).

In determining its' decision regarding this allegation, the Panel was only obliged to consider the Respondent's actions at Allegation A1, A2 and A3 (part) above, as they are the only ones deemed by the Panel to be capable of proof and relevant to this allegation.

The Panel reminded itself of the Communication principle of the Actuaries' Code (version 3.0) specifically the requirement that *“Members must communicate appropriately”* In addition at 6.3 *“Members must take reasonable steps to ensure that any communication for which they are responsible or in which they have a significant involvement is accurate, not misleading and contains an appropriate level of information.”*

Given the decision of the Panel that communications made by the Respondent were inaccurate and misleading and that the vexatious nature of the Respondent's complaint was capable of proof, the Panel felt that paragraph 6.3 of the Actuaries Code has therefore been breached.

The Panel therefore considers that Allegation A9 is capable of proof.

Allegation A10 - He did not adequately understand the roles of the Independent Financial Advisor and/or the Life Office, when advising Mr and Mrs B in 2012 and/or when submitting the allegation against Person X to the IFoA in February 2023.

The Panel has seen the complaint made by the Respondent against Person X, dated 07 February 2023 and the accompanying letter (Appendix 4 to the Case Report). In the accompanying letter, the Respondent appears to conflate concerns about the rejection of Mr and Mrs B's complaint by Person X, concerns regarding the FOS's rejection of Mr and Mrs B's complaint, and the actions of the IFA responsible for advising Mr and Mrs B at the point of purchasing their policy.

The Panel has seen a report prepared by the Respondent in March 2012 titled 'Report of [Mr and Mrs B] Endowment case policy xxx' (Appendix 11 to the Case Report). In it the Respondent makes reference to "*the mis-sale would be nipped in the bud if [Company A] had been vigilant in controlling its sales force*" and includes a section entitled "*5 [Company A] was culpable for an IFA sale—[Company D] is culpable*".

The Actuary members of the Panel agreed that in their professional opinion the documents produced by Respondent, both in 2011/12 and in 2023, appeared to demonstrate a lack of understanding of the differing roles of an IFA and a Life Office. They also agreed that this understanding is something that they would expect of an Actuary operating in these fields.

The Panel therefore considers that Allegation A10 is capable of proof.

Allegation A11- His actions in paragraph A10 above were in breach of the Competence and Care principle of the Actuaries' Code (version 3.0).

The Panel reminded itself of the Competence and Care principle of the Actuaries' Code version 3.0 (effective 18 May 2019) which states:

2. Members must carry out work competently and with care.

2.1 Members must ensure they have an appropriate level of relevant knowledge and skill to carry out a piece of work.

2.2 Members must continue to develop their knowledge and skills in a manner appropriate for their role and comply with the Institute and Faculty of Actuaries' Continuing Professional Development (CPD) requirements.

Given the conclusion that the Allegation A10 was capable of proof, the Panel was of the view that this lack of understanding meant either that the Respondent had not ensured that he had the appropriate level of relevant knowledge and skill to carry out a piece of work, or that he had not demonstrated the required level of care in implementing the competence that he did have.

The Panel therefore considers that Allegation A11 is capable of proof.

Decision and Reasons on Misconduct:

The Panel then considered whether there was a *prima facie* case that Respondent's actions as found capable of proof in respect of Allegations A1, A2, A3 (part), A4, A8, A9, A10 and A11 amounted to Misconduct.

For the purposes of the Disciplinary and Capacity for Membership Schemes, Misconduct is defined as any conduct by a Member, whether committed in the United Kingdom or elsewhere, in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity, competence or professional judgement which other Members or the public might reasonably expect of a Member having regard to the Bye-laws of the Institute and Faculty of Actuaries and/or to any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or, for so long as there is a relevant Memorandum of Understanding in force, by the FRC (including by the former Board for Actuarial Standards) in terms thereof, and to all other relevant circumstances.

The Panel determined, for all of the reasons set out above, that there was a *prima facie* case that the Respondent's actions as found capable of proof under Allegations A1, A2, A3 (part), A4, A8, A9, A10 and A11 did demonstrate a failure to comply with the standards of competence or professional judgement which other Members or the public might reasonably

expect of a Member; and were therefore sufficiently serious as to constitute Misconduct under the Disciplinary and Capacity for Membership Schemes.

The Panel observed that, in its' experience, it is unusual for a failed complaint by a member to then result in a subsequent complaint to be laid against the original complainer. The Panel wishes to emphasise that this decision rests upon a consideration of this particular complaint, and the rather unusual circumstances of this case.

Decision and Reasons on Sanction:

In reaching its decision, the Panel had 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.

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 and it must act proportionately.

In considering sanction, the Panel took into account the following aggravating factors:

- The length of time between the facts giving rise to the complaint against Person X (2011/12) and the making of the complaint by the Respondent (2023), and his resulting ongoing course of conduct, and
- The lack of insight shown by the Respondent into the behaviour that gave rise to the current complaint.

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

- The Respondent has no prior history of disciplinary issues.
- The Respondent has co-operated with the Investigation and has been courteous in his interactions with the Investigating team.

- There has been no suggestion that the Respondent stood to gain by his actions.

The Panel considered whether this was a case that warranted no sanction but was satisfied that the seriousness of the professional breaches required the imposition of a sanction in order that an appropriate message be given to the Respondent, the Profession and the wider public regarding the proper standards of conduct and competence.

The Panel considered whether to impose a Reprimand and determined that a Reprimand should form part of the sanction as there was prima facie evidence of serious breaches of the Actuaries Code.

The Respondent had been invited to provide the Panel with information as to his current financial circumstances. He had not done so. Taking into account the breaches found capable of proof and the Guidance and factors referred to above, the Panel decided that a fine of £2,000 would appropriately reflect the seriousness of the conduct.

The Panel considered whether to impose a period of education, training or supervised practice. As the Respondent is a retired member, this was not deemed appropriate.

The Panel did not consider that the dishonesty found was of a nature or gravity that warranted referral to a Disciplinary Tribunal Panel. The dishonesty was a discrete finding in relation to some aspects of how Mr Pepper had conducted the complaint. It did not relate to any client relationship nor was it dishonest conduct or done for personal gain. The panel found that the dishonesty was therefore at the lower end of the spectrum of dishonesty and as such did not require to be referred on to a Disciplinary Tribunal Panel.

Taking all of the above into consideration, the Panel therefore decided to impose a Reprimand and a fine of £2,000.

Publication:

Having taken account of the Disciplinary Board's Publication Guidance Policy (May 2019), the Panel determined that, if the Respondent accepted the findings of the Panel, this determination will be published and remain on the IFoA's website for a period of five years from the date of publication. A brief summary will also be published in the next available edition of *The Actuary Magazine*.

That concludes this determination.

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