



Institute
and Faculty
of Actuaries

Disciplinary Tribunal Panel Hearing

15 April 2024

Institute and Faculty of Actuaries Online Hearing

Respondent:	Anne Pettifor FIA Present and represented by Alex Dos Santos (Counsel)
Category:	Fellow since July 1999
Region:	UK
IFoA Case Presenter:	Alecsandra Manning-Rees (Counsel)
Panel Members:	Paul Brooks (Chair/Lay member) Simon Head (Actuary member) Melissa D'Mello (Lay Member)
Legal Adviser:	Graeme Dalglish
Judicial Committees Secretary:	Julia Wanless

Charge

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

1. you prepared a report into the pension rights of Person A and Person B dated 7 March 2022 that:
 - a. did not fully disclose all relevant assumptions; and/or
 - b. did not adequately address Person A and/or Person B's state pensions when this had been requested in the letter of instruction; and/or
 - c. suggested Person A's pensions were illiquid when they were not; and/or
 - d. contained a summary of instructions not consistent with the letter of instruction; and/or
 - e. provided results which had not been requested; and/or
 - f. did not summarise the range of reasonable opinion; and/or
 - g. did not include a statement confirming compliance with TAS 100.
2. by reason of paragraph 1, your report was inadequate
3. your actions at paragraph(s) 1.b and/or 1.d and/or 1.f did not comply with paragraph 9 of the Family Procedure Rules Practice Direction 25B
4. your actions at paragraph 1 were in breach of the Compliance section and/or paragraph(s) 3.2, 3.3, 4.3, and/or 5.1 of TAS 100 (effective from 1 July 2017)
5. your actions at paragraph 4 were in breach of paragraph 3 of APS X1: Applying Standards to Actuarial Work
6. your actions at paragraphs 1, 2 and/or 3 were in breach of paragraph(s) 4.1 and/or 4.2 of APS X3: The Actuary as an Expert in Legal Proceedings
7. your actions at paragraphs 1 were in breach of the principle of Communication in the Actuaries' Code (version 3)
8. your actions at paragraphs 1, 2, 3, 4, 5, and/or 6 were in breach of the principle of Compliance in in the Actuaries' Code (version 3)
9. your actions at paragraphs 1 and/or 2 were in breach of the principle of Competence and Care in in the Actuaries' Code (version 3)
10. your 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

1. The Panel found all 10 paragraphs of the charge proved.

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

- Reprimand
- Fine of £3000

2. The Panel also ordered the Respondent to pay to the IFoA costs of £15,463.

Preliminary Matters

3. Before the charge was put to Respondent the following two preliminary matters were settled:

4. Conflicts or Potential Conflicts of Interest

The chair declared that two members of the Panel had current or previous investments/policies with two of the insurance companies referenced in the Respondent's report dated 7 March 2022. Both parties confirmed that they did not consider that the matters disclosed amounted to a conflict or potential conflict of interest and agreed that there was no reason why the hearing should not continue with the Panel as currently constituted.

5. Previous Sanctions

The chair declared that the Panel had seen a document prepared by the IFoA which revealed that two previous sanctions had been imposed on the Respondent by the IFoA in 2013 and 2018. Both parties confirmed that they had consented to the Panel seeing that document prior to it determining whether the charge against the Respondent had been proved or not. The Panel made clear that it would put out of its mind the knowledge of the previous adverse findings in determining whether the charge was proved.

Background

6. The Respondent has been a Fellow of the IFoA since July 1999. She is currently practising as a self-employed actuary.

7. On 22 July 2021, the Respondent received joint instructions from the solicitors acting for Person A and Person B in their divorce. The Respondent was instructed as a single joint expert to produce a report ("the report") on Person A and Person B's pensions. The Letter of Instruction stated that the report should be submitted to the Court and both parties' legal representatives by 8 October 2021.

8. The Respondent initially was not able to provide the report in time; a Court hearing assigned for 22 November 2021 was rearranged for March 2022.

9. The Respondent submitted her report on 7 March 2022.

10. The Court hearing took place on 16 March 2022.

11. On 18 April 2022, Person A referred allegations about the Respondent to the IFoA.
12. The referral of Person A's allegations to IFoA caused the IFoA to investigate the matter, the outcome of which resulted in the charge, as set out above, being brought against the Respondent.

Findings of Fact

13. The Panel was aware that the burden of proof rests on the IFoA, and that the standard of proof is the civil standard, namely the balance of probabilities. 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.
14. The Respondent does not dispute that, at the material time, she was a member of the Institute and Faculty of Actuaries.
15. The Respondent has made full admissions to all 10 paragraphs of the charge.
16. In reaching its decisions on each of the paragraphs of the charge, the Panel took into account:
 - a. a written witness statement of the IFoA's case manager, Witness A, together with her bundle of documents, including an expert's report prepared by an actuary who is a Fellow of the IFoA, Witness B ("the expert witness")
 - b. submissions made by the IFoA's Case Presenter, the written representations of the Respondent and the submissions of the Respondent's Legal Representative
 - c. and accepted the advice given by the Legal Adviser
17. In light of the Respondent's full and unequivocal admissions, and having considered all of the evidence, the Panel was satisfied that all 10 paragraphs of the charge had been proved to the civil standard.
18. The Panel's findings on each of the paragraphs of the charge against the Respondent are as follows:

Paragraph 1

19. It is not in dispute that the Respondent prepared the report dated 7 March 2022 and the Respondent admits all the matters particularised in paragraphs (a) to (g) of paragraph 1 of the charge.
20. In his final report, the expert witness identified all the inadequacies identified in paragraph 1 of the charge.

21. The Panel was satisfied that the report was deficient in respect of all seven of the matters identified in paragraph 1 of the charge. Therefore, and in light of the Respondent's admission, it found paragraph 1 of the charge proved in full.

Paragraph 2

22. By reason of paragraph 1 of the charge, the Respondent admits the report she prepared was inadequate.

23. The evidence of the expert witness included a statement in relation to paragraph 2 of the charge saying, *"In my opinion the Respondent's report was some way below the standard which should be provided...the inadequacies could potentially have misled the Court and possibly increased dissension between the parties"*.

24. The Panel was satisfied that, by reason of the seven deficiencies identified in paragraph 1 of the charge, the report was inadequate. Therefore, and in light of the Respondent's admission, it found paragraph 2 of the charge proved.

Paragraph 3

25. The Respondent admits that because the report was inadequate in respect of matters particularised in paragraphs 1b, 1d, and 1f of the charge, her actions did not comply with paragraph 9 of the Family Procedure Rules Practice Direction 25B ("the Court's practice direction").

26. The evidence of the expert witness makes clear that, as a single joint expert appointed to advise the Court, the Respondent was subject to the Court's practice direction with which she failed to comply.

27. The Panel found that the Respondent, as a single joint expert appointed to advise the Court, was subject to the Court's practice direction. It further found that the Respondent failed to comply with the Court's practice direction in that:

- i. the report failed to adequately address both Person A and Person B's state pensions when this had been requested in the letter of instruction (paragraph 1b of the charge);
- ii. the report's summary of instruction was inconsistent with the letter of instruction (paragraph 1d of the charge); and
- iii. the report did not summarise the range of reasonable opinion (paragraph 1f of the charge).

Therefore, and in light of the Respondent's admission, the Panel found paragraph 3 of the charge proved.

Paragraph 4

28. The Respondent admits that her actions as particularised in paragraphs (a) to (g) of part 1 of the Charge were in breach of the Compliance Section and/or paragraph(s) 3.2, 3.3, 4.3, and/or 5.1 of TAS 100 (effective from 1 July 2017).
29. The evidence of the expert witness makes clear that the report prepared by the Respondent was required to comply with Technical Actuarial Standards ("TAS") 100 set by the Financial Reporting Council. In the expert witness's opinion, the report did not explicitly comply with the Compliance Section of TAS 100, nor did it comply with the paragraphs of TAS 100 said to have been breached in paragraph 4 of the complaint.
30. The Panel found that Respondent should have ensured that the report complied with TAS 100. Having reviewed the TAS 100 Compliance Section and the relevant paragraphs, the Panel found that the report did not comply with TAS 100. Therefore, and in light of the Respondent's admission, the Panel found paragraph 4 of the charge proved.

Paragraph 5

31. The Respondent admits that her actions in paragraph 4 of the charge were in breach of paragraph 3 of APS X1: Applying Standards to Actuarial Work ("APS X1").
32. The evidence of the expert witness included a statement in relation to paragraph 5 of the charge saying, *"the breach of TAS 100 means that the Respondent was also in breach of APS X1"*.
33. The Panel was satisfied that a breach of TAS 100 would necessarily mean that APS X1 was also breached. Therefore, having found paragraph 4 of the charge proved, and in light of the Respondent's admission, the Panel found paragraph 5 of the charge proved.

Paragraph 6

34. The Respondent admits that her actions in paragraph 1, 2 and/or 3 of the charge were in breach of paragraph(s) 4.1 and/or 4.2 of APS X3: The Actuary as an Expert in Legal Proceedings ("APS X3").
35. The Panel reviewed APS X3 which includes the following paragraphs:
 - *"4.1 Members instructed as an Expert Witness in Proceedings must ensure that in addition to their professional responsibilities they act in accordance with any obligations to the court, tribunal or other body that apply in the Proceedings and jurisdiction in which they are instructed;*
 - *4.2 Members must familiarise themselves with, and adhere to, the rules and procedures that apply in the jurisdiction, and to the Proceedings, in which they are instructed"*.

36. The Panel found that, in producing an inadequate report which was deficient in respect of seven matters, and failing to comply with the Court's practice direction, the Respondent breached paragraphs 4.1 and 4.2 of APS X3. Therefore, and in the light of the Respondent's admission, the Panel found paragraph 6 of the charge proved.

Paragraph 7

37. The respondent admits that her actions as particularised in paragraphs (a) to (g) of paragraph 1 of the Charge were in breach of the principle of Communication in the Actuaries' Code (version 3).
38. The Panel reviewed the principle of Communication in the Actuaries' Code (version 3) which says:

"6. Members must communicate appropriately.

6.1 Members must communicate in a timely manner, clearly, and in a way that takes into account the users.

6.2 Members must show clearly that they take responsibility for their work when communicating with users.

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.

6.4 Where Members identify that a user of their work has, or is reasonably likely to have, misunderstood or misinterpreted the information or advice provided by them in a way which could have a material impact, Members should draw the user's attention to this".

39. The Panel also reviewed the Actuaries' Code Guidance (effective from April 2019) as it relates to Communication.
40. The Panel found that because of the seven deficiencies in her report, identified in paragraph 1 of the charge, the Respondent had failed to communicate appropriately and so she had breached of the principle of Communication in the Actuaries' Code (version 3). Therefore, and in the light of the Respondent's admission, the Panel found paragraph 7 of the charge proved.

Paragraph 8

41. The Respondent admits that her actions in paragraphs 1, 2, 3, 4, 5, and/or 6 of the charge were in breach of the principle of Compliance in the Actuaries' Code (version 3).

42. The Panel reviewed the principle of Compliance in the Actuaries' Code (version 3) which says:

"4. Members must comply with all relevant legal, regulatory and professional requirements.

4.1 Members must take reasonable steps to ensure they are not placed in a position where they are unable to comply."

43. The Panel found that by preparing an inadequate report which was deficient in respect of seven matters; by failing to comply with the Court's practice direction; and by failing to comply with three professional/technical standards relating to actuarial work, the Respondent breached the principle of Compliance in the Actuaries' Code (version 3). Therefore, and in light of the Respondent's admission, the Panel found paragraph 8 of the charge proved.

Paragraph 9

44. The Respondent admits that her actions in paragraphs 1 and/or 2 of the charge were in breach of the principle of Competence and Care in the Actuaries' Code (version 3).

45. The Panel reviewed the principle of Competence and Care in the Actuaries' Code (version 3), as relevant to this matter, which says:

"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 ...*

2.3 Members must ensure their work is appropriate to the needs and, where applicable, instructions of user(s).

2.4 Members must consider whether input from other professionals or specialists is necessary to assure the relevance and quality of work and, where necessary, either seek it themselves or advise the user to do so, as appropriate."

* this part of the Code relates to Continuous Professional Development and did not form part of the IFoA's case.

46. The Panel also reviewed the Actuaries' Code Guidance (effective from April 2019) as it relates to Competence and Care.

47. The Panel found that in producing an inadequate report which was deficient in respect of seven matters, the Respondent had failed to carry out work competently and with care and she had therefore breached of the principle of Competence and Care in the

Actuaries' Code (version 3). Therefore, and in the light of the Respondent's admission, the Panel found paragraph 9 of the charge proved.

Misconduct Charge - Paragraph 10

48. The Panel considered whether, having found the first nine paragraphs of the charge proved, the Respondent's actions amounted to Misconduct. In considering this matter, the Panel took account of the definition of Misconduct, which for the purposes of the Disciplinary Scheme, "*means 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*" (Rule 2.1).
49. The Panel noted that the Respondent had made a full and unequivocal admission that her actions particularised in paragraphs 1 to 9 of the charge constituted Misconduct in terms of Rule 2.1 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (Effective 1 August 2023).
50. The Panel found that in:
- a. preparing an inadequate report that was deficient in respect of seven matters (paragraphs 1 and 2 of the charge);
 - b. breaching the Court's practice direction (paragraph 3 of the charge);
 - c. failing to comply with three professional/technical standards relating to actuarial work (paragraphs 4, 5 and 6 of the charge); and
 - d. breaching three principles of the Actuaries Code (version 3) (paragraphs 7, 8 and 9 of the charge)
- the Respondent committed a series of acts or omissions in her professional life which fell significantly short of the standards of behaviour, competence or professional judgement which other Members or the public might reasonably expect of a Member.
51. Therefore, and in the light of the Respondent's admission, the Panel found that the Respondent's actions, as particularised in paragraphs 1 to 9 of the charge, amounted to Misconduct in terms of Rule 2.1 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (Effective 1 August 2023) and so found paragraph 10 of the charge proved.
52. For the avoidance of doubt, the Panel found no evidence that any of the Respondent's actions lacked integrity, and so it made no finding that her Misconduct was, in whole or in part, as a consequence of a lack of integrity.

Sanction

53. The Legal Adviser reminded the Panel to consider the IFoA's Sanctions Guidance and to be mindful of the need to act proportionately. It should be mindful of the over-arching 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 Panel should impose the least restrictive sanction that meets those objectives.

54. The Panel heard from the IFoA's representative who directed it to the IFoA's Sanctions Guidance and to the need to protect the public. She referred the Panel to the previous findings in respect of the Respondent. She remained neutral as to the particular sanction to impose.
55. The Respondent's Representative also referred the Panel to the IFoA's Sanctions Guidance and submitted that that the previous findings were dissimilar to the current charge and whilst not irrelevant, should attract little weight. He submitted that the Respondent's good insight and testimonials as to the high quality of her reports were powerful mitigating factors. He acknowledged that the Misconduct warranted the imposition of a sanction but submitted that the appropriate sanction should be no more than a reprimand and, if the Panel was so minded, a fine. He provided the Panel with some headline figures for the Respondent's annual income and savings.
56. The Panel accepted the advice of the Legal Adviser and had careful regard to the IFoA's 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.
57. 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 was 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.
58. The Panel first considered the seriousness of the Misconduct. In doing so, it started by assessing the Respondent's culpability. It was assisted by reviewing paragraph 5.7(a) of the IFoA's Sanctions Guidance - *The Respondent's culpability*, as well as reviewing the particular circumstances of this case. It found that:
 - a. the Respondent's failings were not deliberate, but that she was careless and exercised poor judgement in preparing the report; and
 - b. the respondent is a very experienced actuary who had prepared very many similar reports, and so none of the failings could have arisen through inexperience.
59. The Panel then considered the harm caused by the Misconduct. It was assisted by reviewing paragraph 5.7(b) of the IFoA's Sanctions Guidance - *The harm caused by the Misconduct*, as well as reviewing the particular circumstances of this case. It found that the inadequate report that the Respondent prepared had the potential to:
 - a. mislead Person A and Person B and the Court; and

- b. heighten the dissension between parties in divorce proceedings, thus increasing the potential to damage the reputation of actuaries undertaking work of this nature.

In coming to those findings, the Panel bore in mind the statement made by the expert witness who said “...*the inadequacies could potentially have misled the Court and possibly increased dissension between the parties*”.

60. The Panel then considered if there were any aggravating factors which properly ought to be taken into account. It was assisted by reviewing paragraph 5.7(c) of the IFoA’s Sanctions Guidance - *Aggravating factors*, as well as the particular circumstances of this case.

61. It found the following aggravating factor:

- Two previous adverse findings by the IFoA of Misconduct on 14 February 2013 and 1 November 2018.

Whilst both of these findings related to work undertaken by the Respondent in respect of similar reports in divorce proceedings, the previous failures related, in essence, to the timeliness of her work rather than the quality of her reports. The Panel was very disappointed that this is now the third occasion there has been a finding of Misconduct against the Respondent. However, it accepts that the nature of the Misconduct this time is sufficiently different to the previous findings to reduce the weight it attaches to this aggravating factor.

62. The Panel then considered if there were any mitigating factors which properly ought to be taken into account. It was assisted by reviewing paragraph 5.7(d) of the IFoA’s Sanctions Guidance - *Mitigating Factors*, as well as the particular circumstances of this case.

63. It found the following mitigating factors:

- a. insight shown by the Respondent as demonstrated by the reflective statement she had written;
- b. her full cooperation during the investigation of the charge; and
- c. the Misconduct appears to be a one-off departure from the Respondent’s usual behaviour.

In coming to its finding of the last mitigating factor, there was no evidence before the Panel that the Respondent's work was generally of poor quality. Rather, there was evidence before it as to the high quality of her reports from five positive references made by legal professionals by whom the Respondent had been instructed over many years, and who were aware of the general nature of today’s proceedings. Therefore the Panel was satisfied that there was a low risk of repetition of the Misconduct found proved.

64. The Panel considered the potential sanctions in ascending order, starting with the least severe.
65. It first considered whether any sanction was required at all. It determined that the seriousness of the Misconduct was such that it ought to be marked by the imposition of a sanction.
66. It then considered the next least serious sanctions. It determined that, taking into account the Respondent's culpability, the potential harm of her failings, and the aggravating and mitigating factors, the Misconduct necessitated the imposition of a Reprimand and a Fine of £3,000. The Panel found that, in all the circumstances of this case, this was a proportionate sanction which marked the Misconduct appropriately, maintained public confidence in the profession and declared and upheld proper professional standards.

Costs

67. The IFoA made an application for costs of £15,463 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Representative. The Panel reviewed a costs schedule prepared for the hearing and noted that costs included administrative costs and costs incurred by the Panel, Legal Adviser as well as the costs associated with a previous hearing of an Adjudication Panel.
68. The Respondent's Representative did not resist the imposition of a costs order, but asked the Panel to be proportionate when considering the appropriate award of costs.
69. The Panel had regard to the Costs guidance (1 August 2023) and the Legal Adviser reminded the Panel that the award under rule 15.13 should be appropriate and that it should consider proportionality in awarding costs against the Respondent.
70. The Panel considered the costs sought to be recovered were at a reasonable level, and that the work undertaken by the IFoA and costs incurred justified that amount of cost. 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 £15,463.
71. In arriving at its decision to award costs in full, the Panel took into account the Respondent's financial means and accepted a submission made by the Respondent's Representative that the fine and costs be payable within 35 days of service of this written determination. The Panel so orders in accordance with paragraph 8.1 of the Costs guidance.

Right to appeal

72. In accordance with Rule 18 and the Appeals Regulations, the Respondent has 28 days from the date that this written determination is deemed to have been served upon her in which to appeal the Panel's decision.

Publication

73. Having taken account of the Publication Guidance (1 August 2023), and having heard no representations from either party on publication, the Panel determined 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.

That concludes this determination.

Date of publication: 1 May 2024