



Institute
and Faculty
of Actuaries

Adjudication Panel Meeting

15 - 16 November 2021

Held by Video Conference

Respondent:	Mr Jan Ignacy Iwanik
Category:	Former Fellow and Affiliate member, now resigned
Region:	London, UK
Panel Members:	Catriona Whitfield (Chair/ Lay member) Julian Ellacott FIA (Actuary member) Thomas Doubell FFA (Actuary member)
Legal Adviser:	Elaine Motion
Judicial Committees Secretary:	Julia Wanless

Allegation:

The allegations against Mr Iwanik (the Respondent) are:

- A1 During a webinar entitled “Wicked Problems, Clumsy Solutions and Leading Change”, held on 19 April 2021, the Respondent:

Posed a question using the online Question and Answer function, which was inappropriate and / or offensive, in that he asked: “*how exactly will promoting the culture of sodomy help the Actuarial Profession or its societal role?*”

- A2 His actions at A1 were in breach of the Integrity principle of the Actuaries’ Code (version 3.0), in that such actions were capable of causing offence and demonstrated a lack of respect and courtesy towards the panel members and speakers and others hosting the webinar.
- A3 His actions at A1 were in breach of the Communication principle of the Actuaries’ Code (version 3.0).
- A4 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 February 2018).

Panel’s determination:

The Panel considered the Case Report and appendices submitted by the Case Manager and Investigation Actuary and the Respondent’s response to the Case Report. The Panel also considered the advice of the Legal Adviser with regard to Integrity, professional regulation of freedom of speech and professional misconduct.

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 the following sanctions:

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

In addition, the Panel strongly encouraged the Respondent to undertake appropriate Diversity and Inclusion training with the objective of building an appreciation of the positive benefits of diversity in a professional context, and how to avoid the risk of offending others in future communications.

Background:

The Institute and Faculty of Actuaries (IFoA)'s [Executive 1] initially made contact with the Disciplinary Investigation team by telephone on 20 April 2021 to explain concerns regarding a Question posed by the Respondent during a webinar which had taken place on 19 April 2021. The Disciplinary Investigation team was provided with a copy of an email exchange between: [Executive 1]; [Executive 2]; Referrers A and B and; the President of the IFoA.

On 26 April 2021, the IFoA's Head of Disciplinary Investigations wrote to the parties outlined in the email referred to above, making reference to the copy of the email exchange which had been provided. The Head of Disciplinary Investigations asked whether the emails provided should be treated as a formal complaint against the Respondent and explained the IFoA's Executive Referral process.

By return email that day, Referrer A confirmed to the Head of Disciplinary Investigations that he wished his emails to be treated as a formal complaint and provided his reasons for this. Also on 26 April 2021, the Head of Disciplinary Investigations acknowledged receipt of Referrer A's above email.

On 27 April 2021, Referrer B advised the Head of Disciplinary Investigations that she, too, wished the matter to be considered a formal complaint.

On the same date, the Head of Disciplinary Investigations asked the Referrers for any information and evidence which would assist with an investigation.

By email of 28 April 2021, [Executive 2] provided the Head of Disciplinary Investigations with the following:

- a link to the recorded webinar;
- a screenshot of the Question;
- a list of the delegates who had attended the webinar; and
- a briefing of the speakers at the webinar.

On 30 April 2021, Referrer A formally confirmed to the Head of Disciplinary Investigations that, as indicated in his email of 26 April 2021, he was submitting a formal complaint about the conduct of the Respondent in respect of the Question asked during the webinar and provided a screenshot by way of evidence. By email, also of 30 April 2021, Referrer B again confirmed her wish to join this formal complaint.

Decision and Reasons on the Allegations:

Allegation 1

It is alleged that during a webinar entitled “Wicked Problems, Clumsy Solutions and Leading Change”, held on 19 April 2021, the Respondent:

Posed a question using the online Question and Answer function, which was inappropriate and / or offensive, in that he asked: “how exactly will promoting the culture of sodomy help the Actuarial Profession or its societal role?”

The Panel reviewed a screen shot of a Question raised in the Q&A facility of a webinar hosted by the IFoA on 19 April 2021 entitled "*Wicked Problems, Clumsy Solutions and Leading Change*". The screen shot shows the Question "*how exactly will promoting the culture of sodomy help the Actuarial Profession or its societal role?*" The screenshot identifies the user raising the Question as "*Yan*" and notes the time of the Question as 9:12 am.

The Panel reviewed a list of attendees at the seminar which included the name "*Yan Iwanik*".

The webinar commenced at 9am. The Panel reviewed a summary of the first 12 minutes of the webinar contained within the Case Report, a recording of the webinar was also made available to the Panel through a link within the Case Report. The President of the IFoA spent the first 9 minutes of the webinar giving an introduction ending with an introduction of the Speaker and the two Panellists involved in that days' webinar. The introduction to the first Panellist referenced them as a "*well respected role model for LGBT and Women in leadership . . . and actively champions the importance of diversity and inclusion in organisations*". The introduction to the second Panellist described them as a "*Co-chair of [Company D's] EMEA Diversity and Inclusion committee & is an Ambassador for the Diversity Project*".

The Panel reviewed the Respondent's response to the Case Report in which he refers to "*my question*".

The Panel reviewed emails from Referrers A and B in which they note how they felt about the Question.

The Panel concluded that the Respondent posed the Question referred to in Allegation 1, the Panel concluded that the Question was inappropriate and /or offensive and could reasonably be regarded as such by others who saw it. Therefore the Panel deemed Allegation 1 was capable of being proved.

Allegation 2

The Respondent's actions at Allegation 1 were in breach of the Integrity principle of the Actuaries' Code (version 3.0), in that such actions were capable of causing offence and demonstrated a lack of respect and courtesy towards the panel members and speakers and others hosting the webinar.

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").

The Panel noted paragraphs 2.6 of the Guidance, where it states that the "*Code also applies to all Members' other conduct if that conduct could reasonably be considered to reflect upon the profession. This means conduct by a Member that may have an impact upon the reputation of the actuarial profession as a whole, even if that conduct occurs outside of a Member's actuarial professional life.*" The Panel noted that the Question had been raised during a webinar hosted by the IFoA, with an external guest speaker, and where the attendees and panellists were members of the profession and so those who saw the Question could reasonably assume that the author was a member of the profession.

The Panel noted paragraphs 3.4 to 3.7 of the guidance which exhort Members to "*show respect for others in the way they conduct themselves*" and notes that the scope of this

requirement extends to *"anyone with whom Members interact, including colleagues and the general public"*. Paragraph 3.5 states that *"the same behaviour may have a different impact on different people; what one person may find offensive may not have any effect on another."* Paragraph 3.6 states that *"Showing respect for others does not mean that Members cannot voice their opinions or disagree with others where they hold an opposing point of view. . . . It is expected however that where disagreements do arise, Members act with courtesy."* Paragraph 3.7 states that *"The IFoA promotes equality and diversity and the development of an inclusive profession that incorporates people from a range of backgrounds. Members are encouraged to behave in a way that recognises and respects diversity and different cultures."*

To provide further context, the Panel's Legal Adviser referred to the definition of "offensive" as that which is *"capable of causing offence."*

The Panel's Legal Adviser also referred the Panel to the leading authority on Integrity in relation to a professional person's actions, as set out in the case of Wingate and Evans v SRA [2018] EWCA Civ 366:

"In professional codes of conduct, the term 'integrity' is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards. Integrity connotes adherence to the ethical standards of one's own profession that involves more than mere honesty."

The Panel considered whether the nature of the event (namely one internal to the Profession which, as a "learned society", encourages active debate) wider latitude should be given to what is deemed inappropriate or offensive comment, relative to comments made in public. The Panel felt that encouragement of debate did not reduce the requirement for Members to behave in an appropriate and respectful manner.

The Panel felt that the timing of the Question, shortly after the introduction of the two Panellists and their identification as leaders in the LGBT and Diversity fields, and the arcane and pointed language in which it was phrased, did not demonstrate courtesy nor respect to the speakers and thus breached the requirements of the Integrity principle of the Actuaries' Code. Therefore the Panel deemed Allegation 2 was capable of being proved.

Allegation 3

The Respondent's actions at Allegation 1 were in breach of the Communication principle of the Actuaries' Code (version 3.0).

The Panel reminded itself of the Communication principle of the Actuaries' Code (version 3.0) specifically the requirement that "*Members must communicate appropriately*" and paragraph 8.13 of the guidance which states that "*When engaging in online discussion, be aware that the views you express may provoke a response; it is important to be open to the opinions of others and to treat others with respect, even if they are disagreeing with your view.*"

The Panel's Legal Adviser referred the Panel to the leading authority of R (Ngole) v University Sheffield [2019] EWCA Civ 1127 regarding freedom of speech in the context of communicating personal opinion. The Court of Appeal had held that:

"the right to Freedom of Expression is not an unqualified right: professional bodies and organisations are entitled to place reasonable and proportionate restrictions on those subject to their professional codes." and *"the legitimate aim of such regulation must extend so far as to seek to ensure that reasonable [users] perceive that they will be treated with dignity and without discrimination"*.

The Guidance recognises social media to be a medium to "*communicate quickly and effectively*" (paragraph 8.8), which enables information to be "*copied and passed on much more quickly than by any other means and potentially to a much wider audience*" (paragraph 8.10).

The Panel considered carefully whether the Respondent's actions had breached the Communication principle. The broad requirement of the Code that "Members must communicate appropriately" could be interpreted to refer to either or both of the mode of communication used, or the content of a communication. The Panel already found the content to be inappropriate (under allegation A1), so on the latter interpretation the Communication principle would also have been breached.

After reviewing paragraphs 6.1-6.4 of the Code, the Panel felt that the scope of the Communication principle was distinct from the Question in this case, given the emphasis in these paragraphs on requirements such as timeliness, clarity and accuracy of

communications, and minimising the risk of those being communicated with being misled. None of these apply to this case.

Reviewing the Guidance, the Panel noted the greater breadth of topics covered in the Guidance compared to the Code. The Panel reviewed the guidance on social and other media but had difficulty in equating a Question posed to a small number of panellists within a closed webinar hosted within the profession to the use of "social or other media". Furthermore, in the context of this IFoA webinar, the Q&A function was the sole means of communication open to participants (which they were actively encouraged to use in the President's opening remarks).

Were the content of the communication to be set aside, it is therefore hard to see that the Question in this instance was inappropriate. The issue is therefore whether it is appropriate to set aside the content when assessing the Communication principle. The Panel discussed whether in matters such as this a breach of the Integrity principle must automatically equate to a breach of the Communication principle and concluded that this could not be so. The content had been dealt with in allegations A1 and A2, which had already been found capable of being proved, and it was felt there was no distinct matter to be considered under the Communication principle.

Therefore the Panel felt that allegation A3 was not capable of proof.

Decision and Reasons on Misconduct:

The Panel then considered Allegation 4 - whether there was a *prima facie* case that the Respondent's actions, as found capable of proof under Allegations 1 and 2 above, 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's Legal Adviser referred the Panel to the case of Ridehalgh v Horsefield [1994] Ch 205; 1994 3 All ER 848; 1994 3 WLR 462, defining improper conduct as:

"conduct which would be regarded as improper according to the consensus of professional (including judicial) opinion"

The Panel concluded that Allegations 1 and 2 found capable of proof above did demonstrate a failure to comply with the standards of behaviour and integrity which might reasonably be expected of the Respondent. The Panel therefore determined that there was a *prima facie* case that the Respondent's actions were sufficiently serious as to constitute Misconduct under the Disciplinary and Capacity for Membership Schemes.

Decision and Reasons on Sanction:

Having determined that the allegations found capable of proof and that, *prima facie*, those allegations amounted to Misconduct, the Panel was then provided with a prior Adjudication Panel determination dated 26 March 2021. In reaching its decision on sanction the Panel therefore had regard to that prior determination as well as to the Indicative Sanctions Guidance (January 2020)". 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.

In considering sanction, the Panel took into account the following aggravating factors which increased the seriousness of the Respondent's action:

- the Respondent had been a Fellow of the IFoA for 12 years, followed by eight months as an Affiliate member, and should have been aware of his obligations;
- he was solely responsible for his actions;
- the Question was posed at the commencement of the webinar, just after introductions of the panelists, and its timing appeared to be designed to be inflammatory;
- he has offered no evidence of insight to, nor remorse for, his conduct; and
- he had accepted a previous finding of professional misconduct, of a similar nature, against him in the month prior to the conduct complained of.

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

- the case did not involve dishonesty, criminal behaviour, a regulatory breach, nor financial loss;
- the case involved a single comment; and
- the Question was made within the Q&A facility of a webinar hosted by the IFoA and was actually visible to the host, speaker and panellists only (although it is not certain that the Respondent knew that the audience to the comment would be so limited at the point at which he made it).

The Respondent had been invited to provide the Panel with information as to his current financial circumstances. He had not done so.

The Respondent had been invited to provide the Panel with information as to whether or not he had undertaken the Diversity and Inclusion training which had been encouraged by another Panel as a result of his prior acceptance of Professional Misconduct. He had not provided any information on this matter.

Taking all the above into account, the Panel decided that a sanction was appropriate. The Panel considered whether to impose a Reprimand and concluded that it should.

The Panel then considered whether to impose a Fine. The Panel concluded that a fine of £2,000 would be appropriate to mark the seriousness of the Respondent's conduct, given that it caused offence, had the potential to damage the reputation of the profession and followed a recent, similar finding of professional misconduct.

The Panel then considered whether it would be appropriate in the circumstances to impose a period of education, training or supervised practice. Given that the Respondent is no longer a member of the IFoA, this was not deemed appropriate. Nevertheless, given the circumstances of this case, the Panel reiterates the recommendation of the Panel from the previous hearing and strongly recommends that the Respondent takes responsibility for his personal development and undertakes appropriate Diversity and Inclusion training with the objective of building an appreciation of the positive benefits of diversity in a professional context.

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.