INSTITUTE AND FACULTY OF ACTUARIES
Disciplinary Tribunal Panel
Determination under Rule 6.21 of the
Disciplinary Scheme of the Institute and Faculty of Actuaries
in respect of a Charge of Misconduct brought by
the Investigation Actuary
in the case of
MR WILLIAM JOHN HUDSON FIA

Heard at the International Dispute Resolution Centre, 70 Fleet Street, London on 6-9 July 2015.

The Investigation Actuary laid the following charge of misconduct against William John Hudson, ("the Respondent").

THAT THE RESPONDENT:

When acting in the role of Director of HP Limited in the period covered by the Scheme Actuary appointment letter, between April 2008 and November 2012, he:

1. in relation to Fund A:

1.1. did not fulfil his role as Scheme Actuary appropriately in that he:

(i) failed to fulfil his statutory responsibility by not signing and instead acquiescing to Norman Head signing the Actuarial Report at 1 January 2011 when he, as Scheme Actuary, should have signed it;

(ii) did not sign and acquiesced to Norman Head signing a number of letters advising on actuarial factors when he, as Scheme Actuary, should have signed them, including;

a) a letter relating to transfer values dated 17 June 2008;
b) a transfer value review for Fund A dated 23 April 2012;
c) a review of commutation factors for Fund A dated 23 April 2012;

(iii) did not sign and acquiesced to Norman Head signing and issuing letters to the Trustees of Fund A dated 29 August 2012 and/or 13 September 2012 advising on transfer values, which is reserved work and he, as Scheme Actuary, should have carried it out;

(iv) his actions at (i), above were contrary to sections 47 and 57 of the Pensions Act 1995 and section 224 of the Pensions Act 2004 and/or the standards of competence and care, compliance and open communication as detailed in the Actuaries' Code version 1.0;

(v) his actions at (ii)(a) above were contrary to Guidance Note (GN11) version 9.3, section 7(1) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 and/or paragraphs 1.2, 1.8, 1.11, 2.1, 2.2, 3.1 and/or 4.2 of the Professional Conduct Standards, version 3.0;

(vi) his actions at (ii)(b) and (c) and (iii) above were contrary to the Rules of Fund A dated 21 April 2011 with reference to paragraph 17 of the Scope and Authority of Technical Standards version 3 and/or the standards of competence and care, compliance and open communication as detailed in the Actuaries' Code version 1.0;

1.2. did not deal with assumptions appropriately in that he:

(i) as Scheme Actuary, allowed an Actuarial Report as at 1 January 2011 to be prepared and presented to Trustees, which utilised the same assumptions as the 2010 Actuarial Valuation without taking into account changing market conditions;

(ii) in the Report on the Employer Debt Valuation as at 29 June 2012:

a) included the draft results of the unsigned 2012 Actuarial Report, when those figures breached the provisions of the Occupational Pension Schemes (Scheme Funding) Regulations;

b) this formalised those figures when the 2012 Actuarial Report had only been prepared in draft;

(iii) did not inform the Trustees that the figures used in the Employer Debt Valuation as at 29 June 2012 were originally draft figures;

(iv) included results from the draft Fund A 2012 Actuarial Report in the Employer Debt Valuation as at 29 June 2012 which did not comply with the Occupational Pension Schemes (Scheme Funding) Regulations and/or the Statement of Funding Principles;

(v) his actions in all or any of the above were in breach of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 and the Statement of Funding Principles; the Pensions Technical Actuarial Standard (TAS P) version 1, in particular paragraphs D.2.2 and D2.13; TAS R version 2, in particular paragraph C.5.1, the Reliability Objective set out in the Scope & Authority of Technical Standards version 3; and/or the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;

1.3. did not deal appropriately with the s.75 debt in that he:

(i) allowed incorrect advice to be given to the Trustees of Fund A by Norman Head in letters dated 29 August 2012 and/or 13 September 2012 in which it was advised that it was reasonable for the actual debt payment to be less than the certified s.75 debt certified by him;

(ii) in his final aggregate report addressed to the Trustees of Fund A certifying the s.75 debt due from Printing Service A he did not include an explanation of why the debt had increased from the estimate provided by Norman Head on 15 March 2012;

(iii) his actions at (i) above were contrary to the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;

(iv) his actions at (ii) above were contrary to TAS R paragraph C5.17, TAS P paragraph D2.2 in terms of paragraph C.1.5; the Reliability Objective of the Scope and Authority of Technical Standards version 4; and/or the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;

1.4. did not deal with transfer values appropriately in that he:

(i) from October 2008, when calculating Cash Equivalent Transfer Values (CETVs) did not calculate an Initial Cash Equivalent (ICE), as required The Occupational Pension Schemes (Transfer Value) (Amendment) Regulations 2008 and/or guidance issued by the Pensions Regulator in September 2008, or did not ensure Norman Head did so;

(ii) when calculating Market Value Adjustment (MVA) factors from 2008, did not take into account the change in post-retirement discount rate and/or the impacts of caps and collars on certain benefits, or did not ensure Norman Head did so;

(iii) his actions or omissions in (ii) above are likely to have caused any transfer values calculated since June 2008 to have been understated;

(iv) his actions at (i) and (ii) above were contrary to paragraphs 1.2, 1.8, 1.11, 2.1, 2.2, and/or 3.1 of the Professional Conduct Standards, version 3.0;

1.5. did not supervise appropriately in that he:

(i) in April 2012 did not adequately check the Deficit Reduction Contribution (DRC) for Fund A which was submitted to the Pensions Regulator and therefore failed to realise that the DRC was incorrect;

(ii) his actions at (i) above were in breach of the principles of competence and care and/or compliance as detailed in the Actuaries' Code;

2. in relation to Scheme A, he:

1.1. did not fulfil his role as Scheme Actuary appropriately in that he:

(i) failed to fulfil his statutory responsibility by not signing and instead acquiescing to Norman Head signing and issuing the Actuarial Report as at 1 January 2011 when he, as Scheme Actuary, should have signed it;

(ii) acquiesced to Norman Head signing a deferred pension statement on 22 March 2012 as the Scheme Actuary, when he was not appointed in that role;

(iii) in his actions at (ii) above he acquiesced to Norman Head holding himself out as the Scheme Actuary;

(iv) his actions at (i) above were contrary to sections 47 and 57 of the Pensions Act 1995 and section 224 of the Pensions Act 2004 and/or the standards of competence and care, compliance and/or open communication as detailed in the Actuaries' Code version 1.0;

(v) his actions at (ii) and/or (iii) above were in breach of the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;

1.2. did not deal with assumptions appropriately in that he:

(i) allowed an Actuarial Report as at 1 January 2011 to be prepared and presented to the Trustees, which utilised the same assumptions as the 2010 Actuarial Valuation without taking into account changing market conditions;

(ii) in the Insufficiency Report dated 13 November 2012:

a) used the same assumptions as in the unsigned 2012 Actuarial Report, when those figures breached the provisions of the Occupational Pension Schemes (Scheme Funding) Regulations;

b) this formalised those figures when the 2012 Actuarial Report had only been prepared in draft;

(iii) did not inform the Trustees that the figures used in the Insufficiency Report dated 13 November 2012 were originally draft figures and did not comply with the Occupational Pension Schemes (Scheme Funding) Regulations;

(iv) his actions in all or any of the above were in breach of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 and the Statement of Funding Principles; the Pensions Technical Actuarial Standard (TAS P) version 1, in particular paragraphs D.2.2 and D2.13; TAS R version 2, in particular paragraph C.5.1, the Reliability Objective set out in the Scope & Authority of Technical Standards version 3; and/or the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;

1.3. did not deal with transfer values appropriately in that he:

(i) from October 2008, when calculating Cash Equivalent Transfer Values (CETVs) did not calculate an Initial Cash Equivalent (ICE), as required by The Occupational Pension Schemes (Transfer Value) (Amendment) Regulations 2008 and/or guidance issued by the Pensions Regulator in September 2008, or did not ensure Norman Head did so;

(ii) when calculating Market Value Adjustment (MVA) factors from 2008, did not take into account the change in post-retirement discount rate and/or the impacts of caps and collars on certain benefits, or did not ensure Norman Head did so;

(iii) his actions or omissions in (ii) above are likely to have caused any transfer values calculated since June 2008 to have been understated;

(iv) his actions at (i) and (ii) above were contrary to paragraphs 1.2, 1.8, 1.11, 2.1, 2.2, 3.1 and/or 4.2 of the Professional Conduct Standards, version 3.0;

1.4. did not supervise appropriately in that he:

(i) in April 2012 did not check or ensure adequate checking procedures were in place regarding the Deficit Reduction Contribution (DRC) for Scheme A which was submitted to the Pensions Regulator and therefore failed to realise that the DRC was incorrect;

(ii) his actions at (i) above were in breach of the principles of competence and care and/or compliance as detailed in the Actuaries' Code;

his actions, in all or any of the above, constituted misconduct in terms of Rule 1.6 of the Disciplinary Scheme of the Institute and Faculty of Actuaries, being conduct falling below 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 or 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 HEARING:

The Respondent was present at the hearing and was represented alongside Mr Norman William Head by Patrick Lawrence QC of 4 New Square Chambers (instructed by Harriet Quiney and Damien McKinnon of DWP LLP). The IFoA was represented by Fiona Horlick of Outer Temple Chambers (instructed by Julie Matheson of Kingsley Napley LLP) on 6-9 July 2015.

DETERMINATION:

The Panel found the alleged facts in paragraphs 1.1(i), 1.1(ii)(b),1.1(iii)(for the letter dated 13 September 2012), 1.1(iv), 1.1(vi), 1.2(i), 1.2(ii), 1.2(iii), 1.2(iv), 1.2(v),1.4(ii), 1.4(iv)(in part admitted), 2.1(i), 2.1(iv), 2.2(i), 2.2(ii), 2.2(iii), 2.2(iv), 2.3(ii), 2.3(iv)(in respect of 2.3(ii)-admitted as a fact), 2.4(i), admitted and found proved.

The Panel found alleged facts in paragraphs 1.1(ii)(c)(fact admitted and reserved work admitted), 1.3(i), 1.3(iii),1.4(i),1.4(iii),1.4(iv)(in part denied), 1.5(i) (but not misconduct), 2.3(i) (but not misconduct), 2.3(iii), 2.3(iv)(in respect of (i)-denied as a fact), 2.3(iv)(in respect of 2.3(i)), 2.4(ii), denied but found proved.

The Panel found alleged facts in paragraphs 1.1(ii)(a), 1.1(iii)(for the letter dated 29 August 2012), 1.1(v), 1.3(ii), 1.3(iv),1.5(ii), 2.1(ii), 2.1(iii), 2.1(v) denied and found not proved.

The Panel found that in respect of the alleged facts it had found proven (except the facts in respect of paragraphs 1.4(iv)(in part proved), 1.5(i) and 2.3(i) where no misconduct was found) the Respondent had breached the Actuaries' Code and was guilty of misconduct in terms of Rule 1.6 of the Disciplinary Scheme.

The Panel ordered that the Respondent should be:

- Expelled from membership of the Institute and Faculty of Actuaries for the maximum permitted of five years.

REASONS:

1. The Panel bore in mind that it was for the IFoA to prove its case. The test being the civil standard, that it is more likely than not that something occurred. It is a single unwavering standard of proof. The more serious the allegation, the more cogent the evidence required, and the more anxious the scrutiny of it, to reach that standard of proof.

2. Both the Respondent and Mr Head had been actuaries for very many years, and both had been scheme actuaries since the inception of that certification in 1997. The Respondent's Association with the sponsors of Fund A went back some 40 years. At all material times the Respondent was the Scheme Actuary. The only other actuary in the firm was Mr Head. The Respondent is now 70. At the time he was 65 or thereabouts. Both he and Mr Head wished Mr Head to succeed the Respondent as Scheme Actuary for Fund A and Scheme A and Mr Head was briefly appointed Scheme Actuary to the smallest of the three schemes, until the Scheme Actuary appointments were lost following a re-tendering exercise. The Respondent ceased to attend Board meetings, and as the Trustees were replaced, ultimately it was that he had never met the Trustees in post. Mr Head undertook almost all the work for the schemes. The Respondent said that his role was to check that work.

3. Ultimately the Respondent was asked to re tender for the work, but was not successful in that exercise. The allegations arose from a complaint made to the IFoA by the new Scheme Actuary.

4. The role of Scheme Actuary to a pension scheme is fundamental and of critical importance. It is an individual appointment. It is the responsibility of one named person, not of a firm. He or she is responsible for ensuring that the Trustees of the scheme have advice upon which to base their decisions. The Trustees are entrusted with the stewardship of the very large amounts of money needed to fund the pensions of the members of the scheme. The role is therefore of great importance to those who will be entitled to, or who are receiving, the pensions. Since those funds require contributions from the sponsoring employer, the Scheme Actuary's role is also of critical importance to the business which sponsors the scheme. A central focus of this case was the responsibility for reserved work implicit in the appointment of Scheme Actuary.

5. At all material times two of the three pension schemes were in deficit. (The third was a small mirror scheme to cater for a few employees outside the UK.) The essence of the allegations is that there was a series of mistakes which cast doubt on the competence and ethics of both actuaries. Further, the documentation provided to the Trustees was alleged to be inappropriately signed by Mr Head instead of by the Respondent.

6. After a series of meetings between those representing the IFoA and the respondents, the charges were made, with admissions to many of them. Messrs Hudson and Head asserted that their admitted failings were minor, and that they were not guilty of the matters not admitted.

7. The Respondent undertook very little work on the schemes himself. He stated that his role was to check the work carried out on his behalf by Mr Head. There was no requirement for the Scheme Actuary to carry out all the work on a scheme himself. The Panel did not disagree, but would have expected the Scheme Actuary to closely oversee and monitor the work being done. The Respondent had the responsibility for the schemes and that involved the positive obligation to ensure that the correct method of work, and assumptions were used, and that the work done was to the appropriate standard. The obligation to check was the greater if the Respondent did no work himself. The Panel noted that in his oral evidence the Respondent stated that he "was getting to the sort of age where I needed to step down from being Scheme Actuary and that Norman was fulfilling that role very well." (Day 2 at page 25).

8. The Panel addressed the issues in order, thematically rather than as charged, as in some cases the same issue arose on different schemes. Some of the charges were found proved on admission and needed no explanation either beyond the text of the charge, or what was announced during the hearing, as set out below.

Signature of documents

9. Firstly, in relation to the signature of the documents which ought to have been signed by the Scheme Actuary. Mr Head signed many letters and reports concerning the aforementioned schemes. Some letters were signed by Mr Head, above his typed name. Others were signed by him "pp W Hudson". It was alleged that this was improper, where the letter related to reserved work. The Panel decided that it was not unprofessional for letters relating to reserved work to be signed "pp", meaning per pro, or for and on behalf of, the Scheme Actuary. The Scheme Actuary might have been unavailable to sign for any number of reasons. The recipient of the letter would correctly take the letter as having the imprimatur of the Scheme Actuary. If there had been no proper authority for that signature, the Panel would have considered it to be a serious matter. As the Panel did not consider that to be the case on this occasion, the Panel did not find the allegations in respect of this issue proved.

10. The other matters relating to letters were found proved either by admission or on the evidence. The Respondent accepted that the basis for his original denial was unsustainable, in that, at the hearing, he accepted that the reports in question fell within the remit of reserved work. The definition of reserved work was not entirely clear in the regulations. However work on transfer values, and a report on commutation factors to be utilised, in the view of the Panel, undoubtedly fell within the remit of reserved work, (as was accepted at the hearing by the Respondent and Mr Head). The Panel considered that it was not therefore appropriate for Mr Head to have signed letters to the Trustees on those matters.

Assumptions

11. Secondly, it was alleged that the Respondent was responsible for inappropriate assumptions being used by the Trustees in 2011 and 2012. In respect of both Fund A and Scheme A, Mr Head prepared an annual valuation ("the report"), and signed it and sent it to the Trustees. This was as at 1 January 2011. It was signed in May 2011 and the deadline for submission was some months later. Prior to the hearing, it was denied by both the Respondent and by Mr Head that the report constituted reserved work. In oral evidence they both accepted that it was. The Panel found this to be a correct admission.

12. Further in oral evidence it was admitted by the Respondent that he had not checked the report fully, and having told Mr Head so, accordingly he was not prepared to sign it. He asked Mr Head to sign it and Mr Head did so, and (as the Respondent knew he would) then sent it to the Trustees. The Panel found this remarkable for a variety of reasons. Chief amongst them is that the Scheme Actuary having declined to sign a report prepared on his behalf required his assistant to sign and send that unchecked report. Since the Respondent stated that his role was to check, rather than to do, the Panel found the Respondent's actions completely unsatisfactory and felt that it warranted considerable criticism.

13. Moreover, Mr Head accepted that he would not, as Scheme Actuary, have permitted another actuary to sign such a valuation. The Respondent and Mr Head discussed the issue in person. There was no practical difficulty in the Respondent signing it. There was no reason why it could not have been sent as a draft. It appeared (there was no clear evidence so show this) that the Trustees had asked for it and so it was signed and sent.

14. That report was discussed with the Trustees by Mr Head. The minutes showed that the report indicated a small but significant improvement in funding. It adopted the assumptions from the previous valuation. Circumstances had changed. It was accepted that this should have shown a small but significant deterioration in the funding of the scheme.

15. In the Report on the Employer Debt Valuation as at 29 June 2012 there were included the draft

results of the unsigned 2012 Actuarial Report. This formalised those figures when the 2012 Actuarial Report had only been prepared in draft. The result of that was that it was reported that there was a further modest improvement in the funding of the scheme, to over 82%. In fact, and as the Respondent and Mr Head admitted during the hearing, the true position was a deterioration to about 70%. This has only to be stated to express the seriousness of these errors (of Mr Head, but for which the Respondent took full responsibility as the Scheme Actuary who said his role was to check the work of Mr Head on the schemes). The Trustees were led to believe that their schemes were showing "small but significant" improvements when then they were moving in a dramatic fashion in the other direction. In the Trustee meeting regarding the 2012 figures, Mr Head indicated that there might need to be more cautious estimates in the 2013 valuations. The Panel noted that it was therefore not a point that had passed him and the Respondent (whose case was that he had checked) by.

16. On 29 August 2012, Mr Head had written to the sponsoring employer of Fund A and Scheme A concerning the S.75 debt. It was not explained why he did this, save that it was apparent that it had been at the sponsoring employer's request. The Panel noted that they were not Mr Head's client, and that he should not have been advising them. However, as a result of that advice it appeared that the sponsoring employer made a reserve in their accounts of £440,000. Mr Head had previously suggested to the Trustees a figure of less than £400,000. He then dealt with the S.75 certificate and issued it at £511,000. On 13 September 2012 Mr Head wrote to the Trustees about the S.75 certificate. The Panel found this letter was muddled, and that it was this muddle that Mr Head (and the Respondent, whose case it is that he was supervising Mr Head) asserted meant that the letter was not advice to the Trustees. The Panel found that the whole tenor of the letter was that though the certificate was at £511,000 there were reasons why that amount might be seen as generous, principally the strength of the employer's covenant. It was not suggested that the certificate be revised.

17. Moreover, the letter enclosed the earlier letter to the employer, of 29 August 2012. The second letter was accepted as being advice to the Trustees. By enclosing the letter of 29 August 2012, the Panel concluded that it became part of the advice given on 13 September 2012. It was not good advice, or clear advice, and its confusion may have been due to a possible conflict of interest arising from the earlier advice to the employer. The Panel found that the Respondent bore responsibility for that letter of advice. His case was not that Mr Head acted without his authority but that he was acting on the Respondent's direction and under his supervision. The Respondent did not say that he did not know of these letters. The import of the letters was that it might be that the employer should pay less than the certified figure (though it appears that ultimately they paid the amount certified).

18. There had been previous correspondence by Mr Head with the Trustees, setting out a lower figure than either of the figures contained in the letters of 29 August 2012 or 13 September 2014. The S.75 certificate did not refer to those other figures. The provision of the certificate was a stand alone procedure.

19. The Panel considered that whilst it might have been a counsel of perfection to advise the Trustees exactly how the final figure was arrived at, it did not consider this to be an obligation. The Trustees were intelligent and informed people, with an external solicitor to advise them. The higher final figure was to the advantage of the pension scheme (there being no suggestion that the amount was an embarrassment to the finances of the employer) and it would not, to the mind of the Panel, have been unprofessional not to give a narrative history of how the figure was ultimately calculated and why this was different to earlier estimates.

Provision of transfer values

20. Thirdly, there were allegations concerning the provision of transfer values. The Respondent regarded the changes in 2008 requiring an Initial Cash Equivalent ("ICE") to be calculated when a transfer value was requested to be, in summary, a distinction without a difference. His evidence, which the Panel noted was given with pride, was that he was an "old school" actuary. It was plain to the Panel that the Respondent did not embrace the reforms of 2008, and carried on his practice as nearly the same as before as he found possible. There was no evidence, save in one case, that of Mr B, of any issue arising because of this approach. That case formed a separate allegation against Mr Head, (which was admitted). In the circumstances of that individual case the Panel found misconduct for the understating of transfer values of pension funds as obviously a matter of the greatest seriousness.

21. The member of the scheme taking the transfer value is the joint owner of a pool of assets held in trust for him and for all the other members. A member taking a transfer value is having his or her share of that pool quantified and paid out. It was the Panel's view therefore that it is to fail in the most basic and fundamental responsibilities of the Scheme Actuary for that person to be short changed, or given part of the funds of the remaining members. The Panel considered that incorrectly stating transfer values would have one of those effects.

22. The Panel turned to the charges put, and the decision on each of them. The numbers refer to documents in the bundle and to pages in the transcript]. The summary of the findings was as announced during the hearing.

23. When acting in the role of Director of HP Limited in the period covered by the Scheme Actuary appointment letter, between April 2008 and November 2012, the Respondent:

1. in relation to Fund A:

1.1. did not fulfil his role as Scheme Actuary appropriately in that he:

(i) failed to fulfil his statutory responsibility by not signing and instead acquiescing to Norman Head signing the Actuarial Report at 1 January 2011 when he, as Scheme Actuary, should have signed it;

Admitted. Found proved.

(ii) did not sign and acquiesced to Norman Head signing a number of letters advising on actuarial factors when he, as Scheme Actuary, should have signed them, including;
a) a letter relating to transfer values dated 17 June 2008;
Denied. Found not proved. The letter was typed as from the Respondent, and pp'd by Mr Head. It was proper for this to be signed by the Respondent. It was not alleged that there was no authority given by the Respondent to sign. The recipient would have seen a letter from the Scheme Actuary, and could rely on it as such (see determination re Mr Head at 1.1(ii)).

b) a transfer value review for Fund A dated 23 April 2012;
Admitted. Found proved.

c) a review of commutation factors for Fund A dated 23 April 2012;
Denied: fact admitted. Admitted to be reserved work, and so found. Found proved. The Scheme Actuary should have signed the document. Mr Head signed it, but not as pp Mr Hudson. [E540]. (see determination re Mr Head at 1(ii)(c)).

(iii) did not sign and acquiesced to Norman Head signing and issuing letters to the Trustees of Fund A dated 29 August 2012 and/or 13 September 2012 advising on transfer values, which is reserved work and he, as Scheme Actuary, should have carried it out;
Admitted, save for 29 August 2012 letter. Found proved as for determination re Mr Head at 1.1(iii).

(iv) his actions at (i), above were contrary to sections 47 and 57 of the Pensions Act 1995 and section 224 of the Pensions Act 2004 and/or the standards of competence and care, compliance and open communication as detailed in the Actuaries' Code version 1.0;
Admitted. Found proved.

(v) his actions at (ii)(a) above were contrary to Guidance Note (GN11) version 9.3, section 7(1) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 and/or paragraphs 1.2, 1.8, 1.11, 2.1, 2.2, 3.1 and/or 4.2 of the Professional Conduct Standards, version 3.0;
Denied. Found not proved. (See determination re Mr Head at 1.1.(ii)(a)).

(vi) his actions at (ii)(b) and (c) and (iii) above were contrary to the Rules of Fund A dated 21 April 2011 with reference to paragraph 17 of the Scope and Authority of Technical Standards version 3 and/or the standards of competence and care, compliance and open communication as detailed in the Actuaries' Code version 1.0;
Admitted. Found proved.

1.2. did not deal with assumptions appropriately in that he:

(i) as Scheme Actuary, allowed an Actuarial Report as at 1 January 2011 to be prepared and presented to Trustees, which utilised the same assumptions as the 2010 Actuarial Valuation without taking into account changing market conditions;

Admitted. Found proved. [E422].

(ii) in the Report on the Employer Debt Valuation as at 29 June 2012:

a) included the draft results of the unsigned 2012 Actuarial Report, when those figures breached the provisions of the Occupational Pension Schemes (Scheme Funding) Regulations;

b) this formalised those figures when the 2012 Actuarial Report had only been prepared in draft;

Both parts of (ii) admitted. Found proved. [E653-689, 533A-O].

(iii) did not inform the Trustees that the figures used in the Employer Debt Valuation as at 29 June 2012 were originally draft figures;

Admitted. Found proved. [E653-669].

(iv) included results from the draft Fund A 2012 Actuarial Report in the Employer Debt Valuation as at 29 June 2012 which did not comply with the Occupational Pension Schemes (Scheme Funding) Regulations and/or the Statement of Funding Principles;

Admitted. Found proved. [E533 A-O, 653-669].

(v) his actions in all or any of the above were in breach of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 and the Statement of Funding Principles; the Pensions Technical Actuarial Standard (TAS P) version 1, in particular paragraphs D.2.2 and D2.13; TAS R version 2, in particular paragraph C.5.1, the Reliability Objective set out in the Scope & Authority of Technical Standards version 3; and/or the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;

Admitted. Found proved.

1.3. did not deal appropriately with the s. 75 debt in that he:

(i) allowed incorrect advice to be given to the Trustees of Fund A by Norman Head in letters dated 29 August 2012 and/or 13 September 2012 in which it was advised that it was reasonable for the actual debt payment to be less than the certified Section 75 debt certified by he;

Denied. Found proved. E684/689. The letter of 13 September 2012 enclosed the letter of 29 August 2012. The s.75 certification at £511k had taken place. The letter was advice to the Trustees to accede to the request of the employer, supported by the letter of 29 August 2012- that the figure of £440k should be paid, it appearing that the employer had made provision in its accounts for that amount. The incoherence of the letter of 13 September 2012 was a reflection on the muddling of the thinking, not evidence that it was not advice. The advice was contrary to the interests of the Trustees, and it was incorrect since the s.75 certificate was

already issued and it was not proposed to alter it, but rather that the Trustees should accede to a request by the employer not to comply with it. That they may later have paid the certificated figure was not germane.

(ii) in his final aggregate report addressed to the Trustees of Fund A certifying the s.75 debt due from Printing Service A he did not include an explanation of why the debt had increased from the estimate provided by Norman Head on 15 March 2012;
Denied. Found not proved. [See report at E653 dated 29 June 2012]. The allegation was factually correct, but the report was a complete report, standing alone. There was no requirement to include a history of prediction or estimation.

(iii) his actions at (i) above were contrary to the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;
Denied. Found proved. See above.

(iv) his actions at (ii) above were contrary to TAS R paragraph C5.17, TAS P paragraph D2.2 in terms of paragraph C.1.5; the Reliability Objective of the Scope and Authority of Technical Standards version 4; and/or the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;
Denied. Found not proved. Depended upon 1.3(ii) which was found not proved.

1.4. did not deal with transfer values appropriately in that he:
(i) from October 2008, when calculating Cash Equivalent Transfer Values (CETVs) did not calculate an Initial Cash Equivalent (ICE), as required The Occupational Pension Schemes (Transfer Value) (Amendment) Regulations 2008 and/or guidance issued by the Pensions Regulator in September 2008, or did not ensure Norman Head did so;
Denied. Found proved. The 2008 regulations contain such an obligation. In oral evidence the Respondent [at page 94/95] stated that this was not done. There was no evidence that the process followed by the Respondent and Mr Head altered at all after the rules changed The Respondent stated that it made no difference and the concept of the ICE was unhelpful. [Document 304A, E142 E628 E356, 145 and Mr Simmons at 6.1 all relevant]. Of itself not misconduct as no evidence (save as in (ii) below) of anything actually being done wrongly.

(ii) when calculating Market Value Adjustment (MVA) factors from 2008, did not take into account the change in post-retirement discount rate and/or the impacts of caps and collars on certain benefits, or did not ensure Norman Head did so;
Admitted. Found proved.

(iii) his actions or omissions in (ii) above are likely to have caused any transfer values calculated since June 2008 to have been understated;

Denied. Found proved. [Admitted at 100].

(iv) his actions at (i) and (ii) above were contrary to paragraphs 1.2, 1.8, 1.11, 2.1, 2.2, and/or 3.1 of the Professional Conduct Standards, version 3.0;
(i) Denied. Found proved but not misconduct. (See above)
(ii) Admitted. Found proved.

1.5. did not supervise appropriately in that he:
(i) in April 2012 did not adequately check the Deficit Reduction Contribution (DRC) for Fund A which was submitted to the Pensions Regulator and therefore failed to realise that the DRC was incorrect;
Denied. Found proved (but not misconduct).

(ii) his actions at (i) above were in breach of the principles of competence and care and/or compliance as detailed in the Actuaries' Code;
Denied. Found not proved. This depends on (i) above.

2. in relation to Scheme A, he:
2.1. did not fulfil his role as Scheme Actuary appropriately in that he:
(i) failed to fulfil his statutory responsibility by not signing and instead acquiescing to Norman Head signing and issuing the Actuarial Report as at 1 January 2011 when he, as Scheme Actuary, should have signed it;
Admitted. Found proved.

(ii) acquiesced to Norman Head signing a deferred pension statement on 22 March 2012 as the Scheme Actuary, when he was not appointed in that role;
Denied. Found not proved. No evidence was offered that the Respondent knew that Mr Head had done so.

(iii) in his actions at (ii) above he acquiesced to Norman Head holding himself out as the Scheme Actuary;
Denied. Found not proved. This depended on (ii).

(iv) his actions at (i) above were contrary to sections 47 and 57 of the Pensions Act 1995 and section 224 of the Pensions Act 2004 and/or the standards of competence and care, compliance and/or open communication as detailed in the Actuaries' Code version 1.0;
Admitted. Found proved.

(v) his actions at (ii) and/or (iii) above were in breach of the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;
Denied. Found not proved. Dependant upon on (ii) and (iii).

2.2. did not deal with assumptions appropriately in that he:
(i) allowed an Actuarial Report as at 1 January 2011 to be prepared and presented to the Trustees, which utilised the same assumptions as the 2010 Actuarial Valuation without taking into account changing market conditions;
Admitted. Found proved. [E438-452].

(ii) in the Insufficiency Report dated 13 November 2012:
a) used the same assumptions as in the unsigned 2012 Actuarial Report, when those figures breached the provisions of the Occupational Pension Schemes (Scheme Funding)Regulations;
b) this formalised those figures when the 2012 Actuarial Report had only been prepared in draft;
Admitted. Found proved. [E694, 624A-O].

(iii) did not inform the Trustees that the figures used in the Insufficiency Report dated 13 November 2012 were originally draft figures and did not comply with the Occupational Pension Schemes (Scheme Funding) Regulations;
Admitted. Found proved.

(iv) his actions in all or any of the above were in breach of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 and the Statement of Funding Principles; the Pensions Technical Actuarial Standard (TAS P) version 1, in particular paragraphs D.2.2 and D2.13; TAS R version 2, in particular paragraph C.5.1, the Reliability Objective set out in the Scope & Authority of Technical Standards version 3; and/or the principles of competence and care, compliance and/or open communication as detailed in the Actuaries' Code;
Admitted. Found proved.

2.3. did not deal with transfer values appropriately in that he:
(i) from October 2008, when calculating Cash Equivalent Transfer Values (CETVs) did not calculate an Initial Cash Equivalent (ICE), as required by The Occupational Pension Schemes (Transfer Value) (Amendment) Regulations 2008 and/or guidance issued by the Pensions Regulator in September 2008, or did not ensure Norman Head did so;
Denied. Found proved. Of itself not misconduct, see 1.4(i).

(ii) when calculating Market Value Adjustment (MVA) factors from 2008, did not take into account the change in post-retirement discount rate and/or the impacts of caps and collars on certain benefits, or did not ensure Norman Head did so;
Admitted. Found proved.

(iii) his actions or omissions in (ii) above are likely to have caused any transfer values calculated since June 2008 to have been understated;

Denied. Found proved. This was admitted in evidence [99/100].

(iv) his actions at (i) and (ii) above were contrary to paragraphs 1.2, 1.8, 1.11, 2.1, 2.2, 3.1 and/or 4.2 of the Professional Conduct Standards, version 3.0;
Denied for (i), admitted for (ii). Found proved in both cases, (ii) having been found proved. Paragraphs 1.2, 1.8, 2.2 and 3.1 breached, but not 1.11 (which relates to the senior actuary) nor 4.2 (which relates to referral to this Panel).

2.4. did not supervise appropriately in that he:
(i) in April 2012 did not check or ensure adequate checking procedures were in place regarding the Deficit Reduction Contribution (DRC) for Scheme A which was submitted to the Pensions Regulator and therefore failed to realise that the DRC was incorrect;
Admitted. Found proved.

(ii) his actions at (i) above were in breach of the principles of competence and care and/or compliance as detailed in the Actuaries' Code;
Denied. Found proved. The Respondent's case was that he was extensively involved in checking. He must have known of the need for a DRC, but there was no requirement by the Respondent for this to be checked, and there was no actual check on the work done by Mr Head on the DRC.

his actions, in all or any of the above, constituted misconduct in terms of Rule 1.6 of the Disciplinary Scheme of the Institute and Faculty of Actuaries, being conduct falling below the standards of behaviour, integrity, competence or professional judgment which other Members or the public might reasonably expect of a Member having regard to the Bye-laws of the Institute and Faculty or 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.
Admitted that the allegations that were admitted constituted misconduct, save where set out above. Found proved. The submissions of lack of integrity should have been spelled out specifically rather than as part of a generic quotation from the relevant rule. For this reason the question of sanction will be considered on the basis of the seriousness of the misconduct found as facts, but not as a lack of integrity.

Sanction

24. Next the Panel considered sanction. The Panel considered the IFoA guidance, and the representations of both advocates. The Panel bore in mind the Human Rights Act and the European Convention on Human Rights and the practice of a profession as part of the right to a private life.

25. The Panel bore in mind that the purpose of sanctions was not to be punitive, though that may be their effect. Sanctions were for the protection of the public and to maintain the reputation of the profession and of the IFoA as its regulator. The Panel noted that appearing before a Disciplinary Tribunal was itself a salutary experience and that it was not obliged to impose any sanction if it considered that was appropriate in the circumstances. If, however, the Panel did decide to impose a sanction, it would commence consideration of the lowest sanction available and only if that was deemed inadequate would the Panel move up in severity to the next sanction. Upon deciding on an appropriate sanction, the Panel would review the next sanction up to consider whether it would be inappropriate. The Panel also bore in mind any aggravating factors and also the factors advanced in mitigation.

26. The aggravating factors in the Respondent's case was that there was an attitudinal issue - the Respondent was Scheme Actuary to Scheme A and he asked Mr Head to sign an actuarial valuation which he, the Scheme Actuary, was not himself prepared to sign. He failed to check Mr Head's work adequately.

27. Whatever the Respondent said about his role in checking Mr Head's work - that his misconduct was of omission not commission - he failed dismally to ensure that a great variety of documents were correct. His responsibility is not the same as total abrogation of responsibility, but over a prolonged period he failed to carry out the role of Scheme Actuary adequately.

28. The aggravating factors in the case of Mr Head's work, set out in that decision, were relevant to the Respondent whose case was that he was checking that work assiduously. Both professional ethics and professional competence are in issue.

29. The length of time over which these errors occurred, and the variety of the mistakes made was also an aggravating factor.

30. The oral evidence indicated no insight at all - the Respondent insisted this was all "minor". Mr Head also stated that if he was Scheme Actuary he would not permit anyone to sign a document such as that which signed at the Respondent's request. The Panel considered therefore that he knew this was wrong, and the Respondent could not have thought that it was not.

31. The Panel noted that it was not an isolated aberration but a consistent inappropriate approach by both Messrs Hudson and Head to the role of Scheme Actuary, and a sorry litany of incompetence.

32. In mitigation, for the Respondent it was said that this occurred towards the end of his long career, and involved a client for whom he had acted for over 40 years. This was true, and the Panel considered the weight of that mitigation carefully.

33. No testimonials were provided, and so there is no mitigation on that basis.

34. It was said that he had engaged with the process of the investigation, but that was his obligation, and is not mitigation.

35. The Respondent indicated that he would go for retraining. That offer was given less weight than if he had actually undergone some training since the allegations were raised some years ago.

36. The Panel did not agree that this was a case for a sanction at the lower end as Mr Lawrence QC submitted, and that whilst the process may have been stressful for the Respondent as it progressed, the Panel viewed this as a consequence of facing disciplinary action and not mitigation.

37. The Panel considered that the matters amounting to misconduct were too serious for no action to be taken, and too serious for a reprimand.

38. The Panel considered education, but did not feel that training would resolve the matter. In the view of the Panel, this would have been done by the Respondent already if it was a suitable sanction. The Panel did not consider that the attitudinal problems could appropriately have been dealt with through training.

39. The Panel were left with a fine, suspension of practising certificate or expulsion. In the Panel's view, a fine did not address the issues in this case of competence or attitude, nor was it an adequate sanction, even coupled with other possible sanctions. Suspension was also considered by the Panel as not addressing the underlying issues in this case.

40. The Panel had regard to the need to protect the public and uphold the reputation of the profession and the IFoA as its regulator. Both the first two requirements greatly concerned the Panel. The matters found proved were of such gravity that it was not appropriate in the view of the Panel to permit the Respondent to continue to practice. Suspension was not considered sufficient to address the underlying problems of attitude and incompetence.

41. Even given the length of the Respondent's unblemished career, the charge found proved led the Panel to conclude that the matters proved and admitted made the Respondent's continued membership of the IFoA fundamentally incompatible with the need to protect the public and to maintain the reputation of the profession.

42. Accordingly the Panel decided to expel the Respondent from membership of the IFoA. There was no reason for that expulsion to be less than the maximum permitted that the Panel had power to impose, five years, and the Panel so ordered.

COSTS:

43. Counsel for the IFoA applied for costs, of some £40,000 in each case. The costs were those incurred only after the matter was the subject of formal charges. Counsel for the Respondent opposed this on principle. Some of the matters had not been proved. These were matters at the end of careers, and the Respondent was not a rich man.

44. The Panel concluded that in principle it was right that the Respondent pay costs. The cost of the matter otherwise fell on the profession. That some matters were not proved was not to the point, for plainly the IFoA had been right to bring the charges, many of which (and misconduct) had been admitted, and this was not a "costs follow the event" jurisdiction. The case of Baxendale-Walker -v- Law Society, while about respondents recovering costs from the regulator, was authority for the proposition that regulators should not be dissuaded from action by reason of costs.

45. While Counsel for the IFoA disputed the level of co-operation pleaded on behalf of the Respondent, the point was not relevant: the greater the co-operation the more the costs would be reduced, rather than co-operation being a reason to reduce costs that were incurred.

46. No point was taken by the Respondent's representative about quantum save that it had been a 4 day hearing not a 5 day hearing, and there should be some reduction for that. The Panel decided to make a summary assessment of a contribution to costs. The legal assessor referred the Panel to Merrick -v - Law Society which pointed out that where an order precludes practice that will inevitably affect income and so ability to pay must be considered. The Panel was supplied with a statement of means and assets by the Respondent. He was contemplating retirement shortly in any event so was not expecting to work. The Respondent is insured for the costs of these proceedings, subject to the payment of a contribution to those costs of £15,000. The Panel's assessed contribution to the costs to be paid by the Respondent is that he is ordered to make a contribution to the costs of the same amount, £15,000. This seemed to the Panel fair in all the circumstances.

Paul Housego (Chair)

David Broadbent, FIA

Maurice Dyson, FIA

James Palmer (Legal Advisor)

27 July 2015