



**Disciplinary Tribunal Panel Hearing**

**21 September 2018**

**The International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU**

<b>Respondent:</b>	Victoria Louise Jenkins Ms Jenkins was not present and not represented in her absence
<b>Category:</b>	Lapsed Member
<b>ARN:</b>	16480
<b>IFoA Case Presenter:</b>	Hannah Eales, Counsel, Kingsley Napley, instructed by the IFoA
<b>Panel Members:</b>	Paul Housego (Chair/Lay Member) Julian Ellacott FIA (Actuary Member) Paul Reid (Lay Member)
<b>Legal Adviser:</b>	Gavin Anderson
<b>Judicial Committees Secretary (Clerk):</b>	Pauline Wharton

## Charge:

The IFoA applied to withdraw paragraphs 6 and 7 from the charge. The Legal Adviser advised that the Panel had the power to do so. As there could be no prejudice to the Respondent in the withdrawal of parts of the charge and there was no public interest reason why the Panel might refuse the request the Panel agreed and these parts of the charge were withdrawn, the last paragraph being renumbered 6.

The charge considered was (as amended) as follows:

Victoria Louise Jenkins, the charge against you is that, being at the material time a member of the Institute and Faculty of Actuaries:

1. during the 2015/2016 Continuing Professional Development (CPD) year you failed to:
  - (a) demonstrate that you had undertaken the appropriate minimum amount of CPD;
  - or
  - (b) submit a written request for an exemption from the CPD scheme.
2. your actions in paragraph 1 above were in breach of paragraph 1.2 of the Institute and Faculty of Actuaries CPD Scheme 2015/2016.
3. your actions at paragraph 1 were in breach of the principle of Compliance of the Actuaries' Code (version 2);
4. you failed to co-operate with the investigation of the head of charge at paragraph 1, in that you failed to supply information, evidence and/or explanations relating to the subject matter of the investigation as requested by the Case Manager in the course of the investigation of the head of charge at paragraph 1;
5. your actions at paragraph 4 were in breach of Rule 1.18 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 August 2010, amended 18 October 2012 and 1 June 2016);

6. your actions, in all or any of the above, constitute misconduct in terms of Rule 1.6 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 August 2010, amended 18 October 2012 and 1 June 2016).

#### **Service of Charge:**

1. The Panel noted that the Respondent was not present and was not represented in her absence. Having considered the submissions of the IFoA's Case Presenter and having accepted the advice of the Legal Adviser, the Panel was satisfied that the charge had been served in accordance with the provisions of the Disciplinary Scheme.

#### **Proceeding in the Absence of the Respondent:**

2. The Panel heard submissions from the Case Presenter and accepted the advice of the Legal Adviser. The Respondent had emailed the IFoA. She knew of the hearing date and stated that she would not attend. She did not seek an adjournment. She set out full written submissions for the Panel to take into account.
3. The Panel considered that an adjournment would achieve nothing, and taking into account all relevant case law decided to proceed in the absence of the Respondent.

#### **Panel's Determination:**

4. The Panel found all parts of the charge proved.
5. The IFoA record showed that CPD had not been recorded on its system as required by the CPD regulations. In her submissions the Respondent accepted that she had not done this, and gave reasons in mitigation. She did not say that she was exempt. Paragraph 1 of the charge is found proved by admission.
6. Paragraph 2 of the charge is proved because the CPD scheme requires the matters set out in Paragraph 1 to be done, and the Respondent accepts that they were not.

7. The principle of Compliance in the Actuaries' Code requires actuaries to comply with all relevant regulatory and professional requirements. This was such a requirement and Respondent did not comply with it so paragraph 3 of the charge is found proved.
8. Paragraph 4 alleges a failure to cooperate in the investigation. The Respondent telephoned the IFoA on 21 November 2016. She stated that she had received the IFoA's communications which had been sent on to her by her previous employer. She said that she would resign her membership and no longer worked as an actuary. Her recent emails indicate that she was not going to participate in this process, and never again wished to work in the industry. Although there have been frequent communications sent to the Respondent she has not responded to any of them. She has failed to cooperate and this part of the charge is found proved.
9. Paragraph 5 alleges a breach of rule 1.18 of the Disciplinary Scheme. This requires former members to cooperate after ceasing to be members. The definition of member in the scheme includes those subject to disciplinary proceedings, which is the case with this Respondent. Accordingly failure to cooperate breached rule 1.18 and this part of the charge is therefore found proved.
10. Paragraph 6 alleges that the other matters separately or together are misconduct. The definition of misconduct is contained in the disciplinary scheme at 1.6. It includes failure by a member (and the definition includes lapsed members subject to disciplinary action) to comply with codes standards or statements on professional conduct practice or duties. The CPD regime falls within this definition and the Respondent did not comply with it. The Panel noted that the Respondent stated that she had undertaken all the training required for the year but had not recorded it before resigning her employment, and then was not able to access her computer record in order to be able to do so. The IFoA confirmed that this was the case in previous years.
11. The Panel considered first the parts of the charge related to CPD. The Respondent had an obligation to ask her former employer to release that information so that she could do so. The Respondent gave various reasons why she did not feel able to do so, but it was a professional obligation to record the CPD and if she did not feel able to do so herself she could have retained someone to make the request for her. The Respondent's submission is that on leaving her employment she never again wished to practice as an actuary, so that she saw no point in recording the CPD in any event. While the Panel

sees the pragmatics of this, if the Respondent intended to cease being an actuary this was part of the "housekeeping" that should have attended to before resigning her membership.

12. The Panel noted that the Respondent had recorded her CPD in previous years in the last month or so before the CPD year end, and had always previously undertaken the CPD required in those years. Accordingly, although the Respondent provided no detail it is likely that she had done the necessary CPD in the year. On the balance of probabilities this was a failure to record, not to undertake the CPD. While the charge is of failure to demonstrate CPD, the mischief designed to be prevented is not undertaking CPD. The Panel finds it to be misconduct but the Panel will take this finding of fact into consideration as a mitigating factor.
13. Failing to cooperate with one's regulator despite specific obligation so to do is misconduct and so paragraph 5 of the charge is also misconduct, and the Panel therefore finds that all parts of the charge constitute misconduct.

**Sanction:**

13. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter and to the advice of the Legal Adviser. The Panel also had careful regard to the Indicative Sanctions Guidance (August 2016), and the CPD Infringement Supplementary Guidelines. 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.
14. The Panel noted 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.
15. The Panel noted that the Respondent had always previously complied with the CPD requirements, and that it had found as a fact that the CPD had been undertaken. The attitude of the Respondent to these proceedings and to the IFoA had been unfortunate.

However the Panel noted fully the representations made by and on behalf of the Respondent. Her account of having left her employment and not being able to access the records was accepted as consistent with the other information about leaving employment. While the Respondent had provided no evidence in support of her assertions about (for her) the traumatic changes in her work life at this time, the explanations were plausible and credible. The Panel accepted the Respondent's statement that never again did she wish to practice and genuinely regarded her actuarial career as historical. The Panel did not find this to be evidence of a deep seated attitudinal problem. The Panel decided that no sanction more severe than a reprimand was proportionate. Accordingly the Panel reprimands the Respondent.

**Costs:**

16. The IFoA made an application for costs of £3,996 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Case Presenter. No administration costs or the costs of the hearing itself were included. Panel considered the costs sought to be at a reasonable level, and they were fully itemised. The work done and costs incurred were justified. The costs were incurred because the Respondent had failed to engage with the IFoA and it was appropriate for a costs order to be made. It was not appropriate that the costs fell upon the remainder of the profession. The Panel therefore orders the Respondent to pay the IFoA costs of £3,996.

**Publication:**

17. Having taken account of the Disciplinary Board's Publication Guidance Policy (April 2018), the Panel decided that 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*.

**Right to appeal:**

18. 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.

That concludes this determination.

**Date of Publication:** 17 October 2018