



Disciplinary Tribunal Panel Hearing

21 September 2018

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

Respondent:	Anna Irina Beck Zlateva Ms Zlateva was not present and not represented in her absence
Category:	Lapsed Member
ARN:	9021534
IFoA Case Presenter:	Hannah Eales, Counsel, Kingsley Napley, instructed by the IFoA
Panel Members:	Paul Housego (Chair/Lay Member) Julian Ellacott FIA (Actuary Member) Paul Reid (Lay Member)
Legal Adviser:	Gavin Anderson
Judicial Committees Secretary (Clerk):	Pauline Wharton

Charge:

The IFoA applied to withdraw paragraphs 7, 8, and 9 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no public interest reason why the Panel might refuse the request the Panel agreed and these parts of the charge were withdrawn, the last paragraph being renumbered 7. There was also a minor typographical error in paragraph 6 which was corrected.

The charge considered was (as amended) as follows:

Anna Irina Beck Zlateva, being at the material time a member of the Institute and Faculty of Actuaries, the charge against you is that:

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 at paragraph 1 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 Integrity principle of the Actuaries' Code (version 2);
4. your actions at paragraph 1 were in breach of the Compliance principle of the Actuaries' Code (version 2).
5. you failed to co-operate with the investigation of the head of charge at paragraph 1, in that you failed to supply documents and/ or further information relating to the subject matter of the investigation requested by the Case Manager in the course of the investigation of the head of charge;
6. your actions at paragraph 5 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);

7. your actions, in each and all of the above, constituted 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 Respondent was neither present nor 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. In considering whether to exercise its discretion to proceed in the absence of the Respondent, the Panel had regard to the submissions of the IFoA's Case Presenter. The Panel accepted the advice of its Legal Adviser. He gave full advice to the Panel including reference to R v Jones [2002] UKHL 5.
3. The Panel noted Tait v Royal College of Veterinary Surgeons [2003] UKPC 34 extended these considerations to regulatory proceedings such as this hearing. It also indicated that "*waiving the right to appear*" is better considered as "*voluntarily absented herself from the proceedings*". The Panel also considered GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162, particularly paragraph 19 which suggests that Panels proceed with hearings unless there is good reason not to do so.
4. The Panel noted that the discretion to proceed in the absence of a Respondent should be exercised with the utmost care and caution. The Panel must consider matters such as whether the Respondent has requested an adjournment, whether she would be likely to attend any adjourned hearing, or whether, in all the circumstances, the Respondent had voluntarily absented herself from the proceedings. The Panel noted the very considerable efforts made by the IFoA to contact the Respondent, and noted also that two documents had been signed for by her. There was no request for an adjournment. There was no evidence of illness. There was no reason to suppose that an adjournment would result in her attendance at the hearing. There was a public interest in regulatory

proceedings being dealt with without undue delay. There was the cost to the regulator of adjourning proceedings. There was inconvenience to a witness who had attended.

5. The Panel noted Jatta v Nursing and Midwifery Council [2009] EWCA Civ 824, where the Respondent was no longer at the address which he had registered but failed to provide a current address. The Court of Appeal held that it was open to a disciplinary committee to proceed to hear the case when he did not appear.
6. In all the circumstances the Panel considered that it should proceed in the absence of the Respondent. While the Panel considers the Respondent knows of these proceedings it would consider it appropriate to proceed in any event given that the addresses for communication are those provided by the Respondent.

Panel's Determination:

7. The Panel found the charge proved, save for paragraph 3.

Reasons:

8. The history of this matter is that the Respondent has not worked as an actuary since 2011. For the 2011/2012 CPD year she did not record any CPD, and elected to pay a charge of £750 and have her name published on a list of non-compliance maintained by the IFoA and made available to the public. For the 2012/2013 CPD year the Respondent was granted an exemption because she was not working. She made that exemption application late, and a late submission sanction was imposed. For the 2013/2014 CPD year the Respondent applied for, and was granted, exemption because she was not working. For the 2014/2015 CPD year the Respondent did not apply for an exemption, but upon investigation explained that she was not working and no further action was taken.
9. For the 2015/2016 CPD year despite numerous reminders before the expiry of time for recording CPD for the CPD year to 30 June 2016 (which is 31 July 2016) the Respondent did not either record CPD or contact the IFoA. Numerous emails were sent to her, to an email address which she had used to contact the IFoA reminding her of her right to seek an extension until 30 September 2016. Subsequent to that date numerous

emails, and then letters, were sent to her about her breach, to none of which did she respond. On 20 September 2016 she was notified that if she did not respond she would be referred under the Disciplinary Scheme. On 3 November 2016 an email was sent to her to say that she would be referred, and on 12 December 2016 there was a formal referral by the General Counsel for the IFoA to the Disciplinary Scheme.

10. On 9 January 2017 the Respondent was removed from membership of the IFoA in default of payment of her subscriptions.
11. There were then a large number of letters and emails sent to the Respondent, to the address she gave for contact, and to the email address that she had used to contact the IFoA. Letters were sent by special delivery, by first class post, and by courier.
12. There were signatures for two of them, on 21 April 2017 and on 30 June 2017 recorded by the post office as "*Anna*".
13. The letter signed for on 30 June 2017 was a letter of 29 June 2017 which stated that there was a further allegation of failing to cooperate with the investigation.
14. The records of the IFoA show that there was a failure to demonstrate that the Respondent had undertaken the appropriate minimum amount of CPD and she had not submitted a written request for an exemption. The Respondent does not deny the allegation. Those are the factual matters set out in paragraph 1 of the charge which is accordingly found proved.
15. The CPD scheme requires such actions to be undertaken, the Respondent did not undertake them and so she is in breach of the CPD scheme, which is paragraph 2. Accordingly the Panel found this part of the charge proved.
16. Paragraph 3 is that this was a breach of the integrity principle of the Actuaries Code, version 2 (the Code). This states "*Members will act honestly and with the highest standards of integrity*". There is no allegation of dishonesty. The Panel considered carefully the legal advice given to it as to the meaning of integrity, this being a failure to follow with steady adherence a moral or ethical code. The case of SRA v Wingate and Evans [2016] EWHC 3455 (Admin) and the cases referred to within it. It takes particular note of paragraph 43 et seq:

"Integrity

43. In SRA v Chan and others [2015] EWHC 2659 (Admin), Davis LJ, sitting in the Divisional Court, said at paragraph 48:

"As to want of "integrity"... it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case."

44. That passage and approach was cited with approval by Sharp LJ, again sitting in the Divisional Court, in the recent case of Scott v SRA [2016] EWHC 1256 (Admin) at paragraph 40. The authority of Scott also makes quite clear at paragraphs 48 and 59 that there is "an obvious distinction" between the concepts of dishonesty and lack of integrity, and that the terms are "not synonymous".

45. I respectfully agree with what both Davis and Sharp LJ have said. It is neither necessary nor desirable to seek to define what is meant by integrity or lack of integrity, and it is a matter for the judgment of the tribunal or court on the facts of any given case whether those facts demonstrate or reveal a lack of integrity. "

17. Self-evidently the Respondent has not followed the requirements of the CPD scheme of the profession. This is a regulatory requirement. It is arguable that it is also an ethical code. However that argument could lead to every breach of every regulation being a matter of lack of integrity. The Panel did not consider that there was anything beyond a failure to comply with a professional obligation which elevated that breach to a matter of lack of integrity. It was not, for example, as if she had misled the IFoA in any way. Accordingly the Panel found paragraph 3 of the charge not proved.

18. The Respondent failed to cooperate with the investigation as alleged. The numerous communications sent to her went unanswered. The Panel considered carefully whether there was any obligation upon her so to do, given that her membership lapsed on 9 January 2017 and the allegation was not made until June 2017. The Panel referred to the definition of member in the Disciplinary Scheme, in paragraph 14. The term "Member" includes former members who are currently the subject of disciplinary action under the scheme. The Respondent was such a former member because the other allegations were placed into the Disciplinary Scheme prior to her removal. The Respondent was notified of this on 3 November 2016, also prior to her removal.

19. The remaining allegation is whether this constituted misconduct in terms of Rule 1.6. Failure to comply with CPD obligations is properly to be regarded as misconduct, defined in 1.6 of the Code. It was a failure to comply with standards of behaviour or professional judgment which other members or the public might reasonably expect of a member having regard to the Code's standards and statements on duties. There is a clear obligation in the Code at 1.18 to cooperate fully with any investigation or process and the Respondent has failed comprehensively to meet that obligation. 1.22 of the Code extends rule 1.18 to former members who were subject to disciplinary proceedings under this scheme. The Respondent was such a person. The whole point of rule 1.22 and the definition of member is that former members cannot escape proceedings by leaving the profession. Other professions prevent members leaving until disciplinary matters are concluded. This profession allows members to leave on the proviso that they remain liable to disciplinary action which has commenced.
20. Accordingly the Panel found that all the parts of the charge it found proved constituted Misconduct both severally and collectively.

Sanction:

21. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter and paid careful heed to the advice of the Legal Adviser. The Panel also had careful regard to the Indicative Sanctions Guidance (August 2016), and to the CPD Infringement Supplementary Guidance. 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.
22. 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, and of the IFoA as regulator. 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.
23. The Panel starts at the lowest sanction and if considers it inadequate moves to the next sanction until it finds a sanction it considers appropriate.

24. The Panel could find no mitigating factors. The aggravating factors are the extent of the non-compliance with the CPD requirements and the total failure to engage with these proceedings over a prolonged period.
25. Given that the Respondent is a lapsed member of the IFoA, the sanctions available are limited. The Panel considered that the extent of the failure to engage meant that the Respondent should have to explain to a Panel why, should she wish, she should be permitted to be readmitted to the register. Accordingly the Panel determined to exclude the Respondent for a period of one year.
26. As the Respondent has not worked as an actuary since 2011 this may be an outcome without consequence for the Respondent. The Panel considered that the public and the profession would consider that an unacceptable outcome. Accordingly the Panel also decided to impose a fine of £2,000, to be paid within 28 days of the date that this determination is deemed to have been served upon the Respondent.

Costs:

27. The IFoA sought costs of £3,996. A schedule of costs had been sent to the Respondent and she had been invited to make representations as to her means, if she wished, but she had not done so. The Panel was satisfied that the work done was entirely appropriate, and the level of costs reasonable. The Panel considered carefully whether to make any reduction in the amount of costs ordered because one part of the charge, an important one, had been found not proved. The Panel determined that the charge of lack of integrity was not a discrete matter but one attaching a more severe label to conduct which was the factual basis of the charges found proved. Accordingly there was no additional expense incurred in bringing the charge of lack of integrity before the Panel, and accordingly there was no reason to reduce costs awarded, which would otherwise fall upon the profession. The Panel orders the Respondent to pay to the IFoA costs of £3,996 within 28 days of the date that this determination is deemed to have been served upon the Respondent.

Publication:

28. Having taken account of the Disciplinary Board's Publication Guidance Policy (April 2018), the Panel determined 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:

29. 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