



Disciplinary Tribunal Panel Hearing

10 October 2018

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

Respondent: Thimmayya Kushalappa Pudiyokkada
Not present and not represented in absence.
Category: Lapsed Student Member
ARN: 9304937

Joined case: Kamlesh Suthar
Not present and not represented in absence.
Category: Lapsed Student Member
ARN: 9547856

Institute and Faculty of Actuaries

(IFoA) Case Presenter: Hannah Eales, Barrister, Kingsley Napley,
instructed by the IFoA

Panel Members: Iain McGrory (Chair/Lay Member)
Graham Farren FIA (Actuary Member)
Ken Price (Lay Member)

Legal Adviser: James Stythe

Judicial Committees Secretary (Clerk): Pauline Wharton

Charge:

Thimmayya Kushalappa Pudiyyokkada, being at the material time a student member of the Institute and Faculty of Actuaries, the Charge against you is that:

1. during the Institute and Faculty of Actuaries' CA2 Online Examination on 4/5 April 2017 you:
 - (a) gave and/or received unauthorised assistance by discussing the examination paper and/or sharing your answers with another candidate;
 - (b) knew or ought to have known that your actions at paragraph 1a would allow another candidate to submit to the Institute and Faculty of Actuaries an examination paper which was not entirely their own work;
 - (c) submitted to the Institute and Faculty of Actuaries an examination paper which was not entirely your own work;
2. your actions at paragraph 1(a) and/or (b) and/or (c) were in breach of Paragraph 9 of the Institute and Faculty of Actuaries' Exam Regulations Fellowship and Associateship;
3. your actions at paragraph 1 were dishonest;
4. your actions at paragraph 1 were in breach of the Integrity principle of the Actuaries' Code (version 2);
5. your actions at paragraph 1 were in breach of the Compliance principle of the Actuaries' Code (version 2).
6. 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 Panel noted that the Respondent was not present and was not represented in his absence. Having considered the submissions of the IFoA's Case Presenter and having accepted the advice 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 also took account of an email of 10 September 2018 from the Respondent in reply to an earlier email from the Clerk to the Panel, in which he confirmed that he would not attend the hearing. He had previously indicated that he would not be represented at the hearing. The Panel considered the advice of the Legal Adviser and the case of *R v Jones (No.2)* [2002] UKHL 5.
3. 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 considered other matters such as whether the Respondent had requested an adjournment, whether they would be likely to attend any adjourned hearing, or whether, in all the circumstances, the Respondent had absented himself voluntarily from the hearing. No adjournment was sought by the Respondent and there was no reason to suppose that an adjournment would secure the attendance of the Respondent. The Panel noted the written representations made by the Respondent which were made in the expectation that the hearing would proceed in his absence. The Panel was therefore satisfied that the Respondent had chosen voluntarily to absent himself. In the circumstances, the Panel determined that it was in the public interest in the expeditious disposal of the case and the Respondent's own interests to proceed in the absence of the Respondent.

Panel's Determination:

4. The Panel found all parts of the Charge proved. The Panel determined that the most appropriate and proportionate sanction was Exclusion from IFoA membership for a period of thirty months.

Background:

5. The Respondent was a Student Member of the IFoA between 26 October 2016 and 4 January 2018, when his membership lapsed due to non - payment of his subscription fee. Rule 1.8 of the Disciplinary Scheme provides that it applies to former members.
6. The Respondent sat the CA2 examination on 4 and 5 April 2017. The exam is an online practical examination, sat over two consecutive days and it is one which members of the IFoA must pass to become a fellow or an associate.
7. Two weeks before the exam date candidates who have been booked on the examination are sent an email setting out the administration arrangements for the examination. Included in this is the process for accessing the papers and filing the examination submission. The candidates are allowed 15 minutes to upload the papers once completed.
8. Candidates are also advised of the rules before sitting the examination. These include that by submitting their files they are confirming that all the material is entirely the candidate's work, that the content of the examination paper is confidential and that examination materials must not be disclosed or discussed with others.
9. On 7 April 2017 the IFoA's online education team emailed the Respondent as it had been noted that his files had been last modified with a time outside the examination time. The Respondent replied to the email and said this was because of an error in his Microsoft Office Software.
10. On 2 May 2017 one of the IFoA's examination markers sent an email to the principal examination marker of the CA2 stating that they were concerned that there may have been collusion between the Respondent and another candidate, Mr Suthar. A subsequent email of the 9 May 2017 referred to the same examination and his particular concern that calculations in one of the columns in the Respondent's spreadsheet appeared to be linked to the equivalent column in Mr Suthar's spreadsheet.
11. On 17 July 2017, the Respondent was sent an email from the Assessment Manager of the IFoA's Engagement and Learning Department highlighting the concern of collusion in relation to the linked spreadsheets.

12. The Respondent replied by email that day and explained he did not know the link being referred to as he did not have the file and it was destroyed after submission. He went on to say that because of some technical issues with his laptop he had borrowed one from Mr Suthar just to be on the safe side and that he had used two computers during the exam. He concluded his email by saying he understood the importance of adhering to the Actuaries' Code and that he had carried out the examination with full integrity and did not indulge in any practice that would breach the Code.
13. Further examination of the Respondent's examination paper identified that it was almost identical in structure, wording and graphs produced to that of the other candidate, Mr Suthar. The IFoA's Head of Disciplinary Investigations was advised of the apparent collusion.
14. On 3 August 2017, the Head of Disciplinary Investigations emailed the Respondent and explained that he was carrying out some preliminary enquiries into possible collusion during the sitting of the examination. He said that he was minded to refer this for disciplinary action but wanted to give the Respondent an opportunity to offer an explanation.
15. On 9 August 2017, the Respondent replied by email. He explained that he had borrowed a laptop from his colleague Mr Suthar and on this laptop was a spreadsheet which Mr Suthar had created when practising for the exam by using previous exam papers. The Respondent added that he had used this saved spreadsheet when sitting the exam and that this was pure coincidence. He denied any wrongdoing in relation to this matter.
16. During correspondence involving the legal agents acting on behalf of the IFoA, the Respondent admitted all elements of the Charge against him and indicated that he would not be attending the hearing, nor would he be represented. Further, given his admission he did not have any objections to the hearing relying upon the statements of witnesses, rather than having witnesses attend to give evidence.
17. The Respondent had been advised that the hearing had been scheduled for two days and in an email of 28 August 2018, he said that he agreed with the timeline and he said, "I wish to see it completed even before two days as I don't want any person associated with the case to exhaust more resources and time".

18. At the hearing the IFoA applied for the case against the Respondent and Mr Suthar to be joined under Rule 6.19 of the Disciplinary Scheme. This application was accepted by the Panel.

Findings of Fact:

19. The Panel was aware that the burden of proof rests on the IFoA, and that the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the Panel was satisfied that it was more likely than not that the incidents occurred as alleged. There is no requirement for the Respondent to prove anything.

20. The Respondent made admissions to all parts of the Charge. The Panel has accordingly found the Charge proved in light of those admissions and other evidence presented on behalf of the IFoA. In reaching its decisions the Panel took into account the submissions of the IFoA Case Presenter and all the witness statements, documents and exhibits contained in the bundle. The Panel also considered the advice of the Legal Adviser.

21. The Respondent was not in attendance at this hearing and the Panel was satisfied that this absence was voluntary and has drawn no adverse inference as a consequence of the Respondent's absence.

22. The Charge

The Panel determined that the IFoA had presented evidence to the required standard that proved all elements of the Charge against the Respondent and that his actions constituted Misconduct in terms of Rule 1.6 of the Disciplinary Scheme of the IFoA (effective 1 August 2010, as amended 18 October 2012, 1 June 2016), for the following reasons.

23. Element 1 (a)

The IFoA had presented evidence that showed he had collaborated with another applicant and he had admitted this element of the Charge.

24. Element 1 (b)

The Respondent has admitted that he knew or ought to have known that his actions described in Element 1 (a) would allow the other applicant to submit to the IFoA an examination paper which was not entirely his own work.

25. Element 1 (c)

The Respondent has admitted that the examination paper submitted to the IFoA was not entirely his own work.

26. Element 2

The Respondent has admitted that his actions at 1(a), 1(b) and 1(c) were in breach of Paragraph 9 of the IFoA's Exam Regulations Fellowship and Associateship and constituted Misconduct in terms of these regulations.

27. Elements 3, 4 and 5

The Respondent has admitted that his actions described in Elements 1 (a), 1(b) and 1(c) were dishonest, were in breach of the Integrity Principle and the Compliance principle of the Actuaries' Code (Version 2) and the Panel so finds

28. Misconduct

The Panel considered whether the Respondent's actions constituted Misconduct as alleged in Element 6 of the Charge.

29. In considering this matter, the Panel took account of the definition of Misconduct for the purposes of the Disciplinary Scheme, which is 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.

30. The Panel considered that the Respondent's actions at 1(a), 1(b) and 1(c), which he had admitted, constituted cheating. Cheating in a professional examination is not only a breach of the principles of the Actuaries' Code referred to above, but also constitutes Misconduct in terms of Rule 1.6 of the Disciplinary Scheme.

Sanction:

31. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter and the advice of the Legal Adviser. The Panel also had careful regard to the Indicative Sanctions Guidance (August 2016). 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.
32. 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 was mindful that it should impose a sanction, or combination of sanctions, necessary to achieve those objectives and in so doing it must balance the public interest with the Respondent's own interests.
33. In considering sanction, the Panel took into account the following aggravating factors:
 - The evident collaboration to cheat;
 - The reluctance to admit wrongdoing;
 - The level of dishonesty and lack of integrity involved.
34. The Panel also took into account the following factors in mitigation:
 - The Respondent's status as a Student Member of the IFoA (of less than a year in duration);
 - The Respondent's eventual co-operation with the IFoA investigation.
35. Having first considered any lesser sanctions and bearing in mind that the Respondent's membership lapsed on 4 January 2018, the Panel concluded that a period of exclusion from membership is the minimum appropriate level of sanction and therefore imposed a period of exclusion from membership of 30 months.

Costs:

36. The IFoA made an application for costs of £7,519.20 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Case Presenter. The Panel noted that administrative costs were not included in the application, nor were any costs in respect of the Panel, Legal Adviser, Stenographer or hire of the hearing venue. The

Panel considered the costs sought to be at a reasonable level, and that the work and costs incurred justified that amount of cost.

37. The Panel was provided with a formal Income Tax Return which indicated that the Respondent had a limited income. It therefore ordered the Respondent to make a contribution towards the IFoA costs of £100.

Right to appeal:

38. The Respondent has 28 days following receipt of this written determination in which to appeal the Panel's decision.

Publication:

39. 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*.

That concludes this determination

Date of publication: 31 October 2018