



Institute  
and Faculty  
of Actuaries

## Adjudication Panel Meeting

1 November 2018

Institute and Faculty of Actuaries, 7th Floor Holborn Gate, 326-330 High Holborn,  
London, WC1V 7PP

**Respondent:** Anne Elizabeth Pettifor FIA

**Category:** Fellow since 31 July 1999

**ARN:** 6669

**Panel Members:** Jules Griffiths JP FCMI FCIPD (Chair/Lay member)  
Andy Scott FFA (Actuary member)  
Ken Price JP FCA (Lay member)

**Legal Adviser:** Alan Dewar QC

**Judicial Committees Secretary:** Pauline Wharton

**Allegations:**

The Respondent was jointly instructed on or around 4 October 2017 to provide a pension report in the divorce proceedings between Mr A and Mrs B (the Clients) and it is alleged that since that date:

A1 The Respondent has not communicated appropriately and/or effectively in that:

- a) she did not consistently communicate with Mr A and/or his solicitors in a timely manner and/or respond to their requests for information in a timely manner;
- b) her actions at A1(a) were in breach of the communication principle of the Actuaries' Code;

A2 The Respondent has not acted competently and/or with care in that:

- a) she did not provide the pension report in a timely manner in that it was not received until 12 March 2018;
- b) she did not advise in the pension report what the impact of Mrs B's asserted medical conditions would be as requested in paragraph 7 of the letter dated 4 October 2017;
- c) she did not clearly advise in the pension report which of the funds would best be utilised for the purposes of implementing a pension sharing order;
- d) her actions at A2(a), (b) and/or (c) were in breach of the competence and care principle of the Actuaries' Code.

Her actions, in all or any of the above, constituted Misconduct in terms of Rule 4.2 of the Disciplinary and Capacity for Membership Schemes of the Institute and Faculty of Actuaries (Effective 1 February 2018).

### **Panel's determination:**

The Panel considered the Case Report and appendices submitted by the Case Manager and Investigation Actuary. The Panel noted that the Respondent had confirmed that she had no further response for the Panel, referring simply to her replies during the investigation. The Panel also considered the advice of the Legal Adviser. The Panel rejected some parts of the Allegations, but determined that the Case Report did disclose a *prima facie* case of Misconduct.

The Panel accordingly invited the Respondent to accept that there had been Misconduct and the following sanctions:

- Reprimand; and
- Fine of £2,500 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation.

### **Background:**

On 16 October 2017 the Respondent acknowledged a joint letter of instruction dated 4 October, which had requested a report in respect of the joint clients' respective pension rights. The letter detailed the specific questions and assumptions to be addressed in the report, which was to be provided by 5 December, in advance of a court hearing in early 2018. Ms Pettifor accepted the work, but in her letter of 16 October she advised that it was "*unlikely*" that the report would be available "*in advance of 5 December 2017*". On 18 December she advised the clients that she had yet to receive information from one of the pension providers and as she had said in the 16 October letter the usual timescale was eight to ten weeks from receipt of all the information required. On 3 January 2018 the Respondent accepted that she had delayed sending a letter of authority "*by around two weeks*" which had contributed to the delay in completing the report, and said that she would endeavour to complete by mid-February. On 9 February she advised that she was on schedule to complete by 16 February. In the event, the report (which amounted to 22 pages) was not sent to the parties' solicitors until on or around 12 March 2018, when Ms Pettifor apologised for the delay and, by way of compensation reduced her fee from £1400 + VAT to £1000 + VAT (to be split equally between the parties as previously agreed). By this time the court hearing had been rescheduled for 14 May 2018. Mr A complained about both the lateness and the content of the report, saying that he had incurred "*significant extra*

costs” and that the “*reduction in the fee is not acceptable*”. He also said that he would be taking things forward as a formal complaint.

In addition to the delay, Mr A had two particular complaints about the content of the report. Firstly, question 7 of the letter of instruction was “*what would be the effect, if any, of [redacted]’s asserted medical conditions on all those calculations?*” In her acceptance letter of 16 October 2017 Ms Pettifor said to both clients’ solicitors “*I note that you are asking me to consider the effect on the results of [redacted]’s health. The results would only be affected if s/he has a shortened life expectancy and I assume this would not be the case. If you did instruct me to complete additional calculations then the fee would be higher*”. There was no joint instruction to proceed on this matter and so it was not addressed in the final report, other than to note that Ms Pettifor had assumed standard life expectancy. Secondly, Mr A sought an explanation for the omission of information as to which of the funds should be utilised to equalise fund values. This had not been specified in the letter of instruction, but Ms Pettifor replied giving advice on this point on 4 April 2018.

Turning back to the delay in finalising the report: in her response to the IFoA investigation of the complaint the Respondent explained that for two weeks from 2 February 2018 she had been “*not as productive as originally planned*” for medical reasons. She did not explain why she did not inform the clients about this at the time, and in particular why on 9 February she had said she was on schedule to complete by 16 February.

### **Decisions and Reasons on the Allegations:**

The Panel did not find evidence to support some of the allegations in A2. The Panel found that there was no agreement between the parties’ solicitors that the Respondent should advise on the impact of [redacted]’s health condition (this is the matter covered in Allegation A2 b)). Although this was requested in the letter of 4 October 2017, Ms Pettifor had replied on 16 October explaining that she would proceed assuming that [redacted] did not have a “*shortened life expectancy*” (and that otherwise there would be an additional cost); in the absence of further agreed instructions from the clients, she had proceeded on the standard assumptions (and stated so in the report) and had not made any additional charge. The Panel found that her actions in this regard were entirely appropriate.

With regard to Allegation A2 (c), the Panel could find no specific instruction for the Respondent to advise on which of the funds would best be utilised for pension sharing. When Mr A asked for information about this in April 2018, she sent an explanation promptly.

It follows that the Panel do not find the matters alleged in A2 b) and c) amount to a breach of the Actuaries' Code.

The remaining allegations relate to the timeliness of Ms Pettifor's responses and her report and the Panel found that in this respect Ms Pettifor's actions fell short of the standards required by the Actuaries' Code.

On 16 October 2017 Ms Pettifor agreed to prepare a report containing multiple assumptions, based on information to be obtained from five pension providers. Her normal timescale for such a report was 8 to 10 weeks from receipt of information. Yet she advised the clients only that it was "*unlikely*" that her report would be available before their deadline of 5 December, even though that was less than 8 weeks away. Ms Pettifor did not suggest a more realistic timescale, nor warn the clients about the complexity of their request, which required multiple sets of figures. It may be argued that the clients, advised by their solicitors, could, or should, have realised that there was less than 8 weeks for her to complete the work (including getting the information required) and so the timescale was not realistic but the Panel considers that there is a professional responsibility on the Respondent to be open, realistic and clear with her clients, and to propose a timescale which the clients understand and accept. That part of her letter was far too vague to be helpful.

Subsequently matters progressed slowly as Ms Pettifor delayed requesting some of the information required; the Panel noted that she apologised for this when she submitted her report in March 2018 and reduced her fee as a result.

The Panel found it significant that on 9 February Ms Pettifor informed the clients that "*we are still on schedule to complete the report by 16 February 2018*", but sent the report to the clients on 12 March, without making any contact in between. She did not explain this delay to the clients. She did, however, seek to explain it to the IFoA by providing evidence of her medical treatment on 2 February, which she says caused her to be less productive than usual for the following two weeks. The Panel could not understand why Ms Pettifor was reassuring her clients that all was well when she was, in fact, incapacitated to some extent.

Whilst there is no complaint about the style or language used, and the Panel noted that Ms Pettifor did reply promptly to some enquiries, the Panel found that her actions in a) not clearly explaining the likely timescale to the clients and not agreeing a realistic deadline with them, b) having to be chased for some replies and explanations, and c) not informing the

clients of a further delay in February, amounts to a failure to communicate appropriately and/or effectively and thus is a breach of the communications principle of the Actuaries' Code (allegation A1).

The Panel also found that, having accepted the instructions but then delaying requesting the information, and then not finalising the report by the revised deadline she had agreed in February 2018, Ms Pettifor had failed to provide the report in a timely manner, and that this was a breach of the competence and care principle of the Actuaries' Code (allegation A2 (a)).

### **Decision and Reasons on Misconduct:**

The Panel then considered whether there was a *prima facie* case that the Respondent's actions amounted to Misconduct.

For the purposes of the Disciplinary and Capacity for Membership Schemes, Misconduct is defined as any conduct by a Member, whether committed in the United Kingdom or elsewhere, in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity, competence or professional judgement which other Members or the public might reasonably expect of a Member having regard to the Bye-laws of the Institute and Faculty of Actuaries and/or to any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or, for so long as there is a relevant Memorandum of Understanding in force, by the FRC (including by the former Board for Actuarial Standards) in terms thereof, and to all other relevant circumstances.

The Panel determined that there was a *prima facie* case that the Respondent's actions were sufficiently serious as to constitute Misconduct under the Disciplinary and Capacity for Membership Schemes; the Panel found no contradictory factors to displace that *prima facie* view. The result was that the Respondent's actions amounted to Misconduct. In particular the Panel considered that from the outset Ms Pettifor had a professional duty to be realistic about the complexity and likely timescale for her work and advise her clients accordingly. If the work could not be done by their anticipated deadline then she should have explained that clearly and proposed an alternative for them to review. Her conduct in managing the work and explaining the delays was not to the standard that clients are entitled to expect from a Member of the IFoA.

### **Decision and Reasons on Sanction:**

In reaching its decision, the Panel had 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.

The Panel was aware that the purpose of sanction is not to be punitive although it may have that effect. Rather, the purpose of sanction is to protect the public, maintain the reputation of the profession and declare and uphold proper standards of conduct and competence. The Panel is mindful that it should impose a sanction, or combination of sanctions necessary to achieve those objectives and in so doing it must balance the public interest with the Respondent's own interests.

After deciding that Ms Pettifor's actions in this case amounted to Misconduct, the Panel was provided with a determination, dated 14 February 2013, relating to a previous complaint against Ms Pettifor, which led to a finding of Misconduct, for which a reprimand, a fine of £2,000 and participation in a Professional Skills course were imposed. On reading that determination the Panel noted that there were some similarities with the current matter. The Panel therefore regarded the risk of repetition to be relatively high. The Panel noted the person making the allegation's account of the impact of the Respondent's actions, and whilst not accepting that her actions were the sole cause of the delays which had occurred, accepted that her conduct did contribute to what was already a difficult situation. By way of mitigation, the Panel noted that Ms Pettifor had reduced her fee and apologised. She had also engaged with the IFoA's investigation and responded to all their requests for information.

The Panel considered that Ms Pettifor's failure to communicate effectively to the clients and to produce timely responses to be a serious failing, especially given a previous finding of Misconduct for a similar matter. This reflected poorly on the profession. Taking account of all relevant information the Panel concluded that the appropriate sanctions are a Reprimand and fine of £2,500.

The Panel did not make an order for training or education as there was insufficient information to identify what would be available and relevant. However, the Panel does recommend that Ms Pettifor should reflect on the shortcomings identified in this and the

previous complaint and take steps to ensure that she is able to manage her clients' expectations better in future and not to agree to, or allow her clients to assume, unworkable timescales. She must manage her work more carefully to make sure it stays on track and update the clients if there are delays.

**Publication:**

Having taken account of the Disciplinary Board's Publication Guidance Policy (April 2018), the Panel determined that, if the Respondent accepted the findings of the Panel, this determination will be published and remain on the IFoA's website for a period of five years from the date of publication. A brief summary will also be published in the next available edition of *The Actuary Magazine*.

That concludes this determination.