



Disciplinary Tribunal Panel Hearing

12 March 2019

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

Respondent:	Lloyd Roger Furber, FIA Present and not represented
Category:	Fellow
ARN:	3552
IFoA Case Presenter:	Jill Harris, Counsel, Brodies LLP, instructed by the IFoA
Panel Members:	Paul Housego (Chair/Lay Member) Pamela Charlwood (Lay Member) Julian Ellacott, FIA (Actuary Member)
Legal Adviser:	Alan Dewar QC
Judicial Committees Secretary:	Julia Wanless
Outcome:	Reprimand

Charge:

The charge against Lloyd Roger Furber, being at the material time a Fellow of the Institute and Faculty of Actuaries, is that: -

1. From 07 March 2016 to 04 April 2018 you acted as Chief Actuary to Swiss Re Specialty Insurance (UK) Limited and The Palatine Insurance Company Limited without holding the relevant Practising Certificate;
2. Your actions at paragraph 1 above were in breach of Bye-law 40 of the Bye-laws of the Institute and Faculty of Actuaries;
3. Your actions at paragraph 1 above were in breach of the requirement of paragraph 3.1 of the Actuarial Professional Standard G1 (effective 01 January 2016);
4. Your actions at paragraph 1 above were in breach of the requirement of paragraph 1.2 of the Institute and Faculty of Actuaries Practising Certificates Scheme (Transition Arrangements for Chief Actuary certificate applications received on or before 31 December 2018, dated 01 July 2015) and of paragraph 1.1 of the Institute and Faculty of Actuaries Practising Certificates Scheme (2016/17 and 2017/18 respectively);
5. Your actions at paragraph 1 above were in breach of Integrity principle 1 of the Actuaries' Code (version 2.0);
6. Your actions at paragraph 1 above were in breach of Competence and Care principle 2 of the Actuaries' Code (version 2.0);
7. Your actions at paragraph 1 above were in breach of Compliance principle 4 of the Actuaries' Code (version 2,0); and
8. Your actions, in all or any of the above, constitute 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:

1. The Panel found parts 1- 4, 7 and 8 of the charge proved.
The Panel found parts 5 and 6 of the charge not proved.
The Panel determined that the most appropriate and proportionate sanction was a reprimand.
2. The Panel also ordered the Respondent to pay to the IFoA costs of £8,000.
3. The Panel ordered publication of its order in accordance with the Guidance note on Publication of Determinations.

Background:

4. Mr Furber is an actuary employed by Swiss Re. He is Head of UK Actuarial & Reserving P&C for Swiss Re Europe SA. Swiss Re has a number of legacy companies as subsidiaries. Among these are Swiss Re Specialty Insurance (UK) Ltd ("Specialty") and Palatine Insurance Company Ltd ("Palatine"). Mr Furber was registered with the FCA and the PRA as Chief Actuary to both companies from 07 March 2016 until 04 April 2018 without holding the relevant practising certificate (Chief Actuary (non-Life without Lloyds)) ("pc"). That pc was issued to him on 04 April 2018 following application made by him on 27 February 2018.
5. Palatine stopped writing business in 1994 with no net reserves, and Specialty stopped writing business in 2007 and has net reserves of £0.06m. By reason of Solvency II both needed a Chief Actuary appointment from 01 January 2016.
6. In September/October 2017 the IFoA carried out a reconciliation exercise between the register of the FCA for those registered as Chief Actuaries and the IFoA's register of those with such practising certificates. Mr Furber was on the former but not the latter, and so the IFoA wrote to him on 03 January 2018 about this. He replied on 12 January 2018 to say that he had already filled out the form. He submitted it on 27 February 2018 and the certificate was issued on 05 April 2018.

Defence

7. Mr Furber stated that he carried out the Actuarial Control function for the two companies from November 2006 onwards and was approved by the FSA to do so, under the pre-Solvency II regime. When Solvency II came in his responsibilities "*mapped seamlessly*" to the Chief Actuary role under Solvency II. Internally there was oversight from an actuarial team in Zurich, which Mr Furber said led to a lack of clarity over the extent to which, in practice, Mr Furber fulfilled the Chief Actuary role. It is this supervisory oversight that Mr Furber says was not taken into account by the IFoA.

Findings of Fact

8. The burden of proof rests on the IFoA, and the standard of proof is the civil standard, namely the balance of probabilities. This means that the facts will be proved if the Panel is satisfied that it was more likely than not that the incidents occurred as alleged. There is no requirement for Mr Furber to prove anything.
9. Since November 2006 Mr Furber had carried out the role that became the Chief Actuary role with the introduction of Solvency II on 01 January 2016. He was registered as Chief Actuary on 07 March 2016. The parent company, Swiss Re, made application to the FCA and the PRA for him to be so registered, and to his knowledge, as it did with all its actuaries who needed to be registered.
10. At all material times the IFoA required those being Chief Actuaries to hold a practising certificate as set out in the charges.
11. It is not required by the FCA or the PRA that a Chief Actuary be a member of the IFoA. Accordingly the FCA and the PRA do not check whether a person so appointed who is a member of the IFoA has the necessary practising certificate. This is a professional requirement imposed by IFoA on its members, not a regulatory requirement of the FCA or PRA.
12. The IFoA made great efforts to ensure that all in the profession knew of the changes, including writing to the two companies involved, as Mr Furber knew.
13. Having identified that Mr Furber did not have a pc the IFoA wrote to him about it on 03 January 2018. After further correspondence Mr Furber wrote to the IFoA on 27 March 2018

"I was approved by the FSA as the Actuarial Control Function for both companies back in November 2006. I performed the actuarial work on these companies from that point onwards. The actuarial control function translated to the Chief Actuary function with the introduction of Solvency II."

14. In his defence document of 21 December 2018 Mr Furber wrote: *"My previous actuarial control function responsibilities mapped seamlessly to the Non-Life Actuarial Function in the Solvency II framework."* He explained why he did not consider that he needed the relevant practising certificate in the following terms *"From an internal Solvency II perspective, the Zürich team provides the separate independent (Chief Actuary equivalent) control role that oversees the actuarial function (i.e. executes oversight/review as appropriate of my ongoing actuarial function work)."*
15. The issue that Mr Furber does not address is that he holds the title of Chief Actuary. He knew he held that role with the introduction of Solvency II, and that his employer had applied for him to be so registered. He says that he did not personally make any application and was *"grandfathered"* across, but not that he was ignorant of this. In fact Mr Furber accepted in his oral evidence that application was made by his employer, and to his knowledge. That others may have done the work, or overseen it, is not relevant. Nor is it relevant that non IFoA members may be registered as Chief Actuaries by the FCA or PRA. The simple fact is that the IFoA requires of any member who acts as Chief Actuary that he or she has a particular type of practising certificate. Mr Furber did not have that certificate for that period.
16. In his defence document (page 203) Mr Furber also states *"This initial internal approach to the delivery of the combined Solvency II Actuarial Function/Chief Actuary deliverables explain the reasons for the delayed practice certificate application in the new Solvency II environment."* The word *"delay"* clearly means that Mr Furber accepts that a pc was needed, but not obtained. He does not submit that he applied as soon as one was needed. This was done at a later date, and only after the IFoA wrote to him about it. Mr Furber provided no evidence that he had done anything towards making an application, or that the matter had been reassessed since 2016. Mr Furber does not say that his employer should have dealt with this for him, and nor could he, as this is a personal professional matter.
17. Accordingly the facts required to substantiate Charge 1 are made out: a pc was required between 07 March 2016 (when Mr Furber was registered with the FCA and PRA as Chief

Actuary for both companies) and 04 April 2018 (he having acquired the relevant pc on 05 April 2018, it being applied for on 27 February 2018), and for that period he did not have the required pc.

18. Mr Furber's defence is that he was in effect the only actuary so not the *Chief* Actuary because he oversaw no one, and he was overseen by another, in Zürich who is a Swiss actuary so could not have an IFoA pc. This may be so, but the fact is that he was registered as Chief Actuary, and knew it, and he knew that Chief Actuaries required a pc. He accepted that this was the case. That is to fail to comply with regulations of which he knew.

19. This is not a matter of lack of competence, which relates to actuarial skill. It is not a matter of care, which is intended to relate to client relationships. It is a matter of regulatory compliance. That leads us to the charges.

20. Charge 1

Proved: Mr Furber was Chief Actuary. He was, to his knowledge, so registered, and he had no pc.

21. Charge 2

This is found proved – a pc was required and he did not have one, and the byelaw requires it.

22. Charge 3

This is the same matter restated, and so also found proved.

23. Charge 4

This is again the same matter restated, and so is found proved.

24. Charge 5

This is not a matter of lack of integrity. It is a breach of the rules. Integrity connotes adherence to the ethical standards of one's own profession (Wingate and Evans -v- SRA [2018] EWCA Civ 366 para 100). There was nothing unethical about what Mr Furber did, or rather did not, do. When he applied for the pc it was issued without difficulty. Not everyone who breaches a rule lacks integrity. Lack of integrity requires there to be something more showing that the person is someone not entirely to be trusted.

25. Charge 6

Not proved – this is not competence or care as set out above.

26. Charge 7

This is found proved – Mr Furber did not comply with the requirement that he must have a pc to be a Chief Actuary.

27. Charge 8

Misconduct: This requires a serious falling short of professional standards. Mr Furber knew all the relevant facts. He was registered as Chief Actuary and did not have the required pc. He decided not to apply for it. While this was two very small companies and there was no harm to anyone, the profession depends on compliance with its own rules. The public and members would expect a Chief Actuary to make sure that he was fully compliant with the rules. The reputation of the profession with the FCA and PFA (who have statutory oversight of the profession) is jeopardised by such a failure. Much of what is said by Mr Furber is mitigation, but is not a defence. The charge as framed does not cite the previous versions of the disciplinary scheme which applied before 01 February 2018, but the definition of misconduct was carried forward unchanged into the present scheme, and there is no disadvantage to Mr Furber by the fact that the previous version was not cited in the charge. The Panel finds the allegations that were proved to be misconduct as alleged.

Sanction

28. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter and the submissions of Mr Furber. The Panel considered the advice of the Legal Adviser. The Panel also had careful regard to the Indicative Sanctions Guidance.

29. The Panel took account of the fact that the purpose of sanctions is not to be punitive although it may have that effect. Rather, the purpose of sanctions 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 Mr Furber's own interests.

30. The Panel did not consider that this was one of those rare cases where no sanction is required. Mr Furber is a senior actuary. This was not oversight but an intentional decision.

31. In considering sanction, the Panel took into account the following aggravating factors:

- This was an intentional decision.
- There was a substantial period of time when Mr Furber had no pc.
- The IFoA's reputation with the FCA and PRA could have suffered detriment.
- Mr Furber does not display any insight or remorse, and defended all the allegations without addressing the central issue.
- Beyond that there is nothing to make the misconduct worse than as found.

32. The Panel also took into account the following factors in mitigation:

- Mr Furber has a blemish free and lengthy career.
- The pc was obtained without difficulty as soon as application was made.
- Mr Furber derived no benefit from not applying for the pc.
- There has been no loss or harm to any person or company.

33. The Panel did not consider this a case which warranted no sanction for the reasons given above.

34. The Panel considered whether to impose a Reprimand, and given the facts and mitigation decided that this was the proportionate sanction.

35. The Panel considered whether to impose a Fine in addition but concluded that this would be disproportionate.

36. The Panel also considered whether to impose a period of education, training or supervised practice, but this is not a case which calls for any of these to be imposed.

Costs

37. The IFoA made an application for costs of some £12,500 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Case Presenter and venue costs. The Panel noted that administrative costs were included in the application, and costs incurred by the Panel, Legal Adviser, stenographer and hire of the hearing venue. In all the circumstances the Panel considered the costs sought, the work done and costs incurred justified an order that Mr Furber contribute towards those costs. The Panel ordered the Respondent to pay the IFoA a contribution of £8,000 towards the costs incurred. This was

a simple case with no complexity of fact or law, concluded in a one day hearing, with limited documentation.

Right to appeal

38. The Respondent has 28 days from the date that this written determination is deemed to have been served upon him 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.