



Institute
and Faculty
of Actuaries

Adjudication Panel Meeting

27 January 2020

By video conference from

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

and

**Institute and Faculty of Actuaries, Webster Room, Level 2 - Exchange Crescent,
7 Conference Square, Edinburgh, EH3 8RA**

Respondent:

Chao Zhi

Category:

Student member since 2011

ARN:

9054386

Panel Members:

Andy Scott FFA (Chair, Actuary member)

Jules Griffiths (Lay member)

Ritchie Campbell (Lay member)

Legal Adviser:

Alan Dewar QC

Judicial Committees Secretary:

Julia Wanless

Allegations:

The allegations against Chao Zhi (the Respondent) are:

- A1 on numerous occasions between January 2019 and March 2019 he used a student Transport for London Oyster card when he was not entitled to do so;
- A2 his actions at A1 were contrary to byelaw 17(1) and/or 23 of the Transport for London Railway Byelaws;
- A3 his actions at A1 were dishonest;
- A4 his actions at A1 were in breach of the principle of integrity in the Actuaries' Code;
- A5 his actions at A1 were in breach of the principle of compliance in the Actuaries' Code;

his 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 and the Respondent's response to the Case Report. The Panel also considered the advice of the Legal Adviser. The Panel determined that the Case Report disclosed a *prima facie* case of Misconduct.

The Panel accordingly invited the Respondent to accept that there had been Misconduct and that a reprimand and a £500 fine were the appropriate sanctions for his actions.

Background:

On 20 June 2019 the Respondent self-reported a pending court summons to the IFoA. He advised that the summons related to a breach of Transport for London's (TfL's) byelaws and that he was required to attend court in September 2019 if the matter could not be resolved by administrative settlement.

On 2 July 2019 the Respondent advised that TfL had dropped the legal proceedings and had instead issued a formal warning on 27 June 2019. He further advised that his employer had conducted an internal disciplinary hearing on 2 July 2019.

On 22 July 2019 the Respondent provided a document titled "Self-Report of Misconduct" providing details of the matter and an explanation for his actions. In summary, the Respondent's flatmate had purchased a student TfL Oyster card for the period 1 January 2019 to 31 March 2019. The Respondent subsequently used his flatmate's student Oyster card between January 2019 and March 2019 on the days when she was not using this. On 13 March 2019, during the course of a ticket inspection, the Respondent was advised that his actions constituted ticket evasion and he subsequently received a court summons requesting that he appear in court in September 2019. The charge was that on 13 March 2019 he entered a compulsory ticket area without a valid ticket contrary to TfL Railway Byelaw 17.

In June 2019 TfL withdrew the charge on the basis that the Respondent paid £470 in penalty fares.

The Respondent has explained that he did not realise that his actions constituted fare evasion. He states that his primary motive was to help his student flatmate get better value from her Oyster card. He has further advised that he was under financial pressure at the time.

Decision and Reasons on the Allegations:

Allegations A1 and A2

The Panel considered Allegations A1 and A2 together as they are inextricably linked.

Byelaw 17(1) of the TfL Railway Byelaws (Appendix 18) states:

No person shall enter a compulsory ticket area on the railway unless he has with him a valid ticket.

Byelaw 23 of the TfL Railway Byelaws (Appendix 18) states:

Any person who breaches any of the Byelaws commits an offence and may be liable for each such offence to a penalty not exceeding level 3 on the standard scale.

By his own admission, the Respondent has confirmed that he did not have a valid ticket during the period in question and so the Panel is satisfied that Allegations A1 and A2 are capable of proof.

Allegation A3

The Panel recognises that the actions by the Respondent were dishonest to the extent that they were in contravention of Byelaw 17(1) of the TfL Railway Byelaws and the Respondent ought to have first checked whether he was legally entitled to use the card. Consequently, Allegation A3 is capable of proof.

However, the Panel also recognises that the level of dishonesty was relatively low in that it only took place for a limited period and it did not lead to a significant financial gain for the Respondent, nor a significant financial loss for TfL (whom the Respondent has subsequently repaid). The Panel also acknowledges some mitigating factors in that the Respondent self-reported to the IFoA, and his employer, and he stated that he did not realise his actions constituted fare evasion and that his primary motive was to help his student flatmate get better value from her Oyster card. He also advised that he was under financial pressure at the time which encouraged him to take advantage of the savings available from the student Oyster Card.

Allegation A4

The Panel considered carefully the position regarding integrity and, in particular, how it relates to dishonesty, as described in Allegation A3.

The current legal view is that integrity and dishonesty are separate concepts. One does not need to be dishonest in order to lack integrity. The difference between the two concepts has been set out in the case of *Wingate and Evans v SRA* [2018] EWCA Civ 366:

“Honesty is a basic moral quality which is expected of all members of society. It involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct. The legal concept of dishonesty is grounded upon the shared values of our multicultural society. Because dishonesty is grounded upon basic shared values there is no undue difficulty in identifying what is or is not dishonest.”

“Integrity is a more nebulous concept. In professional codes of conduct, the term ‘integrity’ is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards. Integrity connotes adherence to the ethical standards of one’s own profession that involves more than mere honesty.”

The Panel considers that the Respondent is an intelligent person and is subject to the Actuaries’ Code, and so, if he was not sure whether he was able to use the card, he should have checked the bye-laws before using it. It follows therefore that he breached the integrity principle of the Actuaries’ Code, both in terms of honesty (as outlined above) and in failing to operate to the highest standards of integrity expected of IFoA members. As such, Allegation A4 is capable of proof.

Again, however, the Panel recognises that the scale of the breach was relatively low and there were some mitigating circumstances, as described in the previous paragraph on Allegation A3.

Allegation A5

The Panel is also satisfied that Allegation A5 is capable of proof in that the Respondent committed a *prima facie* breach of the compliance principle of the Actuaries’ Code, on the basis that the Respondent failed to comply with all relevant legal requirements by contravening Byelaw 17(1) of the TfL Railway Byelaws.

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".

Honesty and integrity by members of the IFoA is important for the maintenance of public confidence in the Profession and the upholding of the Profession's reputation. The Respondent has been a student member of the IFoA since 2011 and would therefore have been well aware of the Actuaries' Code and the principles of honesty, integrity and compliance.

The Panel therefore determined that the Respondent's actions were not what the ordinary person would expect from a member of the Profession and that they were sufficiently serious to constitute a *prima facie* case of Misconduct under the Disciplinary and Capacity for Membership Schemes.

Decision and Reasons on Sanction:

In reaching its decision on sanction, the Panel had regard to the Indicative Sanctions Guidance (August 2016). It also recognised that 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.

The Panel considered that this case warranted a sanction because Misconduct involving dishonesty and integrity is serious and imposing no sanction would not be appropriate, nor in the public interest. However, the Panel also took into account the following factors in mitigation:

- the Respondent self-reported his actions to the IFoA and to his employer;
- the level of the dishonesty was relatively small and had not led to any serious financial or other consequences for the parties involved;
- the Respondent had repaid the sum of £470 to TfL;
- the Respondent had co-operated fully with the IFoA in the investigation and appeared genuinely remorseful about his actions;
- the Respondent was under financial and family pressures which may have coloured his judgement at the time of his actions;
- this is the first such offence by the Respondent and he has made a clear commitment never to carry out similar actions in the future,

The Panel felt that a Reprimand alone was not sufficient sanction in this case, as it is the least sanction that can be imposed, and would not adequately reflect the dishonesty and the lack of integrity. That said, the Panel was satisfied that a high fine would be disproportionate when taking into account the level of dishonesty and the mitigating actions. It concluded that a modest fine within the realms of the amount charged by TfL was appropriate and sufficient to mark the wider public interest and the other considerations of this case. The Panel therefore decided to impose a £500 fine.

The Panel also considered whether to impose a period of education, training or supervised practice, but it did not feel that this would be appropriate given the circumstances of this case.

Given the finding of dishonesty, which is a serious matter, the Panel moved on to consider the full range of sanctions and whether a more onerous sanction (including a referral to Disciplinary Tribunal) was appropriate. Taking account of all the information before it, the Panel concluded that a more onerous sanction was not appropriate in this case.

Publication:

Having taken account of the Disciplinary Board's Publication Guidance Policy (April 2018), to which the Panel is expected to adhere, the Panel determined that, if the Respondent accepted the findings of the Panel, this determination will be published. The Respondent had made the Panel aware of some particularly difficult circumstances that he considered could

apply in the event of publication. However, the Panel was of the opinion that publication would not give rise to any major repercussions for the Respondent.

Nevertheless, the Panel had some sympathy for the Respondent's position and felt that publication on the IFoA's website for a period of two years, rather than the normal five years, was appropriate in the circumstances. The Panel also agreed that, in line with normal practice, a brief summary of the Determination will also be published in the next available edition of *The Actuary Magazine*.

That concludes this determination.