



Institute
and Faculty
of Actuaries

Adjudication Panel Meeting

30 October 2019

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

Respondent: Jack Wicks (student)

Category: Student

ARN: 9343877

Panel Members: Graham Farren, FIA (Chair/ Actuary member)
Andy Scott FFA (Actuary member)
Angela Brown (Lay member)

Legal Adviser: James Palmer

Judicial Committees Secretary: Julia Wanless

Allegation:

The allegation against Mr Wicks (the Respondent) is:

A1 on 23 April 2019, he drove a motor vehicle, ...on a road, ..., after consuming so much alcohol that the proportion of it in his breath, namely 105 microgrammes of alcohol in 100 millilitres of breath, exceeded the prescribed limit, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988;

A2 his actions in paragraph A1 above 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 because

- a) in accordance with Rule 4.10a of the Disciplinary Scheme of the Institute and Faculty of Actuaries the fact that a Member has by a court of competent jurisdiction in the United Kingdom been convicted of a criminal offence shall for the purposes of the Disciplinary Scheme be treated as conclusive evidence of the findings upon which the conviction, determination, judgement or disqualification is based, and
- b) the Respondent's conduct did not comply with the standards of behaviour, integrity, competence and professional judgement which other Members or the public might reasonably expect of a Member.

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

- Reprimand
- Fine of £1000 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation

Background:

On 25th April 2019 the Respondent self-reported to the IFoA that following a motor vehicle accident on 23rd April 2019 he was breathalysed and charged with the criminal offence of driving a motor vehicle when his alcohol level was above the limit, contrary to Section 5(1)(A) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

The Respondent attended Court on 7th May 2019 and pleaded guilty to the charge. He was banned from driving for 24 months which may be reduced by 24 weeks upon completion of a drink driving course. The Respondent was also required to complete 50 hours of community service and to pay £170 in court fees. The Respondent provided a certified copy of the Memorandum of Conviction that confirmed these facts.

Decision and Reasons on the Allegations:Allegation 1

- i) In accordance with Rule 4.10a of the Disciplinary Scheme of the Institute and Faculty of Actuaries the fact that a Member has by a court of competent jurisdiction in the United Kingdom been convicted of a criminal offence shall for the purposes of the Disciplinary Scheme be treated as conclusive evidence of the findings upon which the conviction, determination, judgement or disqualification is based. The Respondent was charged, and pleaded guilty and was convicted of driving a motor vehicle when his alcohol level was above the limit, contrary to Section 5(1)(A) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.
- ii) The Respondent drove a motor vehicle whilst his alcohol level was 105 microgrammes of alcohol in 100 millilitres of breath which is three times the prescribed limit of 35 microgrammes of alcohol in 100 millilitres of breath.

The Panel determined that Allegation 1 was upheld.

Allegation 2

The Panel determined that Allegation 2 concerning the breach of the compliance principle of the Actuaries Code was upheld. However, whilst it was satisfied that there was a technical breach because the Respondent did fail to comply with the legal requirement not to drive when his alcohol level was above the prescribed limit, it did not consider that the

circumstances of the offence could reflect adversely on the actuarial profession. The Panel concluded that this allegation adds nothing to the gravity of the case, given the requirement in accordance with the Rules to find Misconduct where a criminal conviction has been recorded by a Court of competent jurisdiction.

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 Respondent's conduct did not comply with the standards of behaviour, integrity, competence and professional judgement which other Members or the public might reasonably expect of a Member.

The Panel determined that there was a *prima facie* case that the Respondent's action in driving a motor vehicle whilst his alcohol level was in excess of the prescribed limit was sufficiently serious as to constitute Misconduct under the Disciplinary and Capacity for Membership Schemes.

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.

The Panel first considered whether to take no action. However it was satisfied that this would not be appropriate given the seriousness of the offence.

The Panel considered that this case warranted a sanction of a Reprimand and a Fine in order to declare and uphold proper standards of conduct of the profession and for the protection of the public interest.

The Panel took into account the following factors in mitigation:

- a) The immediate self-reporting to the IFoA of the charge and the subsequent conviction.
- b) The cooperation of the Respondent with the investigation.
- c) The evidence provided by the Respondent about the health issues he was suffering at the time of the incident and the treatment he was receiving.
- d) The remorse of the Respondent evidenced by emails to the IFoA.
- e) The character references provided by two actuaries at his employer and a friend
- f) The penalties already imposed by the Court

The Panel determined that a Reprimand was appropriate given the seriousness of the offence. Although the incident was isolated, the act of driving a motor vehicle with an alcohol level three times the prescribed above is a serious offence that was reflected in the duration of the driving ban and other sanctions imposed by the court.

The Panel also determined that this case warranted a fine of £1000. In deciding the amount the Panel bore in mind that a nominal fine might undermine public respect for the regulatory process. It also considered the information that the Respondent had provided about his personal financial position, his income and liabilities. It was satisfied that £1000 was appropriate in the circumstances.

The Panel considered whether to impose a period of education, training or supervised practice but did not consider any education beyond that required by the court to enable the ban on the Respondent driving to be reduced by 24 weeks, to be necessary or relevant in this case.

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 until 6 May 2021. A brief summary will also be published in the next available edition of *The Actuary Magazine*.

That concludes this determination.