



**Disciplinary Tribunal Panel Hearing**

**10 December 2019**

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

**Respondent:** Ben Loon Vernon Tan

Not present and not represented in absence.

**Category:** Lapsed Member

**ARN:** 16759

**IFoA Case Presenter:** Stephen Ferson of Counsel, instructed by the IFoA.

**Panel Members:** Stephanie Bown (Chair & Lay member)  
Paul Whitlock FIA (Actuary member)  
Catriona Whitfield (Lay member)

**Legal Adviser:** Elaine Motion

**Judicial Committees Secretary:** Julia Wanless

**Charge:**

Ben Loon Vernon Tan, being at the material time a member of the Institute and Faculty of Actuaries,  
the charge against you is that:

**1. during the 2016/2017 Continuing Professional Development (CPD) year you failed to:**

**(a) demonstrate that you had undertaken the appropriate minimum amount of CPD; or  
(b) submit a written request for an exemption from the CPD scheme;**

2. your actions at paragraph 1 were in breach of Paragraph 1.2 of the Institute and Faculty of Actuaries CPD Scheme 2016/2017;

3. your actions at paragraph 1 were in breach of the Compliance principle of the Actuaries' Code (version 2);

**4. you failed to engage with or respond to communications from the Membership Department of the Institute and Faculty of Actuaries on the matter of CPD for the 2016/2017 CPD reporting year;**

5. your actions at paragraph 4 were in breach of the Compliance principle of the Actuaries' Code (Version 2);

**6. you failed to co-operate with the investigation of the heads of charge at paragraphs 1 and 4 above, in that you failed to supply information, evidence and/or explanations requested by the Case Manager in the course of the investigation of the allegation;**

7. your actions at paragraph 6 were in breach of Rule 1.18 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 August 2010, amended 18 October 2012 and 1 June 2016);

8. your actions, in each and all of the above, constitute 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 Charges:**

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, having accepted the advice of the Legal Adviser and taking into account the previous decision of 26 November 2019 in relation to service, the Panel was satisfied that all reasonable efforts had been made to serve notice of the hearing on the Respondent by email and by hard copy using the contact details which had been provided by the Respondent. The Panel noted that the Respondent was under a duty to ensure that the IFoA had appropriate contact details for him while he was a Member. The Panel was therefore satisfied that the notice of this hearing 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 considered the advice of the Legal Adviser who referred the Panel to the case of *GMC v Adeogba* [2016] EWCA Civ 162 which in turn quoted the general principles to be considered in the exercise of that discretion as set out *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 must consider matters such as whether the Respondent has 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 was satisfied that it was unlikely to reach an improper conclusion as a result of the Respondent's absence. The Panel was satisfied, after careful consideration, that the Respondent had chosen voluntarily to absent himself. In all 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 parts 1 to 8 of the charge proved.

The Panel determined that the most appropriate and proportionate sanctions were:

- Reprimand
- A fine of £2,500

5. The Panel also ordered the Respondent to pay to the IFoA costs of £10,617.91.

### **Background:**

6. The Respondent was admitted as a Fellow of The Institute and Faculty of Actuaries on 31 December 2013.

The Continuing Professional Development Scheme 2016/2017 of the IFoA (effective from 1 July 2016 until 30 June 2017 - "the CPD Scheme") states at paragraph 1.2:

*'All members must demonstrate that either:*

- *they have undertaken the appropriate minimum amount of [CPD] in accordance with the requirements of this Scheme; or*
- *due to their personal circumstances, they are exempt from the requirements of this Scheme.'*

The compliance principle of the Actuaries' Code (Version 2) states:

*'Members will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure they are not placed in a position where they are unable to comply, and will challenge non-compliance by others'*

Rule 1.18 of the Disciplinary Scheme states:

*'Every Member has, at all times, a duty to co-operate fully with any investigation, process or procedure under this Scheme. This duty includes providing such written or oral information and/or evidence as may be required by the Case Manager or Investigation Actuary under rule 3.11.'*

Paragraph 1.22 of the Disciplinary Scheme states:

*'The failure to comply with rule 1.18...shall amount to prima facie evidence of Misconduct. For the avoidance of doubt, [rule] 1.18...[applies] to any former Member whose conduct, at the date that their membership of the Institute and Faculty of Actuaries ceases, was subject to disciplinary proceedings under this Scheme.'*

The Respondent complied with the requirements of the CPD Scheme for the CPD year 2014/2015. He successfully applied for an exemption from the requirements of the CPD Scheme for the CPD year 2015/2016 as he had worked less than 20 hours over the course of the year.

The 2016/2017 CPD year started on 1 June 2016. On 15 June 2017 the Head of Membership sent the Respondent an email advising him that the 2016/17 CPD reporting year would close on 30 June 2017 and that he had until 31 July 2017 to record his CPD activity. A reminder email was sent on 28 June 2017. A further reminder email was sent on 14 July 2017 and the Respondent was advised that if he was not compliant by 31 July 2017 he would be granted an extension of time to 30 September 2017 for an administration fee of £50. Further reminder emails were sent to the Respondent on 21, 28 and 31 July 2017, each repeating the content of the email of 14 July 2017.

At midnight on 31 July 2017 the online CPD recording system for 2016/17 closed. At this time the Respondent had recorded a total of 6.5 hours of CPD activity for the 2016/17 CPD recording year.

On 4 August 2017 the Head of Membership sent an email to the Respondent stating that the online CD recording system was closed and that his record was non-compliant. The Respondent was advised that he could be given an extension to 30 September 2017 for an administration fee of £50, or the option of paying a charge of £750 to prevent a referral under the Disciplinary Scheme if he had not completed the required amount of CPD. Further emails with the same advice were sent to the Respondent on 8, 22 and 29 September 2017.

On 13 October 2017 the Head of Membership sent a letter to the Respondent at his preferred contact address stating that she had been trying to contact him regarding his CPD record and advising him of the opportunity to pay a £750 charge to prevent a referral under the Disciplinary Scheme. She also advised the Respondent of his

responsibility to ensure that the IFoA had the correct contact information. That letter was returned unclaimed to the IFoA in November 2017.

On 2 January 2018 General Counsel for the IFoA referred for consideration, under the Disciplinary Scheme, an allegation that the Respondent had failed to meet the requirements of the CPD Scheme for the 2016/17 reporting year and that he had failed to engage with the IFoA or respond to any communication on the matter. The Respondent was subsequently appointed an IFoA Case Manager.

On 10 January 2018 the Respondent was defaulted from membership of the IFoA for non-payment of his subscription fee.

On 11 January 2018 the Case Manager wrote a letter to the Respondent to notify him of the allegations and requesting further information. She sent a follow-up email to the Respondent on 6 February 2018 and a delivery confirmation was received. On 19 February 2018 the letter from the Case Manager to the Respondent dated 11 January 2018 was returned to the IFoA. On 20 February 2018 the Case Manager sent an email to the Respondent requesting a response to her letter of 11 January 2018 by 28 February 2018. On 5 March 2018 she sent a further email to the Respondent requesting a response by 12 March 2018 and delivery confirmation was received.

On 7 March 2018 the Respondent sent an email to the Case Manager stating: *“The information is correct. I did not meet the CPD requirement as the records I submitted.”* He explained that he had not worked in the actuarial profession since 2015 and was no longer a member of the IFoA.

The Case Manager replied to the Respondent on 7 March 2018 explaining that ceasing to be a member did not have an effect on disciplinary proceedings and that failure to cooperate could lead to a further allegation of misconduct. She requested a response by 13 March 2018. On 14 March 2018 she sent an email to the Respondent requesting a response by 20 March 2018 and advising that failure to do so may lead to an additional allegation of failure to cooperate with the investigation.

The Case Manager sent a chaser email to the Respondent on 19 March 2018 and delivery confirmation was received. The IFoA did not receive any reply from the Respondent.

In April 2018 General Counsel for the IFoA made a further allegation against the Respondent for failing to cooperate with disciplinary investigation.

The Case Manager sent a letter dated 2 May 2018 to the Respondent by normal mail and International Tracked and Signed notifying him of the additional allegation: the letter was delivered on 15 May 2018 but no response was received from the Respondent. It was also sent by email and a delivery receipt was obtained.

### **Findings of Fact:**

7. 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.
8. The Respondent was not in attendance at this hearing and the Panel was satisfied that this absence was voluntary for the reasons set out above. The Panel has drawn no adverse inference as a consequence of the Respondent's absence.
9. The Panel also took into account the witness statements, of the Head of Membership and the Case Manager, and the exhibits which evidenced the efforts which had been made to communicate and engage with the Respondent on multiple occasions and by multiple methods.
10. The Panel considered whether the Disciplinary Scheme applied in this case given that the Respondent was a lapsed Member. The Panel was satisfied that the Respondent, although a former Member of the IFoA, fell within the Disciplinary Scheme by virtue of paragraph 1.8 of The Scheme. The Panel was further satisfied that the Respondent, in being subject to the disciplinary process at the date of the cessation of his membership was under a duty to cooperate fully with the IFoA's investigation by virtue of paragraph 1.22 of The Scheme.

### **10. Charge 1**

The Respondent was required to complete a minimum of 15 hours CPD in the 2016/2017 CPD year and to record his CPD activities on his online CPD record by 31 July 2017, or to apply for an exemption. The Panel noted that six emails had been sent by the IFoA to the Respondent between 15 June and 31 July 2017 drawing his attention to the requirements of the CPD Scheme and that no reply was forthcoming. The Panel found that the Respondent recorded 6.5 hours of CPD for the CPD year 2016/2017. The Panel was satisfied, to the requisite standard of proof, that there was no evidence that the Respondent had submitted a written request for an exemption from the CPD Scheme. The Panel noted the Respondent's email of 7 March 2018 in which he confirmed that he had not met the CPD requirements in the CPD year 2016/2017. The Panel was satisfied that the conduct alleged was proved on the balance of probabilities.

#### 11. Charge 2

The Panel was satisfied that the conduct alleged and found proved at paragraph 1 of the charge was in breach of Paragraph 1.2 of the Institute and Faculty of Actuaries CPD Scheme 2016/2017.

#### 12. Charge 3

The Panel was satisfied that the conduct alleged and found proved at paragraph 1 of the charge was in breach of the Compliance principle of the Actuaries' Code (version 2).

#### 13. Charge 4

The Panel found that the Respondent was contacted by the Membership Team on six occasions between 15 June and 31 July 2017, on four occasions between 4 August and 29 September 2017 by email and on 13 October 2017 by letter to his preferred contact address. The Panel was satisfied that the Membership Team received no response from the Respondent. The Panel was satisfied that the conduct alleged at paragraph 4 of the Charge was proved on the balance of probabilities.

#### 14. Charge 5

The Panel was satisfied that the conduct alleged and found proved at paragraph 4 of the charge was in breach of the Compliance principle of the Actuaries' Code (version 2).

#### 15. Charge 6

The Panel found that the IFoA Case Manager had made contact with the Respondent notifying him of the allegations and requesting further information on four occasions

between 11 January and 5 March 2018. The Panel noted the Respondents reply on 7 March 2018 confirming that he had not met the CPD requirements for the CPD year 2016/2017, that he had ceased working in the actuarial profession in 2015 and that he was no longer a Member of the IFoA. The Panel found that the Case Manager had contacted the Respondent on four occasions between 7 March and 2 May 2018 and has received no response. The Panel was not satisfied that the single email of 7 March 2018 constituted co-operation with the IFoA's investigation. The Panel was satisfied that the conduct alleged at paragraph 6 of the Charge has been proved on the balance of probabilities.

#### 16. Charge 7

The Panel was satisfied that the conduct alleged and found proved at paragraph 6 of the charge were in breach of Rule 1.18 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 August 2010, amended 18 October 2012 and 1 June 2016).

#### 17. Misconduct: Charge 8

The Panel considered whether the actions of the Respondent amounted to Misconduct. 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."*

The Panel also took account of paragraph 1.22 of the Disciplinary Scheme which states:

*'The failure to comply with rule 1.18...shall amount to prima facie evidence of Misconduct. For the avoidance of doubt, [rule] 1.18...[applies] to any former Member*

*whose conduct at the date that their membership of the Institute and Faculty of Actuaries ceases, was subject to disciplinary proceedings under this Scheme.'*

The Panel was satisfied that the Respondents actions in each and all of the paragraphs of the Charge constituted misconduct in terms of Rule 1.6 of the Disciplinary Scheme. He was aware of his obligations under and in terms of the CPD Scheme, having complied previously and indeed having sought an exemption on an earlier occasion; he accepted, in his email of 7 March 2018, that he had not carried out the required CPD and he has chosen, for whatever reason, not to engage further with the IFoA. All of these reasons and taking account of the whole circumstances left the Panel in no doubt that his behaviour constituted misconduct, as defined.

### **Sanction:**

13. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter. The Panel considered the advice of the Legal Adviser. The Panel also had careful regard to the Indicative Sanctions Guidance (August 2016) and the Supplementary Guidelines on the Imposition of Sanctions in CPD Infringement Cases. The Panel also had regard to mitigating and aggravating factors. 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, but where it diverged from the guidance it required to give reasons. It did not so diverge in this matter.

14. 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 was alive to the attitude of the profession towards CPD infringement in the interests of maintaining public confidence and upholding the reputation of the profession and that it was important that CPD infringement was treated seriously.

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

- The Respondent's repeated failure to engage with or respond to communication from the Membership Department on the matter of CPD for 2016/2017, a Scheme with which he was familiar.
- His failure to co-operate with the disciplinary investigation.

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

- That the Respondent stated that he had not worked in the actuarial profession since 2015.
- That the Respondent had no prior history relating to fitness to practise matters with the IFoA.

17. The Panel considered whether this was a case that warranted no sanction and was satisfied that it was not. Infringement of CPD requirements was a serious matter and the Respondent's failure to engage or co-operate had aggravated his misconduct.

18. The Panel considered whether to impose a Reprimand and considered that it was appropriate to impose a Reprimand but that a Reprimand alone was not sufficient given the level of misconduct which had been found proven.

19. The Panel considered whether to impose a Fine and considered that a Fine was appropriate. The Panel determined that a Fine of £2,500 was proportionate to the level of misconduct which had been found proven.

**Costs:**

20. The IFoA made an application for costs of £10,617.91 incurred in preparation for the hearing and attendance at the hearing by the IFoA's Case Presenter. The Panel considered the costs sought to be at a reasonable level, and that the work done and costs incurred justified that amount of cost. The Panel therefore ordered the Respondent to pay the IFoA costs of £10,617.91.

**Right to appeal:**

21. The Respondent has 28 days from the date that this written determination is deemed to have been served upon him/her in which to appeal the Panel's decision.

**Publication:**

22. 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.