



**Disciplinary Tribunal Panel Hearing**

**12 October 2020**

**Institute and Faculty of Actuaries online hearing**

<b>Respondent:</b>	Katherine Watkin (lapsed member) Not present nor represented in her absence
<b>Category:</b>	Former Fellow (lapsed January 2020)
<b>ARN:</b>	9040330
<b>IFoA Case Presenter:</b>	Stephen Ferson, Counsel instructed by the IFoA.
<b>Panel Members:</b>	Paul Housego (Chair/Lay Member) Paul Whitlock FIA (Actuary Member) Catriona Whitfield (Lay Member)
<b>Legal Adviser:</b>	Elaine Motion
<b>Judicial Committees Secretary:</b>	Julia Wanless

**Charge:**

Katherine Watkin, being at the material time a member of the Institute and Faculty of Actuaries, the charge against you is that:

1. you failed to comply with the requirements of the CPD Scheme 2016/2017 in that you failed to provide evidence of the CPD activities you had completed during the 2016/2017 CPD year when asked to do so;
2. you did not engage with and/or respond to communications from the Membership Team of the Institute and Faculty of Actuaries on the matter of providing evidence of CPD activities for the 2016/2017 CPD reporting year;
3. you failed to comply with the requirements of the CPD Scheme 2017/2018 in that you failed to demonstrate that you had undertaken the appropriate minimum amount of CPD, or submit a written request for exemption;
4. you failed to co-operate with the investigation of the allegations detailed at paragraphs 1, 2 and/or 3, under the Disciplinary Scheme of the Institute and Faculty of Actuaries, 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;
5. your actions at paragraph 4 were in breach of Rule 4.15 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 February 2018);
6. your actions at paragraphs 1, 2, 3 and/or 4 were in breach of the compliance principle of the Actuaries' Code (version 2.0);
7. your actions at paragraph 4 above were in breach of the compliance principle of the Actuaries' Code (version 3.0);
8. your actions, in each and all of the above, constituted misconduct in terms of Rule 4.2 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 February 2018).

**Service of Charges:**

1. The Panel noted that the Respondent was not present and was not represented in her absence. Having considered the submissions of the IFoA's Case Presenter and having accepted the advice of the Legal Adviser, the Panel was satisfied that the charges 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 accepted the advice of its legal adviser. The Panel followed the guidance in GMC v Adeogba [2016] EWCA Civ 162, which referred to Tait v RCVS [2003] UKPC 34, and to R v Hayward, R v Jones, R v Purvis [2001] QB 862, [2001] EWCA Crim 168. The Panel noted that there had been great effort by the IFoA to contact Ms Watkin, by letter, email, text message and telephone call. An enquiry agent had also been employed. Ms Watkin had allowed her membership to lapse in January 2020 by non-payment of her membership fee. She had not contacted the IFoA at all since November 2017, until 07 September 2020.

3. On 07 September 2020 at 15:23 the IFoA emailed Ms Watkin to give notice of this hearing. Ms Watkin emailed back on 07 September 2020 at 16:16 (from the email address to which the IFoA had been emailing her throughout) saying *"I'm not a member of the institute any more so why would I have a disciplinary hearing?"* On 08 September 2020 at 12:01 Ms Higgins emailed Ms Watkin explaining that the Rules provided that a lapsed member remained subject to the disciplinary scheme for any matter occurring while she was a member, and sent her all the papers electronically. Ms Watkin did not respond. There was every reason to believe that the emails had come to her attention, and her partner had answered a call to her mobile phone.
4. There was no request for an adjournment, and no reason to suppose that Ms Watkin was unwell. There was no reason to think that an adjournment would achieve her attendance on a subsequent date. It was the responsibility of a professional to keep in contact with her regulator. It was clear that Ms Watkin knew of the hearing. There was a public interest in the resolution of matters of professional misconduct. The guidance in paragraphs 19-21 of *Adeogba* was to proceed unless there was good reason not to do so. The Panel considered that there was no good reason to adjourn the hearing. The Panel considered that Ms Watkin had deliberately chosen not to exercise her right to be present or to give adequate instruction to enable lawyers to represent her (*Adeogba* paragraph 15).

#### **Panel's Determination:**

5. The Panel found the charge of misconduct proved in all the particulars alleged. The Panel determined that the most appropriate and proportionate sanction was exclusion from IFoA membership. The Respondent may not apply for readmission for a period of one year.
6. The Panel also ordered the Respondent to pay to the IFoA costs of £4,021.49.

#### **Background:**

7. Members of the IFoA were required to undertake Continuing Professional Development ("CPD") in the year 01 July 2016 - 30 June 2017. Members were required to record their training activities online. In that year Ms Watkin did not record CPD. The IFoA wrote to her, and she engaged with the issue. In November 2017 she gave details of sufficient CPD for that year, and apologised. She paid an administrative penalty and promised to do better in future. She was later contacted to ask for evidence that she had actually undertaken that training, but she did not supply any evidence, or respond in any way. She did not

record any training for the next year (2017/2018). She did not respond to communications about that. She was then told that if she did not do so she would face a further charge of failing to co-operate with the IFoA. She did not respond, and so the matter was referred for disciplinary action, leading to this hearing.

### **Findings of Fact:**

8. The Panel noted 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 is satisfied that it was more likely than not that the incidents occurred as alleged. There is no requirement for the Respondent to prove anything. If the Panel finds any factual allegation proved, the question of whether it breaches rules or is misconduct is a matter for the Panel's independent judgment. Misconduct is a word of general application and requires a significant falling short, and must be blameworthy to the extent of moral opprobrium (Roylance v. The General Medical Council (Medical Act 1983) [1999] UKPC 16, and Spencer v General Osteopathic Council [2012] EWHC 3147 (Admin)).
9. As the Respondent had not responded to the allegations the Panel took them all as denied. The Panel noted that Held v GDC [2015] EWHC 669 (Admin), paragraph 14 provided guidance for this situation: the Panel must take reasonable steps to expose weaknesses in the regulator's case, and to make such points as Ms Watkin might have made if present (although there is no obligation on the Panel to cross examine the regulator's witnesses).
10. The Panel has drawn no adverse inference as a consequence of the Respondent's absence, applying Kuzmin, R (On the Application Of) v General Medical Council [2019] EWHC 2129 (Admin).
11. The Panel heard oral evidence from the IFoA's Head of Membership, and from the IFoA's case manager, who attested to the truth of their witness statements and verified the communications to Ms Watkin set out fully in the bundle of documents provided to the Panel by the IFoA. This ran to 254 pages (of which the first 106 were details of the communication with Ms Watkin, and the remainder the relevant policies and Codes). The Panel accepted their evidence and documentation as reliable, and found it accurately set out the facts.

### **Charge 1**

*You failed to comply with the requirements of the CPD Scheme 2016/2017 in that you failed to provide evidence of the CPD activities you had completed during the 2016/2017 CPD year when asked to do so.*

12. The Panel found this proved. Emails were sent to Ms Watkin on 07 March 2018, 27 March 2018, 19 April 2018 and 10 May 2018, and then on 01 August 2018 which set out exactly what was required of her, but Ms Watkin did not respond. She was contacted at both work and personal email addresses. Ms Watkin sent an email from her personal address on 07 September 2020, and all the documents were sent to Ms Watkin by the IFoA's case

manager on 08 September 2020. Ms Watkin has not said that they were not received. There was no “bounce back” of emails. The Panel finds that all the emails sent by the IFoA were more likely than not to have been received by Ms Watkin, and she did not respond to them. Ms Watkin failed to supply evidence of the CPD she said she had undertaken in the year to 30 June 2017 (which she should have logged by 31 July 2017, but lodged late, in November 2017).

#### Charge 2

*You did not engage with and/or respond to communications from the Membership Team of the Institute and Faculty of Actuaries on the matter of providing evidence of CPD activities for the 2016/2017 CPD reporting year.*

13. The Panel finds this allegation proved. The IFoA made enormous effort and went to considerable trouble to contact Ms Watkin about the evidence of the CPD for 2016/2017, and she did not respond to any of the frequent communications sent to her. There were multiple emails to her work and personal email addresses, letters in the post, and recorded delivery letters. In addition, the IFoA’s case manager sent text messages and rang Ms Watkin’s mobile number, and left a message with someone who said he was her partner to call her, without success. A tracing agent was employed. As Ms Watkin eventually responded to one email (on 07 September 2020, sent to her personal email address) the Panel finds it more likely than not that she received all the other emails to that email address. She did not say that she had not received emails, and she did not respond to any of them.

#### Charge 3

*You failed to comply with the requirements of the CPD Scheme 2017/2018 in that you failed to demonstrate that you had undertaken the appropriate minimum amount of CPD, or submit a written request for exemption.*

14. The Panel finds this allegation proved. Training had to be logged online for that year. The printout of the record shows that it was not. Ms Watkin does not say that she logged it and that there is some computer failure. It is a simple incontrovertible fact that no training was logged on the IFoA website in that year, and that no request for exemption was submitted.

#### Charge 4

*You failed to co-operate with the investigation of the allegations detailed at paragraphs 1, 2 and/or 3, under the Disciplinary Scheme of the Institute and Faculty of Actuaries, 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.*

15. The Panel finds this proved, for the same reasons as it found charge 2 proved.

#### Charges 5, 6 and 7

*Your actions at paragraph 4 were in breach of Rule 4.15 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 February 2018);*

*Your actions at paragraphs 1, 2, 3 and/or 4 were in breach of the compliance principle of the Actuaries' Code (version 2.0);*

*Your actions at paragraph 4 above were in breach of the compliance principle of the Actuaries' Code (version 3.0).*

16. The Disciplinary Scheme and the Codes are all clear that CPD is compulsory, must be logged and evidence of it must be provided on request. As there was a new version of the Code during the period, this results in two allegations. There is no material difference in the Codes. Allegations 6 and 7 are essentially the same matter. Ms Watkin did not meet the requirements of the Scheme or the Codes in failing to provide details of CPD stated to have been done, not logging CPD for the next year, and in failing to co-operate with the IFoA's requests for her to provide information and to respond to enquiry of her. Accordingly the allegations are found proved.

#### Charge 8

*Your actions, in each and all of the above, constituted misconduct in terms of Rule 4.2 of the Disciplinary Scheme of the Institute and Faculty of Actuaries (effective 1 February 2018).*

17. In considering this matter, the Panel took account of the definition of Misconduct, for the purposes of the Disciplinary and Capacity for Membership Schemes, 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 judgment 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.
18. The Panel found this allegation proved. Failure to comply with CPD, and failing to respond to enquiry from the IFoA is serious. Members of regulated professions are required to comply with their regulatory requirements and to respond to their regulators. It is a consequence of membership that they must do this. Membership of a profession is a privilege and this is part of the concomitant burden. It is reprehensible not to meet that obligation. Members of professions are required to undertake CPD. The public (and the profession) would consider it serious if a professional failed to undertake the required level of CPD, or failed to give details of training they said that they had done.
19. The IFoA permits members facing allegations to cease to be members (other professions do not) but it is a condition of membership of the IFoA (Disciplinary Scheme 4.15 and 4.19) that members accept that they remain liable to action arising from activity as a member even after leaving membership.

## **Sanction:**

20. 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 and to the additional guidance on failures to meet CPD obligations. 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.
21. 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. In so doing it must balance the public interest with the Respondent's own interests. As Ms Watkin's membership has lapsed, the sanctions available to the Panel are limited. The Panel considered proportionality the primary consideration, and the declaration of professional standards and the reputation of the profession.
22. The Panel considered sanctions in ascending order starting with the least severe. The Panel had regard to the following:
  - (1) the seriousness and circumstances of the Misconduct;
  - (2) the purpose for which sanctions are imposed;
  - (3) any aggravating and mitigating factors; and
  - (4) the extent to which the Respondent may have, or may not have, demonstrated insight and/or remorse.
23. In considering sanction, the Panel took into account the following aggravating factors:
  - This was a long period of failure to co-operate with the IFoA.
  - There was a long and repeated failure, when specifically requested to do so, to give evidence of CPD which Ms Watkin claimed to have undertaken, which the Panel regard as more serious than simply failing to log CPD.
  - Ms Watkin's email of 07 September 2020 indicates that her view is that she does not have to answer to her profession's regulator as she allowed her membership to lapse.
24. The Panel also took into account the following factor in mitigation:
  - Ms Watkin has been a member for many years and has no previous disciplinary matter recorded against her.
25. The Panel considered whether this was a case that warranted no sanction, but considered that this was not such a case.
26. The Panel considered whether to impose a Reprimand. That is the least sanction that can be imposed, and is appropriate on its own for cases where, for example, there was a single act, that act was an aberration, where harm is limited, or where there are extensive

mitigating factors, and no sign of a deeper attitudinal problem. The circumstances of this case do not fall within those parameters.

27. The Panel considered whether to impose a fine. The Panel had no information about the means of Ms Watkin, nor any information about her circumstances, because she had decided not to engage with the process. Notwithstanding an absence of information about Ms Watkin's means and circumstances a fine would have been imposed had that been considered the appropriate sanction. Overall, the Panel was concerned about the aggravating factors to the extent that it did not consider a fine to be an adequate sanction.
28. The Panel considered whether to exclude the Respondent from Membership of the IFoA would be disproportionate, or whether it would be the appropriate sanction. The Indicative Sanctions Guidance is that this should be the sanction where, and only where, the Misconduct found proved is of such gravity that the reputation of the profession or the public interest requires that the Member is no longer able to practice or claim membership of the profession. Exclusion is the order where membership has already ceased, but the matter is of the gravity that would have led to expulsion. In deciding whether to exclude a Member a Panel will consider the effect that this may have on Ms Watkin. When making an order that interferes with or terminates the right to practice, a Panel should consider the effect on the income of the Member: here there is none, as Ms Watkin is no longer a member, although it is possible she may wish to seek readmittance.
29. The Panel decided to exclude Ms Watkin from membership for a period of one year. The failure to provide evidence of the extensive CPD Ms Watkin claimed to have carried out in 2016/2017 is serious, as is the prolonged refusal to engage with the IFoA as the professional regulator. Someone excluded from membership who wishes to rejoin the IFoA must make application to the IFoA which must be placed before a Disciplinary Tribunal Panel for approval or refusal. The Panel considered that if Ms Watkin so applied she should be required to explain to a Disciplinary Tribunal Panel what reasons she may have had for her non co-operation, and what reasons she may have had for not giving evidence of the CPD she claimed to have done. The Panel considered that this required an exclusion order. The Panel decided upon a short period of exclusion in order to give Ms Watkin an early opportunity to make such an application for readmission if she wished. The Panel did not consider it proportionate to impose a fine in addition to excluding Ms Watkin.

**Costs:**

30. The IFoA made an application for costs of £4,021.49 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 £4,021.49

**Right to appeal:**

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

**Publication:**

32. Having taken account of the Disciplinary Board's Publication Guidance Policy, 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.