



Institute
and Faculty
of Actuaries

Disciplinary Tribunal Panel Hearing

13 June 2019

Held at

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

Respondent: Wafula Wycliffe Wangamati (formerly FIA)
Present and Represented by John Ohaga,
Triple OK Law Advocates.

Category: Lapsed Member

ARN: 12573

IFoA Case Presenter: Hannah Eales, Counsel, Kingsley Napley,
instructed by the IFoA.

Panel Members: Paul Housego (Chair/Lay Member)
Richard McCullagh, FFA (Actuary Member)
Paul Whitlock, FIA (Actuary Member)

Legal Adviser: James Palmer

Judicial Committees Secretary: Julia Wanless

Charge:

Wafula Wycliffe Wangamati, being at the material time a member of the Institute and Faculty of Actuaries, the charge against you is that:

1. during the 2015/2016 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 2015/2016;
3. your actions at paragraph 1 were in breach of the Integrity principle of the Actuaries' Code (version 2);
4. your actions at paragraph 1 were in breach of the Compliance principle of the Actuaries' Code (version 2).
5. you failed to co-operate with the investigation of the head of charge at paragraph 1, in that you failed to supply documents and/ or further information relating to the subject matter of the investigation requested by the Case Manager in the course of the investigation of the head of charge;
6. your actions at paragraph 5 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);
7. your actions at paragraph 5 were in breach of the Integrity principle of the Actuaries' Code (version 2);
8. your actions at paragraph 5 were in breach of the Compliance principle of the Actuaries' Code (version 2);
9. 9. your actions at paragraph 5 were in breach of the Communication principle of the Actuaries' Code (version 2);
10. during the 2016/2017 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;
11. your actions at paragraph 10 were in breach of Paragraph 1.2 of the Institute and Faculty of Actuaries' CPD Scheme 2016/2017;
 12. your actions at paragraph 10 were in breach of the Integrity principle of the Actuaries' Code (version 2);
 13. your actions at paragraph 10 were in breach of the Compliance principle of the Actuaries' Code (version 2).
 14. 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;
 15. your actions at paragraph 14 were in breach of the Integrity principle of the Actuaries' Code (version 2);
 16. your actions at paragraph 14 were in breach of the Compliance principle of the Actuaries' Code (version 2).
 17. your actions at paragraph 14 were in breach of the Communication principle of the Actuaries' Code (version 2);
 18. you failed to co-operate with the investigation of the heads of charge at paragraphs 10 and 14, in that you failed to supply documents and/ or further information relating to the subject matter of the investigation requested by the Case Manager in the course of the investigation of the head of charge;
 19. your actions at paragraph 18 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);
 20. your actions, in all or any of the above, constituted 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).

Panel's Determination:

1. The Panel found parts 1-2, 4-6, 8, 10-11, 13-14, 16 and 18-20 of the charge proved. The Panel found parts 3, 7, 9, 12, 15 and 17 of the charge not proved.

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

- Reprimand
- Fine of £1,500

2. The Panel declined to order the Respondent to pay costs to the IFoA.

Background:

3. The charges arise as the Respondent did not comply with the CPD schemes for two successive years. The first was 2015/2016 for which the Respondent did not record CPD. When the IFoA wrote to him about this he did not respond and so a further charge of failing to co-operate was laid. The Respondent then did not record CPD for 2016/2017. The IFoA again wrote to him, and again he did not respond, so that he was again charged with failing to cooperate. In the year before 2015/2016, 2014/2015, the Respondent had not complied with the CPD scheme for that year, but as it was his first such failure he was able to submit to a penalty of £750, and did so. The rules provide that this is only likely to be available to members who have not defaulted on the terms of the CPD Scheme in the preceding ten year period, and so this course was not open to the Respondent in respect of either of the two subsequent years. We return to this point.
4. The Respondent says that he was practising before 2015, but on 08 August 2017 was elected to political office in Kenya, after a sustained election campaign, and effectively had ceased to practice in those two years. He says that nevertheless he did undertake sufficient CPD. He accepts that he did not record it as required. He accepts that he did not apply for exemption from the requirements to record CPD. He apologises for not responding to the IFoA. He puts these matters down to his concentration on seeking and obtaining his political office, and poor internet access when campaigning.
5. On 10 January 2018 the Respondent ceased to be a member when his membership lapsed.

Findings of Fact:

6. 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 is more likely than not that the incidents occurred as alleged. There is no requirement for the Respondent to prove anything.
7. The Respondent accepted that he had not applied for exemption from the CPD schemes for the years in question. Although accepting the fact that he had not recorded any CPD in the two years in question he denied all the charges, save one.
8. In reaching its decisions on the various parts of the charge, the Panel took into account the oral and documentary evidence in this case together with the submissions of the IFoA's case presenter and of the Respondent's representative. It sought and accepted the advice of its Legal Adviser. The Panel took account of the oral evidence of the Respondent, and his defence documents. The Panel took into account the evidence of the two witnesses provided by the IFoA. Their evidence was not contentious, and is procedural in the main. However that evidence did reveal that the emails sent to the Respondent were, at the start of the process for each CPD year default, generic. For 2015/2016, on 05 August 2016 the Respondent was told that *"If I do not hear from you by 5pm on 30 September 2016 you will incur a charge of £750"*. On 05 September 2016 he was told that if he had not complied *"you may be offered the option of making payment of a charge of £750 as an alternative to referral"* [to the Disciplinary Scheme]. On 19 September 2016 he was told that as he had paid £750 the previous year this was not open to him. The same thing happened the year afterwards – 04 August 2017, 08 September 2017, and 29 September 2017 which all suggested that he would get a penalty of £750, and not until 30 October 2017 was the Respondent told that he would not be eligible.
9. The facts are not in dispute: the Respondent did not record CPD for the two years 2015/2016 and 2016/2017. He did not respond to the IFOA correspondence about this, and does not deny receiving it.
 - a. The allegations relating to those matters are found proved, in so far as they relate to the facts.

- b. The Panel finds there was a failure to adhere to the Compliance principle because he did not comply with the requirement either to submit CPD records or seek (and obtain) exemption, and he failed to cooperate with his regulator.
- c. The Panel finds that there was no breach of the Communication principle, by reason of failure to communicate with IFoA when it wrote to him. The Panel noted that the Respondent admitted this allegation, but the Communication principle primarily relates to communication about professional work. The mischief in this case is failure to correspond with the regulator, which is fully covered by the Compliance principle.

10. The IFoA asserts that this is Misconduct, and this the Respondent denies. The Panel has taken note of the Disciplinary Scheme which defines misconduct¹, and taken note of case law which indicates that not every breach of every rule is misconduct. There must be a degree of seriousness or moral opprobrium to cause such a rule breach to be categorised as professional misconduct. The CPD Rules are a simple basic requirement and, absent any good reason or extenuating circumstances, it is Misconduct not to adhere to them. The rules about CPD are part of the way an actuary demonstrates professionalism, and the making of the CPD rules are part of the way the IFoA assures the public of the high standards required of members, so to maintain the reputation of the profession, as other members will expect.

11. The Panel accepts that on 08 August 2017 the Respondent was elected as Governor of a County in Kenya, and was doubtless engaged in his election campaign for some time beforehand, and did not practice after his election to that office, nor for some time beforehand. While that was important, the importance (to the Respondent) of that campaign and the importance of the office, and the weight of that office, are not reasons why he could not apply for exemption, or to record the CPD which he says he undertook. By the time the 2016/2017 year was to be recorded the Respondent had already been

¹ The definition of Misconduct in the Disciplinary Scheme 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.

referred to the Disciplinary Scheme both for not recording CPD and for not cooperating with them, but he repeated this course of (in)action.

12. The IFoA accepts that the evidence offered by the Respondent as to training could amount to sufficient CPD for the relevant years. It does not challenge the CPD undertaken, and the qualification of the IFoA is only that relevance is also a condition, and that point is not something addressed by the Respondent. The Panel notes that the charge is not of failing to undertake CPD, but of failing to comply with the requirements of the schemes for the relevant years, and that includes the obligation to record.

13. The Panel also notes that the Respondent had good reason to be confused about 2015/2016 by reason of the emails (above) relating to the imposition or option of a £750 charge. He received similar emails for 2016/2017. However the dates he was referred under the Disciplinary Scheme were:

- a. 12 December 2016 for CPD 2015/2016 (sent 31 January 2016);
- b. 26 June 2017 for non co-operation for 2015/2016 (sent 29 June 2017);
- c. 27 November 2017 for CPD 2016/2017 (sent 19 December 2017);
- d. 17 April 2018 for non co-operation 2016/2017 (sent 08 May 2018).

14. This shows that by the time there was any issue with the 2016/2017 CPD recording the Respondent knew that he had been referred for disciplinary action for the previous year, yet he did not record CPD for the year 2016/2017, nor did he correspond with the IFoA.

15. The Respondent puts forward his circumstances:

- a. He was not in practice from about 2015 onwards because he was campaigning for election as governor of one of the counties of Kenya.
- b. He was campaigning full time, and it was very time absorbing and was the focus of his attention.
- c. He was out of internet coverage for much of the time (meaning that while his emails would arrive they would arrive in bulk).
- d. He actually undertook CPD even though not practising.

16. It is not a difficult exercise to record CPD, and is done on line. The Respondent could have recorded these training events at any time. It is, on his own evidence, no more than 2 hours work a year. He was not out of internet coverage the whole time. On occasion (eg 27 April 2017) his firm's human resources team promised a reply, and will certainly have told him (the Respondent did not deny this) yet he still failed to deal with matters. He was able to send emails. He was receiving emails.
17. The Respondent proffers no reasons for not recording which in the Panel's judgment fall within the range of exceptional circumstances which could mean that the failure was not Misconduct. That CPD was actually undertaken is relevant to mitigation. Doubtless he was fully engaged in his political campaign, but being busy is not good reason to neglect professional obligations.
18. The Panel finds this was Misconduct: this was a third successive year of failing to record CPD and two years of failing to cooperate with the regulator. This meets the tests required.
19. The IFoA asserts that this failure included a lack of integrity. Integrity is to show steady adherence to a moral or ethical code. The Respondent did not adhere to the professional code of the IFoA by failing to comply with the CPD schemes for 2 successive years, having also failed to do the year before, and he did not respond to the IFoA as he was obliged to do by the rules of the IFoA by which he was, as a member, bound. However these were rule breaches of omission not commission. Not every rule breach involves lack of integrity. A lack of integrity requires there to be something untrustworthy about the professional. Further, not every breach of a rule is misconduct: it must be a serious falling short or attract moral opprobrium. If every breach of a rule is lack of integrity all rule breaches are misconduct, and that is not the case. More, if every rule breach is a lack of integrity then every sanction would have to be serious, and that is not the case. These failures were Misconduct as defined in the rules, but there is not the something more required to elevate them into a matter of lack of integrity.
20. Accordingly the Panel makes the following findings for the reasons given above:
1. during the 2015/2016 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;

Proved.

2. your actions at paragraph 1 were in breach of Paragraph 1.2 of the Institute and Faculty of Actuaries' CPD Scheme 2015/2016;

Proved

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

Not proved

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

Proved

5. you failed to co-operate with the investigation of the head of charge at paragraph 1, in that you failed to supply documents and/ or further information relating to the subject matter of the investigation requested by the Case Manager in the course of the investigation of the head of charge;

Proved

6. your actions at paragraph 5 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);

Proved

7. your actions at paragraph 5 were in breach of the Integrity principle of the Actuaries' Code (version 2);

Not Proved

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

Proved

9. 9. your actions at paragraph 5 were in breach of the Communication principle of the Actuaries' Code (version 2);

Not proved

10. during the 2016/2017 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;

Proved

- 11. your actions at paragraph 10 were in breach of Paragraph 1.2 of the Institute and Faculty of Actuaries' CPD Scheme 2016/2017;

Proved

- 12. your actions at paragraph 10 were in breach of the Integrity principle of the Actuaries' Code (version 2);

Not Proved

- 13. your actions at paragraph 10 were in breach of the Compliance principle of the Actuaries' Code (version 2).

Proved

- 14. 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;

Proved

- 15. your actions at paragraph 14 were in breach of the Integrity principle of the Actuaries' Code (version 2);

Not Proved

- 16. your actions at paragraph 14 were in breach of the Compliance principle of the Actuaries' Code (version 2).

Proved

- 17. your actions at paragraph 14 were in breach of the Communication principle of the Actuaries' Code (version 2);

Not proved

- 18. you failed to co-operate with the investigation of the heads of charge at paragraphs 10 and 14, in that you failed to supply documents and/ or further information relating

to the subject matter of the investigation requested by the Case Manager in the course of the investigation of the head of charge;

Proved

19. your actions at paragraph 18 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);

Proved

20. your actions, in all or any of the above, constituted 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).

Proved

Sanction:

13. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter and the Respondent's Legal Representative. The Panel considered the advice of the Legal Adviser. The Panel also had careful 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 while paying heed to the Indicative Sanctions Guidance the Panel is not bound by it.
14. The Panel notes 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.
15. The Panel took into account mitigating and aggravating factors, set out below. The Respondent had not demonstrated great insight or remorse, as while accepting the underlying facts (which are not capable of being denied) he considered that he had mitigating circumstances, to which he gave greater weight than the Panel was able to accept.
16. In considering sanction, the Panel took into account the following aggravating factors:

- The Respondent had failed for 3 successive years to comply with CPD requirements.
- The failure to co-operate was over an extended period.

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

- The Respondent had undertaken CPD in the years in question.
- The Respondent had a blemish free record until 2014/15.
- The Respondent is in political office, (and though a lapsed member) championing in Kenya high professional actuarial and ethical standards.

18. The Panel did not consider this to be a case which warranted no sanction. Where Misconduct is found this is unusual. It would not be consistent to impose no sanction for the second and third years of failure to record CPD, coupled with failing to co-operate when for the first year of failure there was a penalty of £750. It would also send the wrong message to the profession, and be inconsistent with the need to maintain the reputation of the profession.

19. The Panel considered whether to impose a Reprimand, and decided this was an appropriate and proportionate sanction for this particular Respondent. This was a first disciplinary offence, and a finding of Misconduct (particularly for someone in public office) is itself a significant detriment. The Misconduct is appropriately marked by the Reprimand.

20. The Panel considered whether also to impose a Fine, and decided to do so because of the failure to co-operate with the IFoA when it was writing to the Respondent about the CPD failure. It is inappropriate for any member to ignore his or her professional regulator. Being busy or having ceased to practise does not make that acceptable. The Panel considered that the appropriate fine was £1,500, and the fine could not be less, because the administrative penalty for a first occasion is £750, and there were 2 years of failure to record in the Misconduct found proved.

21. The Panel did not consider that the power to impose a period of education, training or supervised practice was relevant. The charges did not relate to practice.

22. The Panel considered the powers to impose a period of suspension or the withdrawal of a Practising Certificate inapposite as the Respondent has ceased to be a member.

23. The Panel considered exclusion of the Respondent from Membership of the IFoA would be disproportionate.

Costs:

24. The IFoA made an application for costs 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. However the Panel decided that it was inappropriate to award costs to the IFoA for the following reasons:

- a. The sanction imposed by the Panel was less than was proposed by the Adjudication Panel for the matters raised in respect of the first CPD year (of which the Panel did not know when deciding upon sanction), and
- b. The Respondent admitted all the facts, but had no option but to defend the allegations in respect of lack of integrity. The Adjudication Panel had also required the Respondent to accept a lack of integrity, and so the Respondent is not to be criticised for declining the offer of a reprimand and a fine of £2,000. He had no option but to attend in respect of the second CPD year as he was referred to the Panel by the Adjudication Panel. The allegation of lack of integrity was not one that could have been made out, for the reasons given above. The appellant has always accepted all the material facts, and accepted culpability for at least some of the matters put before the Panel, and
- c. The Respondent will have incurred his own costs in defending the charge of a lack of integrity which was not proved.

Right to appeal:

25. 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:

26. 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.