



**Disciplinary Tribunal Panel Hearing**

**21 – 22 January 2019**

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

<b>Respondents:</b>	Mr Varun Bhatt – Not present and not represented in absence Mr Neeraj Sharma – Not present and not represented in absence Ms Roopal Shard – Not present and not represented in absence
<b>Category:</b>	All Student members
<b>ARN:</b>	9052790 9052024 9297150
<b>IFoA Case Presenter:</b>	Hannah Eales, Counsel, Kingsley Napley, instructed by the IFoA
<b>Panel Members:</b>	Bryan Chalmers (Chair/Actuary member) Janet Moss (Actuary member) Rick Tompkins (Lay member)
<b>Legal Adviser:</b>	James Stythe
<b>Interim Judicial Committees Secretary:</b>	Jo Grant

**Charges:**

**Roopal Shard**, being at the material time a student member of the Institute and Faculty of Actuaries:

1. During the Institute and Faculty of Actuaries' CA2 Online Examination on 4/5 April 2017 you:
  - (a) gave and/or received unauthorised assistance by discussing the examination paper and/or sharing your answers with (an)other candidate(s);
  - (b) knew or ought to have known that your actions at paragraph 1a would allow (an)other candidate(s) to submit to the Institute and Faculty of Actuaries an examination paper which was not entirely their own work;
  - (c) submitted to the Institute and Faculty of Actuaries an examination paper which was not entirely your own work;
2. Your actions at paragraph 1(a) and/or (b) and/or (c) were in breach of Paragraph 9 of the Institute and Faculty of Actuaries' Exam Regulations Fellowship and Associateship;
3. Your actions at paragraph 1 were dishonest;
4. Your actions at paragraph 1 were in breach of the Integrity principle of the Actuaries' Code (version 2);
5. Your actions at paragraph 1 were in breach of the Compliance principle of the Actuaries' Code (version 2).
6. Your actions, in each and all 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).

**Varun Bhatt**, being at the material time a student member of the Institute and Faculty of Actuaries:

1. During the Institute and Faculty of Actuaries' CA2 Online Examination on 4/5 April 2017 you:
  - (a) gave and/or received unauthorised assistance by discussing the examination paper and/or sharing your answers with (an)other candidate(s);
  - (b) knew or ought to have known that your actions at paragraph 1a would allow (an)other candidate(s) to submit to the Institute and Faculty of Actuaries an examination paper which was not entirely their own work;
  - (c) submitted to the Institute and Faculty of Actuaries an examination paper which was not entirely your own work;
2. Your actions at paragraph 1(a) and/or (b) and/or (c) were in breach of Paragraph 9 of the Institute and Faculty of Actuaries' Exam Regulations Fellowship and Associateship;
3. Your actions at paragraph 1 were dishonest;

4. Your actions at paragraph 1 were in breach of the Integrity principle of the Actuaries' Code (version 2);
5. Your actions at paragraph 1 were in breach of the Compliance principle of the Actuaries' Code (version 2).
6. Your actions, in each and all 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).

**Neeraj Sharma**, being at the material time a student member of the Institute and Faculty of Actuaries:

1. During the Institute and Faculty of Actuaries' CA2 Online Examination on 4/5 April 2017 you:
  - (a) gave and/or received unauthorised assistance by discussing the examination paper and/or sharing your answers with (an)other candidate(s);
  - (b) knew or ought to have known that your actions at paragraph 1a would allow (an)other candidate(s) to submit to the Institute and Faculty of Actuaries an examination paper which was not entirely their own work;
  - (c) submitted to the Institute and Faculty of Actuaries an examination paper which was not entirely your own work;
2. Your actions at paragraph 1(a) and/or (b) and/or (c) were in breach of Paragraph 9 of the Institute and Faculty of Actuaries' Exam Regulations Fellowship and Associateship;
3. Your actions at paragraph 1 were dishonest;
4. Your actions at paragraph 1 were in breach of the Integrity principle of the Actuaries' Code (version 2);
5. Your actions at paragraph 1 were in breach of the Compliance principle of the Actuaries' Code (version 2).
6. Your actions, in each and all 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).

**Service of Charges:**

1. The Respondents were not present and were not represented in their 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 Disciplinary Scheme of the IFoA (effective 1 August 2010, as amended 18 October 2012, 1 June 2016) (the Disciplinary Scheme).

**Proceeding in the Absence of the Respondents:**

2. In considering whether to exercise its discretion to proceed in the absence of the Respondents, the Panel had regard to the submissions of the IFoA's Case Presenter.

The Panel also took account of various email correspondence between the Respondents and the IFoA's Judicial Committees Secretary in which they clearly indicated that they were aware of the dates and times of the Disciplinary Tribunal Panel hearing but would not be in attendance. The Panel also considered the advice of the Legal Adviser who referred the Panel to the cases of R v Hayward 2001 and R v Jones 2003 and also advised that no adverse inference may be drawn against the Respondents as a result of their voluntary absence from the proceedings.

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 found that the Respondents were all voluntarily absent from the proceedings and they were not requesting an adjournment of the proceedings in order to attend at a later date, indeed indicating that they would not attend in any event. The Panel also took into account that there were witnesses in attendance to give evidence and that any further delay may adversely affect the overall interests of justice, particularly bearing in mind that the alleged misconduct took place almost two years ago. In the circumstances, the Panel determined that it was in the public interest in the expeditious disposal of the case and the Respondents' own interests to proceed in their absence. Although the Respondents had indicated that they did not intend to attend the Disciplinary Tribunal hearing, the Panel nevertheless considered it to be expedient to continue with the arranged Skype facilities to allow their participation in case of a last minute change of mind by any of them and accordingly this was provided.

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

4. The Panel found parts 1 to 6 of the Charges (all Charges) against each Respondent proved.
5. The Panel determined that the most appropriate and proportionate sanction in the case of each Respondent was expulsion from IFoA membership for two years.
6. The Panel also ordered each Respondent to pay to the IFoA costs of £500.00.

#### **Background:**

7. The Respondents are all Student Members of the IFoA, as they were on the date of the misconduct alleged. The Respondents sat the CA2 examination at their office in India on 4 and 5 April 2017. The exam is an online practical examination, taken over two consecutive days which members of the IFoA must pass to become a Fellow or an Associate.
8. Candidates are advised of the rules before sitting the exam. These include that by submitting their files they are confirming that all the material is entirely the candidate's work, that the content of the exam paper is confidential and that exam materials must not be disclosed or discussed with others.
9. On 4 May 2017 the IFoA markers identified evidence of possible collusion between the three Respondents because of strong similarities between their exam scripts.
10. Having been alerted by the IFoA markers, Liz Harriman, Head of Assessment for the IFoA emailed each of the Respondents on 5 June 2017 in which she said that she was reviewing exam scripts from the April CA2 sitting and that it had been noted that there

were similarities between certain scripts. She asked each Respondent to comment in order to clarify the situation.

11. Mr Bhatt responded by email dated 7 June 2017 saying that all of the work he submitted was his own and he did not share it with or provide support to anyone else. In subsequent correspondence Mr Bhatt stated that he was alone throughout the exam and did not communicate with anyone else. He said that he sat the exam at his workplace and that any similarities within the exam papers were purely coincidental.
12. Mr Sharma responded to Liz Harriman's email on 5 June 2017 stating that his exam submissions were "solely prepared by me independently... any resemblances to any other scripts or past exam papers is purely coincidental". On 29 October 2017 Mr Sharma provided a substantive response to the allegation of collusion, in which he denied it completely.
13. Miss Shard responded to Liz Harriman by email on 6 June 2017 in which she said she was puzzled by the similarities alleged and that they were purely coincidental, adding that she sat the exam in her office and that nobody else was present.
14. On 27 September 2017, following further investigation all three Respondents were informed by email of the allegations of misconduct against them by Catherine Mouat of the IFoA.
15. On 9 November 2017 Ms Kirsten Mavor of the IFoA emailed each of the Respondents a comparison table setting out their answers to the material parts of the CA2 exam paper particularizing the near identical answers from each Respondent, giving rise to the allegations against them.
16. On 19 November 2017, having received the further information concerning the allegations from Ms Kirsten Mavor of the IFoA referred to in paragraph 15 (above) Miss Shard stated in an email that during the exam Messrs Bhatt and Sharma had approached her to assist them with a few points on which they were stuck and to which they could not find answers, and that she assisted them with them. She stated that she did not think they would copy her entire answer.
17. On 9 September 2018 Mr Sharma submitted a "Statement of agreed facts and allegations" to the IFoA disputing all the charges. On 13 September 2018 Mr Bhatt submitted the same document to the IFoA also disputing all charges and on the 20 October 2018 Miss Shard submitted the same document in which she admitted all charges except 1(c), (submission of exam paper which was not entirely her own work) and 6 (that her actions constituted misconduct), both of which she disputed.
18. On 9 and 13 September 2018 respectively Messrs Sharma and Bhatt also submitted to the IFoA statements in which they repeated, in some detail, their denials of all allegations against them.
19. On 14 November 2018 the IFoA conducted a case management hearing by telephone to apply for joinder of the charges against the three Respondents. Miss Shard attended unrepresented and did not contest joinder. Messrs Bhatt and Sharma attended, represented by their solicitor, Mr Singh, who on their instructions, opposed joinder. The Disciplinary Tribunal Panel, hearing the application, granted the application for joinder.

## Findings:

20. In reaching its findings the Panel considered the advice of the Legal Adviser throughout but in particular regarding the burden of proof, which lies with the IFoA throughout, the standard of proof, namely the civil standard, being the balance of probabilities and the law relating to a number of issues specifically relevant in this case. Those issues included, in particular, the current legal authorities respectively regarding the definition of dishonesty, *Ivey v Genting Casinos (2017) UKSC* and integrity, *Hoodless & Another (2003) UKFSM*, and *Wingate and Evans v SRA (2018) EWCA*.
21. The Panel heard submissions from the IFoA and oral evidence from a number of witnesses called by the IFoA, namely Ms Kirsten Mavor, Ms Lidia Gomez and Mr Colin Thores each of whom had also provided written statements of evidence within the case bundle. The Panel found these witnesses credible and reliable.
22. The Panel also considered a large number of documentary exhibits in the case bundle, the statements provided by the Respondents and written submissions on their behalf from their solicitor, Mr Singh and the statements of the witnesses Messrs Shriv Pratap dated 15 October 2018 and Rajeev Kumar dated 18 October 2018. The Panel also took into account the partial admission by Ms Shard that she had assisted Messrs Bhatt and Sharma with certain matters on which they said they were "stuck". The Panel noted that she nevertheless disputed submission of a paper which was not entirely her own work and that her actions amounted to misconduct.
23. The Panel considered whether the facts found proved 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.
24. The charges are the same for all three Respondents. The Panel's findings are the same for all three Respondents.
25. The charges and findings in the case of each Respondent, Varun Bhatt, Neeraj Sharma and Roopal Shard are as follows:-

The Panel determined that the IFoA had presented evidence to the required standard that proved all elements of the Charge against each Respondent and that his/her actions constituted Misconduct in terms of Rule 1.6 of the Disciplinary Scheme, for the following reasons:-

**Charge 1 (a)** As evidenced by witnesses called by the IFoA, the answers to the "Results", "Conclusions" and "Next steps" sections in all three Respondents' papers were virtually identical, showing strong evidence of collusion, which the Panel accordingly finds proved to the required standard. Such collusion constitutes cheating and is in contravention of the IFoA's regulations. The regulation that was breached was paragraph 9 of the IFoA Exam Regulation Fellowship and Associateship.

**Charge 1 (b)** The facts giving rise to Charge 1 (b) are as stated in 1 (a) above, that is to say that the Respondents colluded with one another during the completion of their CA2 exam papers, and the Panel finds that the Respondents must have known or ought to have known that such conduct would enable each other to submit examination papers which were not entirely their own work. Such conduct, in the knowledge that it was

facilitating the submission or could facilitate the submission of papers which were not the Respondent's own work, was clearly in breach of the applicable regulations, namely paragraph 9 of the IFoA Exam Regulation Fellowship and Associateship. In addition, the Respondents, by their conduct, were in breach of their certifications in relation to the CA2 VLE Procedure Notes, under which they stated that their assignments were entirely their own work.

**Charge 1 (c)** Having colluded with each other in the compilation of their exam papers as found above the Panel finds that each Respondent went on to submit a CA2 examination answer paper which was not entirely his or her own work. Such conduct is in breach of the regulations referred to above.

**Charge 2.** Having found the charges referred to in 1(a), 1(b) and 1(c) proved, the Panel concluded that the Respondents were each in breach of paragraph 9 of the IFoA Examination Regulation Fellowship and Associateship which states, inter alia:- "Examples of misconduct include: The giving or receiving of unauthorised assistance of any kind during the assessment. Looking at or copying from another candidate's paper".

**Charge 3.** The Panel finds that in giving and/or receiving unauthorised assistance in the CA2 exam and by submitting exam papers which were purportedly entirely their own work, whilst knowing this not to be true, the Respondents were dishonest in accordance with the standards of ordinary decent people.

**Charge 4.** Because of the nature of their actions and their status as members of a respected profession carrying its own ethical obligations, the Panel finds that each of the Respondents' actions referred to in Charge 1 above were in breach of the integrity principle of the Actuaries' Code, version 2, which requires members to act honestly and with the highest standards of integrity.

**Charge 5.** The Panel finds that in contravening the regulations referred to above, each of the Respondents' actions were in breach of the compliance principle of the Actuaries' Code, version 2, requiring members to "comply with all relevant, legal, regulatory and professional requirements... and... challenge non-compliance by others".

**Charge 6.** The actions referred to in charges 1 to 5 above in respect of all three Respondents constituted misconduct under rule 1.6 of the Disciplinary Scheme of the IFoA, namely failure to comply with the standards of behaviour, integrity or professional judgment which other members or the public might reasonably expect of a member.

#### **Sanction:**

26. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter and the written submissions of the Respondents and the legal representative for Messrs Bhatt and Sharma. The Panel also considered the advice of the Legal Adviser and had careful regard to the IFoA's Indicative Sanctions Guidance (August 2016). The Panel bore in mind 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 was mindful of the necessity to achieve those objectives, balanced by the needs and interests of the Respondents in imposing any sanction or combination of sanctions.
27. The Panel took into account the following aggravating factors:

- The evident collaboration to cheat,
  - The reluctance to admit wrongdoing,
  - The level of dishonesty and lack of integrity involved,
  - The lack of remorse or insight shown by all Respondents.
28. The Panel also took into account Miss Shard's late submission of partial admission and apology as a potential mitigating factor. The Panel considered this to be rather late in the day and it was only forthcoming when she was presented with overwhelming evidence of collusion. The Panel did not accept everything that Miss Shard said by way of explanation, however.
29. Having determined that this was not an exceptional case such that no sanction should be applicable, and in accordance with the Indicative Sanctions Guidance, the Panel first considered the lowest available sanction, reprimand, and other lesser sanctions but concluded that this instance of misconduct was serious enough in the case of each Respondent to warrant a period of expulsion from membership of the IFoA and the Panel therefore imposed the following sanction upon each Respondent:-
- Expulsion from membership of the IFoA for 2 years.

**Costs:**

30. The IFoA made an application for costs of £43,411.68 incurred in these proceedings, including preparation for the hearing, attendance by the IFoA's Case Presenter, administrative costs, room hire, Skype costs and costs for the Panel and stenographers.
31. The Panel noted that Miss Shard was currently unemployed and that Mr Bhatt and Mr Sharma had indicated in the course of correspondence concerning the costs of these proceedings that being employed in the Indian economy their means were extremely limited. The Panel therefore ordered each respondent to make a nominal contribution towards IFoA costs of £500.00.

**Effective Date:**

32. This determination takes effect as from 22 January 2019.

**Right to appeal:**

33. The Respondents have 28 days following receipt of this written determination in which to appeal the Panel's decision.

**Publication:**

34. 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*.

This concludes the determination.

**Date of Publication:** 13 February 2019