Adjudication Panel Meeting

18 & 23 June 2021

Held by Video Conference

Respondent:	Mr Priyesh Bamania FIA
Category:	Fellow since 31 December 2016
Region:	London, UK
Panel Members:	Jules Griffiths (Chair) Simon Head FIA (Actuary member) Tim Harris FIA (Actuary member)
Legal Adviser:	Graeme Watson (Legal Adviser)
Judicial Committees Secretary:	Julia Wanless

Allegation:

The allegations against the Respondent are:

A1 while working his notice period for Company A, he sent and/or attempted to send confidential and/or commercially sensitive information held by Company A to his personal email address;

A2 while working his notice period for Company A, he downloaded and/or attempted to download confidential and/or commercially sensitive information held by Company A to one or more data storage devices;

A3 he intended to use the confidential and/or commercially sensitive information in A1 and/or A2 for purposes which were not related to his employment with Company A;

A4 his actions at paragraphs A1, A2 and/or A3 were in breach of Company A's:

A4.1 information security policy;

A4.2 data protection policy;

A5 his actions at paragraphs A1, A2, A3 and/or A4 were in breach of the principle of integrity in the Actuaries' Code (version 3.0);

A6 his actions at paragraphs A1, A2, A3 and/or A4 were in breach of the principle of compliance in the Actuaries' Code (version 3.0);

A7 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, in particular with regard to the process to be followed and the interpretation of the Actuaries' Code and supporting guidance.

For the reasons given below, the Panel determined that the Case Report disclosed a *prima facie* case of Misconduct.

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

Reprimand and Fine in the sum of £1,500 to be paid within 28 days of the Respondent's acceptance of the Panel's invitation

Background:

The allegations against the Respondent arise from his actions between 24 August 2020 when he accepted a position at Company B, subsequently resigning from his role as Investment Adviser at Company A, and 23 October 2020 when his employment at Company A was terminated after an internal investigation.

In November 2020, Company A referred these matters to the IFoA, as it was felt that they appeared to constitute Misconduct. Subsequently Company A provided additional information to the IFoA to assist with the investigation, but they were unable to provide detailed records to support the allegations, as they felt bound by their confidentiality obligations to clients and their own data protection obligations, as well as maintaining the confidentiality of internal policy documents and commercially sensitive information.

The Respondent accepts that during this period he:

- sent confidential and commercially sensitive information to his personal email account,
- attempted to send himself client information (this transfer was blocked);
- used a USB device intending to upload personal photos and videos to share with work colleagues (this did not proceed as data uploading was blocked);
- during the internal investigation, used USB devices to copy sensitive material he had sent to his personal email, and then deleted the material from his personal email.

He admits that, with hindsight, these actions breached his employer's information security and data protection policies, and the compliance principle of the Actuaries Code.

He disputes the allegation that he intended to use the information he sent, or attempted to send, in his new role in Company B. He disputes that his actions amount to a lack of integrity and disputes that they amounted to misconduct.

The Respondent has co-operated with the IFoA's investigation and provided an explanation for his actions. At an early stage of the IFoA's investigation he expressed regret for his actions.

The Panel noted that the Respondent had pro-actively notified Company B as soon as Company A decided to terminate his employment, and as a result Company B withdrew their job offer.

Decision and Reasons on the Allegations:

Allegation A1. While working his notice period for Company A, he sent and/or attempted to send confidential and/or commercially sensitive information held by Company A to his personal email address

The Respondent has accepted that he acted as alleged, and therefore the Panel found there was a real prospect that the allegation would be proved.

Allegation A2. While working his notice period for Company A, he downloaded and/or attempted to download confidential and/or commercially sensitive information held by Company A to one or more data storage devices

The Panel understands that this allegation relates to the Respondent's actions during an internal investigation by his employer, who had detected the material he had sent, or attempted to send, to his personal email address. As part of the investigation, which involved external forensic experts, the Respondent was asked not to delete, or access, the material in his personal email account.

During the IFoA investigation, the Respondent admitted that he copied papers from his personal email account to USBs and then deleted them from his email account. He explained that he did this so that he could continue using his personal email account and avoid an extremely uncomfortable situation.

Based on the Respondent's own account, the Panel found there was a real prospect that the allegation would be proved.

Allegation A3. He intended to use the confidential and/or commercially sensitive information in A1 and/or A2 for purposes which were not related to his employment with Company A

Having found there were real prospects that Allegation A1 and A2 would be proved the Panel turned to the question of the Respondent's intentions in sending or downloading the material.

In reviewing the circumstances of Allegation A1, the Panel noted that the Respondent does not dispute Company A's account that between 24 August and 24 September 2020, he sent 24 emails to his personal email address, including details of the firm's digital developments (including competitive position and priorities), manager research and template documents, client specific investment advice, and information on specific fee deals for various investment managers. He explained that this was material which he intended to read during the last three months of his employment, to refresh his memory before starting his new role. He states that he did not intend to keep these documents after his last day of employment at Company A. The Panel considered that was not a satisfactory explanation for why the material needed to be sent from a work account to a personal account. If the intention was to access it only until the end of his notice period, that could have been done from his work account, using his work laptop during this period.

The Panel also found the Respondent's explanation for the second part of Allegation A1 unsatisfactory. The Respondent does not dispute that he attempted to send a client list to himself, but was unable to do so as the email was blocked. The Panel noted that Company A describe this more broadly, reporting that is contained details of ex-colleagues, as well as names, email addresses and positions held of clients and prospects. The Respondent explains that he intended to start saying goodbyes to his clients and keep in touch for networking purposes. None of that explains why he decided to send the information to his personal account. In the Panel's experience, it would be highly unusual for an employee to use a personal email address to contact clients instead of using a company account to announce their departure, and if appropriate arrangements for their replacement.

With regard to Allegation A2, the Panel noted that Company A had informed the IFoA that the material downloaded by the Respondent amounted to 167 documents. It was not clear whether the Respondent accepted this number, or the summary of the contents of those documents. The Panel also noted that the Respondent had subsequently provided these USBs and all his personal devices to Company A's investigators, but it is unclear when, and how, the use of the USBs was revealed or disclosed. Nevertheless, the Panel concluded

that the Respondent's explanation for transferring material from his personal account to an external storage device was unconvincing; if he had been concerned about accessing it when instructed not to, he could simply have transferred it to a separate folder rather than a USB.

Having explored the Respondent's explanations for his actions, the Panel concluded that there was a *prima facie* case that he intended to use the material he downloaded in August/September, the client list, and the material he transferred to external storage for his own purposes.

The Panel therefore concluded that there were real prospects that Allegation A3 would be proved.

Allegation A4: his actions at paragraphs A1, A2 and/or A3 were in breach of Company A's:

A4.1 information security policy;

A4.2 data protection policy;

The Respondent has accepted that he acted as alleged, and therefore the Panel found there was a real prospect that the allegation would be proved.

Allegation A5: his actions at paragraphs A1, A2, A3 and/or A4 were in breach of the principle of integrity in the Actuaries' Code (version 3.0);

The Panel referred to the Actuaries' Code and the Guidance to support the principles and amplifications in the Actuaries' Code (V1 April 2019). The Panel noted, in particular, that section 3.3 of the Guidance expands on the requirement for members to act with integrity, and explains that acting with integrity will "generally mean being straightforward and honest in your professional and business relationships and dealing fairly with those around you." Section 3.9 expands on the duty to respect confidentiality, saying "users and the general public are entitled to expect that sensitive information will not be misused, treated carelessly or, other than in exceptional circumstances, shared without permission". It goes on to highlight examples of confidential and commercially sensitive information.

The Panel was satisfied that, by saving, or attempting to save, confidential and commercially sensitive information, with the intention of using it for his own purposes, there were real prospects of proving the Respondent had acted without integrity.

Allegation A6: his actions at paragraphs A1, A2, A3 and/or A4 were in breach of the principle of compliance in the Actuaries' Code (version 3.0);

The Panel noted that the Respondent has accepted that his actions breached his employer's internal Information Security and Data Protection policies.

The Panel reminded itself of the provisions of the Actuaries Code and also referred to the Guidance to support the principles and amplifications in the Actuaries'; Code (V1 April 2019).

After careful consideration, the Panel concluded that the Respondent's actions described in the allegations above did not, *prima facie,* amount to a breach of "a legal, regulatory or professional requirement", and therefore decided that the Case Report did not support this allegation.

Decision and Reasons on Misconduct:

The Panel then considered whether there was a *prima facie* case that the Respondent's actions, as described in Allegations A1 to A5 above, 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.

In considering Misconduct, the Panel acknowledge that the Respondent has provided explanations for his actions, but accepts that his actions could and should have been different. He considers his actions to be an error of judgement. The Panel also acknowledge that the Respondent was remorseful. But, having established that the evidence in the Case Report could support the findings that his actions were deliberate and amounted to a lack of integrity, the Panel concluded that the Respondent's actions fell seriously below the standards that other Members and the public were entitled to expect.

The Panel therefore determined that there was a *prima facie* case that the Respondent's actions were 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 (January 2020). 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 accepted that this case did not involve any criminal matters, nor allegations of dishonesty. The Respondent had a clean disciplinary record. Actual harm was limited as the employer had effective detection systems in place. The Respondent has co-operated with the investigation, has expressed regret and been open about his actions, not only with the IFoA but with both Company A and Company B as well. The Panel considered the risk of repetition to be low. The Panel also acknowledge that his actions had serious personal consequences as his new employer withdrew their job offer.

However, in addition to the mitigation above, the Panel identified some aggravating factors. The Panel noted that the Respondent was directly responsible for his actions, which were deliberate and self-serving, and had the potential to cause reputational damage, both to the profession and his employer. In addition to the breach of the principle of integrity, these made the Misconduct more serious.

The Panel considered whether no sanction was appropriate. It concluded that this was not the case. The panel also concluded that a period of education, training or supervised practice, would not be appropriate in this case as the Respondent had understood the error of his actions and in any event is not currently employed as an Actuary.

The Panel concluded a Reprimand would be appropriate, but that a Reprimand alone would not be sufficient to mark the seriousness of the Misconduct.

The Panel moved on to consider a Fine. Taking account of the mitigating and aggravating factors identified, the Panel first settled on a figure of £5,000, which was agreed to be appropriate to the Misconduct. The Panel then reviewed information provided about the Respondent's personal circumstances, and decided that, taking account of the financial information provided, the fine should be reduced to £1,500.

As required by the Indicative Sanctions Guidance, the Panel moved on to consider whether a more onerous sanction would be justified and concluded that it was not.

Publication:

Having taken account of the Disciplinary Board's Publication Guidance Policy (May 2019), 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 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.