



Institute
and Faculty
of Actuaries

Disciplinary Tribunal Panel Hearing

12 & 15 December 2023

Institute and Faculty of Actuaries Online Hearing

Respondent:	Antony P Barker Present and not represented
Category:	Lapsed member
Region:	UK
IFoA Case Presenter:	Ayanna Nelson, Barrister, instructed by the IFoA.
Panel Members:	Stephanie Bown (Chair/Lay member) David Lane FIA (Actuary member) Pradeep Khuti (Lay member)
Legal Adviser:	Alan Dewar KC
Judicial Committees Secretary:	Julia Wanless

Charge:

Antony P Barker being at the material time a member of the Institute and Faculty of Actuaries, the charge against you is that:

1. On or around November 2015 you charged expenses of approximately £420.87 to your employer relating to you and Person A's travel and accommodation costs when it was not appropriate to do so
2. Your actions at paragraph 1 were dishonest
3. On or around 30 April 2016 you charged £807.99 to your Company A credit card for a family holiday to Center Parcs in May 2016 when it was not appropriate to do so
4. You did not reimburse Company A the full amount charged at paragraph 3
5. Your actions at paragraphs 3 and/or 4 were dishonest.
6. On or around May 2016 you extended a business trip in Switzerland for personal reasons to attend a football match
7. As a result of your actions at paragraph 6, you incurred an additional cost of approximately £1,212 to your employer when it was not appropriate to do so
8. Your actions at paragraph 7 were dishonest
9. On or around August 2016 you instructed the reimbursement of travel expenses to South Africa of £5,576.68 from Company C into your personal bank account
10. On or around August 2016 you instructed the reimbursement of travel expenses to South Africa of £2,699.76 from Company C into your personal bank account
11. You knew that the reimbursement of flight costs at paragraphs 9 and/or 10 should not

have been paid to your personal bank account as they were due to your employer

12. Your actions at paragraphs 9 and/or 10 were dishonest by reason of paragraph 11
13. Your actions, in all or any of the above, were in breach of the Integrity principle of the Actuaries' Code (version 2.0) in that you failed to act honestly and/or with integrity.
14. Your 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 June 2021).

Preliminary matters and Plea:

1. The Respondent attended the hearing and was not represented.

Following preliminary discussions between the Respondent, the Legal Adviser and the Case Presenter, the Case Presenter informed the Panel that:

- the Respondent had informed her and the Legal Adviser that he had decided not to download the IFoA bundle and had no intention to do so.
- the Respondent had informed her and the Legal Adviser that he had not read any of the documents in the IFoA bundle and therefore had little if any knowledge of the content of the IFoA case against him save as to the questions asked of him by the IFoA during the investigation and his responses.
- the Respondent understood the difficulties that he would have in responding to the documentary evidence relied on by the IFoA.

The Respondent produced a witness statement from his former PA which he wished to adduce in evidence. This was shared with the IFoA Case Presenter and Legal Adviser who raised no objection to the statement being served out of time and shared with the Panel. The Respondent stated that his former PA was available but he did not intend to call as a witness. The Legal Adviser explained to the Respondent that relying on a written witness statement would carry less evidential weight than a witness's oral evidence and availability for cross examination.

The Legal Adviser informed the Panel that the Respondent had indicated that he was unlikely to give oral evidence but likely to make oral submissions. The Legal Adviser confirmed that he had explained to the Respondent the implications of this approach.

The Charges were read. The Respondent stated that he disputed all of the Charges and confirmed that he made no admissions.

Panel's Determination:

2. The Panel found all parts of the Charge proved.

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

- Fine of £10,000.00
- Exclusion from IFoA membership. The Respondent may not apply for readmission for a period of 5 years.

3. The Panel also ordered the Respondent to pay to the IFoA costs of £9,138.00.

Background:

4. The Respondent was a Fellow of the IFoA from 3 August 1993 until 9 January 2023 when his membership of the IFoA lapsed. The Respondent was the Director of Pensions for Company X (his "employer") from June 2012 until April 2018.

The Respondent states that he was put on notice of redundancy in November 2015, which was subsequently deferred to mid 2016, with a 6 month notice period.

In February 2017 the Respondent was suspended from work on full remuneration, pending a disciplinary hearing which took place in November 2017. In April 2018 the Respondent's contract was terminated on grounds of professional misconduct. His appeal against dismissal was rejected in December 2018.

The Respondent was appointed Managing Director (Head of Origination) at Company Z in August 2018.

On 16 June 2021 the IFoA received an allegation against the Respondent from The Pensions Regulator (TPR). On 23 July 2021 the IFoA's General Counsel referred allegations that the Respondent dishonestly claimed inappropriate expenses on a number of occasions for consideration under the Disciplinary Scheme.

On 29 July 2021 the IFoA emailed a letter to the Respondent notifying him of the allegations. Between July and October 2021 and in March 2022 there was correspondence between the Respondent and the IFoA regarding the identification and disclosure of documents relevant to the IFoA's investigation.

Between October 2021 and March 2022 and November to June 2023 the IFoA and Company X were in correspondence regarding disclosure.

Findings of Fact:

5. The Panel was aware that the burden of proof rests on the IFoA, and that the standard of proof is the civil standard, namely on 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.
6. In reaching its decisions on the various parts of the charge, the Panel took into account the documentary evidence in this case together with the submissions of the IFoA's Case Presenter and those of the Respondent. The Panel considered the advice of the Legal Adviser, in particular as to the integrity principle of the Actuaries' Code, the definition of misconduct and the legal test for dishonesty. The Panel had regard to all the evidence in the case and gave careful consideration to the appropriate weight to be given to hearsay evidence which had not been tested by way of cross examination.
7. The Panel noted that the Respondent had not replied to the Case Management Form or the Charge Response Form. The Panel took account of the Respondent's decision not to access or read the documents contained in the IFoA case bundle. The Panel took account of the Respondent's decision not to give oral evidence.

8. The Panel took into account the witness statement of the IFoA Case Manager who was available to give oral evidence but was not required to do so by the Case Presenter, the Respondent or the Panel. The Panel also took into account the witness statement of the Respondent's former PA who was available to give oral evidence. The Panel took account of the Respondent's decision not to call his witness to give oral evidence and therefore be open to cross examination or questions from the Panel.

9. Paragraphs 1 and 2 of the Charge

On or around November 2015 you charged expenses of approximately £420.87 to your employer relating to you and Person A's travel and accommodation costs when it was not appropriate to do so

Your actions at paragraph 1 were dishonest

In November 2015 the Respondent travelled with Person A to New York whilst in Washington for business reasons. The Respondent charged expenses of approximately £420.87 to his employer for Person A's travel and accommodation costs for this trip.

The Panel determined that this was a personal trip to New York made by the Respondent with Person A which included sightseeing, theatre and dining together. The Panel found that the Respondent knew that it was not appropriate to charge the expenses of a personal trip to his employer. The Panel accepted the evidence presented by the IFoA and rejected the Respondents assertions that there had been a business justification for the trip.

The Panel found paragraphs 1 and 2 of the Charge proven.

10. Paragraphs 3, 4 and 5 of the Charge

On or around 30 April 2016 you charged £807.99 to your Company A credit card for a family holiday to Center Parcs in May 2016 when it was not appropriate to do so

You did not reimburse Company A the full amount charged at paragraph 3

Your actions at paragraphs 3 and/or 4 were dishonest.

Between 14-16 May 2016, the Respondent went on a family holiday to Center Parcs. It is alleged the Respondent charged £807.99 to his Company A credit card for this family holiday and subsequently reimbursed £557, a shortfall of £250.99 to the full cost incurred.

The Panel determined that it was not appropriate for the Respondent to charge a material sum of money to his Company A credit card for a planned personal family holiday. The Panel accepted the evidence of the IFoA and was not satisfied that there was evidence of the Respondent having a business meeting such as to justify failing to reimburse the full amount of the holiday to Company A. The Panel found that the Respondent knew that it was not appropriate to charge his family holiday to the Company credit card. The Panel found that the Respondent's actions at paragraphs 3 and 4 were dishonest.

The Panel found paragraphs 3, 4 and 5 proven.

11. Paragraphs 6,7 and 8 of the Charge

On or around May 2016 you extended a business trip in Switzerland for personal reasons to attend a football match

As a result of your actions at paragraph 6, you incurred an additional cost of approximately £1,212 to your employer when it was not appropriate to do so

Your actions at paragraph 7 were dishonest

On Monday 16 May 2016 the Respondent travelled to Geneva to attend a board meeting the next day. One week before the trip, the Respondent decided to extend the trip to attend the Europa League Final in Basel on Wednesday 18 May 2016 (for which he had bought tickets on 9 May 2016). The total additional cost incurred by his employer due to the Respondent's extension of the trip to travel to Basel is alleged to be £1,212.

The Panel found the facts at Paragraph 6 proven on the evidence adduced by the IFoA, which was not formally disputed by the Respondent. The Panel found that the Respondent's decision to extend his business trip was made for personal reasons and that he subsequently sought to manufacture a business meeting in Basel to justify charging his accommodation and travel costs as a business expense to his employer.

The Panel determined that it was not appropriate to charge these personal expenses to his employer and that the Respondent knew that this was the case. The Panel determined that the Respondent was dishonest in knowingly charging personal expenses as business expenses.

The Panel found Paragraphs 6, 7 and 8 proven.

12. Paragraphs 9,10,11 and 12 of the Charge

On or around August 2016 you instructed the reimbursement of travel expenses to South Africa of £5,576.68 from Company C into your personal bank account

On or around August 2016 you instructed the reimbursement of travel expenses to South Africa of £2,699.76 from Company C into your personal bank account

You knew that the reimbursement of flight costs at paragraphs 9 and/or 10 should not have been paid to your personal bank account as they were due to your employer

Your actions at paragraphs 9 and/or 10 were dishonest by reason of paragraph 11

In or around June 2016, the Respondent travelled to South Africa to attend personal speaking engagements relating to a third party "Company C". The Respondent arranged for his employer to pay for his flights for this trip, and subsequently issued personal invoices to Company C which directed the reimbursement of "Travel expenses" for the sum of £5,576.68 to the Respondent's personal bank account.

A further invoice to Company C dated 31 August 2016 for "Travel expenses" also shows payment of the sum of £2,699.76 is to be made payable to the Respondent.

The Panel found the facts at Paragraphs 9 and 10 proven on the evidence adduced by the IFoA. The Panel found that the Respondent fabricated a business justification to obtain his employer's approval of payment for business travel expenses to South Africa. The Panel determined that the travel expenses were for the Respondent's personal speaking engagements in South Africa for which he submitted personal invoices and received payments into his personal account. The Panel was satisfied that the Respondent knew that reimbursement of the travel costs should have been to his employer and not into his personal account. The Panel preferred the evidence of the

IFoA to that of the Respondent. The Panel found that the Respondent's actions at Paragraph 9 and 10 were dishonest.

The Panel found Paragraphs 9, 10, 11 and 12 proven.

13. Paragraph 13 of the Charge

Your actions, in all or any of the above, were in breach of the Integrity principle of the Actuaries' Code (version 2.0) in that you failed to act honestly and/or with integrity.

The Panel determined that, having made findings of dishonesty against the Respondent in respect of 4 Paragraphs within the Charge, it follows as a matter of logic that the Respondent was in breach of the integrity principle of the Actuaries' Code in that he failed to act honestly and with integrity.

The Panel found Paragraph 13 of the Charge proven.

14. Misconduct Charge

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 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 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 determined that, having found Paragraphs 1 to 13 of the Charge proven, including four allegations of dishonesty and a lack of integrity, it was clear that the Respondent's conduct constitutes Misconduct.

The Panel found Paragraph 14 of the Charge proven.

Sanction:

15. In considering the matter of sanction, the Panel had regard to the submissions of the IFoA's Case Presenter and the Respondent. The Panel also had careful regard to the Indicative Sanctions Guidance (November 2021). 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.

16. 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.

17. In considering sanction, the Panel took into account the Respondent's culpability:

- The conduct was planned and repeated on multiple occasions. It was not a spontaneous, one-off aberration.
- The Respondent was a senior and experienced member of the profession with commensurate responsibilities and levels of trust in his employment and professional life.

18. The Panel took into account the harm caused by the Respondent's misconduct:

- The Respondent's misconduct may cause substantial harm to the reputation and public confidence in the profession. It also may cause distress and professional embarrassment to the Respondent's former colleagues and employer. The internal investigation into the Respondent's conduct will have had potentially significant cost implications for his former employer.

19. The Panel took into account the following aggravating factors:

- Findings of dishonesty in four aspects of the Charge
- Finding of lack of integrity

- Less than full engagement and cooperation of the Respondent with the IFoA, its Disciplinary and Capacity Scheme, investigation and hearing processes.

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

- The Respondent has no previous adverse findings in respect of his professional conduct or capability.
- The Respondent attended the Disciplinary Tribunal Panel Hearing.
- The Respondent was courteous and professional in his demeanour during the Hearing.

21. In considering sanction the Panel was aware the Respondent is a lapsed Member and that therefore some sanctions are not appropriate.

22. The Panel considered that this was a case in which the proven misconduct was very serious. It was not a case that warranted no sanction, a reprimand or period of education / supervision.

23. The Panel considered that the seriousness and circumstances of the Misconduct in this case warranted a fine. The Panel determined that a fine of £10,000.00 would be an appropriate sanction to reflect the serious departure from professional standards and the likely harm to the reputation of the profession.

24. In addition to a fine, the Panel went on to consider whether to exclude the Respondent from Membership of the IFoA would be disproportionate, i.e. not to allow the Respondent to reapply for Membership for a period following his Membership lapsing on 9 January 2023. The Panel took account of the Indicative Sanctions Guidance 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 Respondent should not be able to practice or claim membership of the profession. In deciding whether to exclude the Respondent the Panel should consider the effect that allowing the Respondent's name to reapply to be a Member would have on the public's trust in the reputation of the profession.

25. Dishonesty will usually lead to expulsion or exclusion, but it is important to bear in mind that there is a small residual category of cases where the particular circumstances are

such that the well informed member of the public would not regard dishonesty as a bar to membership of the profession. If a Panel so decides not to exclude it will need to set out its reasons with particular clarity. 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 when deciding on the level of any fine also imposed, and in considering costs.

26. The Panel considered that in this case, to allow the Respondent to reapply immediately to be a member of the IFoA would be inconsistent with the maintenance of the reputation of the profession. This is not one of the small residual category of cases where expulsion or exclusion does not follow a finding of dishonesty. The Panel recognised the possible impact on the Respondent's income and livelihood, but the reputation of the profession and the maintenance of ethical standards are of greater weight than the effect of exclusion on the Respondent.
27. The Panel is required to specify a period during which the Respondent may not apply to be readmitted to the IFoA (8.22(b)(vii)). The Panel decided on a period of 5 years because this was premeditated and repeated dishonesty and the Respondent was an experienced member in a senior position of trust and authority.

Costs:

28. The IFoA made an application for costs of £ 9,338.00 incurred in preparation for the hearing and attendance at the hearing remotely by the IFoA's Case Presenter. The Panel noted that costs included administrative costs and costs incurred by the Panel and Legal Adviser, The Panel noted that the Disciplinary lawyer for the IFoA was unable to attend day 2 of the hearing but was available to give instructions to the IFoA Case presenter if necessary. The Panel therefore reduced that element of the costs by £200.00, from £300.00 to £100.00 resulting in costs of. £3,138.00. The Panel considered the rest of the costs sought to be at a reasonable level, and that the work done and costs incurred justified that amount of cost. The Respondent provided no detailed information or evidence about his financial position and made no challenge to the amount of costs sought by the IFoA. The Panel therefore ordered the Respondent to pay the IFoA costs of £9,138.00.

Right to appeal:

29. 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:

30. Having taken account of the Publication Guidance Policy (May 2019), 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.

Date of publication: 12 January 2024