**Disciplinary Tribunal Panel Hearing**

**9 May 2023, 15-17 January and 26 March 2024**
**(the Panel also deliberated in private on 26 February 2024)**

**Online Hearing**

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| **Respondent:** | Patrick Lee<br>Mr Lee was in attendance and represented by Nicholas Leviseur, Barrister |
| **Category:** | Fellow - Resigned |
| **Region:** | UK |
| **IFoA Case Presenter:** | The IFoA was represented by Rachna Gokani, Barrister<br>Jenny Higgins (Case Manager) was in attendance |
| **Panel Members:** | Peter Wrench (Chair/Lay member)<br>Paul Rae (Lay member)<br>Simon Head FIA (Actuary member) |
| **Legal Adviser:** | Sharmistha Michaels |
| **Judicial Committees Secretary:** | Julia Wanless |

**Preliminary Issues (1)**

1. By agreement with the parties, the hearing on 9 May 2023 was limited to deciding a preliminary matter. Subject to the outcome of the consideration of that matter, the hearing would continue in December 2023. However, those later dates were subsequently rescheduled for January 2024. At the hearing on 9 May the charges were not formally put to the Respondent and no admissions were invited.

2. The preliminary issue had been raised in an application on behalf of the Respondent. The application was that these proceedings should go no further since there is no basis for disciplinary proceedings to continue once a Member had resigned their membership of the IFoA, as the Respondent had done. The IFoA argued that the clear intention underlying the Disciplinary Scheme is that former Members should continue to be liable under the Scheme for their actions and omissions during the time that they were Members. The IFoA further argued that the current wording of the Scheme gives effect to that intention.

**Panel's Determination of Preliminary Issue (1):**

3. The Panel rejected the Respondent's application and found that there is a valid basis in the Disciplinary Scheme for the current proceedings to continue.

**Submissions on Preliminary Issue (1):**

4. The basis of the Respondent's application is set out in his email of 2 February 2022 and an undated further submission prepared for a case management meeting held on 27 March 2023. The IFoA's response is set out in their submissions for that meeting, in a document dated 17 March 2023.

5. In his oral submissions Mr Leviseur made clear that his primary point was that the provision at rule 4.4 of the Disciplinary Scheme, which sought to define the term "*Respondent*" as including former Members, was ultra vires, since it had no basis in the Charter and Bye-Laws. He said that Bye-Law 59 provided for a Disciplinary Scheme that dealt with Members, but that did not extend to former Members. He highlighted that Bye-Law 27 provides that any Rule which is contrary to, or provides differently from, the Charter or Bye-Laws shall be "*invalid*". Mr Leviseur said that the

IFoA could not rely on the argument that the Disciplinary Scheme ought, as a matter of policy, to extend to former Members: if there was no power for it to be extended by virtue of the Charter or byelaws, there was no power.

6. Mr Leviseur went on to refer to the original application from the Respondent and his argument that the definition of "*Member*" in Rule 23 only extends to former Members in the limited case of a breach of the duty to co-operate, and that there was no such allegation in this case (the present case not dealing with an allegation of failure to co-operate).

7. In her oral submissions, Ms Gokani said that the Panel should focus on the provisions of the Disciplinary Scheme and whether its rules applied to the Respondent. The wider context might assist, but rule 4.4 was crucial in providing that references in the Scheme to "*the Respondent*" clearly included former Members who have resigned since the time of the conduct in respect of which an Allegation is made. She also highlighted that the definitions of terms in rule 23 are preceded by the proviso "*unless the context otherwise requires*". She went on to say that rule 8.22 specifically provides for a sanction of exclusion which is solely applicable to a "*former Member who is subject to the Disciplinary Scheme pursuant to rule 4.4*".

8. In addressing the wider context of the Charter and Bye-Laws, Ms Gokani said that the objects of the IFoA, as set out at paragraph 2 of the Charter, included the "*regulation*" of the profession in the "*public interest*". Paragraphs 3 and 12 then allowed the IFoA to do "*any lawful thing*" and to make rules, so long as this was not "*repugnant*" to any provision of the Charter and Bye-Laws. She argued that if anything would be repugnant to the Charter, it would be to allow a Member to walk away from disciplinary proceedings by resigning.

9. The Panel accepted the advice of the Legal Adviser.

**Consideration and Decision on Preliminary Issue (1):**

10. There was no dispute about the underlying facts of the timing of the instituting of proceedings in this case and the Respondent's resignation from Membership. He resigned on 30 September 2020. The allegation against him concerns his actions in the period between March and August 2020, when he was a member. The Panel noted that an executive referral was made on 1 September 2020 (during the currency

of his membership) and the Respondent was notified of this on 3 September. An Investigation Actuary was appointed on 4 September. Proceedings were already underway at the time he resigned.

11. The Panel considered carefully the argument that any provision for former Members to be subject to the Disciplinary Scheme is ultra vires, given the terms of the Charter and Bye-Laws. The Panel noted that the objects of the IFoA include the regulation of the profession in the public interest, and further notes that Bye-Law 59 provides that "*The Rules shall provide for a Disciplinary Scheme for dealing with members who are the subject of a complaint or whose professional conduct is otherwise called into question*". In the Panel's view, it is a proper interpretation of that provision for proceedings to be able continue, once there is a complaint or a Member's conduct has been called into question, even if the Member subsequently resigns. The complaint, or questions raised about the person's conduct, will still be there and will need, in the public interest, to be addressed. The Panel is satisfied that it would be contrary to the public interest if a Member were able to frustrate the disciplinary process simply by resigning from the organisation, leaving the alleged misconduct untested or challenged. The Panel considered that this would not be a just outcome.

12. The Panel recognised that the relevant provisions of the Disciplinary Scheme could have been drafted more clearly, and that the separation between what is contained in the definition section at rule 23 and in the preceding operative provisions is not straightforward. However, it was satisfied that the Scheme needs to be read as a whole and purposively, without taking individual provisions within it as necessarily conclusive in themselves.

13. The definition of "*Member*" in rule 23 makes reference to the term including former Members "*for the purposes of any Allegations of a breach of the duty of a Member to co-operate"*. However, this is in the case of former Members who "*are currently the subject of disciplinary action under the Scheme*". In other words, they need already to be the subject of disciplinary action before the extended definition can bite on them. In the Panel's determination, the second sentence of the definition of "*Member*" would be meaningless if the only former Members subject to disciplinary action were those in breach of the duty to co-operate. A more understandable reason for the definition to highlight the breach of the duty in this way is that rules 4.15 - 4.19 uniquely establish circumstances in which a former Member can be guilty of new Misconduct by virtue of behaviour <u>after</u> their Membership has ceased.

14. Rule 23 defines "*Respondent*" as the Member whose conduct is subject to disciplinary proceedings. It does not specifically state that the term can include former Members, but it must be read alongside rule 4.4 which says specifically that references to the Respondent include a former Member whose Membership has ceased since the time of the conduct in respect of which an Allegation is made. The Panel was satisfied that there is no inherent inconsistency between rules 4.1 and 4.4 and the definitions in rule 23. Rule 4.1 says that a Member is liable to disciplinary action if they have been guilty of Misconduct and Rule 4.4 establishes that, once disciplinary action is underway, ceasing to be a Member does not mean that they will cease to be dealt with as a Respondent. Furthermore, if, as a former Member, they breach their continuing duty to co-operate, they face an additional charge of Misconduct.

15. The Panel accepted that the provision at rule 8.22(b)(viii) of a specific sanction of exclusion for former Members is consistent with this reading and must assume that former Members may continue to be subject to disciplinary proceedings, and would have no purpose if that were not the case. However, this provision cannot of itself be determinative, nor can the various references in guidance documents and policy statements which have been quoted in the IFoA's submissions. The Panel has based its decision primarily on its reading of rules 4 and 23, in the wider context of the IFoA's objects and the public interest in the proper regulation of the profession.

**Preliminary Issue (2)**

16. At the start of the resumed hearing on 15 January 2024, the IFoA applied to amend the charge, as they had undertaken to do at an earlier case management meeting, by deleting subparagraphs (b) and (d) of charge 1. There was no objection on behalf of the Respondent. The Panel was satisfied that there would be no prejudice to him and so accepted the IFoA's application.

**Charge (as amended):**

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

1. between around 20 March 2020 and around 29 August 2020, you posted “tweets” and “retweets” on the Twitter social media platform regarding the Islamic religion, in which you used:
(a) offensive language; and/or
(b) ~~discriminatory language; and/or~~
(c) inflammatory language; and/or
(d) ~~language inciting discrimination; and/or~~
(e) language which was designed to demean or insult Muslims.

2. your actions at paragraph 1 were in breach of the Integrity principle of the Actuaries’ Code (version 3.0), in that you failed to show respect for others in the way you conducted yourself, in circumstances where your conduct could reasonably be considered to reflect upon the reputation of the actuarial profession as a whole.

3. 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 February 2018).

**Panel’s Determination:**

1. The Panel found parts 1(a), 1(c), 1(e), 2 and 3 of the charge proved.

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

- A reprimand.
- Exclusion from IFoA membership. The Respondent may not apply for readmission for a period of 2 years.

3. The Panel also ordered the Respondent to pay to the IFoA costs of £22,667.

**Background:**

4. The Respondent was a Fellow of the IFoA from 1989 until he resigned in 2020. He was a member of the IFoA's Council from 2012 until stepping down from it in September 2020. He was also a member of the IFoA's Management Board between 2016 and 2018.

5. The Respondent was active on the social media platform then known as Twitter from at least 2012. He initially posted using the handle "*actuary21c*" after his name and then, from 2015, as "*pjlee01*". For a period in 2020 he posted as "*Free Speech Actuary*". There was correspondence between the IFoA and the Respondent in the period 2012-2015 in which concerns were expressed about his postings about the religion of Islam. The implications of that correspondence was a matter of dispute in this hearing.

6. The Respondent was concerned about texts from the Quran and hadith (collected sayings of the prophet Mohammed) which he considered might encourage, or be used to justify, terrorism and other criminal acts. The charges concern tweets and retweets posted by the Respondent in the period from 20 March to 29 August 2020, many of which drew attention to the texts he considered problematic, often inviting moderate Muslims and Muslim organisations to disavow them. The IFoA has provided a schedule of 83 tweets and retweets posted by the Respondent in the period covered by the charge on which it has relied in making its case. The IFoA has also provided a more extensive Twitter bundle which includes some of the wider conversations in the course of which the postings were made.

7. An executive referral for investigation was made by the IFoA on 1 September 2020 alleging potential breaches of the Code from "*inappropriate and potentially offensive tweets and retweets*". On 25 November 2020 Company A (a not-for-profit company which seeks to encourage British Muslims to be more involved in British media and politics) wrote to the IFoA complaining about what they called the Respondent's "*Islamophobic hate speech*", attaching screenshots of 17 of his tweets.

**Findings of Fact:**

8. The Panel was aware 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 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.

9. The Respondent made an admission to the stem of charge 1 and accepted that he had posted the tweets and retweets on which the IFoA were relying. He denied the particulars at charge 1(a), (c) and (e), and charges 2 and 3 in their entirety. In reaching its decisions on the disputed parts of the charges, the Panel took into account the oral and documentary evidence in this case together with the submissions of the IFoA's Case Presenter and those of the Respondent's Representative. The Panel accepted the advice of the Legal Adviser.

11. The Panel heard oral evidence from Mr 1, former General Counsel and current Interim Chief Executive of the IFoA, Mr 2, formerly the IFoA's Head of Disciplinary Investigations, and from the Respondent. The Panel found Mr 1 to be credible and reliable in giving his recollection of how earlier concerns about the Respondent's postings had been handled by the IFoA. The Panel found Mr 2 to be credible and reliable in his account of the investigation and the documentation obtained in the course of it. The Panel also found the Respondent to be credible and reliable, both in setting out his recollection of the earlier communications and accounting for his more recent posts.

12. The Panel also took into account the following documentary evidence:

From the IFoA:

1. Witness statement of Mr 1
2. Chronology of correspondence 2012-2014
3. Bundle of correspondence 2012-2014
4. IFoA Tribunal bundle (including witness statement of Mr 2)
5. IFoA Twitter bundle
6. Schedule of tweets linked to charge
7. IFoA response to case management directions, 5 January 2022

From the Respondent:

1. Respondent's witness statement
2. Email exchange between the Respondent and Mr 3 (IFoA President) in 2014
3. Respondent's note of telephone conversations with Mr 1 and Mr 4 (IFoA Chief Executive) in 2015
4. Respondent's note of a video call with Mr 5 (IFoA President) in 2020

5. Hyperlink bundle (printouts of material linked to the Respondent's witness statement)
6. Email exchange between the Respondent and Mr 6 (Chair of IFoA Management Board) in 2014

13. The Panel heard submissions from Ms Gokani and Mr Leviseur.

14. Ms Gokani said that the tweets spoke for themselves, and they were clearly offensive. She said that it did not matter whether some of what the Respondent had said could be supported by material available on the internet, the issue was the manner in which he expressed his views: controversial views and offensive language did not necessarily go together. She also said that, however the Respondent's earlier correspondence with the IFoA was read, it contained a clear and consistent message about the need for compliance with the Code.

15. Mr Leviseur said that the Respondent had strong views about Islam and that, however disagreeable those views might be, they were protected by the right to freedom of expression under Article 10 of the European Convention on Human Rights. He submitted that the only way in which the Code engaged with his expression of the Respondent's views was if it reflected on the profession as a whole, and there was no evidence of that. Mr Leviseur said that each and every assertion that the Respondent had made appeared to be factually correct, and the IFoA had not sought to dispute that. He went on to submit that the Respondent might have said offensive things but, if they were true, no-one had a right to be offended. Mr Leviseur said that charge 1(e) required an intention to demean or insult and the Respondent had no such intention: he wanted Islam to change. Mr Leviseur invited the Panel to consider each of the scheduled tweets individually in making its findings of fact.

<u>Charge 1</u>

16. In deciding this charge, the Panel has considered each tweet individually, as it was invited to do. In doing so, it has relied on the ordinary meaning of the descriptors alleged. It understood "*offensive"* as meaning likely to cause offence, not solely to individuals holding particular beliefs but also to a wider cross-section of society which holds that the beliefs of others should be treated with respect. It took "*inflammatory*" to mean likely to arouse anger or hatred. In the Panel's assessment there is a significant

overlap between these two descriptors. The Panel took "*designed to demean or insult*" as meaning choosing to have the effect of demeaning or insulting. The Panel did not consider it necessary or helpful to seek to analyse the Respondent's underlying intentions, or his view of Muslims, in general terms. Its focus has been on the specific language of the individual texts, and it has considered whether the particular choices of wording which the Respondent made would be bound to have had a demeaning or insulting effect.

17. The Panel was conscious that it had no expert evidence before it about Islam and the status of the texts which had been the focus of the Respondent's concern. It took at face value the Respondent's evidence of his finding of the texts in the course of his research and his understanding that they had been categorised as "*authentic*" in some way. The Panel was satisfied that he was acting in good faith in his stated aims of wishing to draw attention to them, as seeming to be problematic. The Panel also accepted his evidence that he felt obliged to speak out publicly about his concerns.

18. It was clear to the Panel that the Respondent's earlier correspondence and discussions with the IFoA can be read in different ways. It was satisfied that the Respondent genuinely believed at the start of the period covered by the charges that the IFoA had no fundamental objection to him engaging in public debate about Islam. But the Panel accepted Ms Gokani's submission that the earlier correspondence had emphasised the importance of continuing compliance with the Code. In the Panel's assessment, whatever green light the Respondent felt that he had been given could not absolve him from a continuing responsibility to act in accordance with the Code.

19. The Panel was also conscious that the Respondent had chosen to publicise his concerns through the medium of Twitter. Mr Leviseur described Twitter as being equivalent to the "*gutter press*" and a place for "*short, sharp and somewhat brutal statements*", which is "*the bludgeon of modern life*". In the Panel's assessment, however, not every Twitter user is expecting, or inured to, brutality. Twitter is also a medium for bland and innocuous content, but, by its nature, conversations on uncontroversial topics can be diverted suddenly into different areas, if that is what an individual user chooses to do.

20. The Panel assessed each of the scheduled tweets individually against the descriptors in the Charge. The Panel was satisfied that a significant number of tweets, particularly in the earlier part of the period covered by the charge, did not merit any of the three

descriptors and were consistent with encouraging debate and challenge. They were sometimes pithy and provocative, but were consistent with the Respondent's stated aims of drawing attention to the texts he considered problematic and encouraging debate about them. An example is the tweet of 20 March 2020 numbered 1 in the Twitter bundle:

> *Islam needs urgent reform (if possible?). The majority of its victims are Muslims who live under repressive, backward regimes. It still inspires far too much terrorism, child marriage, & hatred of Jews/gays. It is very sad that in 2020 it has barely changed for centuries*

It may well be that some readers might be uncomfortable to read this post, but in the Panel's assessment it does not cross the line into being generally offensive, inflammatory, or designed to demean or insult. It distinguishes Islam as a faith from individual Muslims.

21. However, other postings, particularly those later in the period, are different and involve unqualified assertions and labelling that, in the Panel's assessment, must inevitably be seen as not only offensive and inflammatory, but also designed to insult Muslims. The Respondent sometimes fails to refer specifically to particular hadith, presents what those hadith say as fact, and generalises his criticisms of Islam and Muslims. Increasingly, Islam is labelled as "*morally bankrupt*", a "*dangerous cult*", and a "*1300 year old con trick*". The prophet Mohammad is referred to as a "*monster*". Examples are the tweet of 7 July 2020 numbered 72 in the Twitter bundle:

> *Mohammed was a slaver and rapist, these women are either ignorant or incredibly naive. They have fallen for the con trick that Mohammed was a good man, and Islam is morally good; it can't be given that it praises Mohammed as a role model yet its own texts show he was a monster.*

and the tweet of 12 July 2020 numbered 77 in the Twitter bundle:

> *Islam and Islamic regimes cannot be reformed: at the heart of Islam is a monstrous lie: that Mohammed (a man who enslaved, raped, tortured, beat, and approved of stoning, female genital mutilation and child marriage) is an excellent role model. Islam is fundamentally evil.*

22. A particular issue is that the Respondent sometimes raises his concerns by replying to not obviously related posts in a way which forces his concerns in front of readers who would not be expecting them. An example is the tweet of 4 May 2020, numbered 11 in the bundle, made after a post by [Ms B], an MP, about having fasted for a day during Ramadan:

> *Has [Ms B] volunteered for ~FGM yet, after volunteering to undergo a day of Ramadan last week in support of #Islam, a religion that not only says #FGM is "obligatory", but that Mohammed had sex with 9 year old ,and that wife beating is OK? Virtue signalling LibDems*

It was submitted on behalf of the Respondent that he was asking a rhetorical question and that he was entitled to mock what he saw as virtue-signalling on the part of the MP, by fasting for a day during Ramadan, but not engaging with the foundational doctrines of the religion. In the Panel's assessment, any such motivation cannot justify the choice of such obviously offensive language in the context in which it was used.

23. After considering 83 tweets individually, the Panel concluded that 41 did not fall within any of the descriptors in charges 1(a), 1(c) or 1(e). However, the Panel was satisfied that the remaining 42 tweets were either offensive or inflammatory or both, and that 29 of those 42 tweets met all three descriptors: they were offensive and inflammatory and were designed to demean or insult Muslims. The Panel was satisfied that these were not occasional or isolated errors or misjudgements. On that basis, it found charges 1(a), 1(c) and 1(e) proved.

<u>Charge 2</u>

24. Given its findings in relation to paragraph 1 of the charge the Panel was satisfied that it is self-evident that the Respondent failed to show respect for others in the way that he conducted himself. The real question is whether his conduct could reasonably be considered to reflect upon the actuarial profession as a whole. The IFoA's guidance to support the principles of the Actuaries' Code says this in relation to the integrity principle and duties outside the profession:

> *3.8 The Code applies to all Members' "other conduct if that conduct could reasonably be considered to reflect upon the profession". This means that conduct outside of a*

*Member's actuarial professional life that demonstrates a lack of respect towards others will be caught by the Code, but only to the extent that it may have an impact upon the reputation of the actuarial profession as a whole. In a personal context therefore, not all behaviour that demonstrates a lack of respect will be caught by the Code. Members are expected to use reasonable judgment in determining what behaviour is appropriate.*

The Panel accepted the Respondent's evidence that he had used his judgment and that he remains satisfied that his behaviour was appropriate. It was submitted on his behalf that there was no evidence of any impact on the actuarial profession from the Respondent's expression of his private views.

25. In the Panel's assessment there was inevitably a real risk of the Respondent's conduct being seen as reflecting on the actuarial profession, despite his use of a disclaimer stating that he was speaking in a private capacity. His use of the handle "*Free Speech Actuary*" clearly exacerbated that. The Respondent's profession was also included in his Twitter biography before that period. Furthermore, as a member of the IFoA's Council, it was inevitable that there was a stronger likelihood that what he said in public would be taken as reflecting on the profession. Company A's letter of complaint to the IFoA of 25 November 2020 referred to their concern that the Respondent "*represents a professional body like the IFoA*".

26. Conversations contained in the wider Twitter bundle show that the fact that the Respondent was an actuary became a topic of discussion, and readers could have worked back from those discussions to link the Respondent's earlier posts to his profession. For example, in tweets on 26 August 2020 the Respondent referred to correspondence he was having with the IFoA following "*objections from 4 individuals including 2 anonymous ones*". He had asked the IFoA if members could "*criticise any religious text that advocates or condones any of the following: slavery, rape, child sex, wife beating, ordering the amputation or blinding of healthy people, burning people to death, stoning, crucifixion, FGM*". He commented that "*although in my situation I have made such criticisms in a personal capacity, given the seriousness of the crimes listed, there should be no problem with anyone criticising them in a professional or official capacity*".

27. The Panel was satisfied that, in all these circumstances, the Respondent's conduct could reasonably be seen as reflecting on the profession as a whole and appeared to

contravene the Integrity Principle as set out in the Code, and so it found paragraph 2 of the charge proved.

Misconduct Charge

28. 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 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 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*".

29. The Panel noted that the conduct found proved had continued over a lengthy period and that the posts became more seriously offensive during that period. This was not a one-off misjudgement but a sustained campaign involving a substantial number of unacceptable posts. The Panel was satisfied that members of the public and other members of the profession would consider that this behaviour fell well below what would be expected. It was satisfied that this was misconduct.

**Sanction:**

30. In considering the matter of sanction, the Panel had regard to the submissions of Ms Gokani and Mr Leviseur and accepted the advice of the Legal Adviser. The Panel also had careful 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.

31. 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.

32. In reaching its decision on misconduct the Panel found that the Respondent's conduct fell well below what was expected. The misconduct had been serious and sustained and required a regulatory response. However, the Panel had also accepted that the Respondent had been acting in good faith and believed that what he was doing was justifiable. Given that he has now resigned from the IFoA, the Panel's primary focus in considering sanction was on declaring and upholding proper standards, rather than on protecting against a risk of repetition.

33. In considering sanction, the Panel took into account the following aggravating factors identified by Ms Gokani:
    - there had been a deliberate course of action over a period of months involving many individual tweets;
    - the Respondent had previously been warned to be careful in his postings and accepted that he had toned down what he said while he was a Member of the Management Board;
    - this was serious misconduct which breached the integrity principle; and
    - the Respondent had demonstrated very little, if any, insight, and had made no apology or remediation.

    In the Panel's view, there were further aggravating factors in that the Respondent had deliberately identified himself as an actuary in his use of Twitter, and the position of authority he had held within the IFoA meant that he was a well-known member of the profession. The Respondent had been written to in April 2013 by the (then) President of the IFoA concerning his use of social media. The Panel noted that the Respondent had been involved in the drawing up of social media training and relevant guidance for the IFoA and should have been aware from earlier discussions of the issues which might arise from his social media posts.

34. The Panel also took into account a number of mitigating factors:
    - there were no previous disciplinary findings against the Respondent;
    - he had been an upstanding member of the profession for many years, taking on positions of authority for the IFoA and being held in high regard;
    - he had quickly resigned from the Council once the investigation began; and

- he had engaged fully with the resulting proceedings despite having resigned his membership of the IFoA.

35. Mr Leviseur submitted that this had been a trailblazing case for the IFoA and said that, at the time covered by the charges, there had been no comparable social media cases before the Disciplinary Tribunal to make clear where a line should be drawn. The Panel accepted that this was the case, but noted that there had been clear guidance available to IFoA members on the risks of breaching the Actuaries' Code, particularly in respect of social media use.

36. The Panel, first, considered whether this might be a case that warranted no sanction. It might be argued that the findings of fact and misconduct against the Respondent gave a clear signal that his conduct had been unacceptable, and that, given his resignation from the IFoA, a heavier sanction was not required. However, the Panel concluded that to take no action would be incompatible with the seriousness and sustained nature of the proven misconduct in this case.

37. The Panel next considered a reprimand. It concluded that this could form part of an appropriate sanction but that a reprimand alone would not suffice, given its findings on seriousness.

38. The Panel considered whether to impose a fine and concluded that this would not be appropriate here. This was not misconduct involving any financial gain and the Panel concluded that, in all the circumstances of the case, a fine would be unduly punitive.

39. The Panel concluded that a period of education, training or supervised practice was not appropriate for someone who is no longer a member of the IFoA.

40. Similarly, the Panel was also unable to consider suspension of the Respondent's membership, as there is currently no membership to suspend.

41. The Panel therefore found little alternative to the heaviest sanction available to it of exclusion of the Respondent from membership of the IFoA. It was satisfied that more than a reprimand alone was necessary to mark the seriousness of the misconduct and concluded that exclusion for a period of 2 years would be proportionate in all the circumstances. Exclusion sends a clear message that, in the absence of any evidence of

insight and remediation, misconduct of the sort found proven is not compatible with membership of the IFoA.

42. The Panel noted Mr. Leviseur's submission that the Respondent has no intention of seeking to return to membership at any point. However, his intentions may change. The Panel should make clear that there would be no guarantee of a successful application after 2 years have elapsed. That is simply the minimum period before any application can be made: any application that might be made after that point will be considered on its merits, with the Respondent needing to satisfy the IFoA's applicable requirements and to show that he is a fit and proper person to be admitted to membership.

**Costs:**

43. The IFoA made an application for costs of £45,334 incurred in preparation for the hearing and attendance at the hearing by the Case Presenter. The Panel accepted the guiding principle of the guidance on costs, namely that a Respondent should pay all costs incurred, as the membership of the IFoA should not bear the costs of bringing disciplinary proceedings against Respondents who through their own failings have found themselves before a Panel. However, the Panel had a number of concerns about the level of costs sought here.

44. The Panel accepted the submission that this was in some ways a trailblazing case for the IFoA. It noted that there were some issues which had legitimately been raised at a preliminary stage about the particularisation of the charges and the applicability of the Disciplinary Scheme to former members. The Panel also noted that some of the IFoA's decisions on the handling of the case had contributed to the length and cost of the proceedings. These included the decision to instruct external Counsel to present the case and the particularisation of 83 tweets, which the Tribunal then needed to consider individually. Finally, the Panel took account of the information provided about the Respondent's financial circumstances, which showed limited disposable income or readily realisable assets.

**45.** Putting all these factors together, the Panel concluded that it would be fair and proportionate for the Respondent to pay one half of the IFoA's scheduled costs. The Panel therefore ordered the Respondent to pay the IFoA costs of £22,667.

**Right to appeal:**

46. 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:**

47. Having taken account of the Disciplinary Board's 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.

**Publication date: 5 April 2024**

**Addendum 7 May 2025**
Appeal Tribunal Panel Determination commences on next page

**Appeal Tribunal Panel**

**29 November and 3 December 2024**

**Institute and Faculty of Actuaries**
**Online Hearing (on the papers)**

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| **Appellant:** | Patrick Lee |
| **Panel Members:** | Kay Springham KC (Chair/Lay member)<br>Mark Jones FIA (Actuary member)<br>Susan Ahern (Lay member) |
| **Judicial Committees Secretary:** | Hinna Alim |

1. This is a decision of the Appeals Tribunal Panel ('the Panel') on an appeal under Part 11 of the Disciplinary and Capacity for Membership Scheme (effective 1 February 2018). The appeal was brought by Mr Patrick Lee ('the appellant') against a determination of a Disciplinary Tribunal Panel which was given orally on 26 March 2024, with the written determination being issued on 5 April 2024. In its written determination, the Disciplinary Tribunal Panel ('the DTP') found parts 1(a), 1(c), 1(e), 2 and 3 of the charge against Mr Lee proved, and imposed sanctions of (i) a reprimand, and (ii) exclusion from membership of the IFoA, with the appellant being prohibited from applying for readmission for a period of two years.

2. The hearing of this appeal was dealt with on the papers. Neither party requested an oral hearing.

**Scope of the appeal**

3. Rule 11.4 of the Scheme, referred to above, sets out the grounds on which an appeal may be made. These include that the determination of the DTP was wrong in law. In his Grounds of Appeal, the appellant states at paragraph 2 that he contends that the DTP's determination was wrong in law in certain respects.

4. The appellant's grounds of appeal were originally framed under reference to alleged failures on the part of the DTP to consider in its determination, the appellant's rights under articles 9 and 10 of the European Convention on Human Rights and of the Equality Act 2010. However, in his submissions for the Panel hearing, the appellant revised his grounds of appeal to exclude article 9 and the Equality Act 2010. His appeal was therefore founded solely on whether the DTP had erred in its consideration of article 10.

5. In relation to article 10, as originally presented, the appellant's complaint was that the DTP had failed to consider and address a series of nine questions, drawn from the case of Adil v General Medical Council [2023] EWCA Civ 1261 (see §§5-7 of the Amended Grounds of Appeal). This, the appellant submitted, was 'a material and fundamental error of law' (§7).

6. The appellant's position in relation to article 10 shifted somewhat in his reply to the IFoA submissions to the l Panel. At paragraph 46 the appellant stated that the DTP

failed to consider and address the issues that arose under article 10. This appeared to the Panel to be a wider ground of appeal than originally framed, which focussed on a requirement (so it was contended) for the DTP to answer the nine questions set out in Adil.

7. The Panel considered, however, that the grounds of appeal as originally framed were wide enough to cover both aspects. The Panel therefore considered the grounds of appeal under two headings, firstly, did the DTP consider and address the appellant's rights under article 10 in making its determination? And, secondly, was the DTP required to answer the nine questions identified in Adil, in considering the appellant's article 10 rights?

I. The DTP's determination - did the DTP consider and address the appellant's rights under article 10 in making its determination?

8. The Panel has carefully considered the DTP's determination. There is very little in it specifically about article 10 or to the right to freedom of expression or similar phrases. At paragraph 15, the DTP records the submission by the appellant's counsel about article 10 and the right to freedom of expression. This was part of the summary of the submissions made by each party to the DTP. There are no other references to article 10 or to freedom of expression in the determination.

9. The IFoA in its appeal submissions directed the Panel to paragraph 15 and to paragraphs 24 to 29 of the DTP's determination. It submitted that these paragraphs demonstrated that the DTP had applied its mind to the relevant factors in article 10. The IFoA also submitted that it would be 'extraordinary' for the DTP not to have considered these issues, in light of the IFoA Guidance, parties' submissions, the legal advice and what the DTP chair had said in email correspondence earlier in the proceedings about the appellant's rights under the Convention.

10. There can be no doubt that the application of article 10 to the circumstances of these proceedings was a matter before the DTP and it received legal advice in relation to its application and the applicable law. The DTP's determination does not, however, demonstrate how the DTP applied the legal principles, upon which it had received advice, to the circumstances before it.

11. As already noted, paragraph 15 was a summary of the appellant's submission to the DTP. Paragraphs 24 to 27 relate to charge 2 and to whether the appellant's conduct could reasonably be considered to reflect upon the actuarial profession as a whole and whether it contravened any aspects of the Code of the IFoA. There was no mention as such of freedom of expression (or article 10).

12. Turning to paragraphs 28 and 29, these deal with misconduct. After setting out the definition of misconduct in the Disciplinary Scheme, the DTP set out in a short paragraph why it considered that the appellant's behaviour did amount to misconduct. There is, again, no mention of article 10 or the right to freedom of expression.

13. The Panel would have expected the DTP to consider that right and why in the circumstances of this case, it was necessary for the right to be limited by a finding of misconduct. The Panel do not accept, as the IFoA urged it to do, that it is possible to read into the DTP's determination some implicit consideration of article 10. The Panel acknowledges that it is not necessary to address every issue or to do so in exhaustive terms, provided the important matters are dealt with in a determination. Here, article 10 was an important matter. The DTP should have explained in its determination how it had resolved the issues raised in relation to article 10, but it did not do so. Having carefully reviewed the entire determination of the DTP, the Panel decided that there was a failure on the part of the DTP to evidence in its determination that it had taken account of the appellant's article 10 right. There was therefore an error of law.

II. <u>The DTP's determination - did the DTP require to answer the nine questions identified in Adil?</u>

14. The second aspect raised in the grounds of appeal is whether the DTP erred in law in not answering the nine questions set out in <u>Adil</u>. The appeal in <u>Adil</u> was against a finding of misconduct and the sanction imposed on a medical practitioner. On the finding of misconduct, the grounds of appeal were that the decisions of the tribunal did not satisfy the tests of necessity or proportionality in article 10(2), and that the guidance issued by the GMC was not 'prescribed by law' within the meaning of article 10(2). In the course of its opinion, the court referred to 'the appropriate structure' for analysing the application of article 10 Convention rights as being a series of questions set out in previous cases: see paragraph 45.

15. In his Amended Grounds of Appeal the appellant states that the DTP 'was legally required to consider a series of questions aimed at determining the central issue of whether there was a lawful basis for restricting' the appellant's article 10 rights in this case (§5). Reference is then made to the questions in Adil as contained in the Court of Appeal's decision handed down on 2 November 2023. This decision was not before the DTP. The DTP was only referred to the High Court decision in Adil, which is reported at [2023] EWHC 797 (Admin).

16. The Panel does not agree that the DTP was legally required to consider all the questions set out in Adil, or as articulated in the Amended Grounds of Appeal. In the first place, as explained above, the recent Court of Appeal decision in Adil was not before the DTP. The DTP can hardly be criticised when it was not shown the Court of Appeal decision, nor was it submitted by the appellant that it was required to answer the nine questions which he now says the DTP should have asked itself.

17. The submissions for the appellant at the DTP hearing appear at pages 14 - 37 of the transcript of the hearing on 17 January 2024. There is, in those submissions, reference to article 10 and to freedom of expression. There is a passing reference to the High Court decision in Adil (p.34), but it is not suggested to the DTP under reference to Adil or any other authority that the law requires them to answer nine questions in considering article 10. It is of some note that the appellant did not make submissions on how those nine questions should be answered by the DTP.

18. In her advice to the DTP, the legal advisor also referred to the High Court decision in Adil (p.49). Again, there is no suggestion that the DTP had to answer the nine questions which the appellant now articulates. The appellant made no comment or objection to the legal advice tendered. The legal advice was accepted by the DTP.

19. In the second place, the Panel does not read the Court of Appeal decision in Adil or the authorities which pre-dated it, as requiring a rigid, formalistic approach on the part of panels considering article 10 rights in the regulatory field. It provides a structure for analysis, but which parts require close consideration will depend on the individual case. As was observed in Diggins v Bar Standards Board [2020] EWHC 467 (Admin) issues of necessity and proportionality will normally be the essential issues when a professional (in that case, a barrister) faces disciplinary proceedings over free speech. It is for the party arguing that a particular aspect of the requirements in article 10 has not been met, and to make clear what is disputed and why it is so disputed. In many

cases, there may be agreement on some aspects of article 10; parties' submissions should focus on what is not agreed. The structure in Adil may be helpful in answering the issues in dispute. The approach, the Panel considers, is fact-specific and context-specific, and the Court of Appeal's decision in Adil should be seen in that light.

20. In summary, under this second aspect of the appeal, we do not find that the DTP erred in law.

**Powers of the Panel and Panel decision**

21. Having concluded that there was an error of law, the Panel considered the powers open to it. These are set out at rule 11.16 of the Disciplinary and Capacity for Membership Scheme (effective 1 February 2018). They are to make one or more of the following determinations:-

    (a) affirm, vary or rescind any determination of the Disciplinary Tribunal Panel;
    (b) substitute any other determination or determinations which the Disciplinary Tribunal Panel may have made, which may include substituting a more severe sanction;
    (c) make an award of costs against the Appellant or Institute and Faculty of Actuaries as it considers appropriate.

22. The appellant made the point that it is not open to the Panel to remit the matter back to the DTP (or a differently constituted panel). Even if that had been in the Panel's powers, given the duration of these proceedings that would not have been an attractive option.

23. The Panel considered that it was in a position to determine the appeal, by considering for itself how article 10 applied to the circumstances of the appeal. In doing so, the Panel was mindful of the specific reason why it had found the DTP had erred in law, and the scope of the arguments which were before the DTP. As is well known, it is generally not permissible on appeal to raise new points. The Panel noted that the amended Grounds of Appeal submitted that the Panel 'should not substitute a finding of misconduct for an alternative finding of misconduct… because there are issues of fact and of principle which cannot be resolved by the Appeal Panel on the material before it' (§65). The Panel does not agree and will address that below.

24. The DTP had made findings under Charges 1 and 2. These were respectively findings of fact and a breach of the Code. Charge 3 was a finding of misconduct. A finding of misconduct is capable of interfering with a person's rights under article 10; it is at that stage that those rights become relevant. The appeal is concerned, not with whether certain tweets were or were not offensive, inflammatory and/or demeaning or insulting, nor with whether there was or was not a breach of the Code, it is about whether a finding of misconduct was necessary and proportionate in the circumstances of the case.

25. The Panel therefore accepts the findings of the DTP under Charges 1 and 2. In relation to Charge 1, the Panel has considered what the actual findings of the DTP were. There were 83 tweets submitted in support of the Charges which were published between 20 March 2020 and 29 August 2020. The DTP concluded that 41 of these did not fall within the descriptors in the charge. Of those remaining, the DTP said it was satisfied that 42 tweets were either offensive or inflammatory or both, and that 29 of those 42 tweets met all three descriptors (offensive, inflammatory and designed to demean or insult Muslims). The DTP noted that in the earlier part of the period covered by the charge, a 'significant number' of tweets did not merit any of the three descriptors and were consistent with encouraging debate and challenge. Other postings, the DTP said, particularly in the later period were different citing the examples of; Islam is labelled as 'morally bankrupt', a 'dangerous cult' and a '1300 year old con trick', the prophet Mohammed is referred to as a 'monster'. Although the DTP gives examples of some of the offensive tweets, unfortunately it did not state specifically which of the tweets fell into which category. It could have done so under reference to a schedule of tweets which had been prepared by the IFoA.

26. In assessing necessity and proportionality, the Panel took the view that it required to have some indication of which tweets the DTP had found met at least one of the descriptors. In addition to tweets number 11, 72 and 77, quoted by the DTP, the Panel noted that the words referred to above ('morally bankrupt' etc.), featured in at least fifteen other tweets. The DTP had also noted the escalation of language from debate to offensiveness, over a period of months.

27. A finding of misconduct does amount to an interference with the appellant's freedom of speech. It was never suggested to the DTP that any such interference was not 'prescribed by law'; that has only featured in the Amended Grounds of Appeal. The Panel does not consider it to be open to the appellant to argue new points, which he

could have argued before the DTP. In any event, as is explained below, the Panel considers that the interference was prescribed by law.

28. Further, the appellant did not argue before the DTP that the interference was not in pursuit of a legitimate aim. It is not open to the appellant to argue that now. If the Panel is wrong about that, it would, in any event, have found that such interference was in pursuit of a legitimate aim, as is explained below.

29. The significant question in the Panel's view is whether the interference was necessary in a democratic society. Although not put in precisely those terms to the DTP by the appellant, in essence this was the disputed issue. In the sphere of professional regulations, it is accepted that membership of a profession comes with rights and responsibilities. Restrictions are placed on regulated professionals in terms of what they can and cannot do. Those restrictions are legitimate because they may protect the public and/or the reputation of, and confidence in, the profession.

30. There are many examples of limitations being placed on a professional's freedom of expression in pursuit of a legitimate aim. In Diggins the court noted that the duty on barristers not to behave in a way which was likely to diminish the trust and confidence which the public places in them or in the profession, pursued the legitimate aim of protecting the rights and reputation of others (§75). In R (Ngole) v University of Sheffield [2019] EWCA Civ 1127 the Health Care Professions Council's regulations and guidance pursued the legitimate aim of maintaining confidence in the profession. Indeed, the court noted that 'every set of professional regulations is likely to encompass this aim, if in no other sense than to incorporate a duty not to bring the relevant profession into disrepute.' (§104)

31. The DTP found that the appellant's conduct could 'reasonably be seen as reflecting on the profession as a whole and appeared to contravene the Integrity Principle' in the Code (§27). The Panel has no doubt that restrictions which serve to protect the reputation of the actuarial profession as a whole pursue a legitimate aim under article 10(2). They protect the reputation of the profession and the rights of others.

32. The crucial questions for the Panel were the degree of intrusion into the appellant's article 10 right, and whether a less intrusive measure short of a finding of misconduct would have sufficed. On the first point, the DTP was careful to distinguish between tweets which could be regarded as legitimate comment and contributing to a debate,

from those which were offensive and inflammatory. The restriction which a finding of misconduct imposed on the appellant was to do with the manner in which he expressed his views; he was not restricted from expressing the views provided they were done in a courteous, moderate and sensitive way. The Panel does not regard that as a serious intrusion into the appellant's right to free speech.

33. On the question of less intrusive measures, none were suggested to the DTP. The Panel notes that in his amended Grounds of Appeal the appellant suggests two less intrusive measures (§42). These were to do with the introduction of a social media policy or guidance that addressed the right to engage in political speech and comment on Islam, and to publicise that to all actuaries. Leaving aside that this is a new point being raised on appeal, the Panel does not see how either of these were measures which the DTP could impose. Nor does the Panel understand how they would address the appellant's conduct which had already taken place.

34. For the following reasons, the Panel is of the view that a finding of misconduct was necessary and proportionate. Firstly, the nature of the tweets which were, as the DTP found offensive, inflammatory and, on some occasions, demeaning and insulting to Muslims. Secondly, the number of tweets. As noted above, there were 42 which the DTP considered met one or more of the foregoing descriptors. Thirdly, the period of time over which the offending tweets were posted. Fourthly, the escalation of language from moderate to offensive over that time. Fifthly, as the DTP found there was a breach of the Code. Sixthly, the appellant was not restricted from expressing views; the restriction was on the offensive manner in which he expressed those views. Balancing the rights of the appellant, and the rights of others in the profession and more widely, a finding of misconduct was entirely justified. The Panel would add that at the time of the tweets mentioned in the Charges, the appellant was a member of the Council of the IFoA. This did not feature in the DTP's reasons for finding misconduct, although it was considered under Charge 2, and in considering sanction. In the Panel's view, this could well be considered as an additional factor in support of a finding of misconduct.

35. The Panel's decision, then, is to vary the determination of the DTP. Although the Panel has also made a finding of misconduct, it has done so for different reasons and is therefore varying the reasoning of the DTP. That is sufficient to dispose of the appeal. However, the Panel has the following comments on some of the other matters raised in the appellant's amended Grounds of Appeal.

36. Firstly, the Panel noted above that the appellant argued that the IFoA's regulatory framework did not meet the requirement that any interference must be by 'prescribed by law'. As the Panel also noted, this was not argued before the DTP and was an attempt by the appellant, impermissibly, to raise a new point on appeal. Lest it be said that the appellant is in fact entitled to raise this point on appeal, the Panel does not consider this to be a good point. The first principle of the Code is that members must act honestly and with integrity. In addition, the IFoA has issued Guidance to aid members in their understanding of the Code. Paragraphs 3.6 and 3.7 of the Guidance (April 2019) provide:-

> *3.6 Showing respect for others does not mean that Members cannot voice their opinions or disagree with others where they hold an opposing point of view. Legitimate challenge and constructive comment are to be encouraged both in a professional setting as well as in other contexts. Nor is the Code intended to impinge upon Members' rights to free speech or to express their religious and political views. It is expected however that where disagreements do arise, Members will act with courtesy, recognising the rights of others to hold and express different ideas and opinions from them.*
>
> *3.7 The IFoA promotes equality and diversity and the development of an inclusive profession that incorporates people from a range of backgrounds. Members are encouraged to behave in a way that recognises and respects diversity and different cultures.*

37. Different, but comparable, provisions were considered in Diggins and Adil. In both the courts found that the language was sufficiently clear as to the boundary between what was and was not permissible when expressing views (see §75 and §77 respectively). As was observed in Ngole 'absolute certainty' is not achievable (§103). There is a need for flexibility, recognising that there will be numerous ways in which the reputation of the profession may be undermined by statements made. The Panel finds this passage in Adil helpful:-

> '*One cannot legislate for all forms of speech in advance. It would not be practical, or realistic, to expect a regulator to publish exhaustive guidance on such matters. This is inevitable in the sphere of freedom of expression, where the application of article 10(2) requires a closely fact-specific evaluation of issues of necessity and proportionality.*' (§80)

38. Secondly, the Panel noted above the appellant's contention in his amended Grounds of Appeal that it would not be possible for this Panel to substitute an alternative finding of misconduct (see §65). The first argument appears to be that the DTP had not resolved a factual issue about whether there was an agreement between the appellant and the IFoA about what he was allowed to say about Islam (see §66a ). In its determination, the DTP found that 'whatever green light (*the appellant*) felt that he had been given could not absolve him from a continuing responsibility to act in accordance with the Code' (see §18). The Panel respectfully agrees with that analysis. The Code applies equally to all member actuaries. A system which allowed the Code to be applied differently to different members in respect of the same conduct would be unworkable. It was not necessary for the DTP to deal with this issue in any more detail, nor is it necessary for this Panel to do so.

39. The second argument as to why this Panel cannot substitute an alternative finding of misconduct, according to the appellant, relates to aspects of proportionality (§66b). The Panel has addressed proportionality above. It notes that insofar as the appellant refers to a less intrusive measure being a warning, there is no appeal against sanction.

40. The appellants' amended Grounds of Appeal range far and wide. Many of the points are new points which did not feature before the DTP. The Panel has, however, considered all the arguments made, and has addressed in this decision the material and important arguments.

**Costs and Publication**

To be determined: Finally, in relation to costs, the parties indicated ahead of the hearing that they wished to make submissions on costs after the substantive decision of the Panel had been communicated to them. The Chair of the Panel agreed to that request. A determination of costs and publication will be made once the Panel has received submissions on these. The deadline for receipt is five weeks (i.e. **17 January 2025**) after the Panel's substantive Appeal determination is served. Those submissions should be no more than five A4 pages (double spaced, font size 12). If either party considers that is insufficient, the Chair will consider any reasons advanced and issue directions accordingly.

**Kay Springham KC**
**Chair of the IFoA's Appeal Tribunal Panel**

**Date: 13 December 2024**

**Publication date: 7 May 2025**

Determination on Costs and Publication on next page

**Appeal Tribunal Panel**

**22 April 2025**

**Institute and Faculty of Actuaries**
**Online Hearing (on the papers)**

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| **Appellant:** | Patrick Lee |
| **Panel Members:** | Kay Springham KC (Chair/Lay member)<br>Mark Jones FIA (Actuary member)<br>Susan Ahern (Lay member) |
| **Judicial Committees Secretary:** | Hinna Alim |

1. The Appeals Tribunal Panel ('the Panel') issued its decision on the substantive aspects of the appeal on 13 December 2024. As had been requested by the parties, submissions on costs were to be made after the substantive decision.

2. The Panel has now received written submissions on costs (and on publication) from both parties. The parties agreed that the Institute and Faculty of Actuaries ('IFoA') would make its submission first, with Mr Lee ('the appellant') following. After the appellant had put in his submissions, the IFoA requested that it be allowed to respond. The Chair agreed to a short response by both parties, if wished. In fact, only the IFoA submitted a response.

3. In arriving at its decisions, the Panel has considered all of the submissions made by both parties. It has considered the Rules under which the appeal was made (the Disciplinary and Capacity for Membership Scheme (effective 1 February 2018)). It also considered relevant Guidance.

**The submissions of the parties – on costs**

4. The IFoA invited the Panel to 'endorse the costs award in favour of the IFoA made by the Disciplinary Tribunal Panel' ('DTP'). The DTP had ordered the now appellant to pay the IFoA costs of £22,667. The IFoA did not seek any costs in relation to the appeal. It did so partly due to the appellant's limited ability to meet additional costs above those awarded by the DTP, and partly due to the appeal proceedings having been carried out in writing thus limiting the associated costs. The IFoA also recognised that the Panel had found there to be an error of law in the reasons given by the DTP, albeit the ultimate findings of misconduct and sanction were not affected.

5. The appellant submitted that there should be no order for costs arising in the DTP proceedings or before this Panel. He advanced five reasons for that submission. Insofar as necessary, we deal with these below, as well as picking up some of the points made in the IFoA's subsequent response.

**The submissions of the parties – on publicity**

6. The parties were agreed that the determinations of the DTP and of this Panel should be published and remain on the IFoA's website for a period of five years from the date of publication of the DTP determination, and a brief summary of the DTP and ATP

determinations should be published in the next available edition of *The Actuary* magazine.

**Panel decisions and reasons**

7. Rule 11.16(c) of the Disciplinary and Capacity for Membership Schemes (effective February 2018) states that the ATP shall make an award of costs against the Appellant or IFoA as it considers appropriate. The Panel therefore has a wide discretion in reaching a decision on costs.

8. The Panel begins by noting that the appellant did not seek to appeal the DTP's costs order. It did not form part of his grounds of appeal. It is therefore not open to the appellant to attack the basis for the DTP's decision on costs. It is accordingly not necessary for this Panel to consider whether the DTP erred in its approach to the Guidelines and Guidance on costs in reaching its decision.

9. The Panel considers that its approach should be to consider whether there is any new factor which would merit disturbing the decision of the DTP on costs. It notes that the award made was 50% of the costs sought by the IFoA. The Panel has no new financial information on which to assess the appellant's means. It has been provided with the same 'Income and Expenditure' March 2024 document which was available to the DTP. The Panel notes the further information regarding the payment of solicitor costs (of £3,557), and regarding the personal loan obtained to pay judicial review costs (paras 8-10 of the appellant's submissions). The Panel's assessment was that the appellant appeared to have sufficient assets to fund the costs order already made.

10. The appellant submitted that he had had partial success on the appeal, and had had to defend himself before the DTP and bring an appeal 'in order to secure a consideration and explanation of relevant issues' (para 13). It may be said that there has been partial success in the appeal, but only on the basis that the DTP's reasons were to some extent flawed. The actual result has not changed. That may have been a basis for restricting any award of the costs of the appeal, but the Panel does not consider that it is a basis for disturbing the award made in respect of the DTP costs.

11. In relation to the other points made by the appellant, the Panel agrees with the IFoA's submission that costs are not a sanction. Leaving aside that there was no appeal against sanction, the Panel is not required to consider whether the award made by the

DTP went beyond what was necessary, as costs are not part of the decision on sanction (para 11 of appellant's submission).

12. Another submission made by the appellant was that the IFoA had told him that his tweets were 'on the right side of freedom of speech' (para 6-7 of appellant's submissions). It was a contested matter but ultimately was irrelevant to the Panel's determination of the substantive appeal. The Panel does not consider that it has any relevance to its decision on costs.

13. Having considered the submissions from both parties, in the exercise of its discretion, the Panel decided that the appropriate and reasonable decision was to endorse the order for costs made by the DTP, namely that the appellant should pay costs of £22,667 to the IFoA. There has, after all, been a finding of misconduct, and it is appropriate that the appellant meet a reasonable proportion of the costs in the case against him.

14. In relation to publicity, the Panel considered that the parties' agreed approach to publication was reasonable. It therefore directs that (a) the determinations of the DTP and of this Panel should be published and remain on the IFoA's website for a period of five years from the date of publication of the DTP determination, and (b) a brief summary of the DTP and ATP determinations should be published in the next available edition of *The Actuary* magazine.

**Kay Springham KC**
**Chair of the IFoA's Appeal Tribunal Panel**

**Date: 22 April 2025**

**Publication date: 7 May 2025**