

PROFESSIONALISM

Kathryn Morgan
29 September 2023

OUTLINE

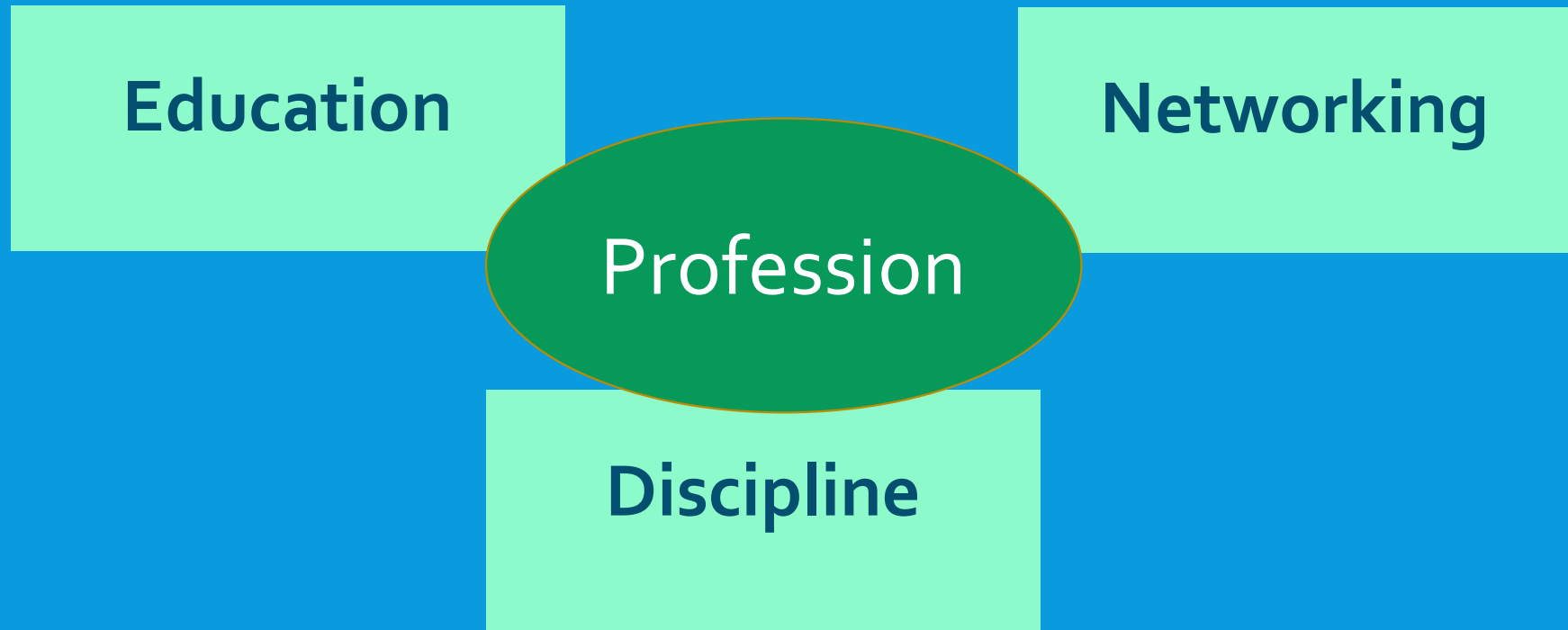
- Why are we here?
- The IFoA disciplinary scheme
- The FRC disciplinary scheme
- Stats on disciplinary cases
- Some key cases
 - What can we take away?
- What to do if someone makes a complaint about you
- Questions / discussion

- There may be a few asides
- Please ask questions / make comments as we go along
- We will have short break after an hour

WHO AM I?

- Actuary
- Ex-regulator
- Board member
- In charge of Actuaries Rock, the Gibraltar actuarial society
- Member of the Financial Reporting Council Actuarial Tribunal Panel

DISCIPLINE – MY VIEW



THE IFOA DISCIPLINARY SCHEME

Complaint made

There may be a referral to the FRC

Investigation

No misconduct

Adjudication panel

Sanction,
publication

Misconduct

Refer to
disciplinary
tribunal

No misconduct

Cases are referred to a tribunal if the panel judgement is not accepted OR the panel think it needs more serious sanction

Sanction,
publication

STATS ON DISCIPLINARY CASES

- For the IFoA only cases, there have been 57 over the period 2018 – 2023 to date.
 - 30 Adjudication panels
 - 26 Disciplinary tribunals
 - 1 Capacity for membership
 - Two people disciplined twice in that period
- 11 CPD related cases
- 5 cheating in exams
- 5 practising certificate issues
- 8 pension related ones (5 pensions on divorce)
- 3 each of poor validation (all the same piece of work); 4 offensive posts; 3 forgery; 2 drunk driving; 2 theft ; 2 poor practice.
- A mix of lying; breach of confidentiality; taking information; lack of integrity

STATS ON DISCIPLINARY CASES

- For FRC cases, there have been four over the period 2017 to date.
 - One conflict of interest case for a pension scheme
 - One case of misconduct in signing Lloyd's statements of actuarial opinion
 - One case of signing an inaccurate statement of actuarial opinion
 - One case of failing to whistle blow about inappropriate claims reserving practice
- Cases often settle before a tribunal
- The FRC has a specific remit so fewer cases come to them

INTERESTING CASES

- Liyaquat Khan – CPD case
 - Failed to provide evidence of CPD for 17/18
 - Didn't respond to communications about this
 - => breached the Actuaries Code
 - Failed to demonstrate evidence of professional skills CPD for 18/19
 - Didn't respond to communications about this
 - => breached the Actuaries Code
 - Failed to co-operate with the investigation
 - => breached the disciplinary scheme rules
 - => breached the Actuaries Code
 - => this is all misconduct under the disciplinary scheme

INTERESTING CASES

- Liyaquat Khan – CPD case
 - The panel were requested to adjourn the case, but after it had started.
 - This was refused, as Mr Khan had not engaged with the process to that date, and had not provided evidence of ill health
 - The panel, after some consideration, decided to carry on without Mr Khan
 - The write up notes lots of emails to Mr Khan which were ignored or not answered satisfactorily
 - The IFoA extended deadlines quite a few times
 - Mr Khan set some deadlines and missed them

INTERESTING CASES

- Liyaquat Khan – CPD case
 - The panel considered the impact of the pandemic
 - The panel also considered the different sanctions that could be applied
 - Outcome
 - Reprimand
 - Fine of £2,000
 - Costs of £4,114
 - This is now on Mr Khan's record in the Actuarial Directory

- Mr Khan did do the CPD, his misconduct was not recording this, and not co-operating with the IFoA staff

INTERESTING CASES

- Jan Iwanik – offensive posts
- Two cases, both in 2021
- Case 1 – a set of comments on LinkedIn about race and sexuality
 - “Why play the racial card?” etc
 - “Which one is the homosexual?”
- Case 2 – a question in an IFoA webinar
 - “how exactly will promoting the culture of sodomy help the Actuarial Profession in its societal role?”

INTERESTING CASES

- Jan Iwanik – offensive posts
- Case 1 (March 2021)
 - Mr Iwanik did not deny making the comments and stated that his comments were not inappropriate.
 - The panel decided that the comments were inappropriate and that most people would think so
 - The panel also looked at the comments against the Actuaries Code.
 - This includes a warning about what other people might find unacceptable
 - The panel did not see any insight or remorse from Mr Iwanik.
 - They imposed a fine of £1,000 and recommended that Mr Iwanik undertook diversity and inclusion training.

INTERESTING CASES

- Jan Iwanik – offensive posts
- Case 2 (November 2021)
 - This was referred to the IFoA by several people
 - Mr Iwanik did not deny asking the question
 - The panel decided that the question was inappropriate and offensive and that most people would think so
 - The panel also looked at the comments against the Actuaries Code.
 - They concluded that the integrity principle was breached, but not the communication principle.
 - The panel did not see the first determination until they were considering sanctions.
 - They imposed a fine of £2,000 and recommended that Mr Iwanik undertook diversity and inclusion training.
 - They probably would have made him do the training but he had left the profession.

INTERESTING CASES

- Caroline Bayliss – pensions on divorce
- Ms Bayliss was appointed by both spouses to report on sharing pensions on their divorce.
- The allegations are lengthy and cover
 - Not doing all the work requested
 - Including incorrect numbers
 - Not providing supporting calculations
 - Not dealing with pension providers, despite not saying she wouldn't
 - Not giving structured responses to solicitors

INTERESTING CASES

- Caroline Bayliss – pensions on divorce
- The panel looked at each allegation in turn and found each one not capable of proof, apart from two of them.
 - One allegation was about details that should have been in the report
 - One allegation was about explaining the effect of a change in pension
- The panel commented that the allegations were, in some cases, unclear.
- The panel noted that Ms Bayliss co-operated, responded to the client's solicitor's questions
- There was no incorrect advice, more omissions and misunderstandings

INTERESTING CASES

- Caroline Bayliss – pensions on divorce
- The panel concluded that there was a small amount of misconduct, and that there should be no sanction.
- Co-operation
- Being open
- Was it a malicious complaint?
- Would we all be guilty of this type of misconduct?

INTERESTING CASES

- Mark Theaker – practising certificate
- Mr Theaker was a student member of the IFoA and had been since 1989
- He had been head of the actuarial team at his firm from 2007.
- The 2016 rules required PRA approval of chief actuaries and the IFoA required any of their members doing that role to have a practising certificate.

QUICK DETOUR

- What do we think about this?
- You don't need to be an actuary to be a Chief Actuary
- But if you are a member of the IFoA, you have to have a practising certificate.

- They are the rules

INTERESTING CASES

- Mark Theaker – practising certificate
- As he was a student he would have been unable to get a practising certificate without becoming a fellow.
- He made sure his role was Head of Actuarial
- The PRA logged him as chief actuary
- Once the IFoA spotted this, they asked if he'd resigned as chief actuary
- Instead, he resigned as a member of the profession

INTERESTING CASES

- Mark Theaker – practising certificate
- This case went to a disciplinary tribunal – it reads very differently to panel cases
- The language is a bit emotive:
 - “...he should have tried to resolve the problem, but chose to run away from it instead.”
 - “...misconduct of a sort which fellow professionals would find deplorable.”
- They were not impressed that he had no earlier disciplinary findings
- They did note that no harm had been caused
- The tribunal imposed a fine of

INTERESTING CASES

- The tribunal imposed a fine of £2,000
- Plus costs of £4,800
- Plus exclusion from the profession for three years
 - As Mr Theaker had already left the profession they couldn't suspend him

INTERESTING CASES

- Jack Copley – drink driving
- Mr Copley was convicted of drink driving, and reported himself to the IFoA
 - If a member of the IFoA gets a conviction, it needs to be reported
- Mr Copley provided all the relevant information to the IFoA before being asked for it
- The panel decided that Mr Copley had breached his responsibilities as a citizen.
- The panel imposed a reprimand

INTERESTING CASES

- Jack Copley – drink driving
- The panel allowed for
 - Remorse
 - Cooperation
 - He drove only because he was threatened
 - Good character references
 - The penalties imposed by the Courts

INTERESTING CASES

- Murat Asiliskender – conflict of interest
- He worked for two competing companies at the same time
 - The panel reviewed employment contracts

INTERESTING CASES

- Murat Asiliskender – conflict of interest
- The panel decided on:
 - £2,000 fine
 - Reprimand
- The panel concluded he showed limited insight and remorse
- He didn't seem aware of conflicts of interest

INTERESTING CASES

- Robert Hammond – lying
- He claimed to be up to date on his tax
- He was a partner in the firm
- He had financial problems
- He referred himself to the scheme

INTERESTING CASES

- Robert Hammond – lying
- He was suspended for two years, although he had not been working as an actuary
- He was ordered to pay costs
- The panel allowed for
 - Remorse
 - Cooperation
 - Self referral

WHAT CAN WE TAKE AWAY?

- There is a process
- There are options
 - Pay £50 to update your CPD record after the deadline (not relevant now the CPD rules have changed)
 - Pay £750 and have your name on the “non-compliant” register and noted in the Actuarial Directory
 - Mock / test hearings
- Contrition
- Being a bit organised helps to avoid the problem

WHAT CAN WE TAKE AWAY?

- The decisions are public
 - The reports are clear and well laid out
- The reasons for decisions and sanctions are public
- This is important – it enables scrutiny and learning
- The US actuarial disciplinary process is not public

WHAT IF SOMEONE COMPLAINS ABOUT ME?

- GET A SOLICITOR
- Read the complaint carefully and prepare a response to each point raised
 - This makes everyone's job easier and shows professionalism
- Acknowledge all correspondence from the IFoA / FRC
- Tell your PI insurer
- Read the independent actuary's report (noting that the independent actuary is acting on behalf of the IFoA)
- Provide support for each action you took that is being complained about

WHAT IF SOMEONE COMPLAINS ABOUT ME?

- Provide evidence before the panel / tribunal meet – don't wait for the meeting
- Put in everything you can find - more is more here
- The panel / tribunal will judge your demeanour as well as the evidence
- Practice giving evidence to the panel / tribunal
- Get a friend to ask tricky questions
- Be courteous. Do not be aggressive.

PREVENTING A COMPLAINT

- Keep up to date with actuarial standards and know which ones apply where your clients are
- Also the Actuaries Code and any guidance
- Do CPD
- Get work peer reviewed
- Mark reports as draft until they are properly final
- Review the disciplinary cases on the website to see what is being sanctioned

IS ALL THIS DISCIPLINE WORTH IT?

- My view
 - Yes, but...

IS ALL THIS DISCIPLINE WORTH IT?

- YES
- The process is rigorous and well governed
- It's all well documented
- We have to have a disciplinary process to be a profession
- All the other professions have one
- There are legal people and lay people involved
- We publish the outcomes so we can learn
- This should be good for users of actuarial work

IS ALL THIS DISCIPLINE WORTH IT?

- BUT
- It takes a long time from complaint to outcome
- It is time consuming for the person complained about
- All complaints have to be investigated, even vexatious ones
- It is expensive, not just in time but also money if you need to pay a lawyer
- The independent actuary is arguably not independent
- Possibly some of the cases seem a bit of a stretch of the Actuaries Code
- There might be some cases of apparent misconduct that have not been investigated or sanctioned.

IS ALL THIS DISCIPLINE WORTH IT?

- So what?
- It's our scheme – give feedback. Send it to the Determinations Review Sub-committee or a Council member
- Read about it BEFORE you have to engage with it
- Volunteer as a panel member or committee member

DON'T FORGET TO LOG YOUR CPD

- No need to put it on the IFoA system, but do log it
- Date, length, etc.
- Learning outcome:
 - Understanding of the IFoA and FRC disciplinary schemes
 - Understanding of the application of those schemes in real cases
 - Understanding from those cases what the profession regards as ethical and unethical behaviour and why
 - Understanding how to react if someone makes a complaint about you

QUESTIONS + DISCUSSION

CAPACITY FOR MEMBERSHIP SCHEME

- Runs alongside the main disciplinary scheme
- The aim is to provide an alternative route for the IFoA to deal more appropriately with members facing disciplinary proceedings, where the alleged misconduct may be the consequence of serious ill health.
- Not used very often, although several cases mention ill-health

THE IFOA DISCIPLINARY SCHEME

- There is tons of information on the IFoA website
- [Independent Disciplinary Process \(actuaries.org.uk\)](http://actuaries.org.uk)
- Formal rules
 - One document
- Guidance notes
 - 12 documents
- Informal notes
 - 24 documents

THE IFOA DISCIPLINARY SCHEME

- A lot of people are involved in the process
- IFoA staff, led by Ben Kemp and Jenny Higgins
- Regulatory Board – 12 people
- Disciplinary Committee – five people plus secretary
- Determinations Review Sub-committee – five people
- Regulatory appointments committee – six people
- Disciplinary Pool Panel – 34 people
- Plus lawyers for each tribunal / adjudication panel
- Discipline costs about 12% of the IFoA annual spend

THE IFOA DISCIPLINARY SCHEME

- Sanctions
 - Adjudication panel
 - Reprimand
 - Fine up to £7,500
 - Period of education, training, or supervised practice
 - Disciplinary tribunal
 - Reprimand
 - Fine unlimited
 - Period of education, training, or supervised practice
 - Suspension or withdrawal of practising certificate
 - Suspension of membership
 - Expulsion or exclusion from membership
- Not punitive

THE IFOA DISCIPLINARY SCHEME

- The scheme has just been reviewed
 - Council have agreed the changes
 - Members will vote in Autumn 2022
 - Vote early, vote often
 - In force from early 2023 (assuming it's voted in)

OTHER PROFESSIONS

- Accountants
- Solicitors

THE FRC DISCIPLINARY SCHEME



THE FRC DISCIPLINARY SCHEME

- [Auditors | Enforcement Division | Actuarial Scheme | Financial Reporting Council \(frc.org.uk\)](https://www.frc.org.uk)

Scope of the Actuarial Scheme

The Actuarial Scheme covers Members of the Institute and Faculty of Actuaries and former members of the Faculty of Actuaries (prior to its merger with the Institute of Actuaries).

The FRC will commence an investigation into a Member if:

- the case raises or appears to raise important issues affecting the public interest in the UK; and
- there are reasonable grounds to suspect that there may have been misconduct.

The decision to investigate is made by the Board or its Conduct Committee. Public interest considerations as to whether to take on an investigation include (but is not limited to):

- the impact on a significant number of people in the UK;
- the loss / potential loss of significant sums of money;
- whether the conduct undermines confidence in financial reporting or corporate governance in the UK.