THE FACTS SET OUT IN THIS DOCUMENT HAVE BEEN AGREED BETWEEN EXECUTIVE COUNSEL AND THE RESPONDENT FOLLOWING AN INVESTIGATION INTO THE CONDUCT OF THE RESPONDENT. THE SETTLEMENT AGREEMENT DOES NOT FOLLOW A HEARING OF EVIDENCE BY A TRIBUNAL. NO FINDINGS HAVE BEEN MADE, NOR SHOULD BE TAKEN TO HAVE BEEN MADE, AGAINST ANY OTHER PERSONS.

IN THE MATTER OF:

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

- and -

MARTIN RYAN

PARTICULARS OF FACT AND ACTS OF MISCONDUCT

Edited for publication

Introduction

1. The Financial Reporting Council ("**the FRC**") is the independent disciplinary body for the accountancy and actuarial professions in the UK. The FRC's rules and procedures relating to actuaries are set out in the Actuarial Scheme and Actuarial Regulations, both of 8 December 2014 ("**the Scheme**" and the "**Regulations**").

2. On 17 February 2015 the Conduct Committee of the FRC decided to refer for investigation by the Executive Counsel the conduct of Members[1] in relation to:

> *their work as actuaries in respect of RSA Insurance Ireland Limited ("**RSA**") for the financial years ended 31 December 2009 to 31 December 2013.*

3. This is the Executive Counsel's Particulars of Fact and Acts of Misconduct in relation to the conduct of Mr Ryan between 2009 and 2013 (the "**Relevant Period**"), in his role as an Actuary and (from 2010) Chief Actuary of RSA (i.e. the most senior Actuary at RSA), in relation to a process of setting of certain large loss case reserves below the recommended reserve, which breached RSA's Claims Business Control Policy and Reserving Business Control Policy (the "**Under-Reserving Practice**").

The Respondent

4. The Respondent to these Particulars of Fact and Acts of Misconduct is Mr. Martin Ryan.

[1] References to "Member" in this document relate to the definition set out in paragraph 2(1) of the Scheme. References to 'member' denote their membership of the Institute and Faculty of Actuaries ("**IFoA**").

He became a fellow of the Institute and Faculty of Actuaries ("**IFoA**") in 1998 and is also a fellow of the Society of Actuaries in Ireland. By virtue of his membership of the IFoA, the Respondent is a Member for the purposes of the Scheme and Regulations.

5. The Respondent was employed with RSA as an Actuary from 2002 and became Chief Actuary, the most senior Actuary within RSA, in September 2011.

6. He was RSA's Signing Actuary[2] for the Statement of Actuarial Opinion on Non-Life Technical Reserves ("**SAO**")[3] for the years ended 31 December 2009 to 31 December 2012 (inclusive).

7. On 20 June 2014, the Respondent was invited by RSA to a disciplinary hearing. That meeting was not held and the disciplinary process was ultimately not completed. The Respondent resigned from his employment with RSA on 15 April 2015.

Misconduct under the Scheme

8. Misconduct is defined in the Scheme as: "*an act or omission or series of acts or omissions, by a Member in the course of his professional activities (including as a partner, member, director, consultant, agent, or employee in or of any organisation or as an individual) or otherwise, which falls significantly short of the standards reasonably to be expected of a Member or has brought, or is likely to bring, discredit to the Member or to the actuarial profession.*"

The Relevant Standards of Conduct

9. The standards of conduct reasonably to be expected of the Respondent as a member of the IFoA in the conduct of his role as an actuary, later Chief Actuary, and as Signing Actuary included those set out in The Actuaries Code Version 1.0 dated 1 October 2009 (the "**Code**")[4], issued by the IFoA.

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[2] An actuary appointed by a company to provide a Statement of Actuarial Opinion.

[3] Non-life insurance companies in Ireland are required to provide to the Central Bank of Ireland (the "Financial Services Regulatory Authority", in 2009), each year for solvency purposes, a Statement of Actuarial Opinion on their non-life technical reserves, both gross and net of reinsurance.

[4] For information, this version of the Code was in force in the Relevant Period but subsequently superseded in August 2013.

10. The code begins by explaining the high professional standards expected of actuaries:

"Since its beginnings, the Actuarial Profession has prided itself on setting and keeping high standards in serving the public, its clients and employers. As members of a chartered profession, actuaries have a core obligation to serve the public interest. The Profession's quality framework – which requires compliance with clear standards of ethical behaviour as well as of technical competence and professional attainment – is the means by which the members of the Actuarial Profession discharge that obligation."

11. The Code sets out five core principles which actuaries are expected to observe in their professional lives and applies to all members of the IFoA. The principles are framed in broad and general terms and set the benchmark by which an actuary's conduct will be judged. The Executive Counsel refers to and relies on the applicable core principles of the Code which are extracted and annexed to these Particulars of Fact and Acts of Misconduct as Annex A.

RSA

12. RSA was incorporated in 1989 as private limited company, and has its registered office at RSA House, Dundrum Town Centre, Sandyford Road, Dublin 16.

13. RSA is wholly owned by RSA Insurance Group plc ("**Group**"). Group is a public limited company, registered in London, whose shares are traded on the main market of the London Stock Exchange. Group is listed on the FTSE 100 share index.

14. Since January 2009, the Irish insurance business of Group has been operated through RSA. At all material times, RSA carried on the business of a non-life insurer and ancillary claims-related activities.

15. In November 2013, Group announced that it had identified accounting irregularities in relation to RSA. The accountancy firm PricewaterhouseCoopers ("**PwC**") was appointed to undertake an independent review focusing on losses of £72 million arising from irregularities within the claims and finance functions. These losses comprised[5]:

15.1. £37 million from inappropriate collaboration on large loss and claims accounting

[5] Other losses within RSA were discovered later but they are not relevant to the allegations made against the Respondent.

(the Under-Reserving Practice); and

15.2. £35 million primarily from inappropriate accounting for net earned premiums and pipeline earnings[6].

16. Subsequently, Group and RSA published their financial statements for the financial year ended 31 December 2013. For that year, the financial statements for RSA included a restatement of the 2012 financial statements. The impact of the accounting irregularities on profits over the relevant periods was stated in the financial statements as follows:

16.1. Year ended 31 December 2013 - £31m reduction (adjusted in published accounts).

16.2. Year ended 31 December 2012 - £19m reduction.

16.3. Prior periods (breakdown not available) - £22m reduction.

The Under-Reserving Practice

17. The Under-Reserving Practice operated broadly as follows.

17.1. Reserves on large insurance claims were estimated by RSA claims handlers and details were provided to senior management. Selected members of senior management would meet, to discuss new and existing claims for which a large reserve increase was being recommended by claims handlers. A list (known as the "**NAMA**" list) was circulated amongst the senior management to track and discuss proposed reserves on affected claims. The NAMA list contained a breakdown of the claims handlers' proposed reserves and the actual reserves booked by RSA for accounting purposes. The list was discussed at the aforementioned meetings and decisions were then made, as to whether: a) all or part of the handler's recommended reserve would be booked in the RSA accounts; or b) the booking of the handler's recommended reserve should be delayed. Subsequently, the claims handlers were verbally informed what reserves could and could not be booked. Where claims were also covered by reinsurance policies, and the claims handler's proposed reserve met the reinsurance notification threshold, the reinsurer would be promptly notified of the value and nature of the claim.

[6] These loses are not relevant to the allegations made against the Respondent.

17.2. There were significant discrepancies between the reserves booked in the accounts of RSA and both: i) the claims' handlers proposed reserves; ii) the values of the same claims reported to the reinsurers. Commonly, in relation to claims included on the NAMA lists: a) the values of reserves booked in the accounts of RSA were significantly less than the values so estimated or reported, in circumstances where this could not be objectively justified; or b) there was a delay in the booking of reserves in the accounts of RSA, in circumstances where this could not be objectively justified. When Group discovered the Under-Reserving Practice in 2013, the aggregate value by which claims were under-reserved was approximately €11.7m. The figure had fluctuated and at one point in 2012 had reached €22m. During the period 2009 – 2013 the average aggregate value by which claims were under-reserved was approximately €10m. For the avoidance of doubt, the Under-Reserving Practice was a significant breach of the Reserving Business Control Policy.

17.3. To put the figure of €10m in context:

17.3.1. the profit (or loss) on ordinary activities after taxation reported by RSA, in its financial statements during the period, were as follows

17.3.1.1. Year ended 31 December 2012 - €21,246,000[7].

17.3.1.2. Year ended 31 December 2011 - €5,548,000.

17.3.1.3. Year ended 31 December 2010 - €8,143,000.

17.3.1.4. Year ended 31 December 2009 - €40,271,000.

17.3.2. The Respondent's Actuarial Reports for RSA reported the following surpluses of estimated reserves, when compared to net[8] reserves held by RSA:

17.3.2.1. Year ended 31 December 2012 - €24,000,000.

17.3.2.2. Year ended 31 December 2011 - €21,100,000.

[7] As restated in the 2013 Financial Statements

[8] I.e Net of reinsurance

17.3.2.3. Year ended 31 December 2010 - €4,700,000.

17.3.2.4. Year ended 31 December 2009 - €18,600,000.

17.3.3. The total reserves held by RSA, net of reinsurance, were reported in the SAOs as follows:

17.3.3.1. Year ended 31 December 2012 - €717,437,000.

17.3.3.2. Year ended 31 December 2011 - €665,918,000.

17.3.3.3. Year ended 31 December 2010 - €634,140,000.

17.3.3.4. Year ended 31 December 2009 - €652,196,000.

17.4. Had that c.€10m been properly accounted for in each of the above financial years, the profit and loss account in the financial statements would have been charged €10m. As can be seen from the figures stated above, this would have had a material effect on profit for each of the financial years ending in 2009, 2010, 2011 and 2012. Specifically, losses (not profits) would have been reported for the financial years ending 2010 and 2011.

18. The Respondent became aware of the Under-Reserving Practice during 2009, prior to his appointment as Chief Actuary of RSA. The Respondent was informed by a member of senior management of its operation. He had further conversations with a member of the claims handling staff at RSA who discussed the operation of the Under-Reserving Practice. On a number of occasions between 2009 and 2013, the Respondent attended meetings at which hard copies of the NAMA list was distributed. The majority of meetings regarding the NAMA list were conducted between other members of RSA senior management in the Respondent's absence. It is not alleged that the Respondent was responsible for the design or implementation of the Under-Reserving Practice.

The Respondent's Misconduct

19. As particularised below, the admitted acts of Misconduct relate to the Respondent's conduct falling significantly short of the standards to be expected of him in that, during the Relevant Period, he:

19.1. was incompetent in submitting SAOs to the Central Bank of Ireland / Financial Services Regulatory Authority that were inaccurate due to the Under-Reserving Practice; and

19.2. failed to whistle-blow regarding the Under-Reserving Practice, or sufficiently challenge his colleagues in respect of it.

20. For the avoidance of doubt, it is not alleged that the Respondent's conduct was dishonest.

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ADMITTED ACTS OF MISCONDUCT

ACT 1: SUBMITTED INACCURATE STATEMENTS OF ACTUARIAL OPINION

The Respondent's conduct fell significantly short of the standards reasonably to be expected of a Member in that for each of the financial years ended 2009 – 2012 (inclusive) he signed and submitted SAOs to Central Bank of Ireland / Financial Services Regulatory Authority which were inaccurate. The Respondent thereby failed to act in accordance with the core principles of Competence and care, and Compliance as set out in paragraphs 2 and 4 of the Code.

Particulars

1. At the relevant times, RSA was required to provide to the Central Bank of Ireland (the "Financial Services Regulatory Authority", in 2009), each year for solvency purposes, a Statement of Actuarial Opinion on their non-life technical reserves, both gross and net of reinsurance. On the following dates the Respondent signed such SAOs on behalf of RSA:

   1.1. 27 April 2010 in respect of the financial year ended 31 December 2009;

   1.2. 27 April 2011 in respect of the financial year ended 31 December 2010;

   1.3. 27 April 2012 in respect of the financial year ended 31 December 2011; and

   1.4. 30 April 2013 in respect of the financial year ended 31 December 2012.

2. In each of those SAOs, the Respondent was required to give an opinion on whether:

   "*total reserves…gross and net of reinsurance, comply with applicable Irish Legislation…and are greater than the sum of expected future liabilities plus the expected profit margin in the unearned premium reserves of RSA Insurance Ireland Limited as at* [date]"

3. In each SAO listed at paragraphs 1.1 to 1.4 inclusive, the Respondent gave such opinion (the "**Positive Opinion**").

4. In light of the Under-Reserving Practice, by which reserves on the NAMA lists were under-declared, the data supplied by RSA's finance department to the Respondent for

the purposes of the SAOs was inaccurate (insofar as it included the under-declaration in respect of large-claim reserves).

5. During the period 2009 – 2013 the average aggregate value by which claims were under-reserved was approximately €10m. Put in context, for the period 2009 -2012, this sum equated to[9]:

   5.1. between 212% and 41% (approximately) of RSA's reported actuarial surplus of estimated reserves over reserves held (net of reinsurance);

   5.2. between 180% and 25% (approximately) of the profit on ordinary activities, after taxation, reported by RSA in its financial statements; and

   5.3. between 1.4% and 1.6% (approximately) of the total reserves held by RSA, net of reinsurance.

6. Those under-reserving inaccuracies notwithstanding, the Respondent considered he was in a position to sign the SAO and give the Positive Opinion because he was satisfied from his own calculations that the total reserves, gross and net of reinsurance, were greater than the sum of expected future liabilities of the company for each year 2009-2012, inclusive.

7. Each of the SAOs contained the statement:

   "I have relied upon data and information prepared by the responsible employees of the Company. These data and information have not been checked by me, although the Company has confirmed the data and information supplied to me are accurate and complete and ***I have not encountered anything during the course of my work that gives me material concern in this respect****"* (emphasis added).

8. The Respondent now accepts that, in light of the Under-Reserving Practice: (1) this statement in the SAOs was incorrect; and (2) that his judgment was critically flawed and displayed significant incompetence in that he should have: (a) not made the statement in the SAO, or (b) made reference in the SAO to inaccuracies in the data caused by the Under-Reserving Practice.

[9] Paragraph 17.3 on page 5 refers

9. Accordingly, the Respondent accepts that this conduct breached:

    9.1. paragraph 2 of the Code in that he did not perform his professional duties competently; and

    9.2. paragraph 4 of the Code, which requires that members will comply with all relevant regulatory requirements.

10. The Respondent accepts that, in these regards, his conduct fell significantly short of the standards to be reasonably expected of a Member.

ACT 2: FAILURE TO WHISTLE-BLOW IN RESPECT OF THE UNDER-RESERVING PRACTICE

The Respondent's conduct fell significantly short of the standards reasonably to be expected of a Member in that he failed to whistle-blow in respect of the Under-Reserving Practice and / or provide sufficient challenge to the participants in that practice, in the knowledge that the practice was unethical and inappropriate. The Respondent thereby failed to act in accordance with the core principle of Compliance set out in paragraph 4 of the Code.

Particulars

Requirements of the Code

1. The Code states in its introductory paragraphs, "*As members of a chartered profession, actuaries have a core obligation to serve the public interest*". Further, paragraph 4 of the Code provides:

> *"Compliance: members will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure they are not placed in a position where they are unable to comply, and will challenge non-compliance by others.*
>
> *4.1 Members will speak up to their clients or to their employers, or both, if they believe, or reasonably ought to believe, that a course of action is unlawful, unethical or improper."*

2. In March 2011, the IFoA published a guide entitled "Whisteblowing: a guide for Actuaries". The guide stated that:

> *"**The guide imposes no new obligations upon actuaries** or their employers. Rather the IFoA hopes that the guide will be a useful tool for its members if, and when, they find themselves in the sort of complex or difficult situations where they may be thinking about whistleblowing."* [emphasis added].
>
> *"..It is clear therefore that actuaries are expected to:*
>
> • *raise concerns about any potentially unlawful, unethical or improper course of action with their clients and/or employer…"*

Requirements of RSA

3. RSA operated a Whistleblowing Policy. This policies was made available to all relevant RSA staff (including the Respondent). The policy encouraged RSA staff to raise concerns regarding inappropriate conduct or breaches of RSA policy. The Whistleblowing Policy specifically permitted anonymous disclosures to be made by employees.

4. The first paragraph of the Whistleblowing Policy contained the following in bold letters:

> *"The objective of this policy is to encourage and enable employees to raise serious concerns within RSA rather than over looking or 'blowing the whistle' outside. To provide avenues for employees to raise concerns in confidence."*

5. The Whistleblowing Policy provided the following steps for making a disclosure:

   a. disclosure to immediate Line Manager;

   b. "*if you do not receive a satisfactory response you should lodge a written notice to your Regional Director;*

   c. *"If for any reason you do not wish to raise your concerns through your normal line management you may choose to bring them to the attention of the following people, who will ensure your concerns are properly investigated:*

      Group Chief Auditor, [Name and telephone number provided];

      Group HR Director, [Name and telephone number provided].

(In this context "Group" means RSA Group plc).

6. The Whistleblowing Policy was readily available to RSA staff, by way of:

   a. A link to the policy on the RSA intranet homepage;

   b. A link to the policy on the RSA human resources homepage; and

   c. Inclusion of the policy as one of the operational risk policies in the Risk section of the RSA intranet.

7. Additionally, the Whistleblowing Policy was emailed to all RSA staff (including the Respondent):

   a. In an email dated 29 September 2010, attaching the policy, the Chief Executive Officer ("**CEO**") of RSA explained:

   "Employees are frequently the first individuals to recognise malpractice…However there is often a reluctance to voice suspicions for a range of understandable if possibly misguided reasons, including fear of disloyalty to colleagues or employer and/or fear of harassment or victimisation arising out of any disclosure."

   "The aim of the Whistleblowing Policy is to address this reluctance and to encourage you to advise us of any malpractice or wrongdoing within RSA of which you become aware."

   "*We believe you should feel able to report any incidents of malpractice or wrongdoing without fear of recrimination, provided any such reports are based on genuine concerns and made without malice or bad faith. This Policy is intended to enable you to raise serious concerns, offering such safeguards and support as may be necessary to protect your personal integrity and, where possible, identity."*

   "Please take the time to read the Whistleblowing Policy…"

   b. The CEO of RSA emailed all staff (including the Respondent) on 28 January 2011 concerning the RSA "Guide to Business Conduct", which also referred to the Whistleblowing Policy. A hard copy of the Guide was issued to all RSA staff at the time.

8. Aside from this policy, the Respondent could have raised concerns about inappropriate practices with other senior members of management within the Group.

The Respondent's conduct

9. In light of the above:

    a. It should have been plain to any Actuary that, professionally, they were (amongst other things) required to: challenge non-compliance with any relevant legal, regulatory and professional requirements; and speak up to their employers, and raise concerns, if they believe, or reasonably ought to believe, that a course of action is unlawful, unethical or improper;

    b. All RSA staff were (or should have been) aware of the Whistleblowing Policy and the importance of raising concerns about unethical or improper conduct such as the Under-Reserving Practice. In the Respondent's case, particularly as a member of senior management, the Respondent was (or should have been) fully aware of the Whistleblowing Policy, and the Reserving Business Control Policy. In any event he was required to comply with both.

10. The Respondent was aware of the operation of the Under-Reserving Practice and a recipient of the NAMA lists, from 2009 to 2013. He was aware that this practice was unethical, breached RSA policy and facilitated the failure to record case reserves at the correct values in the books of RSA.

11. As regards the steps set out in paragraph 5 above with respect to the Whistleblowing Policy:

    a. It is accepted that disclosure to the Respondent's immediate Line Manager would have been ineffective

    b. The Respondent did not lodge a written notice to the Regional Director; and

    c. The Respondent did not bring any concerns to the attention of the Group Chief Auditor or Group HR Director.

12. The Respondent provided some oral challenge, regarding the Under-Reserving Practice, to members of senior management on various occasions during 2009 – 2013. Such challenges were ineffective, however and should have reinforced (to the Respondent) the requirement to whistle-blow according to the Whistleblowing Policy.

Consideration of the Respondent's conduct

13. The Respondent admits his failures to (amongst other things): whistle-blow in respect of

the Under-Reserving Practice (whether in accordance with the Whistleblowing Policy, or to Group, the Central Bank of Ireland or otherwise); provide sufficient challenge to the other participants in the practice as is expected of an actuary by the Code.

14. He explains his failings in this regards as follows: (1) he was concerned, that in light of the involvement of members of the senior management in the Under-Reserving Practice, whistleblowing would not be effective and would not in fact bring about any cessation of the practice; (2) Mr Ryan believed at the time that, even accounting for the Under-Reserving Practice, the reserves held by RSA were greater than the actuarial estimate of liabilities and that the latter was based on prudent assumptions; (3) he was concerned as to the consequences for his employment within RSA were he to whistle-blow, given the direct involvement in the Under-Reserving Practice by members of the senior management and the pressure exerted on the Respondent not to interfere with those improper practices.

15. The Respondent accepts that none of the aforementioned explanations overrode his clear obligations arising from the Code and the relevant RSA policies.

<u>Conclusions regarding the Respondent's Misconduct</u>

16. The significant context of the Under-Reserving Practice, to the financial statements and actuarial reports of RSA, is set out at paragraph 17.3 of the Particulars of Fact (page 5 of this document above). One result of the practice was that the figure for profit, stated in RSA's financial statements for the financial years ended 31 December 2009 to 31 December 2012 (inclusive), was artificially inflated. As such the financial statements were materially inaccurate.

17. The Respondent accepts that his conduct, set out in these Particulars, breached paragraph 4 of the Code which requires that members will comply with all relevant regulatory requirements, and will challenge non-compliance by others. The Respondent accepts that, in this regard, his conduct fell significantly short of the standards to be reasonably expected of a Member.

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ANNEX A

RELEVANT EXTRACTS FROM THE IFOA CODE

Note: All extracts are taken from the The Actuaries Code Version 1.0 dated 1 October 2009.

Core Principles

[Paragraph 1]

Paragraph 2

Competence and care: members will perform their professional duties competently and with care.

[Paragraph 3]

Paragraph 4*.*

Compliance: members will comply with all relevant legal, regulatory and professional requirements, take reasonable steps to ensure they are not placed in a position where they are unable to comply, and will challenge non-compliance by others.

4.1 Members will speak up to their clients or to their employers, or both, if they believe, or reasonably ought to believe, that a course of action is unlawful, unethical or improper.

4.2 Members will fulfil any obligations to report information to relevant regulatory authorities.

4.3 Where there is legal protection available, members will report behaviour that they have reasonable cause to believe is unlawful, unethical or improper, to regulators or other relevant authorities.

4.4 Members will promptly report any matter which appears to constitute misconduct or a material breach of any relevant legal, regulatory or professional requirements including Actuarial Profession Standards and Technical Actuarial Standards issued by the Board for Actuarial Standards, for consideration under the relevant disciplinary schemes. To the extent that the consent of a third party is required for this purpose in order to disclose information, members must take all reasonable steps to obtain such consent.