

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 -

RORY O'CONNOR

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 accountants are set out in the Accountancy Scheme and Accountancy 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 Members¹ in relation to:

"the preparation and approval of the financial statements of RSA Insurance Ireland Limited for the financial years ended 31 December 2009 to 31 December 2012 and the preparation of financial information during 2013".
3. This is the Executive Counsel's Particulars of Fact and Acts of Misconduct in relation to the conduct of the Respondent between 2010 and 2013 (the "**Relevant Period**"), in his role as Finance Manager and (from November 2010) Chief Financial Officer ("**CFO**") of RSA, in relation to: (1) the facilitation of the setting of certain large loss case reserves below the recommended reserve, in breach of RSA's Claims Business Control Policy and Reserving Business Control Policy (the "**Under-Reserving Practice**"); (2) the approval of financial statements of RSA which he knew to be inaccurate and misleading.

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 Chartered Institute of Management Accountants ("**CIMA**")

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The Respondent

4. The Respondent to these Particulars of Fact and Acts of Misconduct is Mr. Rory O'Connor. He became a member of CIMA on 22 May 2002² and is currently an Associate Member of CIMA (ACMA). By virtue of his membership of CIMA, the Respondent is a Member for the purposes of the Scheme and Regulations.
5. The Respondent was employed with RSA from 2002 as a corporate accounting team manager. In 2004 he became Finance Manager and in November 2010 he became CFO, the most senior accountant within RSA. In his role as CFO he was a member of the Executive Management Team at RSA.
6. The Respondent was dismissed by RSA on 6 December 2013 as a result of his involvement in the Under-Reserving Practice. The Respondent instituted proceedings for Unfair Dismissal against RSA. The basis of the Respondent's proceedings included the matters set out at Paragraphs 16 *et seq.* The proceedings were settled between the parties on confidential terms and the Respondent is content to release the full terms of settlement to Executive Counsel if requested, subject to RSA's approval.

Misconduct under the Scheme

7. Misconduct is defined in the Scheme as: “ *an act or omission or series of acts or omissions, by a Member or Member Firm in the course of his or its 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 Member Firm or has brought, or is likely to bring, discredit to the Member or the Member Firm or to the accountancy profession.*”

The Relevant Standards of Conduct

8. The standards of conduct reasonably to be expected of the Respondent as a member of CIMA, in the conduct of his role as an accountant and Chief Financial Officer included those set out in the CIMA Code of Ethics for Professional Accountants dated October

² His membership lapsed during the following periods: 9 April 2003 – 25 June 2004; and 10 April 2006 – 7 April 2008.

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2010, issued by CIMA (“**Code**”)³.

9. The preface to the Code provides that as Chartered Management Accountants, CIMA members throughout the world have a duty to observe the highest standards of conduct and integrity, and to uphold the good standing and reputation of the profession. They must also refrain from any conduct which might discredit the profession. The Code contains three parts. So far as is relevant, Part A establishes the fundamental principles of professional ethics for professional accountants. Part B is not relevant for present purposes. Part C applies to professional accountants in business (such as Mr O’Connor).
10. The principles contained in the Code are framed in broad and general terms and set the benchmark by which a CIMA member’s conduct will be judged. The Executive Counsel refers to and relies on the applicable fundamental principles of the Code which are extracted and annexed to these Particulars of Fact and Acts of Misconduct as Annex A.

RSA

11. RSA was incorporated in 1989 as private limited company, and has its registered office at RSA House, Dundrum Town Centre, Sandyford Road, Dublin 16.
12. 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.
13. 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.
14. 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 comprised⁴:

³ That version of the Code has since been superseded by a new version, in January 2015.

⁴ Other losses within RSA were discovered later but they are not relevant to the allegations made against the Respondent.

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- 14.1. £37 million from inappropriate collaboration on large loss and claims accounting (the Under-Reserving Practice); and
- 14.2. £35 million primarily from inappropriate accounting for net earned premiums and pipeline earnings⁵.
15. 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 as follows:
 - 15.1. Year ended 31 December 2013 - £31m reduction (adjusted in published accounts).
 - 15.2. Year ended 31 December 2012 - £17m reduction.
 - 15.3. Prior periods (breakdown not available) - £22m reduction.

The Under-Reserving Practice

16. The Under-Reserving Practice was a well-established protocol within RSA, of which the Respondent was unaware, prior to the Respondent's elevation to the position of CFO and the Respondent was not involved in devising or introducing the practice within RSA. He was, however, involved in the continued operation of the practice following his elevation to the position of CFO. Once promoted, the Respondent was subject to persistent and severe pressure in respect of the Under-Reserving Practice. During this time, the practice operated broadly as follows.
 - 16.1. Reserves on large insurance claims were estimated by RSA claims handlers and details were provided to the claims manager and in turn the Respondent. Selected members of senior management of RSA would meet (including the Respondent, and either with or without the Claims Manager), to discuss new and existing claims for which a large reserve increase was being recommended by claims handlers. The Respondent did not have licence or authority to set reserves on claims and he did not purport to do so. A list (known as the "**NAMA**" list) was circulated amongst the senior management of RSA to track and discuss proposed reserves

⁵ These losses are not relevant to the allegations made against the Respondent.

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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. The Respondent was responsible for authorising such notifications to reinsurers.

16.2. 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.

16.3. To put the figure of €10m in context, the profit (or loss) on ordinary activities after taxation reported by RSA, in its financial statements between 2009 - 2013, was as follows:

16.3.1. Year ended 31 December 2013 – Loss of €234,688,000⁶

⁶ This figure reflects the losses identified in 2013 and referred to at paragraphs 14, 15 and footnote 4 above.

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16.3.2. Year ended 31 December 2012 - €21,246,000⁷

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

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

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

16.4. 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.

The Respondent's Misconduct

17. 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:

17.1. approved the financial statements of RSA for the financial years ended 31 December 2010 to 31 December 2012 (inclusive) in the knowledge that they were inaccurate and misleading as a result of the Under-Reserving Practice; and/or

17.2. facilitated the operation of the Under-Reserving Practice, in the knowledge that: (i) it was a breach of the relevant written policies⁸ (albeit those policies were customarily overridden by some members of senior management); (ii) there was an onus on him, due to his senior position within RSA, to fully advise Group or the appropriate regulatory authorities⁹ of the entire nature of the operation of the practice; and (iii) the practice was unethical. This practice had the consequence of artificially inflating the profit stated in RSA's financial statements for the financial years ended 31 December 2010 to 31 December 2012 (inclusive); and/or

⁷ As restated in the 2013 Financial Statements

⁸ RSA's Claims Business Control Policy and Reserving Business Control Policy

⁹ RSA was regulated by the Central Bank of Ireland during the Relevant Period

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18. For the avoidance of doubt, it is not alleged that the Respondent's conduct was dishonest. The Respondent repeatedly agitated against the Under-Reserving Practice, not only in the meetings referred to in paragraph 16.1, but also in discussions with members of the Human Resources Department of RSA.

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ADMITTED ACTS OF MISCONDUCT

ACT 1: KNOWINGLY APPROVED INACCURATE FINANCIAL STATEMENTS

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 31 December 2010 to 31 December 2012 (inclusive) he approved the Financial Statements of RSA, knowing they were materially inaccurate due to the Under-Reserving Practice. The Respondent thereby failed to act in accordance with the Fundamental Principles of Integrity and Objectivity, set out in paragraphs 110 and 120 of the Code as well as Section 320 of the Code regarding the Preparation and Reporting of Information.

Particulars

1. The Respondent was appointed as CFO, the most senior accountant in RSA, on 11 November 2010. In his role as CFO, he was responsible for approving the following financial statements of RSA:
 - 1.1. year ended 31 December 2010 (approved 15 April 2011);
 - 1.2. year ended 31 December 2011 (approved 25 April 2012); and
 - 1.3. year ended 31 December 2012 (approved 29 April 2013).
2. Those financial statements were materially inaccurate and substantial restatements were subsequently required, as set out in paragraph 15 above. The significant effect on the financial statements of RSA is set out at paragraphs 16.3 and 16.4 on page 5 above. Most notably, had the claims subject to the Under-Reserving Practice properly accounted for in each of the above financial years, losses (not profits) would have been reported for the financial years ending 2010 and 2011.
3. As a result of his involvement in the Under-Reserving Practice and receipt of the NAMA lists, the Respondent knew, when he approved the financial statements, that they were materially inaccurate. Similarly that they were misleading to persons reading the financial statements.

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4. The Respondent allowed the undue influence of other members of senior management to override his professional judgment in this regard and acted in conflict with his duties to RSA in favour of his own interests (i.e. his employment prospects within RSA).
5. The above conduct breached the following paragraphs of the Code:
 - 5.1. **110.2** - The Fundamental Principle of Integrity, which provides that a professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:
 - a) Contains a materially false or misleading statement.
 - 5.2. **120** - The Fundamental Principle of Objectivity, which imposes an obligation on all professional accountants not to compromise their professional or business judgment because of conflict of interest or the undue influence of others.
 - 5.3. **320** – The obligation on a professional accountant in business to prepare or present financial statements fairly and in accordance with relevant professional standards.

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 facilitated the operation of the Under-Reserving Practice, in the knowledge that the practice was inappropriate and unethical. The Respondent thereby failed to act in accordance with the Fundamental Principle of Professional Behaviour, set out in paragraphs 150 of the Code

Particulars

Requirements of RSA

1. RSA operated a Whistleblowing Policy, a Reserving Business Control Policy and a Claims Business Control Policy. These policies were made available to all relevant RSA staff (including the Respondent). Albeit drafted in different terms, each policy required

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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.

2. 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.”
3. 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].
4. 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.
5. 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**”) explained:

“Employees are frequently the first individuals to recognise malpractice...However there is often a reluctance to voice suspicions for a

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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.
6. The Reserving Business Control Policy provided that *“Failure to adhere to this policy will be regarded as a breach and reported to the [RSA] Reserving Committee, and to the [RSA Group plc] Reserving Committee as appropriate.”*
7. The Claims Business Control Policy provided that *“Failure to adhere to this policy will be regarded as a breach and reported to the [RSA] Regional Risk Committee, and to the [RSA Group plc] Board Risk Committee as appropriate.”*
8. Aside from these policies, the Respondent had a reporting line to the Group Chief Financial Officer, and other senior executives in Group, to whom he could have raised concerns about inappropriate practices.

The Respondent’s conduct

9. In light of the above all RSA staff (including the Respondent) were (or should have been) aware of the Whistleblowing Policy (and other relevant policies) and the importance of raising concerns about unethical or improper conduct such as the Under-Reserving

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Practice. In the Respondent's case, particularly as a member of Executive Management Team, the Respondent was (or should have been) fully aware of the Whistleblowing Policy, the Reserving Business Control Policy and the Claims Business Control Policy. In any event he was required to comply with all of them.

10. The Respondent was involved in the operation of the Under-Reserving Practice and a recipient of the NAMA lists, from at least November 2010 through to December 2013. He was aware that this practice was unethical, violated the aforementioned RSA written policies and facilitated the failure to record insurance reserves at appropriate values in the books of RSA.
11. As regards the steps set out in paragraph 5 with respect to the Whistleblowing Policy:
 - a. It is accepted that disclosure to The Respondent's immediate Line Manager was ineffective;
 - b. Having not received a satisfactory response, 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 neither reported the Under-Reserving Practice to any of the committees mentioned in the Reserving Business Control Policy or the Claims Business Control Policy or otherwise to senior members of RSA Group plc.
13. One result of the practice was that RSA's financial statements for the financial years ended 31 December 2010 to 31 December 2012 (inclusive), were inaccurate and misleading.

Consideration of the Respondent's conduct

14. 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); report his concerns in accordance with the Reserving Business Control Policy or the Claims Business Control Policy; provide sufficient challenge to the other participants in the practice.
15. The Claims Business Control Policy and a Reserving Business Control Policy, were customarily overridden by certain members of senior management in the relevant

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period. The Respondent, as a member of the Executive Management Team, was fully aware of and required to abide by the written policies, notwithstanding pressure from any other senior person to do otherwise. The Respondent admits that there was an onus on him, arising from his senior position, to advise Group or the appropriate regulatory authorities in the event of a serious breach (such as the operation of the Under-Reserving Practice) of those written policies.

16. The Respondent admits that he did not “whistle blow” in respect of the practice (whether to Group, the Central Bank of Ireland or otherwise) notwithstanding he knew that the practice was inappropriate and unethical. He further did not provide sufficient challenge to the other participants in the practice as is expected of an accountant by the Code.
17. The Respondent explains his failings in this regards as follows: (1) he was concerned, that in light of the involvement of members of the Executive Management Team in the Under-Reserving Practice, whistleblowing would not be effective and would not in fact bring about any cessation of the practice; (2) 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 Executive Management Team.
18. The Respondent accepts that none of the aforementioned explanations overrode his clear obligations arising from the Code and the relevant RSA policies.

Conclusions regarding the Respondent’s Misconduct

19. The significant context of the Under-Reserving Practice, to the financial statements of RSA, is set out at paragraph 16.3 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.
20. The Respondent accepts that his conduct, set out in these Particulars, fell significantly short of the standards to be reasonably expected of a Member and breach the following paragraph of the Code:
 - 1.1. **150** - The principle of professional behaviour which imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid

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any action that the professional accountant knows or should know may discredit the profession.

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ANNEX A

RELEVANT EXTRACTS FROM THE CIMA CODE

Note: All extracts are taken from the The CIMA Code dated October 2010.

PART A

Fundamental Principles

SECTION 110

Integrity

110.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:

- a) Contains a materially false or misleading statement;
- b) Contains statements or information furnished recklessly; or
- c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

When a professional accountant becomes aware that the accountant has been associated with such information, the accountant shall take steps to be disassociated from that information.

SECTION 120

Objectivity

120.1 The principle of objectivity imposes an obligation on all professional accountants not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.

SECTION 150

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Professional Behaviour

150.1 The principle of professional behaviour imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession.

PART C

SECTION 320

Preparation and Reporting of Information

320.1 Professional accountants in business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. Such information may include financial or management information, for example, forecasts and budgets, financial statements, management's discussion and analysis, and the management letter of representation provided to the auditors during the audit of the entity's financial statements. A professional accountant in business shall prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context.