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 -

GERARD BRADLEY

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. Bradley between 2009 and 2010 (the "**Relevant Period**"), in his role as Director of Actuarial and Pricing 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. Gerard

[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**").

Bradley. He became a fellow of the Institute and Faculty of Actuaries ("**IFoA**") in 1999 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 first employed by the Republic of Ireland branch of RSA Insurance plc (as it was then known) as an Actuary in 2000. In March 2007, he was appointed to the Executive Management Team of the Irish branch as Director of Personal Underwriting and Pricing. In March 2008, his role was changed to Director of Actuarial and Pricing. In 2009 the Irish branch was incorporated as RSA and The Respondent continued in his role, being the most senior Actuary in RSA. As part of his role, RSA's Signing Actuary[2] would report to him. From October 2010 he took up the role of Underwriting Director at RSA Reinsurance Ireland Limited (a separate company from RSA). From January 2010, The Respondent was responsible for the Solvency II programme in both RSA Reinsurance Ireland Limited and RSA.

6. In 2013, the Respondent left his role at RSA Reinsurance Ireland Limited and is employed as Head of Non-life Practice Ireland at an actuarial services firm.

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 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

8. The standards of conduct reasonably to be expected of the Respondent as a member

[2] 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. The actuary appointed by a company to sign the Statement of Actuarial Opinion is called the "Signing Actuary".

of the IFoA in the conduct of his role as the most senior Actuary at RSA included those set out in The Actuaries Code Version 1.0 dated 1 October 2009 (the "**Code**")[3], issued by the IFoA. 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."

9. 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

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

11. 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.

12. 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.

13. In November 2013, Group announced that it had identified accounting irregularities in relation to RSA. The accountancy firm PricewaterhouseCoopers ("**PwC**") was appointed

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

to undertake an independent review focusing on losses of £72 million arising from irregularities within the claims and finance functions. These losses comprised[4]:

13.1. £37 million from inappropriate collaboration on large loss and claims accounting (the Under-Reserving Practice); and

13.2. £35 million primarily from inappropriate accounting for net earned premiums and pipeline earnings[5].

14. 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:

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

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

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

The Under-Reserving Practice

15. The Under-Reserving Practice operated broadly as follows:

15.1. Reserves on large insurance claims were estimated by RSA claims handlers and provided to senior management. Selected members of senior management of RSA 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 to track and discuss proposed reserves on affected claims. The NAMA list contained 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

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

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

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.

15.2. 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.

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

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

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

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

15.3.2. The Actuarial Reports for RSA (completed by the Signing Actuary) reported the following surpluses of estimated reserves, when compared to net[6] reserves held by RSA:

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

[6] I.e Net of reinsurance

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

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

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

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

15.3.4. It accordingly equated to:

15.3.4.1. between 212% and 54% (approximately) of RSA's reported actuarial surplus of estimated reserves over reserves held (net of reinsurance);

15.3.4.2. between 123% and 25% (approximately) of the profit on ordinary activities, after taxation, reported by RSA in its financial statements; and

15.3.4.3. between 1.5% and 1.6% (approximately) of the total reserves held by RSA, net of reinsurance.

The Respondent's Misconduct

16. As particularised below, the admitted act of Misconduct relates to the Respondent's conduct falling significantly short of the standards to be expected of him in that, during the Relevant Period, he failed to whistle-blow regarding the Under-Reserving Practice.

17. For the avoidance of doubt, it is neither alleged that the Respondent's conduct breached the core principle of Integrity within the Code nor that it was dishonest.

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ADMITTED ACT OF MISCONDUCT

ACT 1: 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*."

"..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 and a Reserving Business Control Policy. These policies were made available to all relevant RSA staff (including the Respondent). Albeit drafted in different terms, each policy required 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). For example, in an email dated 29 September 2010, attaching the policy, the CEO 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…"*

8. 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*."

9. Aside from these policies, the Respondent had a reporting line to the Group Chief Actuary, and other senior executives in Group, to whom he could have raised concerns about inappropriate practices.

<u>The Respondent's conduct</u>

10. 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. The Respondent was (or should have been) fully aware of the Whistleblowing Policy and policies, and the Reserving Business Control Policy. In any event he was required to comply with both.

11. Approximately one month prior to year-end 2009, the Respondent was informed by a colleague on the Executive Management Team (who had responsibility for insurance claims) that there was approximately €10m of case claim estimates not processed on the RSA system, on approximately 10 individual large claims (this was the Under-Reserving Practice). The colleague explained that this was done at the direction of another member of senior management.

12. Shortly after being so informed, the Respondent raised this issue with a member of senior management, in the presence of a member of the RSA human resources team. However, he received no commitment that the practice would cease. Over the following days, the Respondent considered but ultimately rejected the idea of Whistleblowing in respect of the practice.

13. On occasions between January 2010 and August 2010, the Respondent met with members of senior management with responsibility for claims management at RSA to try and bring about an end to the Under-Reserving Practice. No notes of these meetings are available. In this manner the Respondent provided some oral challenge, regarding the Under-Reserving Practice. Such challenge was ineffective, however and should have reinforced (to the Respondent) the requirement to whistle-blow according to the Whistleblowing Policy.

14. Further, the Respondent was a recipient of the NAMA lists from time to time until October 2010. He was aware that the Under-Reserving Practice was unethical, breached RSA policy and facilitated the failure to record insurance reserves at the correct values in the books of RSA.

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

a. It is accepted that disclosure to Mr Bradley'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.

16. The Respondent neither reported the Under-Reserving Practice to the RSA Reserving Committee, the RSA Group plc Reserving Committee or otherwise to senior members of RSA Group plc.

Consideration of the Respondent's conduct

17. The Respondent admits his failures to (amongst other things): sufficiently appraise himself of the terms of the Whistleblowing Policy; whistle-blow in respect of the 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; provide sufficient challenge to the other participants in the practice as is expected of an actuary by the Code.

18. He explains his failings in these regards as follows: (1) he was concerned that any whistleblowing disclosure he might make would not have been treated as credible, as the main proponent of the Under-Reserving Practice was well-respected within the Group; (2) accordingly, he did not consider that a whistleblowing disclosure would be effective in bringing about the cessation of the Under-Reserving Practice; (3) rather, that the meetings referred to at paragraph 13 of page 10 of these Particulars would be more effective; and (4) he considered at the time that the level of the Actuarial surplus (see paragraph 15.3 on page 5 of these particulars) for RSA mitigated the effect of the Under-Reserving Practice (albeit the Respondent now accepts that this judgment was erroneous in this regard).

19. The Respondent accepts that none of the aforementioned explanations should have overridden his clear obligations (arising from the Code) and, were he faced with the same situation again in practice he would have whistle-blown to Group or the Group Chief Actuary in respect of the Under-Reserving Practice.

Conclusions regarding the Respondent's Misconduct

20. The significant context of the Under-Reserving Practice, to the financial statements and actuarial reports of RSA, is set out at paragraph 15.3 of the Particulars of Fact (page 5 of this document above). One result of the practice was that the figure for RSA's surplus of estimated reserves, when compared to net[7] reserves held by RSA stated in RSA's Actuarial Report for the financial year ended 31 December 2009, was artificially inflated.

21. 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.

[7] I.e. Net of reinsurance; paragraph 15.3.2 on page 5 refers.

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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 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.