



## Definition of 'misconduct'

- A Member shall be liable to disciplinary action under the Scheme if he/she has been guilty of Misconduct.
- 'Misconduct' means any conduct by a Member, whether committed in the United Kingdom or elsewhere, in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity, competence or professional judgement which other Members or the public might reasonably expect of a Member having regard to the Bye-laws of the Institute and Faculty of Actuaries and/or to any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and Faculty of Actuaries and/or, for so long as there is a relevant Memorandum of Understanding in force, by the FRC (including by the former Board for Actuarial Standards) in terms thereof and to all other relevant circumstances.

## Misconduct

- May include any conduct **before or after becoming** a Member
  - unless conduct was disclosed in writing prior to becoming a Member.
- May include misconduct of **a connected person** (Employer, colleague, partner, director) where the Member contributed to the misconduct, or did not take appropriate action after learning of the misconduct.

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## Reporting / Advice

- If you wish to report any whistleblowing concerns or have any queries on whistleblowing generally, please contact the Profession at [whistleblowing@actuaries.org.uk](mailto:whistleblowing@actuaries.org.uk)
- You can also contact a confidential advice line provided by the whistleblowing charity, **Public Concern at Work** on **0800 223 0177**. All calls are answered by staff experienced in advising on when and how best to raise concerns.

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## Disciplinary Board of the Actuarial Profession

- Jane Irvine (Chair)



- Scottish Legal Services Ombudsman
- Chair of Scottish Legal Complaints Commission
- Deputy UK Pensions Ombudsman
- Deputy PPF Ombudsman

- Six senior actuaries – three FIAs/three FFAs
- QC
- Senior solicitor

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## Disciplinary Board of the Actuarial Profession (cont'd)

- Independent of the Institute and Faculty Council.
- Council members cannot be Board members.
- Members appointed by Disciplinary Appointments Committee.
- Regulatory strategy is to “licence and regulate the members of the Institute and Faculty in such a way as to ensure Public confidence”.

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## 2012 Objectives

- Carry out a review of Disciplinary Scheme (by end 2012)
  - Definition of 'misconduct'
  - Applying the scheme overseas
  - Range and effectiveness of sanctions
- Review effectiveness of communications re Disciplinary Scheme (late 2012)
- Ensure consistency of decision making/determinations (ongoing)
- Work with PREC to ensure regulatory objectives are met (ongoing)
- Develop process to deal with wider issues arising from complaints (ongoing)
- How to manage information which has come to the attention of the Profession other than by means of a formal complaint (ongoing)

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## Number of complaints by year

People involved in the process: 6 staff, 36 investigation actuaries and 52 pool members

Year	CPD	Non-CPD	Total
2004	0	18	18
2005	0	18	18
2006	0	16	16
2007	0	8	8
2008	27	8	35
2009	19	18	37
2010	35	8	43
2011	0	7	7
2012	6	10	16

Total number of Members at end September 2012: 23,950

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## Where complaints come from

- Chairman of the Board of Examiners
- Chairman of Validation Committee
- Former employer
- Head of Professional Regulation
- Head of Regulatory Compliance
- Members of the public
- Membership Manager
- OPRA (now The Pensions Regulator)
- Other Actuaries
- Other regulators
- Pension Protection Fund
- Self-reported
- Trustees of pension schemes

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## Types of Complaint

- Criminal convictions
- Exam cheating
- Failure to undertake and/or record the required CPD
- Failing to attend professionalism course within required timeframe
- Breaches of guidance in completing expert reports for court proceedings
- Failing to progress claim for compensation on behalf of client, including failure to communicate and/or update the client
- Failures by scheme actuary to comply with statutory and professional requirements
- Failure to respond timeously to requests for information from clients, trustees and other members
- Adoption of inappropriately weak mortality assumptions by scheme actuary based on flawed analysis of actual mortality experience in conducting actuarial valuation
- Computer hacking to amend data on employer's system inappropriately
- Practising without having the right practising certificate

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## Case Study - Breaches of TAS, the Actuaries' Code and misconduct

- Case study to explore the interaction of these used for training of Investigation and Disciplinary Actuaries including lay members.
  - Interesting lessons for us in applying the TASs.
- Simplified example about an actuary who had:
  - failed to set out the position on compliance with TAS R;
  - arguably been pressure into giving insufficient information about reserving margins...
  - ... ultimately resulting in the parent company selling the subsidiary at less than true value.
- Do breaches of the TAS and the Actuaries' Code automatically mean misconduct?

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## Position regarding failure to state whether complied with TAS R

- **TAS R C 3.11**  
An aggregate report shall:
  - (a) state which TASs apply to the work that has been carried out;
  - (b) state any other TASs with which it is intended that the report shall comply;
  - (c) state whether it complies with those TASs; and
  - (d) give particulars of any material departures from the TASs referred to in (a) and (b) above.
- Clearly breached in the case study

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## Position regarding failure to state whether complied with TAS R (cont'd)

- **What about Actuaries' Code 2.4**

Members will take care whether advice or services they deliver are appropriate to the instructions and needs of the client, ..., having due regard to others such as policyholders of an insurer, members of a pension scheme or any analogous persons whose interests are affected by the work of the member.

- Some debate about whether failure of TAS R3.11 automatically means breached 2.4. On balance not sufficiently proven that omission of statement affects the understanding of the reader of the report but dissent from some lay members.

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## Position regarding failure to give sufficient information

### Which parts of the Actuaries' Code might be breached?

- 2.1 Members will consider who their advice and/or services are being provided to (their clients)
- 2.4 As previous slide
- 4.1 Members will speak up to their clients or to their employers or both if they believe or ought reasonably to believe, that a course of action is unlawful, unethical or improper.

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## Position regarding failure to give sufficient information (cont'd)

### Which parts of the Actuaries' Code might be breached? (cont'd)

- 5.1 Members will ensure that their communication, whether written or oral, is clear (indicating how any further explanation can be obtained) and timely and that their method of communication is appropriate, having regard to:
- (a) the intended audience
  - (b) The purpose of the communication
  - (c) The significance of the communication to its intended audience and
  - (d) The capacity in which the member is acting.
- 5.2 Members will take such steps as are sufficient and available to them to ensure that any communication with which they are associated is accurate and not misleading, and contains sufficient information to enable its subject matter to be put in proper context.

➤ **Is this then misconduct?**

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## Position regarding failure to give sufficient information (cont'd)

- **Debate and “model solution” suggested**

- **2.1, 2.4, 5.1 and 5.2 all deemed proven.**
- Most of debate around 4.1 which is a strong allegation
- Discussion around the importance of headings vs sub-paragraphs
- **Deemed that failure to observe the standards of TAS and Actuaries' Code in this manner was deemed to be misconduct.**

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## Questions or comments?

- Expressions of individual views by members of The Actuarial Profession and its staff are encouraged.
- The views expressed in this presentation are those of the presenter.

