



Institute  
and Faculty  
of Actuaries

# Capacity for Membership Process

Information Note

## 1. What is the Capacity for Membership Process?

- 1.1 The Capacity for Membership Process is used to deal with rare cases where a Member's current capacity to hold membership is impaired by ill health and the impairment is directly relevant to the Allegation or Charge. The aim of the process is to find a balance between supporting Members who are experiencing significant health issues and upholding the public interest requirements of the IFoA.
- 1.2 Capacity for Membership Panels do not make findings of Misconduct and outcomes are issued rather than sanctions. These outcomes detail the measure(s) necessary, in the public interest, to support the Member during the period of ill health.
- 1.3 More detailed information on the process can be found in Rules 9 and 16 of the [Disciplinary Scheme](#), Section F of the [General Disciplinary Regulations](#), the [Capacity for Membership Regulations](#) and the [Capacity for Membership Guidance](#). A flowchart showing the process can be found at the end of this information note.

## 2. Who can apply to have a case transferred to the Capacity for Membership Process?

- 2.1 A Respondent who is facing an Allegation of Misconduct can make an application to have their case transferred to the Capacity for Membership Process at any time during disciplinary proceedings up until a final determination has been issued by a disciplinary panel (e.g. an Adjudication Panel or Disciplinary Tribunal Panel).
- 2.2 The Case Manager investigating the Allegation can also apply to have the case transferred if they think it is necessary and appropriate to do so.
- 2.3 Adjudication Panels and Disciplinary Tribunal Panels can decide, even if there is no application, to transfer a case to the Capacity for Membership Process if they are satisfied that the criteria set out in the General Disciplinary Regulations are met. They can only do this if they have not yet issued a final determination.

## 3. Who should the application be made to?

- 3.1 If a Respondent wants to make an application to transfer their case to the Capacity for Membership process, they should contact their Case Manager ([disciplinary.enquiries@actuaries.org.uk](mailto:disciplinary.enquiries@actuaries.org.uk)) or the Judicial Committees Secretary ([clerk@actuaries.org.uk](mailto:clerk@actuaries.org.uk)) who will be able to provide more information. Applications should normally be made in writing however, they can also be made orally at a Disciplinary Tribunal Panel hearing.

## 4. What information needs to be included in the application?

- 4.1 The application should include:
  - (a) details of the Respondent's illness or other relevant health or medical condition.
  - (b) evidence confirming the Respondent's current health or medical condition and what their health/medical condition was at the time of the alleged act(s) of Misconduct. This evidence may include:
    - relevant medical records;

- reports from any medical advisor or health professional involved in the Respondent's treatment;
  - expert evidence regarding the effect of the Respondent's condition on their capacity for membership of the IFoA; and/or
  - any other relevant evidence.
- (c) details of how the Respondent's health condition affects their current capacity to be an IFoA Member and how the condition prevents them from meeting their obligations as a Member.
- (d) an explanation of the connection between the Respondent's health condition and the alleged act(s) of Misconduct.
- (e) an explanation of the public interest considerations in favour of the case being transferred to a Capacity for Membership Panel.
- 4.2 If the Case Manager is preparing the application to transfer the case, they may carry out inquiries and/or obtain any relevant information. The Respondent may be asked to consent to their medical records being obtained or to be examined by a medical advisor or health professional.
- 4.3 The party making the application is responsible for providing and meeting the cost of obtaining any medical records and/or reports. When an application is made orally at a Disciplinary Tribunal Panel hearing, the Panel will decide who is responsible for getting and paying for any medical records and/or reports.

## **5. Who will decide whether to grant the application and what will they consider when deciding?**

- 5.1 The relevant Panel, i.e. the Adjudication Panel or the Disciplinary Tribunal Panel, will decide whether to grant the application to transfer the case to the Capacity for Membership Process.
- 5.2 Adjudication Panels will consider the application in private. This means they will consider the papers provided and the Parties do not attend.
- 5.3 At the Disciplinary Tribunal Panel stage, the application will be considered at a preliminary hearing. This hearing may be a consideration on the papers in private, or it may be that Parties are invited (or can request) to attend and make oral submissions to the Panel. The Judicial Committees Secretary will tell the Parties how and when the application will be considered. Regulations 39 to 51 of the [Disciplinary Tribunal Panel Regulations](#) give further information on preliminary hearings and the procedure.
- 5.4 If Parties attend the preliminary hearing, the Chair of the Disciplinary Tribunal Panel will be in charge of the process. Members of the public cannot observe these hearings. A Legal Adviser and the Judicial Committees Secretary will be present and will be available on the day to answer questions about the process. The process for considering the application is flexible and will accommodate the needs of the Respondent.

The order of preliminary hearing proceedings will normally be:

- (a) The Party making the application will explain why the application is being made and the information provided to support the application.
- (b) The other Party will have an opportunity to respond.

(c) The Party making the application will then have an opportunity to reply.

5.5 The three criteria that Panels must consider when deciding whether to grant an application are set out below. They are also detailed in Regulation F5 of the [General Disciplinary Regulations](#). Further guidance is given to Panels about what to consider in section 5 of the [Capacity for Membership Guidance](#).

- (a) **There must be Prima Facie evidence that the Respondent's current capacity to hold membership of the IFoA is significantly impaired by reason of illness or other relevant health or medical condition.** The Panel must consider whether the Respondent's illness prevents them from meeting their obligations as an IFoA Member. If the Respondent is no longer an IFoA Member, their capacity to hold membership and meet the obligations of a Member is no longer relevant. A Panel may therefore consider that transferring the case to the Capacity for Membership Process is not appropriate or necessary.
- (b) **There must be Prima Facie evidence that the Respondent's impairment is directly relevant to the Allegation.** The Respondent's health condition must be affecting both their current capacity to hold membership **and** be directly connected to the alleged Misconduct. If the Respondent becomes unwell during a disciplinary process this can be dealt with in other ways such as delaying the investigation until they have recovered or by putting in place appropriate adjustments<sup>1</sup>. If the Respondent suffered ill health at the time of the alleged Misconduct but has since recovered, the ill health could be considered as possible mitigation. However, if it does not affect the Respondent's current capacity, it would not be a reason to transfer the case to a Capacity for Membership Panel.
- (c) **It is in the public interest that the case be transferred to a Capacity for Membership Panel.** There may be circumstances where a Member is suffering from ill health, but the Panel decides that it is not in the public interest to transfer the case to the Capacity for Membership Process. Paragraph 5.2(c) of [the Capacity for Membership Guidance](#) states that where the Allegation under investigation is so serious that it is likely to result in exclusion from IFoA membership, it is unlikely that it would be considered in the public interest to transfer the case to the Capacity for Membership process. The IFoA's [Sanctions Guidance](#) states that dishonesty will usually lead to expulsion or exclusion. Therefore, if the Allegation against the Respondent involves dishonesty it is likely that it will not be in the public interest to transfer the case to the Capacity for Membership Process.

## 6. What happens if the application is rejected?

- 6.1 If the Panel rejects the application, the case will continue as if the application had not been made. This means that if an Adjudication Panel rejects the application, the case will be returned to the Case Manager who will conclude the investigation and issue a Case Report to be considered by an Adjudication Panel.
- 6.2 If a Disciplinary Tribunal Panel rejects the application the case will continue to be heard at a public Disciplinary Tribunal Panel hearing.
- 6.3 More information on the different stages of the disciplinary process can be found in [this flowchart](#).

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<sup>1</sup> Please see the Adjustments to the Disciplinary Process Guidance Note for further information: <https://actuaries.org.uk/media/0aonzplf/adjustments-to-the-disciplinary-process.pdf>

## 7. What happens if the application is accepted?

- 7.1 If the Panel accepts the application to transfer the case, the Judicial Committees Secretary will arrange for the appointment of a Capacity for Membership Panel who will then consider the case under Rule 16 of the [Disciplinary Scheme](#) and Regulations 24 to 49 of the [Capacity for Membership Regulations](#).

## 8. Consent Orders

- 8.1 At any stage after a case has been transferred to a Capacity for Membership Panel, the Case Manager may invite the Respondent to agree to a Consent Order. A Consent Order would propose a jointly acceptable outcome to bring an early resolution to the matter.
- 8.2 A Consent Order proposes an outcome such as conditions on the Member's practice or a suspension of up to two years.
- 8.3 If the Respondent agrees to the proposal, it is sent to the Capacity for Membership Panel for them to approve or reject the Consent Order in whole or in part. A Capacity for Membership Panel can only approve a Consent Order that includes conditions that are within its powers to impose. That means a Consent Order will never be more onerous than conditions that the Capacity for Membership Panel could impose.
- 8.4 If the Capacity for Membership Panel rejects the Consent Order the case will proceed to a Capacity for Membership Panel hearing.
- 8.5 More detailed information about Consent Orders can be found in Regulations 1 to 23 of the [Capacity for Membership Regulations](#).

## 9. What happens before a Capacity for Membership Hearing?

- 9.1 Once a case has been transferred to the Capacity for Membership Process, a Capacity for Membership Panel hearing will be arranged. The Judicial Committees Secretary will tell the Parties when the hearing will take place. In line with paragraph 5.1 of the IFoA's [Publication Guidance](#), notice of the hearing will be published on the IFoA's website. Information about the details that will be published can be found in paragraph 5.2 of the publication guidance.
- 9.2 Before the hearing takes place, the Respondent will be invited to submit all the information they think the Capacity for Membership Panel should consider.
- 9.3 A Capacity for Membership Panel can also direct, at any time, that the IFoA and/or the Respondent get any evidence that it thinks necessary to be able to consider the case. To allow a Capacity for Membership Panel to decide what outcomes are appropriate, they will need to be able to gain an understanding of the issues the Respondent is experiencing. This means that access to the Respondent's medical records and a written report from an independent medical professional will be necessary in most cases. Therefore, the Respondent must be willing to be examined by an independent medical expert and to give the IFoA permission to access their medical records. If the Respondent is not able, or willing, to agree to this, it is unlikely a Capacity for Membership Panel will be able to consider the matter and the case may be returned to the Case Manager for an investigation to be carried out and dealt with under the standard disciplinary process.

## 10. What happens at a Capacity for Membership Hearing?

- 10.1 The Chair of the Panel will be in charge of the process. The hearing will be held in private and members of the public will not be allowed to observe it. A Legal Adviser and the Judicial Committees Secretary will be present and will be available on the day to answer questions about the process. The process for each Capacity for Membership Panel hearing is flexible and will accommodate the needs of the Respondent. The order of proceedings will normally be:
- (a) The IFoA will tell the Panel the background to the case.
  - (b) The IFoA will present any relevant evidence which may include calling witnesses.
  - (c) The Respondent may then present their evidence and call their witnesses.
  - (d) Either party may question the other party's witnesses.
- 10.2 The Panel will decide if the facts of the Allegation are proven. If they are not, the case will be dismissed.
- 10.3 If the Panel decides that the facts of the Allegation are proven but the Respondent's health condition does not significantly affect their ability to hold membership, or is not relevant to the Allegation, they will return the case to the standard disciplinary process. The case will then continue as though the transfer to the Capacity for Membership Process had not occurred.
- 10.4 If the Panel decides that;
- (a) the facts of the Allegation are proven,
  - (b) that the Respondent's current capacity to hold membership is significantly impaired, and
  - (c) the ill health is relevant to the allegation or charge,
- they can make an order containing one or more of the following outcomes:
- i. no action.
  - ii. suspension of Membership of up to two years.
  - iii. imposing conditions on the Respondent's membership for up to two years.
  - iv. refer the case back to the disciplinary process for determination.
- 10.5 The conditions that can be imposed on the Respondent's membership are at the discretion of the Capacity for Membership Panel. As an example, conditions may include requirements to meet with an appropriate health professional at regular intervals, allow the health professional to exchange information with the IFoA, meet with an IFoA approved supervisor and/or have your work peer reviewed.
- 10.6 When a Capacity for Membership Panel makes an order, or where a Consent Order is in place, a date will be set for a hearing to review the order. At a review hearing, the Panel will first determine whether the Respondent's capacity for membership is still impaired. Where the Respondent's capacity is no longer impaired, the Panel may confirm the existing order, vary the terms of the order or cancel all, or part of it, at any time up to the expiry date of the existing order. If the Panel confirms or varies an existing order, they will set a date for a further review hearing to take place. Where the Respondent's capacity for membership is still impaired, in addition to the options above, the Panel may also replace the existing order with a new order imposing any of the outcomes listed in paragraph 10.4 above.

- 10.7 If a Respondent does not comply with either a Consent Order, or an order imposed by a Capacity for Membership Panel, the Panel will refer the non-compliance to the IFoA to be considered under the Disciplinary Scheme, if it is in the public interest to do so.

## **11. Will the Respondent's medical information be kept confidential?**

- 11.1 Details of the Respondent's medical circumstances will always be kept confidential and Capacity for Membership Panel Hearings are held in private.
- 11.2 Under section 6 the IFoA's [Publication Guidance](#), a Capacity for Membership Panel has the discretion to decide whether an order should be published. Normally, any final order, Consent Order or non-health related outcomes for a Capacity for Membership Panel should be published. The published information may include the Respondent's name, the date of any hearing and any non-health related outcomes. The findings of fact, health-related outcomes and the Capacity for Membership Panel's reasons for its decision should not normally be published.

## **12. What happens if the Respondent disagrees with the Capacity for Membership Panel's decision?**

- 12.1 If the Respondent is unhappy with the Capacity for Membership Panel's decision, they can appeal within 28 days of receiving the decision in writing. The grounds for appeal are set out in the [Appeals Regulations](#).

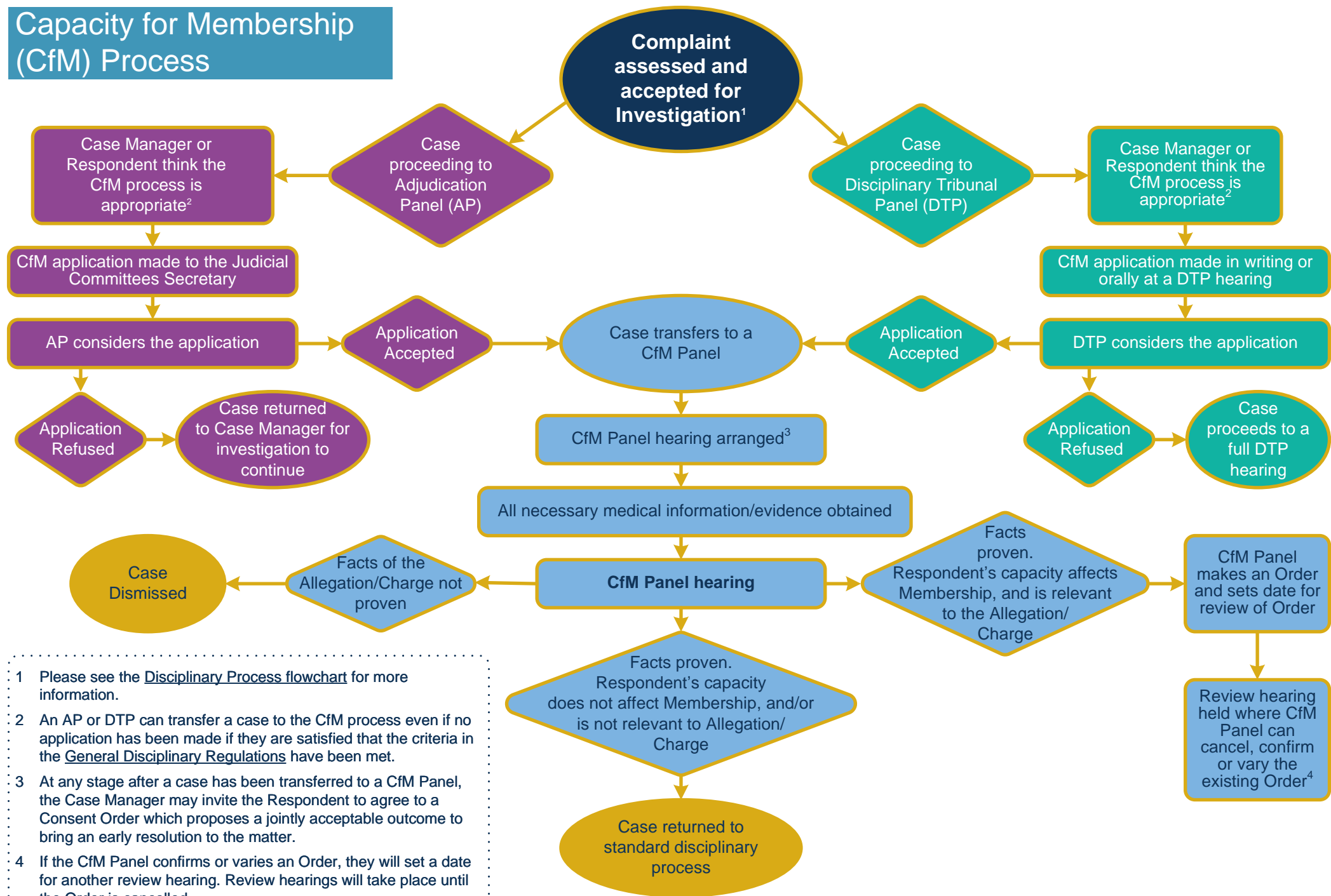
## **13. Who can help with questions about the process?**

- 13.1 For any questions about the process the Judicial Committees Secretary can be contacted by emailing [clerk@actuaries.org.uk](mailto:clerk@actuaries.org.uk), or the Disciplinary Investigations Team can be contacted by emailing [disciplinary.enquiries@actuaries.org.uk](mailto:disciplinary.enquiries@actuaries.org.uk).

## **Document control**

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|         |                     |  |
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# Capacity for Membership (CfM) Process



- 1 Please see the [Disciplinary Process flowchart](#) for more information.
- 2 An AP or DTP can transfer a case to the CfM process even if no application has been made if they are satisfied that the criteria in the [General Disciplinary Regulations](#) have been met.
- 3 At any stage after a case has been transferred to a CfM Panel, the Case Manager may invite the Respondent to agree to a Consent Order which proposes a jointly acceptable outcome to bring an early resolution to the matter.
- 4 If the CfM Panel confirms or varies an Order, they will set a date for another review hearing. Review hearings will take place until the Order is cancelled.





# Institute and Faculty of Actuaries

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## Beijing

Room 512 · 5/F Block A · Landgentbldg Center · No. 20 East Middle 3rd Ring Road  
Chaoyang District · Beijing · 100022 · People's Republic of China  
Tel: + 86 10 5878 3008

## Edinburgh

Spaces · One Lochrin Square · 92 Fountainbridge · Edinburgh · EH3 8QA  
Tel: +44 (0)20 7632 2100

## London (registered office)

1-3 Staple Inn Hall · High Holborn · London · WC1V 7QJ  
Tel: +44 (0) 207 632 2100

## Malaysia

Arcc Spaces · Level 30 · Vancouver suite · The Gardens North Tower  
Lingkaran Syed Putra · 59200 Kuala Lumpur  
Tel: +60 12 591 3032

## Oxford

Belsyre Court · 1<sup>st</sup> Floor · 57 Woodstock Road · Oxford · OX2 6HJ  
Tel: +44 (0) 207 632 2100

## Singapore

Pacific Tech Centre · 1 Jln Kilang Timor · #06-01 · Singapore · 15930  
Tel: +65 8778 1784

**actuaries.org.uk**

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