GAR RELATED MIS-SELLING CLAIMS

INTRODUCTION

The Society is writing to certain former policyholders who withdrew funds from the with-profits fund to advise them of the procedure in respect of complaints they may have relating to guaranteed annuity rates ("GARs"). The purpose of this leaflet is to describe the complaints process so that you may, if you believe that you have a valid claim, lodge such a claim in relation to the GAR issue.

The potential GAR related claims have come about because some former Society policyholders whose policies did not contain a GAR option may have suffered loss as a result of the existence and financial effect of GARs on the Society's with-profits fund. The Society wishes to resolve these potential GAR related mis-selling claims in a fast and fair manner which provides fair redress to those former policyholders with valid claims, whilst also safe-guarding the rights and interests of existing policyholders.

BACKGROUND TO GAR RELATED CLAIMS

Between 1957 and 1988 most of the Society's pension policies gave the policyholder an option, when the policy matured, of buying an annuity from the Society at a guaranteed annuity rate or at current market annuity rates. Market annuity rates are affected by fluctuations in interest rates and life expectancy, whereas the GARs were fixed. In late 1993 market annuity rates fell below the GAR in most policies written by the Society though it was some years before the difference was significant. As a result, the GAR option became potentially valuable to those policyholders with GAR policies.

Upon maturity of the GAR policy, the Society aimed to ensure, so far as possible, that, regardless of whether the GAR option was exercised, the policyholder should receive benefits that were roughly equal to that person's notional interest in the with-profits fund. This led the Society to adopt a practice whereby a reduced final bonus was applied if the GAR option was exercised, therefore reducing the likely cost of such annuities to the with-profits fund (known as the differential final bonus practice).

This policy was tested in Court and in July 2000 the House of Lords ruled that the Society was not entitled to adopt the differential final bonus practice. It was also decided that the Society could not differentiate final bonus (on the basis of the GAR right) between policies with GARs and those without (an approach which was supported by one of the Court of Appeal judges). As a result of that decision, the Society estimated that the cost of honouring the GAR options in accordance with the House of Lords ruling, was £1.5 billion. To meet this cost, the Society decided in July 2000 to withhold 7/12ths of the interim bonus allocated for the year 2000 for both GAR and non-GAR policyholders.

Other with-profits policies (including with-profits pension policies sold after 1 July 1988 to individual policyholders) did not contain the GAR option. These are referred to as non-GAR policies. As a recipient of this leaflet, you have held one or more such non-GAR policies. Because the Society's with-profits fund was a single pot of money and there were no other funds from which payments could be made to meet the costs of satisfying the GAR options following the House of Lords decision, that Court decision also impacted upon non-GAR policyholders.

GAR RELATED MIS-SELLING CLAIMS

The Society obtained legal advice after the House of Lords decision that non-GAR with-profits policyholders might have claims against the Society if they were not made adequately aware when they bought their policies of the extra potential costs of satisfying the GAR options. These potential claims are referred to in this document as "GAR related mis-selling claims". The Society was advised that in order for such a claim to succeed, it would be necessary to establish that the Society in fact mis-sold that case, that the individual claimant relied on statements made (or not made) by the Society, and that any alleged loss was caused by such mis-selling (as opposed to other factors). In addition, and depending upon individual circumstances, the Society might have potential defences that some claims have become barred by the passage of time.

THE GAR COMPROMISE SCHEME

In December 2001, the Society announced a Compromise Scheme under s425 of the Companies Act 1985. That Scheme took effect on 8 February 2002. The effect of the Compromise Scheme was to remove the GAR option from GAR policies in force at that time. In addition, the Scheme settled potential GAR related mis-selling claims of non-GAR policyholders who had policies on the date the Scheme took effect. Non-GAR policyholders

such as you, who had wholly or partially transferred, surrendered or switched any policy funds out of the with-profits fund before 8 February 2002, retained the ability to make GAR related mis-selling claims against the Society in relation to those funds transferred out of the with-profits fund before that date.

HOW COMPLAINTS WILL BE DEALT WITH

If you purchased your policy on or after 1 September 1998 (the date from which the Society began to receive legal advice as to the legality of its differential final bonus practice) and consider that you have a valid GAR related mis-selling complaint against the Society, you can complete the questionnaire at the end of this explanatory leaflet, making sure that you identify the policy number(s) to which the claim relates, and write to the Society at the address at the foot of the accompanying letter enclosing the questionnaire and providing any supporting evidence you have.

If you have already lodged a complaint for GAR related mis-selling with the Society, you need not reply to this letter and your existing claim will be considered.

Upon receipt of your complaint, the Society will conduct a review of your claim. At the conclusion of that review the Society will consider whether there are sufficient grounds to justify the Society making an offer of redress to you without admission of liability. Where redress is payable, this will be calculated on the basis described later in this document.

In order to ensure that the claims review process is operated in a consistent and correct manner, the Society has retained the services of an independent firm of accountants who will be responsible for ensuring the consistent application by the Society of the criteria adopted for reviewing complaints and that any redress is calculated in accordance with the approach set out below.

The review process does not prevent you from exercising any existing rights you may have to bring GAR related mis-selling claims before the Financial Ombudsman Service ("FOS") (where your policy falls under their jurisdiction) or the Courts. Similarly, if you are dissatisfied with the outcome of the review, you will be entitled if you so wish to refer your complaint to the FOS or to issue Court proceedings. However, the Society considers that the review process will operate as a speedy, efficient and fair mechanism for considering complaints and for offering redress, where appropriate.

In order to justify making offers of redress, and as a condition of payment, former policyholders will be required to enter into a full and final settlement waiving any GAR related mis-selling claims they may have, including any claims alleging negligence or fraud.

CALCULATION OF POTENTIAL REDRESS

The Society has commissioned both actuarial and legal opinions to consider what levels of redress might be appropriate in the event that a former policyholder was able to establish a valid, GAR related mis-selling claim. Last autumn, the Society published the findings of an independent actuarial study by leading consulting actuaries B&W Deloitte that had been commissioned at the request of the Financial Services Authority ("FSA"). This study compared the payout performance on various categories of non-GAR policies issued by the Society against available published data on comparable products sold by the Society's main competitors. The study also reported on the value of the flexibility of the Society's products over and above the comparable products of the competitors. Finally, the study considered whether and, if so, to what extent former non-GAR policy values were reduced by the costs of honouring the GAR options in accordance with the House of Lords ruling referred to above.

The B&W Deloitte study shows that:

- payouts to some former policyholders, over the period reviewed by B&W Deloitte, were lower than for comparable providers (for example, regular premium pension holders received lower payouts if their policies were transferred or matured after July 2001;

- the withholding of interim bonuses in 2000 (referred to in the 'BACKGROUND TO GAR RELATED CLAIMS' section above) resulted in the non-GAR policyholders bearing GAR related costs that generally reduced their pension policy values by up to approximately 5% and life policy values by up to approximately 4.5%.

Legal advice has also been obtained by the Society from Christopher Carr QC and Gabriel Moss QC. That advice states that if mis-selling is established in individual cases and former policyholders can show that they acted in reliance on statements improperly made or not made by the Society, individual claimants may have a

valid claim for redress. In such a case, the opinion of Leading Counsel concluded that the maximum recoverable loss would be the lower of:

- the amount the former policyholder would have received if he had bought an equivalent policy from a comparable group of life insurers, less what he actually received on maturity/surrender from the Society; and

- the amount by which that former policyholder's fund was reduced by GAR related costs (i.e. the 5% or 4.5% referred to above).

Leading Counsel made clear that losses related to other factors, such as falling stock markets were not, as a matter of law, caused by the alleged GAR related mis-selling and so would not be eligible for redress. This is a very important legal conclusion as many of those who have written to the Society have claimed that they are entitled to claim redress based on market losses or the imposition by the Society of financial adjustments on surrender or the policy value reductions made by the Society in July 2001. The Society does not accept that claims for such losses are compensatable and the Carr/Moss legal opinion strongly supports this position.

Both the B&W Deloitte study and the legal opinion from Christopher Carr QC and Gabriel Moss QC are available on the Society's website (www.equitable.co.uk).

STEPS FOR YOU TO CONSIDER

If you consider that you may have a valid GAR related mis-selling claim against the Society, you should complete the questionnaire at the end of this explanatory leaflet, making sure that you identify the policy number(s) to which the claim relates, and send the questionnaire to us at the address at the foot of the accompanying letter enclosing any supporting evidence you have. Before deciding whether to send your questionnaire and how to complete it, you may wish to take legal or other advice. (Note: You will need to meet any costs of obtaining such advice yourself.) As mentioned above, if you have already submitted a GAR related complaint to the Society you do not need to take any further action at this stage in respect of this letter.

Many of the complaints received by the Society from former policyholders in relation to the GAR issue have been, in substance, attempts to seek recovery of losses caused by the fall in stock market values. As explained above, the Society has no liability for such investment losses and they would not be recoverable in any normal business. However, the Society will ensure that valid claims are dealt with under the review in a fast and fair way whilst also safeguarding the interests of continuing policyholders who will bear the cost of such redress. The Society also hopes that the review process will avoid (both for its current and former members) the uncertainties, delays and expense of a large number of individual cases going through the FOS or the Courts.

RELEVANT PROCEEDINGS RELATING TO GAR RELATED MIS-SELLING

Various complaints have been launched in the Courts and with the FOS that deal with potential GAR related mis-selling. The Society has not been found liable by any Court in relation to any potential GAR related mis-selling claims at this stage.

The FOS has recently issued adjudications in relation to five cases concerning the Society's potential liability for GAR related mis-selling. The five cases, which have been considered on their individual circumstances, concerned former policyholders whose policies were purchased in or around 1999. The FOS's views are that the Society had in those cases incorrectly disclosed (or in one case failed to disclose) the potential cost of losing the House of Lords litigation and the impact this could have on their non-GAR policies. The Society is considering whether to refer the adjudication to the Ombudsman for a review and formal decision. The FOS's views do not address the issue of redress. The Society will be making representations to the FOS that the appropriate redress in these cases should be as provided under the Review.

In addition, a small number of former policyholders who joined the with-profits fund from around 1998 have alleged in correspondence with the Society that its conduct in relation to the GAR issue went beyond negligence and amounted to fraud. The Society considers that there is no credible case of fraud and in the event that former policyholders choose to issue proceedings alleging fraud, those proceedings will be defended vigorously by the Society.

CONTACTS

If you have any questions about the process described in this leaflet, you can call our dedicated help line on 0845 850 4836 if you are calling from within the UK, or (+44) 1296 337665 if you are calling from abroad.