

21 Appendix 7 – Terms of Reference

Scope of the Independent Expert's work

My role as Independent Expert will be to consider and to prepare a report on the proposed *Scheme* which will be provided to the Court. I will consider the proposed *Scheme* from the perspectives of all policyholders, and opine as to whether any policyholders' interests could be in any way (either directly or indirectly) adversely affected. While my overriding duty will be to the Court, my report will be addressed to the Society for the benefit of the policyholders and, in particular, the with-profits policyholders.

Primarily this will entail an opinion on the fairness of the effects of the *Scheme* which, for with-profits policyholders would take into account:

- The methodology used for the allocation of benefits amongst the relevant (or groups of) with-profits policyholders and the form of those benefits;
- The criteria used for determining the eligibility of the various with-profits policyholders to both participate in the *Scheme* and to vote;
- The terms and conditions of the *Proposals* (to the extent that they materially affect the benefits to be offered, or the bonuses that may be added to with-profits policies).

In addition this will involve setting out to with-profits policyholders, or each group of with-profits policyholders, with reasons, whether the firm's *Proposals* are fair.

For non-profit policyholders this would involve setting out whether there were any adverse effects of the *Scheme* on the security of their benefits.

While Chapter 18 of SUP (in particular, SUP 18.2.33G) does not formally apply, COBS 20.2.48 would require me as Reattribution Expert to prepare a report (which will be "the Report") which complies "with the applicable rules on expert evidence". No guidance on what is meant by "applicable rules" is supplied in SUP and my understanding therefore is that the FCA expect any independent report to be prepared in accordance with Part 35 of the Civil Procedure Rules 1998 ('CPR'), to the extent relevant. I will therefore conduct my work as if Part 35 of the CPR did apply to the extent relevant. In particular, I will owe an overriding duty to the Court to assist the Court and to give the Court independent expert evidence on the proposed *Scheme*.

In order to form my opinion, I will expect the tasks that will be carried out will include the following:

- Review the Society's projections of *run-off* and the outcome of the *Scheme* and compare these against a number of fairness criteria to express an opinion as to whether the *Scheme* is a fair outcome for with-profits policyholders, in doing so setting out the fairness criteria used;
- Review and comment on the analysis of the classes of with-profits policyholders used to determine the voting arrangements of the *Scheme*;

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- Review the analysis of the different groups of with-profits policyholders and express an opinion on the suitability of the different groups for fair treatment of with-profits policyholders, considering different factors that impact the *Investment Guarantees* and benefits being surrendered such as age of policyholder, duration of policy in-force and outstanding, size of policy, product type, types of guarantee and levels of guarantee;
- Determine the fairness of the methodology used to allocate benefits amongst the relevant groups of policyholders;
- Consider the impact of the conversion of the with-profits policies to unit-linked policies on with-profits policyholders, including the investment options offered to policyholders on conversion together with any future automatic changes to those investment options, and the potential terms, charges and types of investment funds available to converted policyholders;
- Review the outcome of the *Scheme* and Sapphire (i.e. Sale of the Society) in the context of determining any impact on the security of the benefits of non-profit policyholders;
- Review the approach to dealing with Irish, Jersey and Guernsey policyholders under the *Scheme* and determine the appropriateness of this and whether there would be any reason to treat them differently than is proposed;
- Review over a wide range of scenarios, the benefits forgone (allowing for a reasonable level of claims enhancement going forwards based on past experience and different levels of claims enhancement) against the benefits offered under the *Scheme*;
- Assessment of the Society's consideration of alternative strategies to *run-off* that might have the potential to achieve the *Scheme*'s objective of fairly distributing all of the assets amongst with-profits policyholders within an appropriate timeframe. This should include consideration of the advantages and disadvantages in terms of policyholder outcomes of these alternatives relative to the *Scheme* and a view as to the reasonableness of the Society's decision to proceed with the *Scheme*;
- Consider the potential impact on policyholders and their future benefits of the Society rolling back from the *Scheme* to a *run-off* basis post the announcement of the *Scheme*;
- Consider whether the costs of the Society's hedging strategy which fall on the with-profits fund are incurred in the best interests of policyholders;
- Consider the potential impact on policyholders and their future benefits of the Society unwinding the interest hedging strategy transaction;
- Consider the Society's proposals in respect of advice and guidance, and the fairness of the monetary contribution on offer to individual policyholders, and determine whether the proposals demonstrate that the policyholders will be able to access advice and guidance;
- Review and comment on the calculations that form part of the ready reckoner (replaced by individual personalised illustrations) that will be available to policyholders;
- Consider the potential financial impact on policyholders and their future benefits of the Society's proposals in respect of advice and guidance;
- In determining the fairness of the *Scheme* we will utilise output from the Society's models. We will consider the work commissioned by the Society setting out an independent review of the accuracy and appropriateness of the modelling, together with the overall results, questioning the providers of the assurance if necessary and requesting additional model results if necessary;
- In the event that the Society utilises specimen policies to determine potential benefits for groups of with-profits policyholders rather than individual personal calculations we will

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- consider the work the Society carries out to demonstrate that with-profits policyholders do not lose out due to the use of specimen policies;
- Review of any other eligibility criteria;
 - Review of treatment of “*Legacy Scheme Policyholders*” and “leavers” before the *Scheme Effective Date*;
 - Review of the terms and conditions of the *Scheme*, including the absence of a policyholder opt-out;
 - Consider the potential impacts for policyholders from the approach taken by the Society to legal matters connected with the *Scheme* (including the legal advice and opinions obtained by the Society to support their approach) and to assess whether it would be appropriate to seek independent legal advice on these matters;
 - Review of the potential timing of different stages of the *Scheme* and any impact on with-profits policyholders of that timing;
 - Review of existing company documentation, as set out in the appendix to this letter;
 - Review of the *Scheme* Documentation and, if necessary, suggesting amended drafting in order to eliminate any concerns that I may have;
 - Review and input into all policyholder documentation and other policyholder communications that may relate to the *Scheme*, including all communications planned for the initial announcement of the *Scheme*;
 - Consider how the comparators between the *Scheme* and *run-off* are presented to policyholders to aid their decision making;
 - Be aware of the Part VII Scheme that is due to run alongside the *Scheme* and express any concerns if this may have an adverse impact on the *Scheme* for with-profits policyholders;
 - Liaise and raise issues and questions as necessary with the appropriate persons at ELAS and maintain a log of material challenges made, including how these have been addressed by the Society and what changes (if any) this has led to;
 - Liaise and raise issues and questions as necessary with your advisors, including tax and legal advisors, and maintain a log of material challenges made, including how these have been addressed by the Society and what changes (if any) this has led to;
 - Consider and deal with any queries or requests for further consideration arising from either the FCA or PRA;
 - Draft a full report for the Court addressed to the Society for the benefit of all policyholders together with a summary report to be sent to the with-profits policyholders. For non with-profits policyholders the report will be made available on the Society’s website and communications with these policyholders will refer to this.