

Annexe Number 5B

Reporting to Policyholders Post-Reattribution

A summary of Aviva's perspective in connection with the reattribution of the inherited estates of CGNU Life and CULAC with-profits funds

Norwich Union rebranded as Aviva in the UK on 1 June 2009. Where an historical position or events prior to 1 June 2009 are described in this appendix, 'Aviva' and associated naming conventions have been used. Financial information has not been updated and remains as at the time of the report date.

Information contained in this report, its appendices or elsewhere which was provided by Aviva has been prepared by or commissioned by Aviva to facilitate its negotiations with the Policyholder Advocate. Aviva does not authorise the use of this information for any other purpose. Whilst Aviva has taken reasonable care that the information is accurate, it was prepared for use only by the Policyholder Advocate and her advisers and this information is not to be construed as advice by or on behalf of Aviva to any person, including policyholders and shareholders. No representation or warranty (whether express or implied) is given as to the future projections, estimates, returns or prospects, or any assumptions underlying them noted in this report. Aviva is not liable for any loss arising from any errors, omissions or misrepresentations in this report or other documents referred to in this report, or any third party action or decisions which may in any way be based on this report.

This information may not be published in any format or otherwise disclosed to any third parties without the express written permission of Aviva.

The report and appendices prepared by the Policyholder Advocate and her advisers do not necessarily represent the views and opinions of Aviva. Except where specifically stated otherwise, the views and opinions of the Policyholder Advocate, the Office of the Policyholder Advocate and/ or her advisers set out in the Policyholder Advocate's Report, its Appendices or elsewhere should not be taken to represent the views of Aviva.

Annexe by: Aviva UK Life – 1st September 2009

Aviva Life Services UK Limited. Registered in England No 2403746. 2 Rougier Street, York, YO90 1UU.

Aviva Life Services UK Limited is authorised and regulated by the Financial Services Authority.

www.aviva.co.uk

Annexe Number 5B

Contents

1.00	Context	3
2.00	Current Annual Report Requirements to With-Profits Policyholders	4
3.00	Aviva's Assessment of the Policyholder Advocate's Proposals	6
4.00	Aviva's Conclusions	7
	Appendix A – COBS 20.4.7 and 20.4.8	8

Annexe by: Aviva UK Life – 1st September 2009

Aviva Life Services UK Limited. Registered in England No 2403746. 2 Rougier Street, York, YO90 1UU.

Aviva Life Services UK Limited is authorised and regulated by the Financial Services Authority.

www.aviva.co.uk

Annexe Number 5B

1.00 Context

In this annexe Aviva considers and responds to the proposals made by the policyholder advocate regarding reporting to policyholders after the reattribution of the CGNU Life and CULAC inherited estates.

Annexe Number 5B

2.00 Current Annual Report Requirements to With-Profits Policyholders

2.01 FSA Requirements

The FSA specifies the type of annual reporting that needs to be made to with-profits policyholders in their handbook under COBS20.4.7 and COBS20.4.8. In addition, SUP 43.16AR(4) sets out the requirement on the With Profit Actuary (WPA) to make a written report to with profits policyholders to accompany the annual report.

Under the rules a report must be made available to with-profits policyholders within six months of the end of the financial year. This report addresses compliance with the PPFM; all significant relevant issues (including the way in which discretion has been exercised) and any competing or conflicting rights, interests or expectations of policyholders and shareholders.

The WPA report must cover the WPA's opinion as to whether the interests of the with-profits policyholders have been taken into account in a reasonable and proportionate manner. COBS 20.4.8G also requires this WPA report and any statement or report provided by the With-Profits Committee (WPC) to be annexed to the annual report to policyholders.

Copies of the "Board report to policyholders for 2008" and "With-Profits Actuary report to policyholders for 2008" for the CGNU Life and CULAC with-profit funds are available on Aviva's web-site.¹

In addition, Aviva provides with-profits customers with an annexe to the CFPPFM entitled "Update on how we manage the with-profit fund".

¹ <http://www.aviva.co.uk/savings-and-investments/ppfm.html>

Annexe Number 5B

2.02 Compliance with the Fund Transfer and Reattribution Scheme

Aviva will report annually to the FSA on compliance with the terms of the Fund Transfer and Reattribution Scheme.

2.03 With-Profits Committee

The WPC views communications with customers as the remit of marketing and the Board in normal circumstances. They consider that, only in exception, it would be appropriate for WPC to communicate directly.

The WPC view is that in most instances it is better and more fitting of the formal governance structures within the company to influence the Board/marketing in its messages to customers. In this regard the WPC is already quite active and recent examples such as the reviews of the customer friendly with profit guides illustrate where WPC advice and guidance resulted in material changes being made to improve documents.

The WPC has existing rights under its terms of reference to communicate direct with customers should it wish to do so, and does consider this option regularly. WPC continues to monitor its own approach on direct communication with policyholders.

In addition to the WPC's terms of reference, FSA guidance requires the firm to facilitate the WPC should it wish to make a statement or report to with-profits policyholders in addition to any annual report. Therefore, should the WPC wish to adopt the PHA's suggestions, Aviva will of course facilitate the process.

2.04 FSA Review

FSA is reviewing its rules on policyholder communications, and we understand that the PHA can input to these considerations.

Annexe Number 5B

3.00 Aviva's Assessment of the Policyholder Advocate's Proposals

The policyholder advocate's proposals appear to be geared towards reporting on the uses of the inherited estate, which are permitted uses, with a view to how these are affecting the likelihood of future special distributions to the with-profits policyholders in the CGNU and CULAC With-Profits Fund.

This, from Aviva's perspective, arises from the policyholder advocate's view of the primary purpose of the with-profits funds being to distribute profits to policyholders.

To report in this manner would represent a change to Aviva's historic position in relation to the inherited estates. Aviva considers that policyholders' interest in the inherited estates is primarily how it supports:

- their guaranteed benefits,
- investment flexibility and smoothing, and
- the ability to write new business.

Therefore from Aviva's perspective, policyholders should have no expectation that the inherited estate will be distributed, except where an excess surplus arises. In addition, Aviva is concerned that this manner of reporting could well create policyholder expectations that cannot be justified.

Annexe Number 5B

4.00 Aviva's Conclusions

Aviva welcomes the PHA's thoughts in this area and will continue to keep them under review when monitoring its approach to policyholder communications.

Aviva notes that the proposals appear appear to be geared towards reporting on the uses of the inherited estate, which are permitted uses, with a view to how these are affecting the likelihood of future special distributions to the with-profits policyholders in the CGNU and CULAC With-Profits Fund.

This, from Aviva's perspective, arises from the policyholder advocate's view of the primary purpose of the with-profits funds being to distribute profits to policyholders, which does not reflect the current legal position, the FSA's view or the accepted industry practice. These are covered in detail in the annexe 25A & 25B "Legal Issues Arising in Respect of Rights and Interests in and Uses of the Inherited estate".

The policyholder advocate has suggested that policyholders in the Old WPSF may not have elected to accept the reattribution offer because of their interest in a possible future distribution. Aviva has stressed that further special distributions are unlikely to occur for many years, and has concluded that to accept the reattribution offer would be in the interests of the vast majority of eligible policyholders (99%).

In the interests of treating its policyholders fairly Aviva has considered the policyholder advocate's proposals and has provided them to the WPA and WPC for their views. At this stage, they do not consider them to be necessary changes, but will keep them under review whilst monitoring their own approach to policyholder communications.

In summary, Aviva will continue to operate, as a minimum, in accordance with the FSA rules regarding communications to policyholders. The suggestions made by the policyholder advocate go beyond these rules.

Annexe Number 5B

Appendix A – COBS 20.4.7 and 20.4.8

COBS 20.4.7 01/11/2007

A *firm* must produce an annual report to its *with-profits policyholders*, which must:

- (1) state whether, throughout the *financial year* to which the report relates, the *firm* believes it has complied with its obligations relating to its *PPFM* and setting out its reasons for that belief;
- (2) address all significant relevant issues, including the way in which the *firm* has:
 - (a) exercised, or failed to exercise, any discretion that it has in the conduct of its *with-profits business*; and
 - (b) addressed any competing or conflicting rights, interests or expectations of its *policyholders* (or groups of *policyholders*) and, if applicable, *shareholders* (or groups of *shareholders*), including the competing interests of different classes and generations.

COBS 20.4.8 01/11/2007

The following documents should be annexed to the annual report in this section:

- (1) the report to *with-profits policyholders* made by a *with-profits actuary* in respect of each financial year (see SUP 4.3.16AR(4)); and
- (2) any statement or report provided by the *person* or committee who provides the independent judgement under the *firm's* governance arrangements for its *with-profits business*.

COBS 20.4.9 01/11/2007

In preparing the annual report to *with-profits policyholders*, a *firm* should take advice from a *with-profits actuary*.

COBS 20.4.10 01/11/2007

A *firm* should make the annual report available to *with-profits policyholders* within six months of the end of the *financial year* to which it relates. A *firm* should notify its *with-profits policyholders* in any annual statements how copies of the report can be obtained.