

Appendix 23 B

Eligibility for the reattribution

A report for the policyholder advocate in connection
with the reattribution of the inherited estates
of the CGNU Life and CULAC with-profit funds

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1.00 Introduction

Reference is made to the Aviva report entitled “Eligibility for the Reattribution” which reflects the position agreed between Aviva and the Policyholder Advocate (*PA*) in relation to the eligibility of policyholders to participate in the proposed reattribution of the inherited estates in the CGNU Life and CULAC with-profits sub-funds. This report summarises a number of key issues in relation to eligibility which were addressed by the PA during the negotiations with Aviva.

2.00 Eligible Policies

The basic eligibility criteria set out by Aviva in its report are that the relevant policy should be invested in the with-profits funds of CGNU Life or CULAC and in force both on the date on which Aviva announced the PA’s formal appointment, 21 November 2006 (*A Day*) and on the date on which the reattribution is implemented (*E Day*) subject to appropriate exemptions¹. In relation to new policies, these will be eligible if an application has been sent to Aviva on or before A Day with an appropriate form of premium payment.

An alternative approach would be to determine eligibility by reference to one date only:

- (a) if that was A Day, which will be two years or more before E Day, a policyholder could voluntarily surrender his policy at any time prior to E Day and still benefit from an incentive payment;
- (b) if that was E Day, there would clearly be scope for “carpet-bagging”.

Whilst it is at least arguable that using only A Day would be sufficient, the PA has accepted Aviva’s proposal for the reasons given above and on the basis that the two-date test is subject to appropriate exemptions broadly for maturities and retirements under policies and death and disability claims.. The PA considered whether a policyholder should be permitted to make voluntary surrenders between A and E Day without prejudicing his right to an incentive payment. It does not appear to the PA that it is inherently unfair to a policyholder to provide

¹ In certain circumstances due to systems constraints, surrenders late in the reattribution process may result in a policyholder receiving the PIP when strictly he is not eligible. The treatment of late surrenders and their impact on the allocation of the PIP is considered further in Appendix 16 – Aviva’s Scheme.

that a voluntary surrender prior to E Day will result in the policyholder losing his entitlement to an incentive payment provided that policyholders are given adequate notice of this – the PA understands that Aviva has, with effect from June 2006, explained the implications to policyholders submitting surrender requests.

The PA also asked Aviva if it could mitigate the impact of early voluntary surrenders (e.g. in hardship cases) by putting in place arrangements such as offering the policyholder a loan or a payment holiday to facilitate the relevant policy staying in force until E Day. Aviva's position on these suggestions is that they are not viable largely because Aviva does not have the necessary systems. Another possibility would be to defer an MVR free date (on this see below).

The PA has also considered the situation in which a policy has an MVR free date which falls between A and E Day. It might be regarded as unfair if the policyholder would either lose his entitlement to an incentive payment if he surrenders his policy or lose his MVR free date if he would otherwise have surrendered on that date but does not do so in order to remain eligible for the incentive payment. Aviva have explained that they do not believe that this issue should generally arise in practice because Aviva has a mechanism under which, generally, a policyholder can effectively carry forward the benefit of an MVR free date without having to surrender his policy.

3.00 “Backdating”

Another issue considered by the PA relates to the potential eligibility of persons whose policies terminated before A Day. Aviva have concluded that there should be no “backdating” of eligibility to participate in the reattribution to before 21 November 2006. Aviva note that this would be unusual on the basis of the evidence available from previous demutualisations and reattributions and that, from a legal perspective, “a customer whose policy has come to an end before the announcement day has finished their contractual relationship with Aviva”. Aviva have also cited practical problems which may arise with re-establishing contact with former customers.

The PA accepts that backdating raises a number of difficult questions. One fundamental issue is to determine which former policyholders would be entitled to participate: this could be those whose policies have most recently matured on the basis that they are closest to being eligible by reference to the date criteria; equally one could argue that it is those older policies which were in force at a time during the period when the inherited estate was accumulating which have the greater claim. Clearly the latter proposition is unworkable but it does illustrate the difficulty of introducing a backdating concept. The former proposition is at least viable - for instance there could be a tapering incentive payment from, say, £100 for a policy which matured on the day before the announcement to £0 for a policy maturing more than 1 year before that date.

However, from a policyholder's perspective any date chosen by Aviva is in a sense arbitrary and backdating eligibility by a specified period does not remove that arbitrary element since there will always be another population of former policyholders who fall just outside the backdated period. Also, if there was to be any backdating, it would presumably be necessary to exclude any policy terminated in the backdating period in circumstances which would have resulted in its exclusion had it been terminated between A and E Day (i.e. voluntary surrenders). Not to do so would be unfair to those policyholders excluded for voluntary terminations between A and E Day. The PA accepts that this might indeed give rise to the sort of material practical problems which Aviva state they would face in relation to any backdating and that it is not inherently unfair to exclude policies which terminated prior to A Day.

Another matter considered by the PA in relation to policyholders whose policies have matured in recent years is whether their policies may have been substantially "over-smoothed" with the effect that in years of good market performance policyholders might have been paid significantly less of their asset share than they might have reasonably expected. Were that the case, then there is an argument that fairness demands that these policyholders should benefit from the reattribution. This is a complex issue, but having discussed it with Aviva, the PA has no reason to believe that there has been any such over-smoothing.

Having taken into account the various factors and arguments referred to above, the PA accepts the Aviva proposition that policies will not be eligible for an incentive payment if they were terminated before A Day.

4.00 Eligible Populations of Policies

The PA has no significant concerns in relation to the populations of policies which are potentially eligible for an incentive payment (as set out in Appendix A to the Aviva report).

5.00 Eligibility panel

The PA supports the concept of an Eligibility Panel. The PA believes, and Aviva have accepted, that Aviva itself will only be able to make a determination in relation to an eligibility appeal or challenge in respect of a policy or circumstances which clearly fall within the eligibility criteria agreed with the PA – this can be a determination that a policy is *not* eligible as well as a determination that a policy *is* eligible. Any appeal or challenge relating to a policy or circumstances which do not fall within those criteria (or in respect of which there is reasonable doubt as to whether or not they do) must be referred to the Eligibility Panel, which may institute new criteria. The PA is represented on the Eligibility Panel and it has been agreed that there must also be an independent (i.e. non-Aviva) representative on the panel after the PA office is disbanded.