



Financial Services Authority
FAO Philip Salter
25 The North Colonnade
Canary Wharf
London
E14 5HS

By e-mail (philip.salter@fsa.gov.uk)

17 September 2009

Dear Sirs

**In the matter of Commercial Union Life Assurance Company Limited and others
Folio No. 13755 of 2009**

We write with reference to yesterday's hearing in the above-referenced matter and the discussion between our counsel during the short adjournment.

As you will be aware, Ms Spottiswoode was provided with a draft of the Financial Services Authority (the *FSA*)'s Second Report and made representations to the FSA about a number of paragraphs, but in particular paragraph 71 of the final version (i.e. paragraph 72 of the draft version on which Ms Spottiswoode commented), where reference is made to the Policyholder Advocate indicating to the FSA "that she has obtained the best deal available in the circumstances". As a result of her representations, the FSA added the words in parentheses "(albeit with reservations about the regulatory context in which the negotiation was conducted – see paragraph 96 below)".

Ms Spottiswoode is seriously concerned that, notwithstanding the added qualification, the Court may be left with the misleading impression that she did indeed inform the FSA that her view that Aviva's offer was the "best deal available". The true position is as set out in her witness statement, namely, that she considers that her bargaining position was in effect limited to points on which the FSA was prepared to offer her support and that a better offer might well have been available if the FSA had put greater pressure on Aviva, even under

Freshfields Bruckhaus Deringer LLP is a limited liability partnership registered in England and Wales with registered number OC334789. It is regulated by the Solicitors Regulation Authority.

A list of the members (and of the non-members who are designated as partners) of Freshfields Bruckhaus Deringer LLP and their qualifications is available for inspection at its registered office, 65 Fleet Street, London EC4Y 1HS. Any reference to a partner means a member, or a consultant or employee with equivalent standing and qualifications, of Freshfields Bruckhaus Deringer LLP or any of its affiliated firms or entities.

Freshfields Bruckhaus Deringer LLP has taken over the practice of Freshfields Bruckhaus Deringer with effect from 1 May 2008. Please refer to www.freshfields.com/support/legalnotice for information on the transfer of the business and regulatory information (including in relation to the provision of insurance mediation services).

Abu Dhabi Amsterdam Bahrain Barcelona Beijing Berlin Bratislava Brussels Cologne Dubai Düsseldorf
Frankfurt am Main Hamburg Hanoi Ho Chi Minh City Hong Kong London Madrid Milan
Moscow Munich New York Paris Rome Shanghai Tokyo Vienna Washington

LONDON
65 Fleet Street
London EC4Y 1HS
T+ 44 20 7936 4000
Direct T+ 44 20 7716 4030
F+ 44 20 7832 7001
Direct F+ 44 20 7108 4030
LDE No 23
E nicholas.gibson@freshfields.com
W freshfields.com
DOC ID LON8797984/2+
OUR REF APR/MM/NTJG
CLIENT MATTER NO. 138050-0001



existing rules. The Treasury Committee reached the same conclusion in the passage cited at paragraph 31 of her witness statement, that in effect the power to affect the terms of any offer lay with the FSA.

We apologise that this matter is still outstanding at such a late stage in the proceedings, but you will be aware that Ms Spottiswoode was not available until Tuesday morning and was not previously aware that the FSA had not made appropriate amendments to paragraphs 71 and 72 of the Report until later that day.

Yours faithfully

Freshfields Bruckhaus Deringer LLP

- Cc (1) Catherine Beech
Financial Services Authority (catherine.beech@fsa.gov.uk)
- (2) FSA Supervision – Aviva Group
Financial Services Authority (AvivaGroup@fsa.gov.uk)
- (3) **By hand:**
Clerk to Mr Justice Norris
Companies Court
Royal Courts of Justice
Strand
London
WC2A 2LL
- (4) Clifford Chance LLP
FAO: Clare Swirski (clare.swirski@cliffordchance.com)
Cheng Li Yow (chengli.yow@cliffordchance.com)