

Eleanor Linton
With Profits Review
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

20 December 2001

Dear Eleanor

With-Profits Review: Issues Paper 1
Process for dealing with attribution of inherited estates

I am responding on behalf of the Consumer Panel to the questions raised in Issues Paper 1.

Q1 Do you agree that paragraphs 3-6 above provide an appropriate description of the inherited estate and the uses to which it may be put?

Yes.

Q2 Do you agree with the description in paragraph 23 above of the issues arising over the current process for attribution, or re-attribution, of the inherited estate?

Yes.

Q3 Are there any issues arising from the way the current arrangements have worked other than those mentioned in paragraph 23?

The Panel feels that it is wrong that companies should be able to 'raid' their inherited estate in order to pay fines or compensation for mis-selling.

Although bargaining in relation to distribution of the inherited estate is, by definition, focused on existing policyholders, we note that the FSA's existing responsibilities include ensuring that companies do not run down their inherited estate in a way that undermines their business plan and thus adversely affects the position of future policyholders (paragraph 17).

.Q4 Could increased transparency in relation to the process of negotiation and scrutiny mitigate the issue of the lack of a defined 'policyholder negotiator'?

It is possible that increased transparency could mitigate the lack of a defined 'policyholder negotiator'. However, we do not believe that increased transparency in itself would be sufficient to secure the best possible deal for consumers.

Q5 Would you favour moving away from the current practice to one of the options in paragraph 24-32?

Yes. We think it is wrong for the FSA's role as protector of consumers to extend to undertaking what we agree are commercial negotiations on behalf of consumers.

Q6 If so, which option would you favour, and why?

We favour Option D - the establishment of a Proxy Negotiator. We feel that the range of skills required for the role is such that it would not always be appropriate for an independent actuary or the Independent Expert to undertake it.

Q7 If option B were to be followed do you think that the responsibilities of the Appointed Actuary and an independent actuary and/or Independent Expert should be modified so as to be made consistent with the modified responsibilities of the FSA?

We do not favour Option B. However, if it were to be followed, consistency of responsibilities seems essential.

Q8 If option D were followed (the establishment of a proxy policyholder negotiator):

- *Should this be an individual or panel?*
- *What expertise should be required and how might it be provided?*
- *What principles should be included in the proxy's Terms of Reference?*
- *What powers should the proxy be given?*
- *Should there be an element of policyholder participation in the appointment and, if so, in what way?*
- *From where should the costs of the proxy be deducted either if a deal was concluded, or if one was not?*

We have an open mind on whether the negotiator should be an individual or a panel. A range of skills would be required and this could be provided by bankers, accountants, solicitors and other professionals. The proxy's Terms of Reference should be quite straightforward in that they should focus on securing the best possible deal for policyholders.

Our initial reaction to the question on the costs of the proxy was that they should be borne by the shareholders, irrespective of whether or not a deal is concluded. That remains our view where the company itself initiates the process for business reasons. However, we recognise that it would not be inconceivable for policyholders to initiate the process of attribution. In these circumstances, it would seem reasonable for the costs of the proxy to be a charge on the inherited estate (and thus paid by both sides according to the proportions of any final distribution if a deal is concluded).

In the knowledge that a further Issues paper on Governance is to be issued soon, we would like to defer any further comments in this area until we have reviewed that paper.

Q9 Do you agree that where a re-attribution is proposed, under any option, policyholders should be given the opportunity to choose to retain their interest in the estate and without detriment? Are there any circumstances in which this principle might not be appropriate?

Yes, we agree that policyholders should be given the opportunity to choose to retain their interest in the estate without detriment. We cannot think of any circumstances where this principle would not be appropriate.

Q10 At what point, or on what trigger, do you consider the start of the process should be formally signalled?

Given the present arrangements for governance, the Panel is unhappy that the Appointed Actuary plays such a key role in determining that a distribution may be made from the long-term fund, including the inherited estate within that fund (paragraph 5 of the Issues paper). We are particularly concerned about the company's ability to take action or make a decision that will affect the level of funds available for distribution before the formal process for dealing with attribution has commenced. We think this issue should be considered by the With-Profits Review in developing proposals for governance.

That said, we agree with the suggestion in the paper that the process for dealing with attribution should start at a clearly defined point, which should be signalled formally. We also support the suggestion that the company should be required to communicate the start of the process to policyholders, shareholders and others with an interest in the inherited estate. In the case of policyholders, we believe they should be informed individually by post.

Q11 What information do you consider should be included in the regular progress reports?

We agree that policyholders should receive regular reports on the status of the negotiations and the key issues being considered. Sufficient information should be available to policyholders to ensure that they are left in no doubt as to what was being proposed. We acknowledge that the required frequency, size and format of these reports would inevitably vary according to the circumstances of the case.

Q12 To what extent do you consider the above arrangements would improve the transparency of an inherited estate attribution process?

Notwithstanding the technical nature of inherited estate attributions and reattributions, communications would need to be clear, fair and not misleading. With that proviso, we believe that implementation of the above arrangements would improve transparency of an inherited estate attribution considerably.

Q13 From where do you think the costs of publicity requirements such as those set out in paragraphs 35-38 should be deducted either if a deal was concluded, or if one was not?

Where the company itself initiates the process of attribution for business reasons, we believe that that the costs of publicity requirements should be borne by the shareholders, irrespective of whether or not a deal is concluded. However, as mentioned in our answer to question 8, we recognise that it would not be inconceivable for policyholders to initiate the process. In these circumstances, it would seem reasonable for the costs of publicity requirements - like the costs of the proxy - to be a charge on the inherited estate (and thus paid by both sides according to the proportions of any final distribution if a deal is concluded).

Yours sincerely,



Colin Brown
Chairman

cc. John Tiner
Martin Roberts
Christine Farnish

FS Consumer Panel can be contacted
c/o Consumer Panel Secretariat at the FSA
Tel: 020 7676 0720 Fax: 020 7676 9711
Email: enquiries@fs-cp.org.uk
Website: <http://www.fs-cp.org.uk>