

LEGAL SERVICES DEPARTMENT

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Prue Hopley

SO/PKH/37165

28th November 2007

Dear Mr Walker

Yourself v Co-operative Insurance Society Limited

I refer to our correspondence yesterday and as agreed, now enclose, by way of service, the statement of Dr T S Bunch on behalf of the Defendant. I also attach copies of the following that are referred to in the statement for your ease of reference:

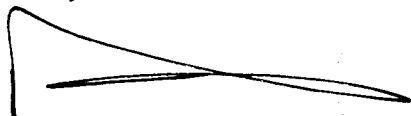
1. Extract from the FSA Handbook – FSA rule SUP 4.3 Appointment of actuaries;
2. Extract from the FSA Handbook – FSA rule COBS 20.3 Principles and Practices of Financial Management.

I also enclose a specimen illustration for a stakeholder pension.

Please acknowledge safe receipt of this letter and enclosures.

I now await receipt of your statement of facts and issues which is due by 4.00 p.m. on Friday 7th December.

Yours sincerely



Prue Hopley

Statement filed
On behalf of: Defendant
Witness Name: Timothy Stephen Bunch
Statement Number: 1
Exhibit Marking:
Date made: 28th November 2007

IN THE CENTRAL LONDON COUNTY COURT

CLAIM NO: CHY07347

B E T W E E N

MR ANDREW JOHN WALKER

Claimant

-and-

CO-OPERATIVE INSURANCE SOCIETY LIMITED

Defendant

WITNESS STATEMENT

I, Dr Timothy Stephen Bunch of CIS Building, Miller Street, Manchester, M60 0AL , over 21 years of age, shall say:

Section 1: Personal details

1. Under Insurance Companies Act legislation in force during the 1990s, every insurance company transacting long-term business was required to appoint an actuary to undertake regular investigations into the financial condition of the long-term business. I was made the Appointed Actuary of CIS in 1994 and held this position until, under rules of the Financial Services Authority which came into force at the beginning of 2005, the Appointed Actuary role was replaced by two new roles, the Actuarial Function Holder and the With-Profits Actuary. As with the Appointed Actuary role, these two new roles are 'Approved Persons' roles under FSA rules which means that the role holder must have appropriate qualifications and experience and be a fit and proper person. I took on both roles at their introduction and

continued as Actuarial Function Holder until October 2007. I remain the With-Profits Actuary and will continue to hold this role until I retire in April 2008. My current job title is 'Director of Actuarial Services and With-Profits Actuary'.

2. After attending secondary school at Ardingly College in Sussex, I studied mathematics at Magdalen College, Oxford from 1971 to 1974, obtaining a first class degree. I moved to King's College, London where I obtained an MSc in 1975 and a Ph.D in 1977 for work in a branch of theoretical physics known as Quantum Field Theory in Curved Spacetime. I continued this work as a Post Doctoral Research Fellow at the University of Wisconsin-Milwaukee from 1977 to 1979 and at the University of Liverpool from 1979 to 1981.
3. In 1981, I undertook a career change and joined Co-operative Insurance Society Ltd in Manchester as an Actuarial Trainee. I completed the actuarial examinations in 1983 and became a Fellow of the Institute of Actuaries in 1985.
4. During my career at CIS I have worked extensively on all major aspects of Life Assurance and Pensions business, together with other areas such as the Unit Trust business and new computer systems. I have also been involved in the development of asset share models, which are used to ensure that policyholders receive fair payouts on their policies, in the development of stakeholder pensions and in the drafting of Principles and Practices of Financial Management, which document the way in which CIS manages its with-profits business.
5. The principal responsibilities of the With-Profits Actuary are set out in FSA rules and guidance: the relevant paragraphs of the FSA Rulebook are summarised in Section 2.4 of this statement.
6. I confirm that unless stated otherwise the contents of this statement are made from my own knowledge and belief.

Section 2: Background information on CIS's Long-Term Business

7. Before addressing the matters raised in the Particulars of Claim, it may be helpful to explain the nature of the with-profits contracts held by the Claimant, the way in which the benefits under the contracts are determined, the way in which CIS's Long-Term Business Fund ('the Fund') is managed, the governance arrangements for with-profits business and the principal characteristics of stakeholder pensions business. Much of the information provided below is contained in the Principles and Practices of Financial Management (PPFM) documents which CIS has produced and published in accordance with FSA rules. These documents explain how with-profits funds are managed and how CIS exercises discretion in the operation of the funds. They were produced following a detailed review of literature that had been issued to policyholders and of the representations that had been made concerning the operation of the Fund. They were subject to external review by independent firms of actuaries, accountants and solicitors.

Section 2.1: With-profits contracts

8. The Claimant holds, or has held, a number of with-profits contracts issued by CIS. The majority of these are endowment policies, although there were also four personal pension contracts which the Claimant has transferred to another pension provider.
9. A with-profits endowment contract is a fixed term contract under which the policyholder pays regular premiums throughout the term of the contract and in return receives a payment on survival to the end of the term or on earlier death. The total benefit paid under this type of contract is generally in three parts:
 - (1) the sum assured;
 - (2) annual bonuses, if any;
 - (3) a final bonus, if any.

10. At the outset of the contract, the only benefit that is guaranteed to be paid (in return for the payment of premiums throughout the term of the contract) is the sum assured. However, CIS may (but is not obliged to) increase this guaranteed amount each year by the declaration of annual bonuses. The total guaranteed amount at the time a claim is made (on death or at the end of the policy term) is therefore the sum assured plus any annual bonuses attaching to the policy.
11. During the life of the policy, the premiums paid by the policyholder are invested, together with premiums paid by other policyholders, in a range of investments with the aim of achieving a return which not only ensures that the guaranteed benefits described above can be met but also provides an additional amount that may be paid out in the form of a final (or terminal) bonus. Clearly, because future investment returns cannot be predicted, the amount of any final bonus cannot be guaranteed and it is possible that no final bonus will be payable.
12. In common with other insurers, CIS has developed methods for calculating appropriate rates of final bonus to ensure that policyholders receive a fair return on their premiums, taking account of the experience of the Fund during the lifetime of their policies. These methods are described in the PPFM and a summary is given in the next section (Section 2.2).
13. In addition to his endowment policies, the Claimant has held a number of personal pension policies. The description given above of the operation of endowment policies applies equally to personal pension policies, although there are some differences in detail. These differences arise for a number of reasons, including the following:
- (i) The relationship between the amount of premium payable each month and the initial guaranteed amount (the sum assured for an endowment policy) differs between the two types of policy.
 - (ii) Endowment policies provide an element of life assurance cover for which a charge is made, as described in the next section, whereas personal pension policies do not.

(iii) The two types of policy are subject to different tax treatment.

(iv) The initial guaranteed amount under an endowment policy is the full sum assured under the policy and annual bonuses are applied to this full amount. Under personal pension policies, the guarantee starts at zero but builds up as premiums are paid and annual bonuses are applied to this increasing amount.

14. Notwithstanding items (i) to (iv) above, the basic principle, that at the end of the policy term the policyholder will receive all guaranteed benefits (including any annual bonuses) and may receive in addition a final bonus, applies to personal pension policies as well as to endowments.

Section 2.2: How benefits under with-profits contracts are determined

15. In Section 2.1 it was explained that the benefits under with-profits contracts consist essentially of two parts:

- a guaranteed amount (the sum assured plus any annual bonuses);
- a discretionary amount (the final bonus, if any).

16. Provided that the total amount received by the policyholder is determined fairly, it should not matter to the policyholder how much of the total consists of the sum assured and annual bonuses and how much comes from the final bonus. As an example, if a policyholder pays £50 per month throughout the term of a 10-year endowment contract, the following possible outcomes are in practice equivalent:

		£
<u>Outcome 1</u>	Sum assured	5,000
	Annual bonuses	1,000
	Final bonus	<u>2,500</u>
	Total maturity amount received	<u>8,500</u>
<u>Outcome 2</u>	Sum assured	5,000
	Annual bonuses	1,500
	Final bonus	<u>2,000</u>
	Total maturity amount received	<u>8,500</u>
<u>Outcome 3</u>	Sum assured	5,000
	Annual bonuses	0
	Final bonus	<u>3,500</u>
	Total maturity amount received	<u>8,500</u>

17. The main issue, therefore, to be addressed in determining the benefits under a with-profits contract is how to ensure that the total amount payable fairly reflects the contributions made by the policyholder and the return obtained on those contributions during the term of the contract. This is done by calculating 'asset shares' for policies reaching maturity and using these asset shares to determine an appropriate rate of final bonus to apply to maturing policies.

18. The asset share of a with-profits endowment policy is similar to the value of a bank account to which various items are credited (the premiums paid, the interest on the account, etc) and other items are debited (charges for expenses, life cover, guarantee costs etc). It is defined in section A4 of the PPFM for the CIS Long Term Business Fund as the accumulated value of the following:

- (i) the premiums paid over the term of the policy, allowing for any tax relief obtained;
- (ii) the investment returns achieved during the term of the policy after allowing for averaging over a number of years;
- (iii) the expenses which have been apportioned to the policy;
- (iv) the cost of the life cover provided over the term of the policy;
- (v) any charges to help meet the cost of providing guarantees, smoothing and/or capital support;
- (vi) any allowance for profits and losses from policies that are surrendered or lapsed, or from business risks, that is apportioned to the policy; and
- (vii) the tax and tax relief that has been apportioned to the policy.

19. Further explanation of the above items is given in section A4 of the PPFM. Important points to note are:

- the expenses charged to the asset share are the expenses incurred by or attributed to the policy type: they specifically do not include expenses incurred in respect of other types of policy;
- under item (vi), with-profits endowment policies are currently benefiting from the addition of an allowance in respect of past profits that have arisen within the fund.

20. It follows from this that the final bonuses currently being paid on with-profits endowment policies are not being reduced on account of expenses incurred on other types of business (eg stakeholder pensions); on the contrary, they are being enhanced as a result of past profits that have been accumulated within the fund.

21. Reverting to the example given above, if the asset share calculation for a policy of £50 per month payable over 10 years gave rise to an asset share of £8,500, the terminal bonus would in principle be determined as the asset share (£8,500) less the guaranteed amount, whether that be £6,000 (outcome 1), £6,500 (outcome 2) or £5,000 (outcome 3). So, in this example, the amount of annual bonus that has been added to the policy does not affect the amount ultimately payable, which is £8,500 in all three cases.

22. The only circumstances under which the amount of annual bonus that has been added becomes significant are when the guaranteed benefits (the sum assured plus the annual bonuses) exceed the asset share. In this case, the policyholder will receive more than the accumulated value of the contributions that have been made (i.e. more than the asset share). Should this happen, there will be a cost which must be met from another part of the fund. The way in which the fund is managed to cater for this situation is described in Section 2.3. However, in order to minimise the risk of this situation arising, it may be necessary to limit the amounts payable by way of annual bonus, perhaps in some circumstances by declaring no annual bonus at all.

Section 2.3: How the Long-Term Business Fund is managed

23. All long-term business transacted by CIS is accounted for in the Long-Term Business Fund.

The assets of the Fund have been built up over many years from the following sources:

- the current generation of policyholders;
- previous generations of policyholders, to the extent that claims paid out may have been less than the accumulated value of the contributions made;
- CIS's shareholder (currently Co-operative Financial Services Ltd).

24. It should be noted that, although CIS has a shareholder, and the shareholder has made substantial contributions to the Fund in the past, the profits of the long-term business are to be applied for the sole benefit of policyholders, both with-profits and non-profit.
25. It should also be noted that the assets of the Fund are owned by CIS, not by the policyholders. A policyholder may have a claim on the assets of the Fund as set out in, and subject to the terms and conditions of, his contract. In the case of a with-profits contract, the claim is to the value of the sum assured plus the bonuses which are determined using the methods described in Section 2.2.
26. For the purposes of determining the entitlement of different groups of policyholder to a share of the assets of the Fund, the Fund is divided into a number of distinct parts. The principal division is as follows:
- (1) the asset shares of current with-profits policies;
 - (2) additional amounts in respect of with-profits policies to cover the expected cost of guaranteed benefits, to the extent that this cost exceeds the asset shares;
 - (3) amounts required to meet liabilities in respect of non-profit policies;
 - (4) the remainder, which is known as the 'working capital'.
27. Item (1), the with-profits asset shares, includes the aggregate amount of the asset shares defined in Section 2.2. As explained in that section, this amount is the accumulated value of the contributions made by the current generation of with-profits policyholders, plus any allowances included under item (vi) of Paragraph 18. It represents CIS's best estimate of the fair entitlement (or reasonable expectation) of those policyholders to benefits from the Fund.

28. Item (2) is derived in part from charges for guarantees that are made to with-profits policies. These charges are deducted from asset shares and are included under item (v) in the definition of asset share given in Paragraph 18. To the extent that these deductions may be insufficient to cover the full additional cost of guarantees, they will be supplemented by transfers out of the working capital.

29. Item (3) is derived from the premiums paid by non-profit policyholders and the investment return obtained on them. The accumulated value of stakeholder pension contributions is included under item (3). Any difference between the accumulated value of the premiums and the amount required to meet the liabilities is met by transfers to or from the working capital.

30. The working capital itself, item (4), is derived principally from contributions made by previous generations of policyholders that have not been paid out in claims and contributions from the shareholder. No part of the working capital has been derived from existing with-profits policies such as those held by the Claimant as all the contributions from these policies are held within the asset shares, item (1) above.

31. The working capital and its role are described in Section B4 of the PPFM for the Fund. This states that the primary purposes to which the working capital may be put are to:

- ensure that the Fund remains solvent;
- support business risks;
- develop the business and write new business;
- support the Fund's investment strategy with, for example, greater investment in more risky assets such as equities, property and corporate bonds;
- support smoothing of payouts;
- meet unexpected costs, including compensation costs; and
- meet other rights of policyholders or other parties.

32. Among the business risks supported by the working capital are meeting any differences between the expenses charged to policies and those actually incurred.

33. It should be noted that the list above does not include using the working capital to enhance the benefits payable to with-profits policyholders. These benefits are determined from item (1) of Paragraph 26, the with-profits asset shares, and the rights and expectations of with-profits policyholders do not extend to any specific share of the working capital.

Section 2.4: The governance arrangements for with-profits business

34. FSA rules require companies transacting with-profits business to put in place governance arrangements which include:

- the appointment of a With-Profits Actuary (FSA rule SUP 4.3.1);
- the publication of Principles and Practices of Financial Management (PPFM) for with-profits funds (FSA rule COBS 20.3.2); and
- some independent oversight of compliance with the PPFM (FSA rule COBS 20.3.2).

35. The duties of the with-profits actuary are set out in FSA rule SUP 4.3.16AR. The main responsibilities are to:

- (1) advise the firm's management on the key aspects of the discretion to be exercised affecting the with-profits business;
- (2) advise the Board whether the assumptions used to carry out the actuarial valuations required by FSA rules are consistent with the firm's Principles and Practices of Financial Management (PPFM) for with-profits business;

- (3) at least once a year, report to the Board on key aspects of the discretion exercised during the previous year in respect of with-profits business;
- (4) in respect of each financial year, make a written report to with-profits policyholders stating whether the discretion exercised by the firm has taken their interests into account in a reasonable and proportionate manner;
- (5) request from the firm such information and explanations as are reasonably considered necessary to carry out (1) to (4) above;
- (6) advise the firm as to the data and systems that he reasonably considers necessary for the firm to meet its requirements under (5).

36. In CIS's case, independent oversight is provided by an Independent Reviewer, whose principal responsibilities are to review CIS's compliance with its PPFM and to prepare an annual report setting out the nature and extent of the review which has been undertaken and the findings on CIS's compliance with its PPFM during the previous year.

37. The Independent Reviewer may also be asked to provide advice on specific issues affecting with-profits policyholders as they arise, for example in connection with the twice-yearly bonus declarations or when any major changes affecting with-profits funds occur.

Section 2.5: The principal characteristics of stakeholder pension business

38. Stakeholder pensions are a type of long-term business under which customers are able to save for their retirement in a product which is regulated under the Stakeholder Pension Schemes Regulations 2000, as amended. The main points covered by these regulations are:

- the maximum charge that a provider may make to cover all the costs of selling and administering stakeholder pensions was, when stakeholder pensions were introduced, 1% per annum of the underlying value of the funds;
- the 1% per annum limit was increased to 1.5% per annum for the first 10 years of any new contract with effect from 6 April 2005;
- the assets of with-profits stakeholder pensions must be held separately from other with-profits assets;
- policyholders are entitled to transfer their pensions to another provider at any time and without penalty;
- policyholders should receive annual statements setting out the value of their investment;
- an annual declaration on compliance with certain aspects of the Stakeholder Pensions Regulations must be made.

39. CIS's stakeholder pension product complies with all the above requirements.

40. It should be noted that the Stakeholder Pension Schemes Regulations do not limit the amounts that a provider may incur in selling and administering stakeholder pensions; it is only the annual policy charges that are limited.

41. In CIS's case, on the introduction of stakeholder pensions the commissions payable to Financial Advisers were as follows:

- Single premiums: 2.75% of the premium;
- Regular premiums: 5% of the first year's premiums, plus
1% of each year's premiums.

42. In addition CIS incurred other costs in supporting Financial Advisers and the total "Cost of Advice" was disclosed to prospective policyholders in a Key Features document. In 2001, the amount disclosed as Cost of Advice was typically 13.6% of the first year's premiums.

43. The limit of 1% (or 1.5%) per annum to the charges that may be taken from stakeholder pension funds does undoubtedly present a challenge to providers of these products. However, stakeholder pension contracts are long-term contracts and the total value of the 1% per annum charge may be substantial as it is applied every year to a fund that is expected to grow rapidly over time as a result of the payment of additional contributions and the investment return earned on those contributions. It is possible, therefore, for a stakeholder pension to be unprofitable in its first year (because the costs including initial commission paid exceed the income in the form of the 1% per annum charge) but for it to be profitable over its lifetime (because in later years the value of the 1% charge on a growing fund should greatly exceed the administration costs that are incurred).

44. This feature, of costs exceeding income in the first year of a contract but income exceeding costs in later years, is a common feature not only of stakeholder pensions but of many other financial services contracts, including regular contribution unit trusts and mortgage loans. In order to transact business with the profit profile just described, a financial services company must provide capital to cover any losses incurred initially. This capital is then repaid, together with an appropriate return on the capital, out of the profits that are made in later years.

45. In CIS's case, the capital to support the transaction of stakeholder pensions business is provided by the working capital of the Fund. As explained in Section 2.3, this capital is quite distinct from the asset shares of with-profits policies and no part of the working capital has been derived from these asset shares. As the benefits to which with-profits policyholders are entitled are based on their asset shares, it follows that their benefits are unaffected by the existence of stakeholder pensions within the Fund. This is the case irrespective of whether stakeholder pensions ultimately prove to be profitable or, as is clearly possible, unprofitable.

Section 3: Comments on Particulars of Claim

46. There are two principal allegations contained within the Particulars of Claim. The first, set out in Paragraphs 8 and 9, relates to the legality or otherwise of the commissions paid in respect of stakeholder pensions and the impact that this may or may not have had on with-profits policyholders. The second, set out in Paragraphs 9A and 9B relates to the fact that CIS has paid different rates of bonus on different types of with-profits policy.

47. Paragraph 8 of the Particulars of Claim states:

"In order to increase its return from selling unprofitable stakeholder pensions CIS operated a policy of subsidising commissions in excess of the statutory limit to its sales staff to the detriment of with profits funds/bonuses..."

48. Paragraph 9 of the Particulars of Claim states:

"The payment of high commission in respect of stakeholder pensions was unlawful and/or in breach of the above implied terms".

49. As explained in Section 2.5, while the Stakeholder Pension Schemes Regulations 2000 place an upper limit on the amounts that may be deducted from stakeholder pension funds to cover the cost of commission and other costs, they do not place any limit on the amounts that a firm may pay in commission to acquire the business.
50. The payment by CIS of initial commissions in respect of stakeholder pensions was not therefore unlawful.
51. There remains the question of whether the shortfall that arises in the first year of a stakeholder pension contract (because commission and other costs exceed fund charge income in that year) was detrimental to the interests of with-profits policyholders and their bonus prospects.
52. In Sections 2.2 and 2.3, it was explained that the rights and expectations of with-profits policyholders are based on the asset shares of their policies. These asset shares are the accumulated value of the contributions made under the policies, allowing for the investment returns obtained, the expenses incurred, the charges made for life cover and guarantees and other factors specific to these policies. In particular, expenses incurred in respect of other types of policies (eg stakeholder pensions) are under no circumstances charged to the asset shares of with-profits policyholders.
53. To the extent that, under a stakeholder pension, there is a shortfall in the first year of a contract as a result of the payment of initial capital, the shortfall is covered by the working capital of the Fund, not by with-profits policyholders' asset shares.

54. As a result, the bonuses to which with-profits policyholders are entitled, and the bonuses which have been declared in practice, have not been reduced on account of the initial commissions payable on stakeholder pensions or in respect of any other aspect of stakeholder pensions.
55. Turning to the second allegation made in the Particulars of Claim, Paragraph 9A states that from about 2002 CIS operated a differential bonus policy between personal pension and endowment policyholders, while Paragraph 9B claims that this policy was unlawful and/or in breach of implied terms.
56. It is a fact that CIS has always declared different rates of annual bonus on endowment and personal pension policies. This is standard practice within the insurance industry and reflects the fact that the policies are quite different in their structure, in the benefits provided, in the way that bonuses are applied, in the relationship between the premiums paid and the guaranteed benefits, and in respect of other factors such as taxation. There is no reason why the rates of annual bonus should be the same, nor is there any regulatory, contractual or implied term that would require an insurer to make them the same.
57. As explained in Section 2.2, one of the considerations in fixing the level of annual bonus from time to time is the level of guarantees within each product and the expected cost of meeting those guarantees. The cost of meeting guarantees on endowment and personal pension policies has increased markedly in recent years and, as a result, rates of annual bonus have been reduced. The cost of meeting guarantees is potentially particularly high for personal pension policies and, as a result, a number of insurers including CIS have in recent years declared no annual bonus on such policies.

58. However, the eventual return obtained by policyholders is determined not by the amount of annual bonus received but by the amount of final bonus. The rate of final bonus applied to each policy is determined by calculating asset shares as described in Section 2.2, and the same approach to determining asset shares is taken for endowments as for personal pensions. There is therefore, in essence, no difference in the principles applied in determining fair maturity values for the various policies held by the Claimant who will continue to receive a fair return on his investment, as will other policyholders of CIS.

I believe that the facts stated in this witness statement are true.

Signed

A handwritten signature in black ink, appearing to read 'T. P. Burch', written over a dotted line.

Dated this 28th day of November 2007

Handbook at 28 November, 2007

Printed on 28 November, 2007

Full Handbook / SUP / 4 / 3

SUP 4.3 Appointment of actuaries

SUP 4.3.1 **R** Appointment by firms

A firm to which this section applies (see SUP 4.1) must:

- (1) appoint one or more actuaries to perform:
 - (a) the actuarial function (see SUP 4.3.13 R) in respect of all classes of its long-term insurance business; and
 - (b) the with-profits actuary function (see SUP 4.3.16A R) in respect of all classes of its with-profits business (if any);
- (2) notify the FSA, without delay, when it is aware that a vacancy in the office of any such actuary will arise or has arisen, giving the reason for the vacancy;
- (3) appoint an actuary to fill any such vacancy that has arisen; and
- (4) ensure a replacement actuary can take up office at the time the vacancy arises or as soon as is reasonably practicable after that.

SUP 4.3.2 **G** The provisions relating to the duties of an actuary appointed to perform these functions are set out in SUP 4.3.13 R to SUP 4.3.18 G. The functions performed by actuaries appointed by a firm under SUP 4.3.1 R are specified as controlled functions (CF 12, the actuarial function, and CF 12A, the with-profits actuary function) in SUP 10 (Approved persons). As a result, an application must be made to the FSA under section 60 of the Act (Applications for approval) for approval of the person proposing to take up such an appointment. Section 61(3) of the Act (Determination of applications) gives the FSA three months to grant its approval or give a warning notice that it proposes to refuse the application. A firm should not appoint an actuary until the FSA has approved the actuary. In order to comply with SUP 4.3.1 R, a firm should ensure it applies to the FSA as soon as practicable before the date when it needs the actuary to take office. The FSA will need time to consider the application before deciding whether to grant approval. See SUP 10 (Approved persons).

SUP 4.3.3 **R** Appointment by the FSA

If a firm, which is required to appoint one or more actuaries under SUP 4.3.1 R, fails to do so within 28 days of a vacancy arising, the FSA may appoint one or more actuaries to perform any function corresponding to the actuarial function or the with-profits actuary function on the following terms:

- (1) the actuary to be remunerated by the firm on the basis agreed between the actuary and the firm or, in the absence of agreement, on a reasonable basis; and
- (2) the actuary to hold office until he resigns or the firm appoints another actuary.

SUP 4.3.4 **G** SUP 4.3.3 R allows but does not require the FSA to appoint an actuary if the firm has failed to do so within the 28 day period. When it considers whether to use this power, the FSA will take into account the likely delay until the firm can make an appointment and the urgency of any pending duties of the actuary.

The FSA will not normally seek to appoint an actuary under SUP 4.3.3 R if a notification under SUP 10 (Approved persons) has been received from the firm in relation to a proposed appointment of an actuary under SUP 4.3.1 R, and that application is still being considered.

SUP 4.3.6 R A firm must comply with and is bound by the terms on which an actuary has been appointed by the FSA under SUP 4.3.3 R.

SUP 4.3.7 G If the FSA appoints an actuary under SUP 4.3.3 R, he will not be an approved person (not being appointed under SUP 4.3.1 R). However, the firm is still under an obligation to appoint an actuary under SUP 4.3.1 R and will need to seek prior approval of that person (even if the individual it proposes to appoint is the person who has been appointed by the FSA under SUP 4.3.3 R).

SUP 4.3.8 G **Actuaries' qualifications**

The FSA is concerned to ensure that every actuary appointed by a firm under this section has the necessary skill and experience to provide the firm with appropriate actuarial advice. SUP 4.3.9 R to SUP 4.3.10 G set out the FSA's rules and guidance aimed at achieving this.

SUP 4.3.9 R Before a firm applies for approval of the person it proposes to appoint as an actuary under SUP 4.3.1 R, it must take reasonable steps to ensure that the actuary:

- (1) has the required skill and experience to perform his functions under the regulatory system; and
- (2) is a Fellow of the Institute of Actuaries or of the Faculty of Actuaries.

SUP 4.3.10 G To comply with SUP 4.3.9 R and Principle 3, before an actuary takes up his appointment the firm should ensure that the actuary:

- (1) has skills and experience appropriate to the nature, scale and complexity of the firm's business and the requirements and standards under the regulatory system to which it is subject; and
- (2) has adequate qualifications and experience, which includes holding an appropriate practising certificate under the rules of the Institute of Actuaries or the Faculty of Actuaries;

and seek confirmation of these from the actuary, or the actuary's current and previous employers, as appropriate.

SUP 4.3.11 R **Disqualified actuaries**

A firm must not appoint under SUP 4.3.1 R an actuary who is disqualified by the FSA under section 345 of the Act (Disqualification) from acting as an actuary either for that firm or for a relevant class of firm.

SUP 4.3.12 G If it appears to the FSA that an actuary has failed to comply with a duty imposed on him under the Act, it may disqualify him under section 345 of the Act. For more detail about what happens when the disqualification of an actuary is being considered or put into effect, see EG 15 (Disqualification of auditors and actuaries). A list of actuaries who are disqualified by the FSA may be found on the FSA website (www.fsa.gov.uk).

SUP 4.3.12A R A firm must take reasonable steps to ensure that an actuary who is to be, or has been, appointed under SUP 4.3.1 R:

- (1) does not perform the function of chairman or chief executive of the firm, or does not, if he is to perform the with-profits actuary function, become a member of the firm's governing body; and
- (2) does not perform any other function on behalf of the firm which could give rise

to a significant conflict of interest.

SUP 4.3.12B **G** Both the actuarial function and the with-profits actuary function may be performed by employees of the firm or by external consultants, and performing other functions on behalf of the firm will not necessarily give rise to a significant conflict of interest. However, being a director, or a senior manager responsible, say, for sales or marketing in a firm (or for finance in a proprietary firm), is likely to give rise to a significant conflict of interest for an actuary performing the with-profits actuary function. He nevertheless retains direct access to the firm's governing body under SUP 4.3.17 R (2).

SUP 4.3.13 **R** **The actuarial function**

An actuary appointed to perform the actuarial function must, in respect of those classes of the firm's long-term insurance business which are covered by his appointment :

(1) advise the firm's management, at the level of seniority that is reasonably appropriate, on the risks the firm runs in so far as they may have a material impact on the firm's ability to meet liabilities to policyholders in respect of long-term insurance contracts as they fall due and on the capital needed to support the business, including regulatory capital requirements;

(2) monitor those risks and inform the firm's management, at the level of seniority that is reasonably appropriate, if he has any material concerns or good reason to believe that the firm:

(a) is not meeting liabilities to policyholders under long-term insurance contracts as they fall due, or may not be doing so, or might not have done so, or might, in reasonably foreseeable circumstances, not do so;

(b) is, or may be, effecting new long-term insurance contracts on terms under which the resulting income earned is insufficient, under reasonable actuarial methods and assumptions, and taking into account the other financial resources that are available for the purpose, to enable the firm to meet its liabilities to policyholders as they fall due (including reasonable bonus expectations);

(c) does not, or may not, have sufficient financial resources to meet liabilities to policyholders as they fall due (including reasonable bonus expectations) and the capital needed to support the business, including regulatory capital requirements or, if the firm currently has sufficient resources, might, in reasonably foreseeable circumstances, not continue to have them;

(3) advise the firm's governing body on the methods and assumptions to be used for the investigations required by IPRU(INS) 9.4R or IPRU(FSOC) 5.1R and the calculation of the with-profits insurance capital component under INSPRU 1.3 as applicable;

(4) perform those investigations and calculations in (3), in accordance with the methods and assumptions determined by the firm's governing body;

(5) report to the firm's governing body on the results of those investigations and calculations in (3); and

(6) in the case of a friendly society to which this section applies, perform the functions of the appropriate actuary under section 87 (Actuary's report as to margin of solvency) of the Friendly Societies Act 1992.

SUP 4.3.14 **G** IPRU(INS) 9.4R and IPRU(FSOC) 5.1R require firms to which this section applies to cause an investigation to be made at least yearly by the actuary or actuaries appointed to perform the actuarial function, and to report on the result of that investigation. INSPRU 1.3 requires realistic basis life firms to calculate the with-profits insurance component as part of their capital resources requirements. The firm is responsible for the methods and assumptions used to determine the liabilities attributable to its long-term insurance business. The obligation on friendly societies to obtain a report from the 'appropriate actuary' under section 87 of the Friendly Societies Act 1992 applies to a friendly society which is to receive a transfer of engagements under section 86 (transfer of engagements

to or by a friendly society). The 'appropriate actuary' in this context is the actuary appointed to perform the actuarial function, rather than the appropriate actuary under SUP 4.4 (Appropriate actuaries).

SUP 4.3.15 **G**

SUP 4.3.13 R is not intended to be exhaustive of the professional advice that a firm should take whether from an actuary appointed under this chapter or from any other actuary acting for the firm. Firms should consider what systems and controls are needed to ensure that they obtain appropriate professional advice on financial and risk analysis; for example:

- (1) risk identification, quantification and monitoring;
- (2) stress and scenario testing;
- (3) ongoing financial conditions;
- (4) financial projections for business planning;
- (5) investment strategy and asset-liability matching;
- (6) individual capital assessment;
- (7) pricing of business, including unit pricing;
- (8) variation of any charges for benefits or expenses;
- (9) discretionary surrender charges; and
- (10) adequacy of reinsurance protection.

SUP 4.3.16 **G**

The with-profits actuary function

[deleted]

SUP 4.3.16A **R**

An actuary appointed to perform the with-profits actuary function must:

- (1) advise the firm's management, at the level of seniority that is reasonably appropriate, on key aspects of the discretion to be exercised affecting those classes of the with-profits business of the firm in respect of which he has been appointed;
- (2) where the firm is a realistic basis life firm advise the firm's governing body as to whether the assumptions used to calculate the with-profits insurance component under INSPRU 1.3 are consistent with the firm's PPFM in respect of those classes of the firm's with-profits business;
- (3) at least once a year, report to the firm's governing body on key aspects (including those aspects of the firm's application of its Principles and Practices of Financial Management on which the advice described in (1) has been given) of the discretion exercised in respect of the period covered by his report affecting those classes of with-profits business of the firm;
- (4) in respect of each financial year, make a written report addressed to the relevant classes of the firm's with-profits policyholders, to accompany the firm's annual report under COBS 20.4.7 R as to whether, in his opinion and based on the information and explanations provided to him by the firm, and taking into account where relevant the rules and guidance in COBS 20 the annual report and the discretion exercised by the firm in respect of the period covered by the report may be regarded as taking, or having taken, the interests of the relevant classes of the firm's with-profits policyholders into account in a reasonable and proportionate manner;
- (5) request from the firm such information and explanations as he reasonably

considers necessary to enable him properly to perform the duties in (1) to (4);

(6) advise the firm as to the data and systems that he reasonably considers necessary to be kept and maintained to provide the duties in (5); and

(7) in the case of a friendly society to which this section applies, perform the function of appropriate actuary under section 12 (Reinsurance) of the Friendly Societies Act 1992 or section 23A (Reinsurance) of the Friendly Societies Act 1974 as applicable, in respect of those classes of its with-profits business covered by his appointment.

SUP 4.3.16B **G** In advising or reporting on the exercise of discretion, an actuary performing the with-profits actuary function should cover the implications for the fair treatment of the relevant classes of the firm's with-profits policyholders. His opinion on any communication or report to them should also take into account their information needs and the extent to which the communication or report may be regarded as clear, fair and not misleading. Aspects of the business that should normally be included are:

- (1) bonus rates to be applied to policies at maturity or on the death of a policyholder, or when calculating the annual bonus;
- (2) investment policy in the light of product descriptions disclosed to customers;
- (3) surrender value methodology (including market value adjusters);
- (4) new business plans and premium rates;
- (5) allocation of expenses to with-profits business;
- (6) investment fees to be charged to with-profits business;
- (7) changes to the Principles and Practices of Financial Management; and
- (8) communications with policyholders or potential policyholders on the issues in (1) to (7).

SUP 4.3.16C **G** The reports in SUP 4.3.16AR (3) and SUP 4.3.16AR (4) should be proportionate to the nature of the with-profits business. For smaller firms with fewer products, the extent of reporting would be proportionately less.

SUP 4.3.16D **G** Firms should normally obtain advice, from the actuary appointed to perform the with-profits actuary function in respect of the affected class or classes of with-profits business, whenever they are preparing to make key decisions based on the exercise of discretion affecting their with-profits business. Firms should also have risk management processes in place to ensure that all relevant matters are referred to the actuary for advice.

SUP 4.3.17 **R** A firm must require and allow any actuary appointed to perform the with-profits actuary function to perform his duties and must:

- (1) keep him informed of the firm's business and other plans (including, where relevant, those of any related firm, to the extent it is aware of these);
- (2) provide him with sufficient resources (including his own time and access to the time of others);
- (3) hold such data and establish such systems as he reasonably requires;
- (4) request his advice about the likely effect of material changes in the firm's business plans, practices or other circumstances on the fair treatment of the relevant classes of the firm's with-profits policyholders; and
- (5) pay due regard to his advice, whether provided in response to a request under (4) or on the actuary's own initiative; this will include, if he requests it, allowing him

to present his advice directly to the firm's governing body (that is, the board of directors or, for a friendly society, the committee of management).

SUP 4.3.18 **G** A firm's duty to keep an actuary appointed to perform the with-profits actuary function informed includes providing relevant information, even where the actuary does not ask for it. The firm needs to appreciate that the actuary may be unaware of certain business developments and so unable to request relevant information.

SUP 4.3.19 **G** [deleted]

SUP 4.3.20 **R** [deleted]

SUP 4.3.21 **G** [deleted]

COBS 20.3 Principles and Practices of Financial Management

COBS 20.3.1 **R** Production of PPFM

(1) A firm must:

(a) establish and maintain the PPFM according to which its with-profits business is conducted (or, if appropriate, separate PPFM for each with-profits fund); and

(b) retain a record of each version of its PPFM for five years.

(2) A firm's with-profits principles must:

(a) be enduring statements of the standards it adopts in managing with-profits funds; and

(b) describe the business model it uses to meet its duties to with-profits policyholders and to respond to longer-term changes in the business and economic environment.

(3) A firm's with-profits practices must:

(a) describe how a firm manages its with-profits funds and how it responds to shorter-term changes in the business and economic environment; and

(b) be sufficiently detailed for a knowledgeable observer to understand the material risks and rewards from effecting or maintaining a with-profits policy with it.

(4) A firm must not change its PPFM unless, in the reasonable opinion of its governing body, that change is justified to:

(a) respond to changes in the business or economic environment; or

(b) protect the interests of policyholders; or

(c) change the firm's with-profits practices better to achieve its with-profits principles.

(5) A firm may change its PPFM if that change:

(a) is necessary to correct an error or omission; or

(b) would improve clarity or presentation without materially affecting the PPFM's substance; or

(c) is immaterial.

COBS 20.3.2 **G** Governance arrangements for with-profits business

In complying with the rule on systems and controls in relation to compliance, financial crime and money laundering (SYSC 3.2.6 R), a firm should maintain governance arrangements designed to ensure that it complies with, maintains and records any applicable PPFM. These arrangements should:

- (1) be appropriate to the scale and complexity of the firm's with-profits business;
- (2) include the approval of the firm's PPFM by its governing body; and
- (3) involve some independent judgment in assessing compliance with its PPFM and addressing conflicting rights and interests of policyholders and, if applicable, shareholders, which may include but is not confined to:
 - (a) establishing a with-profits committee;
 - (b) asking an independent person with appropriate skills and experience to report on these matters to the governing body or to any with-profits committee; or
 - (c) for small firms, asking one or more non-executive members of the governing body to report to the governing body on these matters.

COBS 20.3.3 G If a person or committee who provides the independent judgement wishes to make a statement or report to with-profits policyholders, in addition to any annual report made by a firm to those policyholders, a firm should facilitate this.

COBS 20.3.4 R **Scope and content of PPFM**

A firm's PPFM must cover the issues set out in the table in COBS 20.3.6 R.

COBS 20.3.5 R A firm's PPFM must cover any matter that has, or it is reasonably foreseeable may have, a significant impact on the firm's management of with-profits funds, including but not limited to:

- (1) any requirements or constraints that apply as a result of previous dealings, including previous business transfer schemes; and
- (2) the nature and extent of any shareholder commitment to support the with-profits fund.

COBS 20.3.6 R **Table: Issues to be covered in PPFM**

	Subject	Issues	
(1)	Amount payable under a with-profits policy	(a)	Methods used to guide determination of the amount that is appropriate to pay individual with-profits policyholders, including:
		(i)	the aims of the methods and approximations used;
		(ii)	how the current methods, including any relevant historical assumptions used and any systems maintained to deliver results of particular methods, are documented; and
		(iii)	the procedures for changing the current method or any assumptions or parameters relevant to a particular method.
		(b)	Approach to setting bonus rates.
		(c)	Approach to smoothing maturity payments

