

# WESLEYAN

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## **Terms of Reference With Profits Committee**

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# **Wesleyan Assurance Society**

## **With-Profits Committee**

### **Terms of Reference**

#### **Background**

1. On 1 July 1997, the Society merged with Medical Sickness Annuity & Life Assurance Society Limited and the MSS Fund was formed under the merger scheme. The balance of the Wesleyan long-term fund is known as “the Open Fund”.
2. This Committee operates in relation to both the Open Fund and the MSS Fund. Prior to 1 July 2013 there were two Committees, the Open Fund and the MSS Fund each with its own Terms of Reference.
3. Ultimate responsibility for managing the Open Fund and the MSS Fund rests with the Board. The role of the Committee is, in part, to act in an advisory capacity to inform the decision-making of the Board. The Committee also acts as a means by which the interests of the with-profits policyholders are appropriately considered within the Society’s governance structures. The Committee will address issues affecting with-profits policyholders as a whole or as separately identifiable groups of policyholders generally rather than dealing with individual policyholder complaints. The Committee is not empowered to take management decisions.

#### **Role of the Committee**

4. The role of the Committee is, as relevant, to assess, report on, and provide clear advice and, where appropriate, recommendations to the Board on:
  - (a) the way in which the Open Fund and MSS Fund are managed by the Society and whether this is properly reflected in the respective Practices and Principles of Financial Management (PPFM);
  - (b) whether the Society is complying with the principles and practices set out in the PPFMs;
  - (c) whether the Society has identified and addressed effectively the conflicting rights and interests of with-profits policyholders and other policyholders or stakeholders in a way that is consistent with treating customers fairly; and
  - (d) any other issues with which the Board or the Committee considers with-profits policyholders might reasonably expect the Committee to be involved.

## Responsibilities of the Committee

5. The Committee will decide on the specific matters it will consider in order to enable it to carry out its role described above.
6. The Committee will give appropriate consideration to the following non-exhaustive list of specific matters:
  - (i) the identification of surplus and excess surplus, the merits of its distribution or retention and the proposed distribution policy;
  - (ii) how bonus rates, smoothing and market value reductions have been calculated and applied;
  - (iii) the relative interests of policyholders with and without valuable guarantees;
  - (iv) the Society's with-profits customer communications such as annual policyholder statements and product literature and whether the Committee wishes to make a statement or report to with-profits policyholders in addition to the annual report made by the Society;
  - (v) any significant changes to the risk or investment profile of the Open Fund and the MSS Fund including the management of material illiquid investments and the Society's obligations in relation to strategic investments;
  - (vi) the Society's strategy for future sales supported by the assets of the Open Fund and its impact on surplus;
  - (vii) the impact of any management actions planned or implemented;
  - (viii) relevant management information such as customer complaints data (but not necessarily information relating to individual customer complaints);
  - (ix) the drafting, review, updating of and compliance with run-off plans, court schemes and similar matters;
  - (x) the costs incurred in operating the Open Fund and the MSS Fund;
  - (xi) the identification and extent of the Society's with-profits funds, with particular regard to the considerations as to whether part of the with-profits fund constitutes a separate with-profits fund in accordance with COBS 20.1A.2 R (Sub-funds)\*; and
  - (xii) the use and purpose of, and terms under which, support assets are available to the Open Fund and the MSS Fund, having regard to the considerations in COBS 20.2.33 G to 20.2.34 G and COBS 20.2.34A R\*.
7. The Committee will work closely with the with-profits actuary, and obtain his opinion and input as appropriate.

\* see Appendix for details

8. The Committee must:
  - (a) advise the Board on the suitability of candidates proposed for appointment as the with-profits actuary; and
  - (b) assess the performance of the with-profits actuary at least annually, and report its view to the Board of the Society.

## **Membership**

9. The Committee shall consist of at least three members at least half of whom will be independent of the Society. Where there are an equal number of independent and non-independent members, the Committee must be chaired by a person who is one of the independent members.
10. The Chairman and other members of the Committee will be appointed by the Board. The membership of the Committee shall not include any serving Executive directors, officers or employees of the Society.
11. The Board shall ensure that any person appointed as a member of the Committee must have the appropriate skills, knowledge and experience to carry out the role and responsibilities as described above.

## **Meetings and Decisions**

12. The Committee will meet at least quarterly and ad hoc if required.
13. The quorum for any meeting (or decision by written procedure) will be at least half the number of members, with at least half the members present being independent.
14. The Committee will work closely with the with-profits actuary who will attend all meetings. Directors who are not members of the Committee can attend any meeting at the invitation of the Chairman.
15. Other members of senior management will attend as necessary before the Committee.
16. A separate part of each meeting may be set aside for private discussion by the Committee if it so wishes.
17. The with-profits actuary or any independent member of the Committee may request a meeting if they consider that one is necessary.
18. Unless otherwise agreed, notice of each meeting, however held, shall be forwarded to each member of the Committee and the with-profits actuary, and any other person invited to attend, no later than 5 working days before the date of the meeting.
19. A meeting can take place by conference call or other means provided it meets the requirements of paragraph 13 and all the participants can communicate effectively. Also the Committee may pass resolutions or decisions by written procedure. The resolution will be valid when written confirmation (which includes email) has been received from a majority of members sufficient to meet the requirements of paragraph 13. Members will be required to provide their signed resolution to the Chairman or the Secretary.
20. The Secretary shall be the Company Secretary or his nominee. Full records will be kept of all requests of and material produced by the Committee, and all significant interactions between the Committee and the Board.

## Reporting Responsibilities

21. Following approval of the content by the Committee the Secretary shall circulate the minutes to the Board. The minutes shall be in sufficient detail to form the formal report from the Committee as regards the carrying out of its responsibilities.
22. The Committee may, if it wishes, make a report to the with-profits policyholders in addition to the annual report to policyholders made by the Society, and the Society will facilitate it.

## Responsibilities of the Society

23. The Board will ensure that, in the context of its consideration of issues referred to in paragraphs 4 to 8 above, it:
  - (a) obtains, as relevant, assessments, reports, advice and/or recommendations of the Committee, if the Board or Committee considers that significant issues concerning the interests of with- profits policyholders need to be considered by the Society;
  - (b) allows the Committee sufficient time to enable it to provide fully considered input on the issues to be considered;
  - (c) considers fully and gives due regard to the input of the Committee when determining issues concerning the management of the Open Fund and the interests of its with-profits policyholders;
  - (d) sets out fully its reasons for any material departure from the advice or recommendations of the Committee and allows the Committee a reasonable period to consider them and respond; and
  - (e) considers any further representations from the Committee and, if appropriate, sets out fully any additional reasons if it continues to depart from the Committee advice or recommendations.
24. The Society will:
  - (a) provide the Committee with sufficient resources as it may reasonably require to enable it to perform its role effectively;
  - (b) notify the FCA of the decision of the Board to depart from the advice or recommendation of the Committee if the Committee considers that the issue is sufficiently significant and requests of the Board that the FCA be informed;
  - (c) consult the with-profits actuary on the appointment of a new member of the Committee;
  - (d) consult the Committee on the appointment of a new with-profits actuary;
  - (e) decide whether a member of the Committee is independent having regard to the guidance provided by the FCA in section 20.5.7 of its Conduct of Business Sourcebook;
  - (f) ensure that the Committee operates in accordance with these terms of reference; and
  - (g) ensure that these terms of reference are made available on the Society's website.

## **Authority and Terms of Reference**

25. The Committee is a sub-committee of the Board and has no executive decision-making authority. The Committee is authorised to investigate any activity within its terms of reference.
26. The Committee is authorised to seek any information it requires from the Board or any employee of the Society including the with-profits actuary or from the Society's auditors. The Committee may request that relevant employees will be made available, and provide relevant information and input, to assist the Committee in its role, as required.
27. The role of the Committee is recognised as being non-technical. Its advice to the Board shall be that of an informed layperson. Therefore, the Committee may obtain external professional, including actuarial, advice, at the expense of the Society, if the Committee considers the advice necessary to perform its role effectively.
28. The Committee will review its terms of reference at least annually and propose to the Board any amendments as necessary to ensure they continue to be appropriate.
29. These terms of reference were approved by the Board to be effective from 30 March 2017.

## Appendix

### Extracts from FCA Conduct of Business Sourcebook (COBS)

#### 6 (xi) [COBS 20.1A.2 R (Sub-funds)]

COBS 20.1A.2 R 01/01/2016

(1)

Where the *firm*:

(a)

identifies particular assets as forming a distinct part of its *with-profits fund*; and

(b)

restricts participation in the profits or other experience of that distinct part of the fund to a particular category of *with-profits policies*;

then, provided that:

(c)

such identification and restriction is consistent with the considerations in (3), and

(d)

the *firm* treats each affected category of *with-profits policyholder* fairly, having regard to those considerations;

each such part constitutes a separate *with-profits fund*.

(2)

Notwithstanding (1), each different part of its *with-profits fund* constitutes a separate *with-profits fund* if that is necessary in order to treat each affected category of *with-profits policyholder* fairly, having regard to the considerations in (3).

(3)

The considerations referred to in (1) and (2) are the terms of the relevant *with-profits policies*; the *firm's* established practice; its *PPFM* and/or other relevant communications to affected *with-profits policyholders*, and the terms of any arrangement formally approved by a court of competent jurisdiction, *appropriate regulator* or *previous regulator*.

6 (xii) COBS 20.2.33 G to 20.2.34 G and COBS 20.2.34A R

COBS 20.2.33 G 01/11/2007

(1)

If a *firm*, or a *connected person*, provides support to a *with-profits fund* (for example, by a contingent loan), no reliance should be placed on that support when the *firm* assesses the *with-profits fund's* financial position unless there are clear and unambiguous criteria governing any repayment obligations to the support provider.

(2)

The degree of reliance placed on that support should depend on the subordination of the support to the fair treatment of *with-profits policyholders* and clarification of what fair treatment means in various circumstances. For a *realistic basis life firm* this would normally be evidenced by the liability for such support being capable, under stress, of a progressively lower valuation in the *future policy-related liabilities*.

COBS 20.2.34 G 01/11/2007

Where assets from outside a *with-profits fund* are made available to support that fund (and there is no ambiguity in the criteria governing any repayment obligations to the support provider), a *firm* should manage the fund disregarding the liability to repay those assets, at least in so far as that is necessary for its *policyholders* to be treated fairly.

COBS 20.2.34A R 22/11/2016

(1)

*5A Solvency II firm* must ensure that, in relation to any arrangements where assets outside a *with-profits fund* provide or may provide support to it, both the following requirements are met:

(a)

the precise terms and conditions on which those support asset arrangements operate and assets may become available, including whether and when they are repayable:

(i)

are adequately documented in the *firm's* records; and

(ii)

if the *firm* is required to produce a *PPFM*, are set out clearly and unambiguously in its *PPFM.6*

(b)

the operation of those support asset arrangements is consistent with terms and conditions in communications to *with-profits policyholders*, including any *PPFM*.



24 (e) COBS 20.5.7

COBS 20.5.7 G 01/04/2013

(1)

The *FCA* expects the *governing body* of the *firm* to decide whether a member of the *with-profits committee* or a person (other than a *non-executive director*) carrying out the advisory arrangement is independent. The *FCA* expects a *firm's governing body* to adopt the following approach and have regard to the following factors when making this assessment:

(a)

the *governing body* should determine whether the person is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the person's judgment; and

(b)

the *governing body* should state its reasons if it determines that a person is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the person:

(i)

has been an employee of the *firm* or group within the last five years; or

(ii)

has, or has had within the last three years, a material business relationship with the *firm* either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the *firm*; or

(iii)

has received or receives additional remuneration from the *firm*, participates in the *firm's* share option or a performance-related pay scheme, or is a member of the *firm's* pension scheme; or

(iv)

has close family ties with any of the *firm's* advisers, directors or senior employees; or

(v)

has significant links with the *firm's* directors through involvement in other companies or bodies; or

(vi)

represents a significant shareholder; or

(vii)

has served on the *governing body* for more than nine years from the date of their first election.

(2)

If a *firm* appoints one or more *non-executive directors* to carry out the advisory arrangement, the *FCA* expects the *governing body* of the *firm* to be satisfied that that person or persons is or are adequately able to provide independent judgment.