

Note accompanying the report titled “Supplementary Report of the Independent Expert on the proposed Scheme to transfer certain long-term insurance business from Rothesay Life Plc to Monument Life Insurance DAC”

21 July 2020

Background

- 1 I have been appointed as the Independent Expert for a proposed scheme (the Scheme) for the transfer of a portfolio of non-profit annuity policies (the Transferring Policies) from Rothesay Life Plc (Rothesay) to Monument Life Insurance DAC (Monument Life).
- 2 I produced a report (my Main Report) dated 27 March 2020 in advance of the Directions Hearing at the High Court of Justice of England and Wales (the Court) on 6 April 2020 to assist the Court in its deliberations on the Scheme. I have also produced a second report (my Supplementary Report) dated 8 July 2020 to provide the Court with an updated assessment of the likely effects of the Scheme ahead of the Sanction Hearing at the High Court on 22 July 2020.
- 3 My Main Report and my Supplementary Report (my Reports) have been made available to policyholders via the Rothesay and Monument Life websites.

Purpose of this note

- 4 Since the publication of my Reports, an error has been identified in one paragraph of my Main Report in relation to the taxation of benefits where the holder of a Transferring Policy resides outside the Republic of Ireland (Ireland). I would like to take this opportunity to correct this error, to clarify the impact of the Scheme on these policyholders regarding tax and, for the UK-resident policyholders, to clarify the position regarding ongoing payment of benefits in the context of the UK’s withdrawal from the European Union.
- 5 The content of this note does not affect any of my conclusions in respect of the Scheme as set out in my Main Report and my Supplementary Report.

Taxation of benefits for policyholders residing outside of Ireland

- 6 All but three of the holders of Transferring Policies currently reside in Ireland. Of the remaining policyholders, two reside in the United Kingdom (UK) and one resides in Australia.
- 7 In paragraph 8.3.36 of my Main Report, I stated:
“for the three holders of Transferring Policies who currently do not reside in the Republic of Ireland (two in the UK and one in Australia) benefits are paid gross of tax, the policyholder is responsible for paying tax locally and this will continue if the Scheme is implemented.”
- 8 It remains the case that the Scheme will not change the way the benefits are taxed in the hands of the policyholder, but I have been informed that the statement made in paragraph 8.3.36 of my Main Report does not reflect the correct current position.
- 9 In the normal course of events, all of the holders of Transferring Policies would be subject to Irish tax on the benefits received under those policies regardless of where they reside. However, any policyholder who lives outside of Ireland can apply to the Irish Revenue to request that they do not pay tax in Ireland on the grounds that they are paying tax in their country of residence. This would involve the policyholder

providing proof that they are paying tax in the said residency. If the Irish Revenue agree, they will provide an Exclusion Order, which is an instruction to the relevant payroll provider to class the income as non-taxable.

- 10 Rothesay had previously received such instructions from the Irish Revenue in respect of all three policyholders residing outside of Ireland. However, Rothesay has informed me that only one of these instructions remains in-force, in respect of one of the UK-resident policyholders.
- 11 As a result, the current position is that this policyholder receives their benefits gross of tax. The other two policyholders receive their benefits net of Irish tax. There will be no change to the arrangements for any of these policyholders as a result of the Scheme.

Impact of Brexit on UK-resident policyholders

- 12 A query received from the Prudential Regulation Authority (PRA) as part of its review of the Scheme has prompted me to clarify the impact of the UK's withdrawal from the European Union on the ability of Monument Life to lawfully pay benefits to holders of Transferring Policies residing in the UK.
- 13 My understanding is that there is no legal or regulatory barrier to Monument Life continuing to pay benefits to the UK-resident policyholders and, in particular, Monument Life is not required to be authorised in the UK to do so.
- 14 This is consistent with legal advice obtained by Monument Life (summarised below):
 - The relevant UK law (being section 19 of the Financial Services and Markets Act 2000, its predecessors and case law in relation to them) employs an activities-based test to determine whether a UK authorisation is needed. A UK authorisation is only needed where a person carries on a regulated activity in the UK. The fact that there are policyholders resident in the UK does not itself mean that an overseas insurer is required to have a UK authorisation. The House of Lords has held that the mere payment of a claim in the UK does not amount to the regulated activity of carrying out a contract of insurance (see *Scher v Policyholders Protection Board* (No. 1) [1993] 3 WLR 357).
- 15 It is possible that the law, or interpretation of it, may change in the future such that Monument Life would require UK authorisation to lawfully pay benefits to holders of Transferring Policies residing in the UK. In this regard, I note that Monument Life is currently authorised in the UK by virtue of its passporting rights and it intends to seek retention of authorisation in the UK over the long-term in order to continue to service its existing UK insurance business by establishing a third country branch in the UK as discussed in paragraphs 6.3.34 and 6.3.35 of my Main Report.



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