



Private Pension

TERMS AND CONDITIONS

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1. INTRODUCTION

These *terms and conditions* describe the operation of the *scheme*. Your signed application to join or take benefits from the *scheme* confirms your agreement to these *terms and conditions*, the fees set out in the *fee schedule* and the *rules*. These *terms and conditions*, together with the documents listed immediately below, form the basis of a legally binding agreement between you and us:

- your signed application form(s)
- the *fee schedule*.

If there is any conflict between these *terms and conditions* and the documents listed above, the *terms and conditions* take precedence.

Neither we nor the *independent trustee* accept liability for those aspects of the operation of the *scheme* that are described in section 33. Further, you promise to be responsible for and pay any losses, costs and expenses incurred by us and the *independent trustee* in respect of certain aspects of the operation of the *scheme* as described in section 33.3.

We have the right to vary the *fee schedule* and the *terms and conditions* in accordance with section 18.1 and section 29 respectively.

In addition to the documents that form the legally binding agreement, the following documents provide important information about the *scheme*:

- Key Features
- Personalised Illustrations
- Guide to Property and Land Purchase
- The Annual Renewal Packs that we send you.

You can ask us for copies of these documents.

Please keep the *terms and conditions* and any other materials that you get in relation to the *scheme* in a safe place for future reference.

If you have any questions about these *terms and conditions*, or if you would like to obtain a copy of a document or form referred to, please see our website or contact us at:

Website: www.hornbuckle.co.uk
By mail: The Hornbuckle Mitchell Group Limited
Tyman House
42 Regent Road
Leicester
LE1 6YJ
Telephone No: 0845 345 2555
Email: midlands@hornbuckle.co.uk
Fax: 0845 125 6700

2. UNDERSTANDING THIS DOCUMENT

- 2.1 These *terms and conditions* use special expressions, which are shown in italics and defined in the glossary at the end. References to "we", "us", "our" or "ourselves" are references to Hornbuckle Mitchell Group Limited, acting as scheme administrator and operator of the *scheme*. References to "you" or "your" are to you as a *member* or, where the context requires, a *dependant*.

3. THE PRIVATE PENSION SCHEME

- 3.1 The *scheme* is established under trust and is governed by the *rules*. We impose certain conditions and restrictions on the operation of the *scheme*, which are set out in the legally binding agreement between you and us referred to in section 1. If there is any conflict between that agreement and the *rules*, the *rules* prevail. You can access a copy of the *rules* on our website or ask us for a copy.
- 3.2 We are responsible for operating and administering the *scheme*.

4. OWNERSHIP

- 4.1 The assets in your *individual fund* are held by the *independent trustee*. You can ask us to appoint an *individual trustee* to act with the *independent trustee*, in which case the assets will be held jointly by the *independent trustee* and the *individual trustee* and decisions of the *trustees* must be unanimous.
- 4.2 In relation to arranging investments, the *independent trustee* acts only according to instructions from you or persons appointed by you (subject to our conditions for investments that are set out in sections 12 and 13). In relation to all other matters, the *independent trustee* acts only according to our direction.

5. MEMBERSHIP

- 5.1 Anyone may apply to become a *member*. However, we reserve the right to decline an application at our discretion. If we accept an application, the individual becomes a *member*.
- 5.2 A parent or legal guardian may apply for membership on behalf of his/her child under age 18. Until the child reaches age 18, we will act on the instructions of the parent or legal guardian in relation to the child's *individual fund*. Once the child reaches age 18, he or she will have full authority to give instructions in relation to his/her *individual fund*, provided that he/she accepts these *terms and conditions*.
- 5.3 We do not currently impose a minimum initial investment level, but we reserve the right to introduce a minimum, subject to giving you advance notice of the change as described in section 29.1.

6. FINANCIAL ADVISER

- 6.1 When you join the *scheme*, you must appoint a financial adviser (called the "*financial adviser*") to provide advice to you in relation to the *scheme*. Your *financial adviser* is responsible for providing you with financial advice about the suitability of using the *scheme*, in accordance with all applicable laws and regulations. Your *financial adviser* must be an individual or firm that is appropriately authorised to transact investment business within the UK by the Financial Services Authority.
- 6.2 We will treat your *financial adviser* as continuing to be appointed unless and until we receive written notice from you or the *financial adviser* that the appointment is to end. At this point, you should appoint a replacement *financial adviser*.

7. COMMUNICATING INSTRUCTIONS

- 7.1 Our formal communications to you will be provided in writing, either via your *financial adviser* (normally) or direct to you. If we send a communication via your *financial adviser*, you are treated as having received it when the *financial adviser* receives it (or is deemed to have received it). If we send a communication direct to you, we will send it to your last known address for correspondence according to our records. Any communication sent by post will be deemed to have been received within three working days. Oral statements by us or the *independent trustee* cannot be relied upon unless confirmed by us in writing.
- 7.2 Any instruction relating to your contributions, membership, benefits, or investment must in writing, signed by you or (if a decision of any *individual trustee*) the *individual trustee* and submitted to us via your *financial adviser*. The exceptions to this rule are where:
- 7.2.1 we agree that instructions relating to ongoing transactions by any *DFM* should be submitted direct to that *DFM* (see section 13) in accordance with the separate terms and conditions governing the operation of those services;
- 7.2.2 we agree to accept instructions relating to your *individual fund* from your *financial adviser*;
- 7.2.3 we agree that instructions:
- to place a buy, sell or switch transaction in relation to funds linked to any investment product held by your *individual fund* or
 - to trade assets and investments using any agreed share dealing facility
- should be submitted to the provider of the investment product or share dealing facility in accordance with the separate terms and conditions governing that product or facility;
- 7.2.4 we give notice that instructions should be submitted to any other relevant third party;
- 7.2.5 you wish to give urgent instructions relating to the buying or selling of investments, in which case you can send a copy of your instruction to us by facsimile or email, provided that the original is posted to us as soon as possible. These instructions must be identifiable by including the *scheme's* full name;

- 7.2.6 your *individual* fund has direct investment in *commercial property*, all decisions relating to the *commercial property*, other than in respect of acquiring or disposing of it, will be communicated in the manner set out in the Property Application Form; or
- 7.2.7 we have received written notice direct from you or the *financial adviser* that the *financial adviser's* appointment is to end and you have not yet appointed a replacement *financial adviser*. In this circumstance, your instructions must be submitted direct to us, in writing.

Instructions include, but are not limited to, notices, application forms, benefit options and nominations and directions in relation to investments. Instructions are not effective until actually received by us at the address set out in section 1 or at any other address which we agree with you.

You authorise us and the *independent trustee*

- to rely on, and treat as fully authorised and binding on you, any decision or instruction which purports to have been given by you without further enquiry by us; and
- to accept such a decision or instruction as genuine, without the need for further investigation as to the authority or identity of the person giving it, or purporting to give it, provided the instructions have been received in good faith and without negligence.

8. CONTRIBUTIONS

- 8.1 As a *member* you can commence contributions to your *individual fund*, provided you remain eligible to receive tax relief on contributions under the *Finance Act*. Contributions can be regular or one-off. We can receive contributions from you, or from someone else on your behalf (eg from a spouse, partner, parent, grandparent etc) or from your employer. Except as described in sections 22.7.2 and 22.10, contributions can continue after you take retirement benefits and after you reach age 75 (but any contributions made after you reach age 75 will not qualify for tax relief).
- 8.2 We do not currently impose any minimum or maximum limits on the amount you can save in your *individual fund* (but there is a limit on the amount that can get tax relief each year – see the section below headed "**tax relief**"). We reserve the right to introduce minimum and/or maximum limits on the amount you can save in your *individual fund*, subject to giving you advance notice of the change as described in section 29.1.
- 8.3 Regular contributions must be paid by standing order. Single contributions can be paid:
- 8.3.1 by cheque, payable to "Private Pension - [your initials], [your surname]"
- 8.3.2 by direct credit (i.e. using an electronic payment system such as BACS or CHAPS);
- 8.3.3 with our prior consent, by standing order; or
- 8.3.4 with our prior consent, as an "in specie" contribution. In specie contributions are paid by transferring assets or investments into your *individual fund*. The assets are not sold but, instead, are re-registered jointly in the name of the *trustees*. With an in-specie transfer, costs may be incurred during the re-registration process and there are *HMRC* rules around the process. Our requirements for making in specie contributions are set out in the section "In specie contributions" below.
- 8.4 We will act as the collecting agent for all contributions and will pass monies, including basic rate tax relief on *member* contributions, to the *designated account*.
- 8.5 You may stop and start your contributions at any time without penalty, although charges continue to apply whether you are contributing or not
- 8.6 No contributions may be made in respect of *dependants*. The *scheme* is unable to accept ongoing payments relating to *contracted-out benefits* direct from *HMRC* (although it can accept transfer values that include the value of *contracted-out benefits* - see section 9).

Tax relief limit

- 8.7 Legislation limits the amount of tax relief you may receive on contributions paid by you, or other persons in respect of you. You are able to claim tax relief on personal contributions up to the higher of:
- £3,600 p.a. (including the allowance for basic rate tax relief); and
- 100% of your relevant UK earnings in the same period. ("Relevant UK earnings" means earnings or income subject to UK income tax, as defined in the *Finance Act*).

- 8.8 We will claim the basic rate tax relief from *HMRC* on the contributions made by you or on your behalf. You must be a UK resident for tax purposes in order for the tax relief to be claimed. The basic rate tax relief will only be applied to your *individual fund* once *HMRC* pays the tax relief to us. You may claim higher rate tax relief through your self-assessment tax return. Tax relief on personal contributions paid on behalf of an individual under the age of 18 years is attributable to that individual as opposed to the person who actually pays the contribution. Your employer may also pay contributions on your behalf. An employer should claim tax relief as a business expense on any employer contributions.
- 8.9 Any contributions over the tax relief limit may, with our agreement, still be paid into your *individual fund*, but you won't receive any tax relief on them. In addition, if these total contributions result in the annual allowance being exceeded, there might be a tax charge on you. The annual allowance is the maximum amount of pension saving you can have each year that benefits from tax relief. It is currently £50,000. This includes pension savings that you make plus any made for you by someone else - for example, your employer. The tax charge is called the annual allowance charge, which *HMRC* would levy against you directly via your tax code or, in certain circumstances, against us and which we would recover from your *individual fund*. You are responsible for notifying the local Inspector of Taxes if the annual allowance is exceeded.
- 8.10 It is possible to carry forward tax relief on "unused annual allowance" from the previous three tax years to achieve tax relief on contributions over the annual allowance, provided that you were a member of a *registered pension scheme* during those years. For this purpose, the allowance that can be carried forward from each previous year is limited to £50,000 less any contributions already made during that tax year. You should discuss this with your *financial adviser* if you are planning higher contributions.
- 8.11 There will be no test against the annual allowance in the year that you die, or if your pension entitlement is paid as a serious ill health lump sum.

Refund of excess contributions

- 8.12 Where you have paid pension contributions over the tax relief limit, you may ask us to refund the excess. Provided the refund would not be an *unauthorised payment*, we will refund the lower of the excess contribution and the value of the part of your *individual fund* attributable to that excess contribution. In addition, *HMRC* will require us to repay the full amount of the basic rate tax relief that we had claimed on the excess contribution.
- 8.13 If contributions are paid which result in the annual allowance being exceeded, you cannot avoid the annual allowance charge simply by obtaining a refund of contributions from us.

In specie contributions

- 8.14 All contributions must be expressed in cash terms but may be settled, wholly or partially, by appropriate assets rather than cash. *HMRC* will treat the value of the asset as a cash contribution for the purposes of establishing any tax relief due. Making a contribution in the form of assets is subject to:
- 8.14.1 the assets being a permitted investment in accordance with section 12
 - 8.14.2 our prior consent;
 - 8.14.3 full legal ownership of the assets being transferred jointly into the names of the *trustees*; and
 - 8.14.4 satisfying any *HMRC* requirements.
- 8.15 Where the contribution is in the form of shares which you acquired on exercising a right under a Save As You Earn option scheme (as defined in Section 516 Income Tax Employment and Pensions Act 2003), or from a share incentive plan (as defined in Section 488 Income Tax Employment and Pensions Act 2003), the value given to the contribution for tax relief purposes is the market value at the date on which the shares are transferred to the *scheme*.
- 8.16 Where the contribution is in the form of an asset which does not come within section 8.15, the value of the asset must equal the agreed amount of that contribution. For this purpose, we must get a current open market valuation of the asset. The cost of the valuation will be met from your *individual fund* in accordance with section 18 when we are asked for payment, irrespective of whether or not the transfer is actually completed).

9. TRANSFER PAYMENTS INTO THE SCHEME

- 9.1 Subject to *HMRC's* requirements and our prior consent, as a *member* you may transfer benefits under another pension scheme to this *scheme*, including

- 9.1.1 the value of *contracted-out benefits* in another pension scheme, in which case the value of *contracted-out benefits* becomes a *protected rights fund* when transferred to the *scheme*. We will maintain records that enable us to identify separately any *protected rights fund*; and
- 9.1.2 the value of any part of your member's fund under another *registered pension scheme* allocated for paying income withdrawal or flexible drawdown.

If you have any pension arrangements that are suitable for transfer into the *scheme*, your *financial adviser* can discuss this with you.

- 9.2 Any individual who has become entitled to income withdrawal or flexible drawdown on the death of a member under another *registered pension scheme* may apply to transfer the entitlement into the *scheme* for the purpose of continuation of *income withdrawal* or *flexible drawdown*. The application must be in writing on our prescribed form, which includes the individual's agreement to these *terms and conditions*. We reserve the right to decline such an application at our discretion. If we accept the application, the individual is treated as a *dependant*.
- 9.3 Transfer payments may be arranged as a cash transfer (by cheque or direct credit), or by a transfer of assets, or a combination of both, from the other scheme. A transfer of assets is subject to:
 - 9.3.1 the assets being a permitted investment in accordance with section 12;
 - 9.3.2 our prior consent;
 - 9.3.3 us having obtained a current open market valuation of the assets (the cost of which, if any, being met when we are asked for payment in accordance with section 18, irrespective of whether or not the transfer is actually completed);
 - 9.3.4 full ownership of the assets being transferred to the *trustees*; and
 - 9.3.5 satisfying *HMRC's* requirements.

10. TRANSFER PAYMENTS OUT OF THE SCHEME

- 10.1 You may request a transfer of the value of any benefits under your *individual benefit fund* to another *registered pension scheme* or overseas pension scheme allowed by *HMRC* rules. You would need to check that the proposed scheme is willing to accept the transfer.
- 10.2 If you are not transferring out your whole *individual fund*, you must tell us which assets are to be sold or cashed in before we can arrange the transfer.
- 10.3 Costs may be incurred for cashing in assets and making the transfer out (for example, by the *DFM* or product provider).
- 10.4 It may be possible to make a transfer payment to another pension arrangement "in specie" (i.e. the assets are not sold but, instead, are re-registered in the name of the trustee of the new pension scheme). With an in-specie transfer, costs may be incurred during the re-registration process.
- 10.5 With both cash and in-specie transfers, costs may also be incurred if we require a current open market valuation of the assets.
- 10.6 The costs (irrespective of whether or not the transfer out proceeds) will be met, in accordance with section 18, prior to any transfer taking place. Payment of a transfer value may be delayed if there is a delay in receiving the relevant invoice.
- 10.7 You may transfer your *income withdrawal fund* at any time to another *registered pension scheme* that is willing to accept it. You should get advice from an appropriately qualified financial adviser before considering a transfer.

11. DESIGNATED ACCOUNT

- 11.1 All monies in your *individual fund* that are not invested will be deposited in an interest bearing bank account opened in the name of the *trustees* as a trust account with an authorised bank selected by us from time to time. The signatories to the bank account will be the authorised signatories on behalf of the *independent trustee*, acting on instruction from us, and any *individual trustees*. We may direct that the same bank account is used to hold money received in respect of other *members' or dependants' individual funds*. A record is maintained, called the "**designated account**", of the amount of any cash held within the bank account that we attribute to contributions and transfer proceeds made by or in respect of you. This account will be your main *individual fund* account through which all contributions, transfers, investments and benefit payments must be channelled for audit purposes.

- 11.2 We are not regulated to hold client money. Monies held in the bank account will fall outside the scope of protection provided by the Client Money Rules as set out in the Financial Services Authority's Client Asset Sourcebook. Where money attributable to your *individual fund* is pooled with money attributable to *individual funds* of other *members* or *dependants*, in the event that a default by the bank causes any unreconciled shortfall in the money held in the pooled account, your *individual fund* may share proportionately in that shortfall.
- 11.3 All monies available for investment will be held in the *designated account* unless and until we receive investment instructions from you.
- 11.4 Where the *designated account* has a credit balance it will earn interest, paid free of tax based on the amount of funds in the bank account and the rate of interest payable by the bank or institution. The rates of interest will be published by us on our website. We may receive and benefit from payments from the bank calculated by reference to the total balance of all *designated accounts* held within the *scheme*.
- 11.5 Currently, no charges are made in relation to the normal operation of the *designated account*. This may change in the future if there are changes to our arrangement with the bank and we will notify you if this occurs. Non standard transactions may attract charges (for example, receipt of monies in foreign currencies or electronic transfer). Any bank charges will be met in accordance with section 18.
- 11.6 We require you to maintain a suitable cleared balance, currently a minimum of £1,000, in the *designated account* to cover payments due from or in respect of your *individual fund*. These payments will include, but shall not be limited to:
- 11.6.1 any *income withdrawal* or *flexible drawdown* payments falling due which will cease or be delayed if sufficient cleared funds are not available;
 - 11.6.2 ongoing capital and interest repayments in connection with any borrowing; and
 - 11.6.3 fees, charges or costs.
- Overdrafts are not permitted on any bank account used for the *scheme*.
- If there is an insufficient cleared balance in the *designated account* to comply with these requirements, we will realise (cash-in) assets in order to provide the necessary funds. The procedure for realising assets is set out in section 19. You will be responsible for any liability (including any tax charge) that may be incurred due to insufficient cleared funds being available in the *designated account* or in any account used for the *scheme*.
- 11.7 Where a *DFM* is appointed, cash may be held by the *DFM* or its nominees, subject to section 12. Cash held in this way may attract interest. Details of the appropriate prevailing interest rates can be obtained on request from the *DFM*.
- 11.8 Subject to the provisions of 11.6 above, you may ask us to open other bank deposit accounts, set up in the name of the *trustees*, to hold monies in respect of your *individual fund*. These must be operated as deposit accounts rather than current accounts and no payments into or out of the *scheme*, other than interest received, may be made without prior consent or direction from us. Any deposits into or transfers out from an alternative deposit account will be made via your *designated account*.

12. PERMITTED INVESTMENTS

The range of investments that we permit in the *scheme* is set out in the *permitted investments schedule*. Any investments selected for your *individual fund* must be an investment listed in the *permitted investments schedule*. We may vary the *permitted investments schedule* from time to time, as explained in section 29, but we will not notify you every time we change the *permitted investments schedule* and therefore it is your responsibility, along with your *financial adviser*, to check that any proposed investment is listed within the *permitted investment schedule* when making decisions about investments.

If any investment held within your *individual fund* ceases to be an investment listed within the *permitted investment schedule* we may require the *trustees* to sell that investment without giving you any notice.

We will only permit investments in contracts for difference or similar instruments if the potential liability for losses associated with the investment is limited to the capital amount of that investment.

In addition, we only permit investment transactions (whether directly or indirectly) with:

- you or a person connected with you (e.g. a family member or a business partner); or
- a company or firm in which you or a member of your family has an interest

if the transactions are made on an arm's length basis i.e. on commercial, open market terms.

13. INVESTMENT MANAGEMENT

13.1 You (and any *individual trustee*) are responsible for selecting and giving instructions about investments for your *individual fund*. You can do this yourself, using your own judgment or using advice from one or more financial advisers, or you can arrange (subject to section 13.3) for one or more *DFMs* to select and give instructions about investments for you.

However, we may veto proposed investment instructions. The decision to veto an investment proposal will not be exercised unreasonably and will normally be taken in order to:

- ensure all investments are and remain investments listed in the *permitted investment schedule*;
- protect the *scheme* from *unauthorised payment* tax charges.

Subject to the decision being reasonable, our decision to veto an investment proposal is exercisable in our absolute discretion as we think fit. Such decision shall be final and no appeal will be allowed.

Any investment instruction will only be carried out where there are sufficient cleared funds available to complete the transaction in addition to the minimum requirement for the *designated account* described in section 11.6.

Any investment instruction must be communicated in accordance with section 7, using the form that we make available on our website for this purpose.

13.2 You may select an execution only dealing facility, for trading in stocks and share / securities, which will be governed by separate terms and conditions. It will be necessary for you to complete the relevant documentation provided by the facility provider and to agree to those terms and conditions.

13.3 Instead of directing investments yourself, you may appoint, with our agreement, one or more *discretionary fund managers (DFMs)* to manage all or part of your *individual fund*, on a discretionary basis. Such appointments must be notified to us. If you wish for a *DFM* to be appointed, it will be necessary for you to complete the relevant documentation provided by the appointed *DFM*. The investment strategy will be set out in the documentation which will also detail the terms and conditions under which the *DFM* will execute transactions in relation to the assets of the *scheme* managed by that *DFM*. These terms will be formally entered into by the *trustees* and us with the *DFM*. Please note that the *DFM* may have rights to compensation from or to take security over some or all of the assets of the *scheme* held by them in certain circumstances.

We will release the monies (after they have cleared) to the appointed *DFM*. For new monies, this will happen only once the *DFM* has opened an account for the *scheme* relating to your *individual fund*.

The costs arising from the *DFM*'s commissions, fees and disbursements relating to your *individual fund* will be borne by the investments under the control of the *DFM* relating to your *individual fund*.

Any *DFM* appointed will be able to provide full details of their charges

14. STOCK CUSTODY

14.1 Permitted investments may be registered in the name of nominee companies used by any *DFM* appointed in accordance with section 13 or, subject to our agreement, such other third party provider appointed by you.

14.2 The costs arising from fees and charges of any nominee or custodian relating to stock registration or custody and settlement shall be charged to the *scheme* in accordance with section 18.

14.3 The *independent trustee* will not exercise voting rights. You may want to ask any appointed *DFM* or nominee or third party provider about the approach they will take to voting rights.

15. COMMERCIAL PROPERTY

15.1 Neither we nor the *independent trustee* will give advice in respect of property investment in relation to your *individual fund*. You are solely responsible for any choice of property investment in relation to your *individual fund*, and for any loss or liability arising from that investment.

15.2 All *commercial property* in the *scheme* will be held and any associated borrowing will be made in the name of the *trustees*.

15.3 When purchasing or selling any *commercial property*, we will instruct or appoint only approved third parties. This will include surveyors, environmental specialists, solicitors, insurance consultants, property administrators and property managers. The fees arising from the appointed third parties, together with all associated costs and expenses arising from the on-going administration and compliance with relevant

legislation in respect of *commercial property* including litigation, will be charged to the *scheme* and met in accordance with section 18.

- 15.4 We reserve the right to instruct the *independent trustee* and the *individual trustee* to sell a *commercial property* at any time if a particular risk or liability (statutory or otherwise) occurs that affects the *commercial property* or the land surrounding it. For example, if legislation changes so that the property is no longer treated by *HMRC* rules as commercial property or the property is subject to revised environmental requirements.
- 15.5 You can get further details in our leaflet, Guide to Property and Land Purchase from our *website*.
- 15.6 Subject to section 19.1.2, acquisition and disposal of *commercial property* will require your instructions as set out in section 7.

16. BORROWING

- 16.1 The maximum amount that the *scheme* can borrow is set by *HMRC* and is currently limited to 50% of the "net market value" of your *individual fund* (immediately before the borrowing takes place).
- "Net market value" has the meaning given by Section 278 of the *Finance Act*. The value of any asset being purchased using the borrowing must therefore not be taken into account in calculating the borrowing limit unless, exceptionally, the asset was already held in your *individual fund* before the borrowing takes place (e.g. a re-mortgage). We will take into account any existing borrowing when calculating the limits.
- 16.2 Subject to section 16.1, any borrowing may be further restricted in accordance with the terms and conditions offered by the lender. For example, a lender may not be willing to lend the maximum otherwise permitted in respect of individuals under the age of 18 years or where there are benefits in payment.
- 16.3 All borrowing must be arranged in the name of the *trustees*.
- 16.4 Neither we nor the *independent trustee* take responsibility for finding a willing third party lender, but we may be able to facilitate a third party lender that could be used.
- 16.5 When we confirm that the borrowing is acceptable, we will instruct the *independent trustee* to sign the lender's loan documentation on behalf of the *scheme*.
- 16.6 Certain lenders may require the *scheme* to maintain a suitable cleared balance in the *designated account* to cover ongoing capital and interest repayments. This will vary from lender to lender. If there are insufficient cleared funds available in the *designated account* to cover ongoing capital and interest repayments, we will realise (cash-in) assets in order to provide the necessary funds. The procedure for realising assets is set out in section 19.
- 16.7 All borrowing must be repaid in accordance with the terms and conditions of the lender's loan documentation (for example on completion of the sale of a *commercial property*).
- 16.8 It will be necessary to review the level of borrowing available if your *individual benefit fund* is to be fully encashed as a consequence of you:
- 16.8.1 dying;
 - 16.8.2 transferring out;
 - 16.8.3 becoming subject to a Pension Sharing Order;
 - 16.8.4 purchasing a *lifetime annuity*.

In certain circumstances, this may require the borrowing to be wholly or partially repaid.

- 16.9 We will comply with the terms and conditions offered by the lender.

17. STATEMENTS

- 17.1 You will get regular statements in respect of the *designated account* on the basis of the instruction you gave when you joined the *scheme*. We will also include a transaction statement in respect of the *designated account* as part of the annual renewal pack that we send to you.
- 17.2 You must agree with the *DFM* (if one is appointed) how often investment updates are issued, including transaction details and a portfolio valuation during the period.
- 17.3 We will arrange to send you a yearly statement covering investments relating to your *individual fund*. This will give details of all investments relating to your *individual fund* although (due to issues of timing

and costs in obtaining valuations) this may not be a current valuation. If you ask us for a current valuation, the cost (if any) of obtaining this will be charged in accordance with section 18. If you require an additional summary of investments at any time, we may apply an additional charge for each and every statement (although currently we do not apply additional charges for this). Any additional charge will be met in accordance with section 18. Please refer to the *fee schedule* for more details.

18. CHARGES

18.1 Amount of charges

The *fee schedule* sets out the charges that may become payable to us.

The charges that will actually become payable will depend on the investments you select, the benefits you take and any administrative or other requests you make. Additional services outside our normal administration activities will be charged on a "time/cost" basis (hourly rates for the service). We will give you details of the current "time/cost" rates where these will apply for any request you make to us. We may review and amend our *fee schedule* as explained in section 29.

We will normally increase our charges on 1 January each year in line with any rise in the National Average Earnings index during the 12 months ending on the previous 1 September as described in the Fee Schedule.

All charges quoted are exclusive of any VAT, stamp duty and other applicable taxes and/or duties, which, if payable, are in addition.

18.2 Payment of charges and other sums due

All charges and other sums due from your *individual fund* or from you personally under this agreement must be paid out of funds held in the *designated account* in respect of your *individual fund*. You are responsible for ensuring that there are sufficient funds available in good time to pay charges or any other sums due under these *terms and conditions*.

If there is not enough money in the *designated account* in respect of your *individual fund* to meet charges or other amounts as they fall due, we may cover the shortfall by arranging the sale of investments held within your *individual fund* without further reference to you. If there is more than one type of investment in your *individual fund*, we will normally follow the process set out in section 19.1.

Important: If any shortfall remains after the sale of all investments held within your *individual fund*, you will be personally responsible for paying the outstanding charges or other sums due to us.

19. REALISATION OF ASSETS

19.1 Where there are insufficient cleared funds in the *designated account* to meet payments that are due to or from your *individual fund*, we will carry out the following procedure:

19.1.1 we will ask you to provide additional contributions (where appropriate) or instructions to sell assets (or a combination of both) to provide sufficient funds. The instructions to sell assets must specify the assets we should sell, and the order in which we should sell them;

19.1.2 if we do not receive additional contributions and/or instructions to sell assets that would together provide sufficient cleared funds within one month (or such longer period as we allow) of our request, we will arrange for assets to be sold in the following order:

- (a) any cash held on deposit with another bank or licensed deposit taker;
- (b) any assets held through a *DFM* (last appointed *DFM* contacted first);
- (c) stocks and shares, on a last-in, first-out basis;
- (d) investment trusts/unit trusts/OEICs on a last-in, first-out basis;
- (e) trustee investment policies/bonds on a last-in, first-out basis;
- (f) any other asset (excluding *commercial property*) not included above on a last-in, first-out basis; then
- (g) *commercial property* on a last-in, first-out basis.

By joining the *scheme*, or applying for *dependant's income withdrawal* or *flexible drawdown*, you agree and accept that in these circumstances you authorise us to sell assets in the order set out above.

- 19.2 We may make a charge to the *scheme* on a "time/cost" basis (hourly rates for the service) as set out in the *fee schedule*, for coordinating the sale of assets under section 19.1.2 and will deduct this charge from your *individual fund*. This is in addition to other parties' costs incurred in valuing and selling the assets.
- 19.3 We will write to you as soon as practicable to confirm the intention to sell assets and the order in which we will do this. We will also write to confirm details after the assets have been sold and the amount of any charge made.
- 19.4 In some circumstances, it may be necessary to sell or cash-in assets at whatever price is available at the time. This may result in the cashing-in of assets when the relevant market is depressed. Assets may have to be cashed-in:
- 19.4.1 to provide a lump sum death benefit (see section 25 for details of the time limits on payment of lump sum death benefits);
 - 19.4.2 to facilitate other benefit payments; or
 - 19.4.3 on implementing the *scheme* wind-up provisions (as described in section 30).
- 19.5 As an alternative to cashing-in assets in accordance with section 19.4, it may be possible to settle the transaction by a transfer of assets.
- 19.6 Cashing-in any investment will be governed by the terms and conditions of that investment. Such terms and conditions may include a right for the investment provider to delay the cashing-in.

20. MEMBER'S RETIREMENT

This section applies to Member's retirement benefit only

- 20.1 As part of the process to join the *scheme*, we require you to choose a retirement date – the date when you intend to take retirement benefits.
- This date must be on or after your 55th birthday. However, some people have a right to a special early normal retirement age in terms of *HMRC* rules which applied before 6 April 2006. We will confirm any such early normal retirement age if you qualify for this and we have seen confirmation of your right to an earlier normal retirement age.
- You may change your chosen retirement date, but if you do so you must inform us. You do not need to retire to take benefits.
- Contributions can continue to your *individual fund* even after you take retirement benefits in terms of sections 21 to 22. However, no contributions are allowed after your 75th birthday.
- Even if you do not have a right to a special early normal retirement age, you may still be able to access benefits before age 55 (50 before 6 April 2010), if you are in ill-health. If you are in ill-health, please ask us for details.
- 20.2 Before you can take retirement benefits, there must be sufficient cleared money in the *designated account* relating to your *individual fund*. To achieve this, assets may need to be realised (cashed-in or sold) under the procedure set out in section 19. Some assets (for example, property) may take longer to realise than others. This could delay benefit payment.
- 20.3 The value of the *individual fund* being used to provide retirement benefits must be tested against an allowance called the lifetime allowance, set by *HMRC*. Where the lifetime allowance is exceeded, there will be a tax charge. We will deduct the tax charge due from the retirement benefits being taken and pass this to *HMRC*. For further details of the circumstances in which this tax charge may arise, please contact us.
- 20.4 Subject to section 20.7, the options for taking benefits from your *individual fund* are:
- 20.4.1 When you start to take retirement income (as a *lifetime annuity*, *income withdrawal* or *flexible drawdown*), you can opt to take part of the benefit as a tax-free lump sum (also known as pension commencement lump sum). Normally, the maximum tax-free lump sum will be 25% of the value of the part of your *individual fund* being used to provide retirement benefit. However, if you have higher tax-free lump sum rights in respect of benefits earned before 6 April 2006, it may be possible to take more than 25% as a tax-free lump sum.
 - 20.4.2 With the balance of your *individual fund* (after the tax-free lump sum) you may,
 - (a) buy a *lifetime annuity* – see section 21, or

- (b) subject to our agreement, choose *income withdrawal* or *flexible drawdown* - see section 22.

- 20.5 We will contact you shortly before the retirement date that you chose (see section 20.1) to explain the options in respect of your *individual fund*.
- 20.6 Any *protected rights fund* (after any tax-free cash lump sum as described in section 20.4.1) can be used to buy a *lifetime annuity* or for *income drawdown*.
- 20.7 We will normally pay any tax-free lump sum and any ongoing income payments by direct credit (BACS) into your chosen bank or building society account.

21. LIFETIME ANNUITY OPTION

- 21.1 A *lifetime annuity* pays an income for the rest of an individual's life. There are different ways in which a *lifetime annuity* can be paid. Please ask us for *more* details if you are interested in this option.
- The *rules* allow you to purchase a *lifetime annuity* with an insurance company using the value of the whole or part of the *individual fund*. (This is known as the open market option.)
- The *lifetime annuity* option is also available where income has been taken initially on an *income withdrawal* or *flexible drawdown* basis (see section 22).
- 21.2 If you use your *protected rights fund* to buy a *lifetime annuity* and you are married or in a civil partnership, provision must be made for a pension to continue to your wife, husband or civil partner after your death. This continuing pension must be equal to 50% of your own pension from the *protected rights fund*. In addition, any fixed period of pension payments under the *lifetime annuity* must be limited to a maximum of five years for the part of the *lifetime annuity* that comes from *protected rights fund*. Where the *lifetime annuity* does not come from a *protected rights fund*, a fixed period of pension payments can extend to up to ten years.
- 21.3 We require the appropriate documentation to be completed before a *lifetime annuity* is purchased. You must agree the relevant amount to be transferred to the pension company to buy the lifetime annuity contract, and that you have no further interest in the *individual fund* in respect of the amount used to buy the *lifetime annuity*.

22. INCOME WITHDRAWAL

- 22.1 If you are aged over 55, you can draw an income from the *scheme* instead of buying a *lifetime annuity*. You do this by allocating, using our prescribed form, all or part of your *individual fund* as being available for providing *income withdrawal* or *flexible drawdown*.
- 22.2 With *income withdrawal*, there is a maximum limit on the income that can be taken, set by HMRC rules. We will calculate and provide you with details of your maximum. You may choose to take any level of income up to the maximum, including choosing not to take any income at all after having taken your tax-free lump sum. Subject to the maximum limit, you may increase, reduce and/or ask us for an extra one-off *income withdrawal*. You may choose for *income withdrawals* to be paid on a monthly, quarterly, half-yearly or yearly basis. We will require you to complete, and return to us, certain paperwork (which we will supply) before you can start *income withdrawals*.
- 22.3 We do not currently apply any separate charge for implementing changes in the level of *income withdrawal*, nor do we currently impose a minimum on the amount of *individual fund* that you can allocate for providing *income withdrawal*. However, we reserve the right to apply a separate charge for changes in the level of *income withdrawal* and to impose a minimum on the amount of *individual fund* that you can allocate for providing *income withdrawal*. If we do this, we will give you details by notice as described in section 29.
- 22.4 HMRC also require that the maximum limit on *income withdrawal* is reviewed at least every 3 years (even if you are not taking any income after your tax-free cash payment) until the end of the review year when you reach age 75, then every year from your 75th birthday. If necessary, the amount of income must be reduced to ensure the maximum limit is not exceeded. The reviews can be carried out on any pre-arranged future date within a 60 day period before the review date. You can elect for any such review date by giving us 5 days' notice. Making this calculation early will not affect the timing of any subsequent review. Before you reach age 75 you can also request an earlier review, on any anniversary date and we can agree to this. Please speak to your *financial adviser* before requesting this, as a review can result in a reduction in the maximum amount of income you can draw.
- 22.5 *Income withdrawal* cannot be drawn from your *protected rights fund* only. Where you use any of your *protected rights fund* to provide *income withdrawals*, the same proportion of non-protected rights fund

must also be used to provide *income withdrawals* (i.e. if you use 100% of your *protected rights fund*, you must also use 100% of your non-protected rights fund).

Flexible drawdown

22.6 *Flexible drawdown* is the facility to receive unrestricted payments from your *income withdrawal fund*. You become eligible to receive *flexible drawdown* payments if:-

- 22.6.1 you meet the statutory conditions under the *Finance Act* for *flexible drawdown*, which are summarised in 22.7;
- 22.6.2 using our prescribed forms, you make a declaration to the effect that you meet the statutory conditions for *flexible drawdown* (the "flexible drawdown declaration") and you apply for *flexible drawdown*. The application form for *flexible drawdown* and the *flexible drawdown declaration* form are available on request or from our website; and
- 22.6.3 we accept your *flexible drawdown declaration* and your application for *flexible drawdown*. We have the right to decline an application for *flexible drawdown* where accepting it would, in our opinion, limit or restrict in any way our ability to administer the *scheme*.

Eligibility is restricted to receiving *flexible drawdown* payments from funds allocated as *income withdrawal funds* before or at the time of the *flexible drawdown declaration*. Later fund allocations will only be covered if the eligibility conditions are met at that time.

22.7 The current statutory conditions for *flexible drawdown*, which must be met at the time of your *flexible drawdown declaration*, are that:-

22.7.1 you satisfy the *minimum income requirement*. This means you must have pensions in payment from other sources of at least a set level (currently £20,000) in the tax year in which you make the *flexible drawdown declaration*.

Only certain types of pension income count towards the *minimum income requirement*. Your *financial adviser* can confirm whether or not any pension income you have will qualify towards and meet the *minimum income requirement*. You must have received at least one payment from each pension in payment for it to be included in meeting the *minimum income requirement*;

22.7.2 no contributions can be made to any money purchase *registered pension scheme* by or in respect of you in the tax year that you go into *flexible drawdown*; and

22.7.3 you cannot be building up benefits under any defined benefit or cash balance *registered pension scheme*.

22.8 Neither we nor the *independent trustee* are responsible for checking the accuracy of your *flexible drawdown declaration*. You will incur severe tax charges if you use *flexible drawdown* but do not meet the eligibility requirements under the *Finance Act*.

22.9 *Flexible drawdown* is not available for *contracted-out benefits* until 6 April 2012, which is when legislation removes restrictions on money purchase *contracted-out benefits*.

22.10 You may contribute to or resume building up benefits in a *registered pension scheme* in future tax years. However, if you do this all contributions paid into a money purchase scheme by you or on your behalf and any benefits you build up in a defined benefit or cash balance scheme after you commence *flexible drawdown* will be subject to a tax charge called the annual allowance charge. This will be levied against you directly by HMRC via your tax code, or in certain circumstances against us, in which case we would recover the charge from your *individual fund*. For more information on the annual allowance charge speak to your *financial adviser*. The decision to move to *flexible drawdown* cannot be reversed under the tax rules. Once you become eligible for *flexible drawdown*, if you make further contributions or build up further benefits, then these tax charges will apply.

23. BENEFITS FOLLOWING MEMBER'S DEATH

23.1 On your death, the *trustees* shall apply your *individual fund* (excluding any *protected rights fund*, for which see section 23.2) as follows:

23.1.1 if at the time of the your death we are satisfied that your benefits are subject to a valid trust, under which no beneficial interest in a benefit can be payable to you, your estate or your legal personal representatives, then the amount of any *uncrystallised fund* not exceeding the amount of the your individual lifetime allowance which is available on your death shall be paid as a lump sum to the trustees of that trust; and

23.1.2 in all other cases, in such one or more of the following ways as the *trustees* in their absolute discretion may determine:-

- (a) allocated to provide pension income in accordance with section 24
- (b) paid as a lump sum death benefit in accordance with section 25

You can complete an Expression of Wish form to inform the *trustees* of your wishes for who should receive lump sum death benefits. The *trustees* will take your wishes into account but are not bound by them.

23.2 If you are married or in a civil partnership at the time of your death, any part of your *individual fund* that is a *protected rights fund* must be used to provide a pension for your spouse or civil partner in accordance with section 20.6. If you are not married and not in a civil partnership at the time of your death, any part of your *individual fund* that is a *protected rights fund* will be paid as a lump sum in accordance with any written instruction you gave us, or if you did not give us any such instructions, to your estate.

24. DEPENDANT'S PENSION

24.1 Any *eligible dependant* who becomes entitled to a pension under section 23 must either:

24.1.1 instruct us to purchase a *lifetime annuity* in the *eligible dependant's* name (see section) 21; or

24.1.2 apply to take income as an *income withdrawal* or *flexible drawdown* (see section 22).

24.2 An application for *income withdrawal* or *flexible drawdown* must be made in writing using our prescribed application form, which includes the *eligible dependant's* agreement to these *terms and conditions*. We have the right to decline such an application:-

24.2.1 where the *eligible dependant* is not habitually resident (i.e. does not normally live) in the UK and this would in, our opinion,

- (a) likely lead to an *unauthorised payment*, which attracts tax charges; or
- (b) would limit or restrict in any way our ability to administer the *scheme*; or

24.2.2 where the *eligible dependant* is applying for *flexible drawdown* but does not meet the eligibility requirements described in section 22.6.

If we accept the application, the *eligible dependant* becomes a *dependant*.

24.3 If any *eligible dependant* fails to decide which option should be used for pension income within three months of being asked to do so (or such longer period as we may at our discretion decide), we may buy a *lifetime annuity* for that person, from a pension provider of our choice.

24.4 *Income withdrawal* and *flexible drawdown* are not available where the *eligible dependant* is a child who has not reached the age of 23. However, if the child is a lifetime dependant (dependent on you because of physical or mental impairment and such dependency is likely to continue beyond age 23), the *income withdrawal* and *flexible drawdown* options may be available, subject to our agreement. If the child is not a lifetime dependant, the only options would be to take a lump sum (less any tax charges due) or buy a temporary annuity ceasing on the child's 23rd birthday.

25. LUMP SUM DEATH BENEFITS

25.1 Any part of an *individual fund* to be paid as a lump sum in accordance with this section shall be paid to one or more recipients as the *trustees* decide (from the range of possible "lump sum beneficiaries", as defined in the *rules*) and in such shares as the *trustees* decide. You can complete an Expression of Wish form to inform the *trustees* of your wishes as to who should receive lump sum death benefits. The *trustees* will take your wishes into account but are not bound by them.

25.2 Any payment out of an *uncrystallised fund* in accordance with this section is subject to the following:

25.2.1 it must be paid within two years of the date we first received notification of your death, or the date we could have first reasonably been expected to have known of your death if earlier. If payment is not made within the two year period, *unauthorised payment* tax charges will arise; and

25.2.2 the value of the *uncrystallised fund* must be tested against an allowance called the lifetime allowance, set by *HMRC*. Where the lifetime allowance is exceeded, there will be a tax charge. We will pay any lump sum death benefit without deduction of the tax charge. However, it may be possible use any excess over the lifetime allowance to provide a pension for an *eligible dependant*. (We will discuss this with you, or after your death, with the *eligible*

dependant, where relevant). If the aggregate lump sum death payments exceed the lifetime allowance, HMRC will contact the beneficiaries to collect any tax.

25.3 Any lump sum death payment from an *income withdrawal fund* in accordance with this section will be made after deduction of any tax charge.

26. BENEFITS FOLLOWING DEATH OF DEPENDANT

26.1 If a *dependant* dies while taking income through *income withdrawal* or *flexible drawdown*, the *income withdrawal fund* of that *dependant* will be paid as a lump sum, after deduction of any tax charge in accordance with section 25. The *dependant* can complete an Expression of Wish form to inform the *trustees* of his or her wishes for who should receive lump sum death benefits. The *trustees* will take the *dependant's* wishes into account but are not bound by them.

27. TAXATION OF INCOME PAYMENTS

27.1 If you are receiving income payments from the *scheme*, the income you receive will be taxed under the Pay As You Earn System. Where we have taken reasonable steps to identify your correct tax code, we will not be liable for any loss whatsoever you incur as a result of the use of an incorrect tax code.

27.2 If you are receiving income payments from the *scheme*, we will provide you with a P60 at the end of each tax year showing the gross income paid, tax code used and details of any tax deducted.

28. COMPLAINTS & COMPENSATION

28.1 Should you wish to register a complaint in relation to the operation of the *scheme*, you should do this in writing, addressed to us. We have the right to telephone you, or someone else nominated by you, to discuss any administrative aspects without having been expressly invited by you to do so.

28.2 If you are not satisfied with any aspect of the service that you have received from us, we have a formal complaints procedure, a copy of which is available on request.

28.3 If you are not happy with our response to your complaint, you may have the right to refer it to the Pensions Advisory Service ("PAS"), the Pensions Ombudsman ("PO") or the Financial Ombudsman Service ("FOS").

PAS are an independent non-profit organisation providing information and guidance on pensions to help pension scheme members who have a problem, complaint or dispute with their pension scheme.

FOS and PO are both independent statutory bodies that investigate and adjudicate on disputes between pension schemes and members, but only after you have complained to us and tried to resolve the dispute using our complaints procedure. We will tell you about any ombudsman referral rights you may have.

PAS contact details:

Pensions Advisory Service
11 Belgrave Road
London SW1V 1RB
Tel: 0845 601 2923

PO contact details:

Pensions Ombudsman
11 Belgrave Road
London
SW1V 1RB
Tel: 020 7834 9144

FOS contact details:

South Quay Plaza
183 Marsh Wall
London
E14 9SR
Tel: 0845 080 1800

28.4 Compensation

The Financial Services Compensation Scheme (FSCS) is a scheme that provides limited compensation for customers who might otherwise lose out if a company regulated in the UK by the Financial Services Authority is unable to pay claims against it.

Investments in your *individual fund* may be covered by the FSCS. Where compensation is available in respect of an investment in your *individual fund*, we will make the claim on your behalf.

FSCS contact details:

Financial Services Compensation Scheme
7th Floor
Lloyds Chambers
1 Portsooken Street
London E1 8BN
Tel: 020 7892 7300

www.fscs.org.uk

Please ask us if you have any questions about the FSCS or the protection it provides.

29. VARIATIONS TO THE TERMS AND CONDITIONS

29.1 We reserve the right to amend or supplement the *terms and conditions* from time to time on giving 30 days' written notice (or such other period allowed or required by law) to you. We will send such written notice to your *financial adviser* (or to the last address you gave us if you do not currently have a *financial adviser*). The changes notified in this way will be effective from the date stated in the written notice.

During the notice period, if you are unhappy with the proposed amendment or supplementary *terms and conditions* that we provide, we will not increase the transfer out fees and charges and you will be free to transfer your *individual fund* to another *registered pension scheme* (subject to the existing transfer out fees and charges.) For the avoidance of doubt, any fees and charges involved in cashing in or selling assets will be at the rates applicable at the time of realisation and/or encashment, as appropriate.

29.2 We will only alter the *terms and conditions* for the following valid reasons:

29.2.1 relevant changes in pensions, tax or other relevant UK or European legislation;

29.2.2 relevant changes in the reporting requirements or regulatory regime;

29.2.3 changes in how the London Stock Exchange or other different investment markets may work which may impact on the *scheme*;

29.2.4 changes in investment/share dealing or administration which may impact on the *scheme*;

29.2.5 to correct manifest errors or other issues outside our control and avoid cross-subsidy between *individual funds* where the charges for any service is, in our opinion, no longer reasonable;

29.2.6 changes in ownership of our business or how it operates;

29.2.7 changes in our services;

29.2.8 changes to the services provided by third parties appointed under the *scheme*;

29.2.9 appointment by us of alternative third parties to provide services under the *scheme*;

29.2.10 any other reasonable issues outside our control.

30. WINDING UP OF THE SCHEME

30.1 The *terms and conditions* shall continue until your *individual fund* has been extinguished by the payment of a transfer value to another *registered pension scheme* or the provision of pension/death benefits outside the *scheme* or the *scheme* is wound up in accordance with the *rules*.

30.2 On wind-up, we will apply the assets of your *individual fund* as set out in the *rules*.

30.3 On wind-up, no fees or charges already paid shall be refunded and those due shall remain so and will include any charges associated with undertaking any transaction necessary to wind-up the *scheme*. On wind-up, the obligations of payment of charges in section 18 and the provisions in section 31 shall continue in full.

30.4 Wind-up will be without prejudice to the completion of transactions already initiated. The *independent trustee* is authorised to continue to operate the *designated account* to our order and direction for the purposes of receiving monies, paying benefits and paying any expenses or charges due to us, the *independent trustee* or other parties.

31. ADDITIONAL INFORMATION

31.1 We undertake not to disclose personal information coming into our possession at any time during the life of the *scheme*, except where expressly authorised to do so, or where required to do so by law.

31.2 The tax reliefs referred to in the *terms and conditions* are those available under current legislation, which may change. The value of the tax reliefs depend on individual circumstances.

- 31.3 Notwithstanding anything to the contrary in the *terms and conditions*, only those options described in the *terms and conditions* will be made available under the *scheme* unless we notify you in writing to the contrary.
- 31.4 It may be necessary to change the provisions of the *scheme's rules* to meet with any changes to law or regulation affecting the *scheme*. We will provide notice to you of any changes.
- 31.5 You need to tell us as soon as you move to another address.
- 31.6 We have the right to delay calculation of any amount due under the *scheme* until we have received satisfactory proof of ownership. Similarly, the exercise of rights conferred by the *scheme* and payment of any benefit is subject to the satisfactory proof of ownership.
- 31.7 We and you have a free choice about the law that can apply to the *scheme*. We propose to choose the law of England and Wales and, by agreeing to these *terms and conditions*, you agree that the law of England and Wales applies to the *scheme*.
- 31.8 We, the *independent trustee* and you can enforce the *terms and conditions*. Nothing in the *terms and conditions* expressly or impliedly confers any right on any third party to enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999. For the purpose of this section, a third party is any party not already mentioned in this section.
- 31.9 These *terms and conditions* will only apply provided they are not held by a relevant court or decided by the Financial Services Authority to be unfair contract terms or reasonably considered by us to be unfair contract terms. If a term is held, viewed or considered to be unfair it will, as far as possible, still apply but without any part of it which could cause it to be held, viewed or considered unfair.
- 31.10 For the purposes of section 19 only, where you are unable to act due to serious ill-health, physical or mental incapacity, we may at our sole discretion require medical advice to that effect (the cost of which will be met from the your *individual fund*). Subject to such medical advice, we may accept the directions of any legally authorised party acting on your behalf. Neither we nor the *independent trustee* will be liable for any or all losses, costs, actions, proceedings, claims and demands which may be incurred by or brought or made against either or both of us and the *independent trustee* arising directly or indirectly from us or the *independent trustee* having acted in good faith (as described in this section).

32. DATA PROTECTION AND CONFIDENTIALITY

- 32.1 We are the data controller of any information we hold about you. We will comply with all relevant data protection legislation.
- 32.2 Your information includes any details which we hold about you and includes information received from third parties. We will use your information for the purpose of establishing, processing and administering the scheme. You accept that even if the application to join the scheme does not proceed, your information may be stored for regulatory, statutory or audit purposes.
- 32.3 We will not disclose your information to anyone outside the Hornbuckle Mitchell Group of companies unless:
- 32.3.1 we have your permission; or
 - 32.3.2 we are required or permitted to do so by law; or
 - 32.3.3 we are transferring your information to our third party providers, credit reference agencies and fraud prevention agencies; or
 - 32.3.4 we have transferred our rights and obligations under the terms and conditions.
- 32.4 We may transfer your information to other countries but this will only be done if the receiving country has an appropriate level of data protection.
- 32.5 You may request a copy of the information we hold about you by writing to The Data Protection Officer, Hornbuckle Mitchell Group Limited, at the address given in section 1. We reserve the right to charge a small fee.

33. LIABILITY AND INDEMNITY

- 33.1 By accepting the *terms and conditions*, you accept that:
- 33.1.1 your rights in relation to your *individual fund* are limited to those detailed in these *terms and conditions*; and

- 33.1.2 you waive any other rights that you may otherwise have had to make any and all legal claims (claims or rights of action) at any time against any previous, current or future officers, employees, agents and sub-contractors of ours, or of any company within our group of companies.
- 33.2 We are responsible for operating and administering the *scheme* in accordance with these *term and conditions* and your instructions. You are responsible for any and all benefit options, benefit nominations and investment directions and all other matters which are within your control or in respect of which you provide, or are entitled to provide, instruction to us either personally or via your *financial adviser*.
- Other than as a direct result of our negligence, wilful default or fraud, neither we nor the *independent trustee* accept any liability or obligation for any or all losses, costs, actions, proceedings, claims and demands arising directly or indirectly that may be incurred by, or brought or made against us or the *independent trustee*:
- 33.2.1 where we or the *independent trustee* acted in good faith in accordance with any instruction (relating to benefit options, benefit nominations and investment directions) that reasonably appears to have been given by you or by your *financial adviser*;
- 33.2.2 as a result of any error by you or by your *financial adviser*, or your representatives or agents;
- 33.2.3 as a result of any instruction or investment direction sent by you, or your representatives or agents, not being received by us;
- 33.2.4 for any failure or delay in implementing any instruction or investment direction which is caused by circumstances beyond our reasonable control, including but not limited to acts of God, fires, strikes, terrorism, power failures, intervention by exchanges or regulators, court orders, failure or error of any equipment, telecommunications, intermediary, exchange, counterparty product provider or bank; and,
- 33.2.5 for default or any losses whatsoever caused by any third parties, nominees, other custodians, banks or authorised institutions which hold any assets including, but not limited to, insurance company unit-linked funds, stocks and shares, unit trusts, Open-Ended Investment Companies (OEICs) and investment trust companies and cash for the purpose of your Individual Benefit Fund.
- 33.3 In accepting the *terms and conditions*, you accept that you will be responsible to us for all reasonable costs, claims, expenses, tax charges, demands and losses whatsoever that we may suffer or incur in performing our duties under the *terms and conditions* or carrying out our lawful duties and responsibilities in relation to you, except as a direct result of our negligence, wilful default or fraud.

34. GLOSSARY

The following words and expressions, which appear in italics, have the meanings as set out below:

commercial property means any land or building that is zoned, designed or intended for use by businesses such as offices, retail, leisure and industrial developments but not "residential property" for the purposes of the taxable property provisions as defined in paragraphs 7-10 of Schedule 29A of the *Finance Act*.

contracted-out benefits means benefits earned under another *registered pension scheme* from contracting-out of the State schemes (State Earnings Related Pension Scheme and/or the State Second Pension).

dependant means:

- an *eligible dependant* who has become entitled to benefits under the Scheme upon the death of a Member and in respect of whom we have accepted an application to receive benefits in the form of *income withdrawal* or *flexible drawdown* as described in section 24 (Dependant's Pension); or
- an individual who has become entitled to income withdrawal or flexible drawdown on the death of a member under another *registered pension scheme* and in respect of whom we have accepted a transfer of the entitlement into the *scheme* for the purpose of continuation of *income withdrawal* or *flexible drawdown*, as described in section 9.2.

and who has not subsequently died or left the *scheme*.

designated account means the record of any cash held within the *scheme's* bank account(s) attributable to contributions and transfer proceeds made by or in respect of you that is described in section 11.

discretionary fund manager (“DFM”) means an investment manager who has been given complete discretion to manage and invest all or part of your *individual fund* (see section 13).

eligible dependant means, in relation to a *member*, a person falling within any of the following categories at the date of their death:

- the *member's* wife, husband or civil partner;
- any child of the *member* who has not reached the age of 23 (any pension to a child will cease on the child's 23rd birthday unless the child is also dependent or mutually dependent on the *member* because of physical or mental impairment);
- any child of the *member* who has reached the age of 23 and in our opinion is dependent on the *member* because of physical or mental impairment; or
- any other individual who in our opinion is financially dependent on the *member*, or who is in a mutually-dependent financial relationship with the *member* or is dependent on the *member* because of physical or mental impairment.

fee schedule means the schedule we provide or make available to you from time to time, which sets out the charges applicable to your *individual fund*, as amended from time to time.

Finance Act means the Finance Act 2004 as amended from time to time.

financial adviser has the meaning defined in section 6.1.

flexible drawdown means *income withdrawal* but without any limit on the amount which can be withdrawn each year.

flexible drawdown declaration means the declaration described in section 22.6.2, which legislation requires you to make in order to commence *flexible drawdown*.

HMRC means Her Majesty's Revenue & Customs.

income withdrawal means taking an income directly from your *income withdrawal fund*, where HMRC limit the amount of income that can be drawn each year. Your *income withdrawal fund* remains invested so its value can go up and down. The amount of income you can take is subject to maximum limits set by HMRC and is reviewed regularly. Please see section 22 for further details.

income withdrawal fund means any part of your *individual fund* that you have allocated as available for providing *income withdrawal* or *flexible drawdown*.

independent trustee means Hornbuckle Mitchell Trustees Limited or any successor appointed for the time being in accordance with the *rules*.

individual fund means:

in relation to a *member*, the investments (including cash) of the *scheme* attributable to you having regard to (i) contributions and (ii) transfer-in payments paid by or in respect of you, **less** any benefits and transfer-out payments paid to or in respect of you and any charges and fees deducted as described in section 18 and any borrowing as described in section 16, **adjusted** to account for any growth or loss in the investments; and

in relation to a *dependant*, the investments (including cash) of the *scheme* attributable to you having regard to (i) any part of the *individual fund* of a *member* allocated to provide you with *income withdrawal* or *flexible drawdown* following the death of that *member* as described in sections 23, 24 and 26 and (ii) transfer-in payments paid in respect of you, **less** any benefits and transfer-out payments paid to or in respect of you and any charges and fees deducted as described in section 18 and any borrowing as described in section 16, **adjusted** to account for any growth or loss in the investments.

individual trustee means any person (who may include the relevant *member* (or *dependant*)) for the time being appointed as a trustee to act with the *independent trustee* in relation to the *member's* (or *dependant's*) *individual fund* (as appropriate).

lifetime annuity means an annuity contract purchased from an insurance company, which provides an income for life.

member means an individual whom we have accepted for membership of the *scheme* under section 5 and who has not subsequently left the *scheme*.

minimum income requirement means the minimum income requirement under paragraph 14A of Schedule 28 of the Finance Act 2004.

permitted investment schedule means the schedule that we provide or make available to you from time to time that sets out the investments you are permitted to hold within your *individual fund*.

protected rights fund means that part of the *member's individual fund* that represents rights transferred into the *scheme* deriving from *contracted-out benefits*.

registered pension scheme means a pension scheme registered under Part 4 of the *Finance Act*.

rules means the trust deed and rules that establish the *scheme*, as amended from time to time.

scheme means the Private Pension.

terms and conditions means the terms and conditions set out in this document, as amended from time to time.

trustees means the *independent trustee* and, where appointed, any *individual trustee*.

unauthorised payment means an unauthorised payment (as defined in Section 160(5) of the *Finance Act*), which attracts tax charges.

uncrystallised fund means, in relation to a *member* only, any part of your *individual fund* that has not been used to provide you with a benefit and is not being used as *income withdrawal fund*.