



FRIENDLY SOCIETIES ACT 1992

DECISION BY THE PRUDENTIAL REGULATION AUTHORITY ON THE APPLICATION OF LIVERPOOL VICTORIA FRIENDLY SOCIETY TO CONVERT TO LIVERPOOL VICTORIA FINANCIAL SERVICES, A MUTUAL COMPANY LIMITED BY GUARANTEE, UNDER SECTION 91 OF THE FRIENDLY SOCIETIES ACT 1992.

The Prudential Regulation Authority appointed the Supervision, Risk and Policy Committee to hear and decide the application on its behalf.

1. INTRODUCTION

1.1 **Liverpool Victoria Friendly Society** (“the Society”) applied on 8 March 2019, with a supplement received on 8 June 2019, and further representations received on 22 July 2019, to the **Prudential Regulation Authority** (“the Authority”) for confirmation of its conversion from a friendly society into a company limited by guarantee, **Liverpool Victoria Financial Services** (“the Company”) pursuant to section 91 of the **Friendly Societies Act 1992** (“the FS Act”).

Procedure

1.2 Paragraph 6 of Schedule 15 to the FS Act requires that, where a friendly society applies to the Authority for a confirmation of a conversion, a notice shall be published stating that interested parties have the right to make representations to the Authority with respect to the application. The notice must specify the date, determined by the Authority, before which any written representations or notice of a person’s intention to make oral representations must be received by the Authority and the date on which the Authority intends to hear any oral representations. In the case of this proposed conversion (“the conversion”) notice was given in the Belfast Gazette, the Edinburgh Gazette and the London Gazette by the Society on 12 April 2019. The notices specified 29 May 2019 as the closing date for receipt by the Authority of written representations or notice of intention to make oral representations and 19 June 2019 as the date set aside by the Authority to hear oral representations.

1.3 The intention to convert and notice of the special general meeting including the availability of the member documents online was provided in the Sun on 9 April 2019; the Daily Mail on 10 April 2019; and the Observer on 14 April 2019.

1.4 By 29 May 2019 the Authority had received ten written responses and one included a notice of intention to make oral representations. No representations were received out of time albeit that the Authority continued to engage with some of the interested parties who made representations in order to clarify their views after the specified cut-off date. The Authority decided that, following the withdrawal of the one notice of intention to make oral

representations, there were no matters to be put to the Society at an oral hearing, and that an oral hearing was not therefore necessary.

The Legal Framework

1.5 Part II of Schedule 15 to the FS Act sets out what is required of the Authority when an application is made to it for confirmation of a conversion of a society into a company. Paragraphs 8, 9(2) and 11 of Schedule 15 to the FS Act provide that the Authority **shall** confirm a friendly society's application for conversion to a company **unless** it considers that:

- (a) some information material to the members' decision about the conversion was not made available to all the members eligible to vote;
- (b) the vote on any resolution approving the conversion does not represent the views of the members eligible to vote;
- (c) or some relevant requirement of the FS Act or the rules of the Society was not fulfilled;

provided that the Authority **shall not** confirm the application for conversion **unless** it is satisfied that:

- (d) there is no substantial risk that the company into which the Society is converted will not have such permission under Part 4A of the Financial Services and Markets Act 2000 ("FSMA") as will enable it to carry on its business after the conversion without contravening section 19 of FSMA.

In accordance with section 91(2A) and paragraph 11A of Schedule 15 to the FS Act, the Authority must consult the Financial Conduct Authority (FCA) before confirming a conversion.

1.6 Paragraph 9(3) of Schedule 15 to the FS Act provides that the Authority shall not be precluded from confirming the conversion by virtue only of the non-fulfilment of some relevant requirement of the FS Act or the rules of the Society if it appears to the Authority that it could not have been material to the members' decision about the conversion and the Authority gives a direction that the failure is to be disregarded for the purposes of paragraph 9 of Schedule 15 to the FS Act.

1.7 Paragraph 18(2) of Schedule 15 to the FS Act defines a "relevant requirement" in 1.5(c) above (the "Third Criterion") and paragraph 9(3) as a requirement of this Part of the FS Act (ie. Schedule 15) or of any rules prescribing the procedure to be followed by the society in approving or effecting its conversion into a company.

Materials prepared by the Society

1.8 In considering the four criteria set out in paragraph 1.5(a) to (d) above, the Authority considered the booklet ("the Member Booklet") produced by the Society for circulation to its members which contained the statutory statement required to be sent to members of the Society under paragraph 3 of Schedule 15 to the FS Act ("the Member Statement"). The Member Statement was approved by the Authority insofar as it covered any matters which the Authority specifically required it to contain. The Authority consulted the FCA prior to giving this approval in accordance with paragraph 4ZA of Schedule 15 to the FS Act. In addition to the Member Statement, the Member Booklet contained other information including a letter from the Chair of the Society and notice of the Special General Meeting ("SGM") of members at which the special resolution to approve conversion and adoption of new memorandum and articles of association and the ordinary resolution to amend the Society's rules were to be put.

1.9 The Authority is under a duty to re-examine the contents of the Member Statement when it is asked to confirm the conversion notwithstanding its earlier approval of it and in the

light of any new information put to it in representations from members or otherwise available to it.

1.10 It is **not**, however, for the Authority to consider the merits of proposals which the members have approved.

2. THE SOCIETY'S MEETING AND VOTES

2.1 In its application for confirmation, the Society declared that the requisite special resolution, required by section 91(2)(b) of the FS Act, was passed at the SGM of the Society on 22 May 2019. A copy of the minutes was furnished to the Authority.

2.2 Paragraph 7(1) of Schedule 12 to the FS Act provides that a resolution of a friendly society cannot be passed as a special resolution unless it is required to be so passed by or under any provision of the FS Act or by the rules of the society.

2.3 Paragraph 7(2) of Schedule 12 to the FS Act provides that a resolution of a friendly society shall not be effective as a special resolution unless it is passed by not less than three-quarters of the number of the members of the society entitled to vote on it and voting either (in person or by proxy) on a poll at a meeting of the society or in a postal ballot.

2.4 The resolution was passed by the required majority and the Society has confirmed that, in its opinion, the arrangements for the conduct of the voting were such as to ensure that notices of the meeting and Member Statements were sent to all those entitled to receive them except for those the Society was unable to trace, with (save in a very small number of cases) the requisite periods of notice being given, in accordance with the Act and the Society's rules, and that there were satisfactory procedures in place to ensure the safe custody and proper counting of votes.

2.5 The voting figures for the special resolution to approve the conversion and adopt a new memorandum and articles of association were:

	Total votes	Based on mailing to 1,101,473	Total in favour	Total against	Abstentions
Overall	97,099	8.8%	93.3%	6.7%	1,631

2.6 In addition to the special resolution to approve the conversion, the Society also passed an ordinary resolution to amend its existing rules; the Society stated that these changes were necessary in order to ensure that its constitution would comply with the Company's Act 2006 following the conversion. The voting figures for the ordinary resolution to amend the Society's rules were:

	Total votes	Based on mailing to 1,101,473	Total in favour	Total against	Abstentions
Overall	94,736	8.6%	94.5%	5.5%	1,843

2.7 The Society confirmed that the resolutions were duly passed in accordance with the FS Act and its rules in force at the time.

2.8 The Society sent the Authority revised information on 27 August 2019 which included changes to the number of votes received. The revised numbers included certain proxy votes, the validity of which were determined on whether the nominated individual attended the SGM in person. These votes had been omitted from the data sent to the Authority. The correct numbers were nevertheless announced at the special general meeting and on the Society's website so the Society's members received the correct information in relation to the outcome of the votes. The additional votes did not materially affect the percentage of voters in favour of either vote. Given that the members received the correct information and that the change to the numbers was not material to the outcome of the vote, the Authority was satisfied that this revised information, if it had been presented to the Committee on 30 July 2019, would not have affected its decision to confirm the conversion.

3. THE SOCIETY'S APPLICATION

3.1 The Society, in preparing to make its application for conversion, had undertaken a review of its membership, including the rights and interests of parties. This revealed that the Society had approximately 2.2 million members of which approximately 1.16 million members were untraceable. The Society had very limited information about these members beyond their name and age as the majority arose from their industrial branch business prior to the computerization of records.

3.2 The Society had carried out actuarial analysis of untraceable policies and estimated that, of the 1.16 million members, only approximately 224,000 untraceable members may still be alive.

3.3 The Society also undertook various steps to reconnect with its untraceable members before the Member Statements were circulated. Media campaigns were carried out in September and October 2018, which incorporated the press, radio and social media with a reach of approximately 7 million people for each campaign. The media outlets chosen considered the likely demographics of the untraceable members (or their descendants). The media campaigns were also covered in the financial press, which assisted in broadening the reach of the messages. In addition specialist agencies were commissioned by the Society to trace members.

3.4 The Society's efforts had revealed 554 members who are still living and 59 who are no longer alive.

3.5 In addition to the untraceable members, the Society also identified a further 37,000 "gone away" members (members whose address the Society did not have or whom the Society had lost contact with), holding approximately 47,000 policies. .

3.6 In total, the Society had spent approximately £1.5 million in its efforts to trace and reconnect with its untraceable or gone away members before circulating the Member Statement.

4. THE AUTHORITY'S CONCLUSIONS

4.1 The Authority must confirm a proposed conversion from a friendly society into a company **unless** it considers that any of the four criteria referred to in paragraph 1.5 above apply.

(i) The First Criterion - Material Information

4.2 The Authority considered the contents of Member Booklet and Member Statement and, specifically, whether any material information was omitted from the latter. The Authority was particularly mindful of the representations which were concerned that the content of the Member Statement was insufficient in relation to the financial affairs of the Society and in addition considered if the exclusion of a sale of a minority residual holding (30.1%) in the general insurance business, which occurred after the statutory statement was prepared and sent to members, was material.

4.3 The Authority noted that the Society's financial reports were publically available. Information on the sale of the general insurance business would have been commercially sensitive and as the proceeds of its sale remain in the business and it was the residual stake, its omission was not considered material.

4.4 The Authority considered how the Society had described the benefits and additional flexibility that being a company limited by guarantee would offer and discussed whether the information was sufficiently transparent about the options for the firm's future if the conversion did not occur. It considered that the reference to this in the Member Booklet under the 'Challenges we face' section was reasonable.

4.5 The Authority had regard to the FCA's views that the contents of a statement should contain all the information which would allow a member to take a fully informed decision and, in this case, the FCA was satisfied that, taking into account the information in the Member Statement, the covering letter, the information available on the Society's website, the helpline and other resources to which members had access, this was the case. The Authority considered whether the number of abstentions could suggest that those abstaining members did not consider that they had received material information (but had not said as much).

4.6 The Authority noted the large population of untraceable members and 'gone aways' who could not have been sent the Member Statement and Booklet. The Authority noted that untraceable members and 'gone aways' would, to a greater or lesser extent, be an issue for any society, but the size of the population in the Society's case was significant. The Authority noted that poor records, which was acknowledged as being highlighted in the representations, was a particular problem for a firm whose historic business model had included door-to-door premium collection but that the actuarial analysis suggested that many possible members were almost certainly deceased. The Authority further noted that the Society has been generous in its interpretation of membership and had treated as members individuals whose entitlement to membership was not clearly specified in its rules ('quasi members'). Taken together, the actual population of living untraceable legal members was likely much smaller. The Authority acknowledged that there was no loss of policy benefits as a result of this interpretation.

4.7 It was accepted by the Society, the FCA and the Authority that it followed from this that the Member Statement could not, in fact, have been **sent** to each member eligible to vote as the Act required. This is considered below under the Third Criterion. However, the Authority was required to be satisfied that the material information had been **made available** to eligible members. The Authority noted the steps that had been made to make the information available to all members through the advertising campaigns, the helpline, tracing activities, and making the material information available on the Society's website. The Authority noted that the cost of these steps had been significant and, concluded that, cumulatively, the steps taken were reasonable.

4.8 The Authority therefore finds that all the information material to members' decision on the conversion was made available to eligible members and **the First Criterion does not apply**.

(ii) The Second Criterion - Views of Members

4.9 The main mischief to which this criterion appears to be directed is a resolution carried by a small and unrepresentative number of votes. The Authority noted that the Society counted 97,099 votes of which 89,022 (93%) were in favour of the conversion. This was 8.8% of the traceable members, and a higher proportion than the Society usually received at its AGM (around 4%). The Authority queried whether there was anything significant about the abstentions rate (2% of those who voted) and the profile of those who abstained. The Authority noted that the issue of voter turnout had been raised by representations. It acknowledged that the number of abstentions was relatively small and the ages of those who abstained was broadly in line with the profile of those who voted. The Authority also acknowledged that abstainers who had strong views had had the option to make representations.

4.10 The Authority considered the issue raised by one representor relating to the inclusion of quasi member votes in the overall total. It acknowledged that their relatively small number (1,815) meant their inclusion did not have a decisive impact on the decision. The Authority also noted that those untraceables who had voted after being found in the advertising campaign had also voted for the conversion (around 83% voted for the conversion) and there was no evidence to suggest these were unrepresentative of the greater number of untraceables. The Authority noted that no one sub-group of voters voted materially differently to the others and all above the minimum requirement.

4.11 The views of the FCA were also noted, which were, in summary, that it was satisfied that the Society's approach to the treatment of the quasi members was fair; that the actions taken with regard to locating untraceable members and 'gone away' members were sufficient (taking into account the cost expended); and that, overall, they had no reason to believe that the vote did not represent the views of members.

4.12 The Authority found no reason to object to the conversion on the basis that the vote was unrepresentative and so finds that **the Second Criterion does not apply**.

(iii) The Third Criterion - Compliance with the Procedural Requirements

4.13 It is a requirement of paragraph 3 of Schedule 15 to the FS Act that, on a proposed conversion, the Member Statement is sent to all members entitled to vote. This requirement on the Society is a "relevant requirement" of the FS Act. Because the Society cannot, and has not, fulfilled that requirement with respect to the class of members identified as untraceable, the Authority finds that **the Third Criterion applies to this extent**. No other failure to comply with a "relevant requirement" of the Act or the rules of the Society has been brought to the Authority's attention by the Society, its members or the FCA, and the Authority has not observed any such failure.

4.14 The Authority then proceeded to consider whether, as it was not precluded from confirming the conversion by virtue only of the non-fulfilment of paragraph 3 if that could not have been material to the members' decision about the conversion, the inability to send the Member Statement to each eligible member was material. The Authority acknowledged the issue, considered the factors set out in paragraphs 4.6 and 4.7 above, the steps taken by the Society to trace living members, the costs of tracing, the actuarial advice and how untraceable

members who were found voted and concluded that it could not have been material to the members' decision.

The Authority accordingly directed that the failure of the Society to comply with paragraph 3 of Schedule 15 to the Act is to be disregarded for the purposes of paragraph 9 of Schedule 15.

(iv) The Fourth Criterion - Permission

4.15 The Authority considered the Society's application and concluded that it would be fitting for the new company to inherit (or have transferred to it) without amendment the permissions and approvals of the Society when it changed its legal form. The Company will therefore have such permission under Part 4A of the Financial Services and Markets Act 2000 as will enable it to carry on the business which it will have as a result of the conversion without contravening the general prohibition.

The Fourth Criterion therefore does not apply.

5. DECISION

The Authority has considered the application by the Society for confirmation of the conversion of Liverpool Victoria Friendly Society from a friendly society into a company limited by guarantee, namely, Liverpool Victoria Financial Services, pursuant to section 91 of the Friendly Societies Act, and, having had regard to the information available to it and having consulted the Financial Conduct Authority as required under section 91(2A) of the FS Act: - (a) directs that the failure of the Society to comply with paragraph 3 of Schedule 15 to the Act is to be disregarded for the purposes of paragraph 9 of Schedule 15; and (b) confirmed the conversion on 30 July 2019.

For and on behalf of the
Prudential Regulation Authority

Lyndon Nelson

16 September 2019

**Prudential Regulation Authority
20, Moorgate
London EC2R 6DA**