



An independent association of  
Equitable Life Members & Policy-Holders  
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## Equitable Members Action Group Ltd

Address for correspondence:

42 Bartholomew Villas, Kentish Town, London NW5 2LL

Telephone: 020 7267 5938 [www.emag.org.uk](http://www.emag.org.uk)

### **Submission by Paul Braithwaite (secretary general of EMAG) to PASC. A personal background perspective on “Equitable Life: A Decade of Regulatory Failure”.**

*“My expectation of the regulators is that they should not connive at the dishonest behaviour of those being regulated nor should they indulge in a cover up. The regulators helped Equitable to arrange a reinsurance treaty which was entirely worthless. If they had not suggested this bogus treaty, Equitable would have been finished in early 1999. Instead, we have continued with dishonest regulators leading to a whole host of other chickens coming home to roost. If anyone doubts this, read the chronology (Part 3 of the PO’s report) from December 1998 onwards.”*

**Nicolas Bellord, retired trust solicitor and EMAG director.**

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1. I have been actively involved since the formation of EMAG more than eight years ago. But the Treasury’s involvement began even earlier, when it took on responsibility for prudential regulation for the calendar year of 1998, before subcontracting that responsibility to the FSA (on the Treasury’s behalf) until the FSA became self-policing in December 2001.
  2. The PO’s report was remitted to look at prudential regulation, only up until December 2001. It could not and did not look at any mis-selling by the Society or at conduct of business regulation.
  3. EMAG’s separate formal submission addresses quantifying compensation for the losses springing solely from the PO’s ten findings of maladministration. Those losses were incurred not just by the with-profits annuitants, who are the most visible, but by hundreds of thousands of others just as deserving whose pensions savings were damaged by regulators not performing their statutory duties. These core 500,000 largest pension savers had an average investment of just £45,000 – hardly fat cat.

## **Outrage, seven years on**

4. It is astounding that, more than seven years after the losses resulting from maladministration were crystallised, there is still such a widespread and deep sense of outrage. This is manifest in the many letters that most MPs have received since the PO reported. EMAG still has more than 15,000 paid-up members and hundreds of them have attended the half dozen regional meetings that EMAG's regional groups have organised recently.

5. The sense of injustice has been fuelled of late by talk of tax hand-outs and the array of government bail outs. Northern Rock was bad enough but more recently Bradford and Bingley, the big British banks and, most inflammatory of all, Icesave. There, vulnerable investments in a higher-risk, higher-return foreign internet bank have been addressed and transferred out within days with all of individuals' savings 100% guaranteed without limit.

6. The chancellor explained to the Treasury select committee on 3<sup>rd</sup> November that Equitable is not a bank and its problems happened long ago. But the numerous delays have all been of this government's making and why should time excuse the government's moral duty? Like the banks, Equitable Life had a business model that was flawed. It was run by questionable management who were the primary authors of their own downfall and they too were subject to the incompetent "light touch" regulation of the FSA. The only difference is that in the case of Equitable there have also been damning findings on 10 counts of maladministration by Parliament's Ombudsman.

7. I was present in the hall in Manchester on 23<sup>rd</sup> September when the Prime Minister made his admirable Conference speech. It had 41 references to "fair" and "a fairer society". Equitable sufferers are understandably confounded and wonder when it will begin for them. This has become an outstanding debt of honour.

8. However, there is an encouraging precedent: In the case of failed occupational pension schemes, PASC gave the PO its full backing and at Christmas 2007 Peter Hain, as secretary of state at the DWP, agreed to a compensation package for 150,000 victims totalling (over time) £7 billion.

## **A strategy of delay and dissembling**

9. The PO's report was laid before Parliament on 16<sup>th</sup> July and the then Treasury minister's statement explained that, because it is a complex report, the government will respond in the autumn. But the regulators received this report in draft - which has remained largely unchanged - more than 20 months ago.

10. It is my conviction that the Treasury realised the depth of Equitable Life's unique black hole, which was far broader than the GAR guarantees issue, during 1998 and it laid down then a policy of delay and dissembling which has prevailed to this day.

11. Ann Abraham has observed that it would have been far better to have commissioned one comprehensive report back in 2001. But that would inevitably have revealed what the Treasury already knew - that the regulators were profoundly culpable. And so it was in December 2001, immediately after the closure of the Equitable Life, that the economic secretary to the Treasury (Melanie Griffiths) asked the FSA to look into its own role in the debacle - but not to look back. As with Northern Rock, after the event the FSA produced a fair report, published in October 2001 which was highly self-critical. It is regrettable that the lessons that should have been learned then in 2001 remained unaddressed throughout Callum McCarthy's disastrous FSA regime until summer 2007 when exactly the same set of seismic fault lines were again revealed in the failed supervision of Northern Rock.

12. To date there have been no fewer than 13 different reports precipitated by Equitable Life. But the PO's is the very first report to have the authority to recommend compensation, which was explicitly excluded from Lord Penrose's remit.

13. No other Life Company, no matter how disastrous (e.g Standard Life 2001 – 2005) has been the subject of any study. Equitable Life is the ONLY one that is the subject of credible claims of injustice for a very good reason – it IS unique. But the Treasury has consistently sought to obfuscate to avoid any admission of culpability or liability to compensate.

14. For example, maturing policy comparative performance figures for 20 and 25 year terms have been spun by the Treasury as showing similar returns to other companies, thus deliberately muddying the water. But these are irrelevant because the regulatory failures found by the PO hurt savers who made the bulk of their investment after the mid-1990s and not in the '80s.

### **Tripartite system – early failures**

15. Possibly the first stress-test for the Tripartite regulatory arrangement was in December 2000 when it met and decided to do nothing about Equitable Life, ostensibly because there was no panic. A lot of Equitable Life sufferers subsequently moved their savings into Northern Rock and many of them were in the queues that formed outside branches. Having learned their lesson they panicked - to immediate successful effect. Equitable Life stands as THE defining cause of the breakdown in trust in the regulators.

16. Equitable Life was also the subject of the Tripartite regulators being convened in July 2001. Once again Equitable's investors were failed. It chose not to intercede because the Association of British Insurers (ABI) made clear that the industry would resist any and all demands for it to bail out Equitable. In consequence, sophistry well-evidenced in the PO's chronology in July 2001 was perpetrated against Equitable's investors. It took the Northern Rock crisis a year ago for it to be recognised that, because the FSA was dysfunctional, the Tripartite system could not work.

### **Europe**

17. The powers of and obligations on the prudential regulators provided by the series of Insurance Companies Acts were considerably enhanced by the European Third Life Directive, which was incorporated into UK law in the summer of 1994. Thereafter, the UK regulator had arduous proactive statutory duties, not only to UK savers but to the citizens across Europe for all products sold by the UK's financial services industry. There is no doubt that, in the case of Equitable Life, the UK regulators persistently breached the Third Life Directive.

18. After various successful diversionary and delaying tactics by the Treasury, the FSA and the FOS in response to Lord Penrose's report in March 2004, it became clear that Equitable sufferers were being subjected to a well orchestrated cover-up. For this reason, I myself and another EMAG director, Tom Lake, petitioned directly to the European Parliament for justice.

19. In January 2006 the first EU special committee of enquiry in a decade was set up with 22 MEPs to investigate Equitable Life – named EQUI. In total it conducted 11 three-hour long evidence sessions with 50 witnesses taking part over a 15-month period. The EQUI report was debated in the Parliament's full Plenary in Strasbourg in Jun 2007. The report and its recommendations were adopted by 611 MEP votes in favour, with just 11 votes against. Seventeen months on and the UK Treasury has thus far refused to comment at all on the EQUI report, despite the majority of its remit not overlapping in any way with that of the PO. It is worth re-stating three of the EQUI's recommendations:

### **EQUI report remedies (extract)**

20. (Remedy 9) In view of the UK Government's failure to comply with the requirements of the Third Life Directive and given the absence either of accessible legal redress through the courts or of effective alternative means of redress, the committee **firmly** believes that the UK Government is under an obligation to assume responsibility. The Committee therefore strongly recommends that the UK Government devise and implement an appropriate scheme with a view to compensating Equitable Life policyholders both within the UK and abroad.

21. (Remedy 10) The committee urges the UK Government to accept and implement any recommendations the UK Parliamentary Ombudsman may make with regard to Equitable Life.

22. (Remedy 11) Although the FOS can be considered as one of the more advanced out-of-court dispute settlement schemes in Europe in terms of competences and powers, the committee believes that the Equitable Life case has revealed a number of serious shortcomings in its operation. The Committee therefore **demand**s that the UK Government urgently address these shortcomings, strengthen the FOS's capacities and ensure that it is truly independent from the FSA.

## **Why the European dimension is important**

23. For a decade the UK has told European governments that our industry-funded single regulator, the FSA, is the ideal paradigm that they should replicate. But post EQUI, Northern Rock and the bail-outs of the UK's leading banks the credibility of the FSA is now rock bottom in Europe. The financial services industry is one of our most important export industries and it is vital that we retain our pivotal role in the development of revised European regulation in negotiating both Solvency II and Basel III.

24. The FSA has not succeeded in squaring the circle of preserving confidence in the industry AND protecting the investing public. The industry funds it and thus preserving confidence in the industry always prevail when stress-tested.

## **The office of the PO**

25. The office of the PO performs a very valuable function in our constitution, for MPs and citizens alike. It is a laudable creation of Dick Crossman MP, in that it is an alternative to the ludicrously expensive court costs of proceedings against any public body. It is a free alternative disputes resolution (ADR) mechanism that is truly independent and seeks to dispense natural justice. Its sole function is to determine whether a public body has been maladministrative. If so, whether it is sufficiently serious to warrant a recommendation to Parliament that compensation be paid. That is the only reason that EMAG and 3,000 complainants wrote to the PO in May 2004 to encourage a thorough investigation into the prudential regulation of Equitable Life. EMAG has spent four years and hundreds of thousands of pounds of its members' contributions in informing the PO's investigation team as professionally as we are able.

26. This particular report must be the finest, most rigorous and thoroughly tested one that the PO's office has ever produced. If Parliament chooses to ignore the unequivocal recommendation or it pleads poverty and short-changes the sufferers then what is the point of the PO? We will have wasted our and Ann Abraham's time to no purpose and the office of the Parliamentary Commissioner will be damaged and devalued.

**Paul Braithwaite**  
**Secretary General of EMAG**  
**9<sup>th</sup> November, 2008**

## SUPPLEMENTARY SUBMISSION



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**To: Dr Tony Wright**

**12<sup>th</sup> November, 2008**

### **Counsels' Opinion**

EMAG's Counsels' opinion from Rabinder Singh QC and Duncan Fairgrieve of Matrix Chambers (28th April, 2008) is attached, as promised, at appendix 2. We would draw the committee's attention in particular to paras 20 – 27.

Whilst EMAG's board shared the PO's own view that compensation of 100% should be paid for the losses attributable to the Maladministrations, we felt obliged to act on our expert legal advice and mitigate our claim, as Counsel recommended, by 10%.

### **Maladministration**

**We would stress that EMAG's estimate of aggregate losses is comprised of only those which the Parliamentary Ombudsman found related to maladministration, using her recommended 'relative loss' method and not those related to any other factors.**

Furthermore, we have made allowances for:

- a) The possibility that some policyholders would have continued to invest in Equitable Life, even if the truth about its finances had been known.
- b) The possibility that investment in other providers might have performed even more badly than that in Equitable Life
- c) The fact that the Equitable Life directors were primarily responsible for the Society's demise.

### **NOT a bidding situation**

EMAG's formal submission was not "an opening bid" but a realistic and practical proposal for fair and swift broad-brush redress for injustice that should have been tackled in 2001. The delay's are almost entirely of the Treasury's making. That the cupboard is temporarily bare in 2008 is hence not a fair consideration. The PO also raised the concept of "outrage" which has not been factored in but is also a valid consideration. Any idea of a hardship approach would have to be self-nominating and means-tested, which would be demeaning to people who have waited so long. If policyholders have suffered hardship in recent years they have, of course, been able to claim from the benefits system and the pensions tax credit. An injustice has now been proved and ALL should be entitled to fair treatment, rich or poor, without any requirement for either application or means-testing.