



Equitable Members' Action Group Ltd

PO Box 889, Canterbury CT4 7WQ

16 March 2009

EMAG legal fighting fund – will you help?

Dear EMAG member,

On 15 January the Government snubbed Parliament's own Ombudsman (PO) in its response to her Report. In rejecting many of her recommendations, and in asking a retired judge to decide - with very narrow terms of reference - who merits an ex-gratia payment because they are "disproportionately affected" by financial loss, the Government has created a pale shadow of the proper independent tribunal that the PO called for. EMAG believes this will inevitably involve means-testing. Further, we estimate it will reduce payments by more than 90% of what's due according to the PO, and rule out all Equitable policies that were started before 1999. This is a truly shocking state of affairs. The Treasury says that it does not recognise our figures, but it refuses to clarify the position.



30,000
dead
waiting for
justice



EMAG has started legal proceedings

After lengthy preparation, on 11 March EMAG delivered to the Treasury a comprehensive "Pre-Action Protocol" letter.

This puts the Treasury on notice that we are preparing to seek a Judicial Review of its response to the PO's Report (in Command Paper 7538). The Treasury claimed that it had advice from actuaries and lawyers that justifies its rejection of the PO's findings of Injustice, but it obstinately refuses to publish that advice.

Our Pre-Action Protocol

The Pre-Action Protocol sets out 13 heads that EMAG may use to challenge the Treasury. It is not

an easy document to read but it shows just how thoroughly EMAG and its lawyers have worked to demolish the half-truths and evasions in the Government's mealy-mouthed response to the PO's report. If you read the 55-page letter in full you will understand how the Government has bent every sinew to avoid paying us proper compensation. We cannot let them get away with it.

You can read this vital and devastating document – paid for by EMAG members - at:

www.emag.org.uk/documents/PAT.pdf

This formal notification requires a response from the Treasury within two weeks. Then we have only until 15 April to commence litigation in the High Court.

Good grounds for legal action

EMAG has not embarked on prospective litigation against the Government lightly – hence the apparent delay whilst we assembled the arguments. We are encouraged by senior partner Stephen Grosz at our public law expert solicitors, Bindmans LLP, who has written: -

"I consider that there are good grounds for a substantial challenge to the response." It was Bindmans who represented the Occupational Pensioners successfully in their claim to enforce their PO Report against the Government. But to be able to proceed we will need urgent further funding from EMAG's members because the English legal system is extremely expensive.

The PO has spoken out

In her evidence to the Public Administration Select Committee (PASC) on 27 January the Parliamentary Ombudsman, Ann Abraham, herself accused the Government: -

"I think the Government's response provides insufficient support for the rejection of my findings."

"It is strong on assertion. It is short on facts. The response says that I said something different to what I actually said, and then says why it disagrees with something I didn't say."

***"I am disappointed to see the Government picking over and reinterpreting my findings of maladministration and injustice.....
.....re-arranging the evidence, re-doing the analysis and acting as judge on its own behalf."***

EMAG's legal committee: (left to right: Nicolas Bellord, Paul Braithwaite, Stephen Grosz (Bindmans LLP) Colin Slater and John Newman - Tom Lake not pictured



EMAG demonstrators at the Labour Party Conference

Strong support for our cause

The PASC select committee is expected to publish a second report within days, which we anticipate will be fully supportive of the Ombudsman and slam the Government's chicanery, as its report of 15 December did – calling for compensation for Injustice, without means-testing.

We also anticipate that the PO herself will publish a supplementary report - known as a 10(3) - expressing her dissatisfaction with the inadequacy of the Government's response. However, that is not likely to be laid before Parliament until May, before which we have to launch any Judicial Review or be timed out. In any case, a Judicial Review is a legal challenge, whereas the PO's would be a political appeal to Parliament to discipline the Government. In the PO's 40-year history only four such reports have ever been submitted, two of which have been in the last three years. In itself this demonstrates this immoral Government's disturbing lack of respect for the office of the PO.



Demand for action

Many EMAG members have been in contact asking when EMAG is going to commence legal action against the Government. We have been working on it for several weeks but were unable to say much for two reasons – EMAG did not want the Government to find an excuse to stifle political debate, particularly in PASC, by saying that the issue was “sub judice” and secondly, we needed to consult our lawyers in great detail to confirm that we have a strong legal case.

Good news!

The good news is that we DO. But to mount a legal challenge like this against a ruthless Government that has no compunction about spending whatever it takes on lawyers’ fees to get its way, we need to create a serious LEGAL FIGHTING FUND to ensure that EMAG can see any judicial review through.

Here’s what our lawyers Bindmans, have to say

“We consider that in important respects the Government’s response to the Ombudsman’s report will not stand up to scrutiny by the courts. The Government has not explained, either adequately or in some cases at all, its reasons for rejecting the Ombudsman’s careful findings of maladministration or injustice. There are also good grounds for challenging the Government’s decision to restrict any ex-gratia payments to limited classes of policyholder, and to seek to dilute the loss which the Ombudsman found to have been sustained.”

Are you one of those who could make a £100 contribution?

We are asking all EMAG members to contribute whatever you can reasonably afford NOW towards a legal fighting fund, ideally £100.

If we don’t raise a sufficient sum it won’t happen and the Government will win by default. To serve a claim for Judicial Review we have to lodge it by 15 April at the very latest. **So, time is of the essence. This is our last chance to get justice through the courts.**



EMAG regional campaign planning meeting in Birmingham

**Hold the Government to account!
You can help us fight for justice by making a significant contribution.**

Yours sincerely

P. N. Braithwaite

Paul Braithwaite
General Secretary

John Newman

John Newman
Chairman

Equitable Members Action Group

Snapshot of developments in the Equitable Life saga in the last six months:



Prevarication

In the aftermath of the publication of the PO's Report on 16 July 2008 the Government promised its reaction "in the autumn". EMAG met the minister responsible, Kitty Ussher, on 1 October but she was replaced four days later by Ian Pearson.

The all-party Parliamentary Group on Financial Services

Held two sessions with Equitable Life and EMAG in early November.

Select Committee on Public Administration (PASC)

Four oral evidence sessions between 30th October and 9th December. Witnesses included Ann Abraham, an EMAG trio, Minister Ian Pearson, Sir Howard Davies (Ex-Chair of FSA), Ian Cowie (Telegraph), Tom Winsor (Ex-Rail Regulator), Vanni Treves. Culminated in a PASC Report (15 December – Justice Delayed ins Justice Denied") which recommended payment of compensation for Injustice and backed the PO.

A false dawn

Just before Christmas, Harriet Harman announced a delay which was widely believed to be a U-turn and an expectation that the Government had decided, because of pressure from back-bench MPs, to pay up.

Adjournment debates

Two, sponsored by Lib Dem MPs Jo Swinson and Steve Webb (Nov 25 and Jan 27) both well attended by MPs of all parties and very encouraging. The Tory MP for Shrewsbury, Danny Kawczynski, proposed to set up an all-party group of MPs on Equitable.

Government response

15 January: The chief secretary to the Treasury, Yvette Cooper, presented the Government's response to the Commons in a grossly misleading way, implying compensation would be paid. But she did apologise for some Maladministrations accepted on behalf of the public bodies.

Command Paper 7538

Only hours later did the formal Command Paper with its toxic ramifications of knocking out eligibility of all policies started before 1999 get distributed.

The "Chadwick process"

To add a veneer of judicial respectability, the Treasury appointed Sir John Chadwick as adviser, only on those bits in the PO's Report that it has admitted to, to decide on ex-gratia payments only to those who have been "disproportionately affected" – whatever that means.

EMAG challenged the Chadwick appointment

Acting on legal advice, EMAG wrote to the Lord Chief Justice (9 Feb) to suggest that the appointment is unacceptable under the new code for retired Judges. The Treasury has, incredibly, responded saying that Chadwick is not retained to give legal advice! The appointment blurs the traditional constitutional divide between Government and Judiciary but the Lord Chief Justice is, apparently, content with the appointment.

More PASC sessions

The PASC select committee convened two more sessions (29 Jan and 11 February), when it heard again from Ann Abraham, the EMAG trio, Charles Thomson and minister Ian Pearson. Ann Abraham maintained that her report has been misrepresented by the Treasury. It responded in writing on 6 March to deny everything. PASC is expected to submit a further report before 23 March.

EMAG regional meetings

There have been a dozen mass-meetings of EMAG members with MPs across the country, with several more planned. Have you checked out your local group yet? www.emagreginal.org.uk

EMAG lodged a JR Pre-Action letter

As the pre-requisite to a prospective Judicial Review, which must be lodged by 15 April, or the opportunity is lost, EMAG delivered a Pre-Action Protocol letter to the Treasury on 11 March.

PO to report again?

Ann Abraham has flagged up that she is so unsatisfied with the Government's response that she will take the dramatic step of lodging a subsequent report to Parliament, probably in early May.

IMPORTANT NOTES - STAY INFORMED:

Because of the two mass mailings we did in August and November, EMAG's membership doubled. But we had to use an external mailing house who did not process the applications as swiftly as we would like and EMAG wishes to apologise for any confusion or delays. This time, EMAG has reverted to using our accountants, Burgess Hodgson to handle cheques, and there should be no such processing problems this time.

EMAG sends out regular email updates – ten since the PO's report – so the best way to keep informed is to **ensure that EMAG has your correct up-to-date email address** – please use the enclosed form and FREEPOST envelope.



Equitable Members Action Group Ltd

Mr J. Smith
Address 1
Address 2
Address 3
Address 4
Address 5
Postcode

Membership Number



Appeal for contributions to EMAG's Legal Fighting Fund

I confirm that my details are correct as above. If not please amend below. BLOCK CAPITALS PLEASE

Name: _____

Address: _____

_____ Postcode:

Current Email: _____

Confirm Email: _____

Note that EMAG regularly disseminates important news exclusively by email.

I would like to contribute to EMAG's LEGAL FIGHTING FUND

I enclose a cheque for £100 other £_____ made payable to "EMAG Limited".
£100 is the recommended contribution to our legal fighting fund.

I am a current Equitable Life policyholder

I am not a current Equitable Life policyholder

Signature: _____

Date: _____

Please return in the reply-paid envelope provided.
Your details will NOT be passed on to a third party.
EMAG LTD is not authorised to give advice and cannot comment on individual cases.
Please note that EMAG LTD, to save time and expense, does not acknowledge applications or renewals.