

A briefing from EMAG for MPs in advance of the meeting of the APPG on Justice for Equitable Life Policyholders at which Liam Byrne, Chief Secretary to the Treasury and Sir John Chadwick, adviser to the Treasury, will be in attendance.

****** NOTE VENUE & TIME CHANGE ******

3.30 p.m. on Wednesday 24 February, Committee Room 7

There's no fairness – merely delay, obfuscation and cynical devices to cut the eventual payouts. This is not the justice that the Parliamentary Ombudsman intended.

Daily Telegraph (leader 19 Feb): *The Government's regulatory incompetence in the Equitable Life debacle has now given way to callous cynicism.....Yvette Cooper, then Chief Secretary to the Treasury, conceded that the policyholders had suffered an "injustice" and promised ex gratia payments to the hardest hit "as swiftly as possible". Since then, nothing.*

Mail on Sunday (21 Feb): *No set of savers has suffered under Labour more grotesquely than Equitable Life's one million policyholders.....The Government has simply sat on its hands and stalled all efforts to bring compensation any closer. Yet, frustratingly as far as frugal Labour is concerned, the Equitable issue will not go away.*

After a four year rigorous study, the Parliamentary Ombudsman (PO) laid her detailed report before Parliament in July 2008. That report recommended the setting up of a COMPENSATION scheme to redress serial maladministration by regulators spanning over a decade. The PO's scheme was meant to be **independent, transparent and simple**, set up within 6 months, with payments **completed** within two years i.e. by the end of year 2010.

What happened?

It took the Government six months, with repeated delays, before finally announcing in January 2009 that it was rejecting many of the Ombudsman's findings. It ignored her recommendations, instead appointing a retired judge, Sir John Chadwick, as a paid adviser with a very restricted remit to recommend a pared-down ex-gratia scheme with a number of reduction factors to be calculated, all designed to minimise net payouts.

EMAG's response

EMAG's response at the time was to say:

"The process proposed is nothing more than a cheap trick to lend a veneer of judicial respectability to a dodgy hardship scheme. The Treasury's latest ruse means that more than 90% of the victims of this scandal would receive absolutely nothing."

To stand up for policyholders, EMAG was forced to seek a judicial review of the Government's decision. EMAG's High Court challenge was successful, with several of the Government's restrictions being ruled unlawful. As a result, the Government has had to accept that the start date for qualifying for compensation must be rolled back from 1999 to 1991. In consequence, hundreds of thousands more policyholders should now be eligible for payment – people who would have been denied anything at all if the Government had been left to have its way. But even since that judgement was handed down, the Treasury has

shamelessly continued to argue both for the maximum reductions of payouts and to resist any “flexible approach”.

The Chadwick Process

The Command Papers contain the instructions to Sir John Chadwick. Their complexity has inevitably caused delay and their strictures deny the justice that the PO sought. Liam Byrne told Parliament both in July and October that it will be quicker than the PO’s method and the process was going as fast as possible. This is nonsense! Sir John has spent cumulatively months abroad in the last year on his other duties in Dubai, the Cayman Islands and Guernsey as well as continuing to act as an Appeal Court Judge for many additional days.

Mr Byrne has agreed that Sir John’s recommendations need not be lodged until May and indeed that was the timetable the Treasury set in January 2009. Only thereafter will the Treasury consider his suggestions prior to finalising its scheme.

How can it possibly be justice for one of the regulators found guilty of maladministration by the PO to be entrusted with the scheme’s final design and supervision?

More than one year after the Government’s statement to the House (15 Jan, 2009), a separate team in the Treasury has only just appointed Deloittes to advise on how to locate possible recipients. The process currently in train simply could not facilitate full distribution of compensation payments during 2010. Indeed, without a radical overhaul to the approach, it’s doubtful whether *any* payments will be achieved this year. This, despite the average age of the locked in with-profits annuitants being 79.

Sir John Chadwick has written that a simpler flexible approach to calculating payments (as originally suggested by EMAG) is the way ahead, rather than the Treasury’s continuing insistence on a report-based approach which piles hypothesis upon hypothesis. There are also several Treasury proposed discounts to salami-slice away the amounts of payments, which will then be reduced by making payments only to those “disproportionately impacted” – a term that remains undefined to this day.

There was a delay of six months before actuaries Towers Perrin were appointed to assist Sir John. Now it appears their pivotal work in determining the actual losses by policyholders will be kept secret at the insistence of the Treasury. This is totally unacceptable, given that policyholders have suffered so much in the past at the hands of secretive actuaries keeping them at bay and in the dark.

EMAG submitted its “Principles of Compensation” and its views to Sir John Chadwick on the basis that it will lead to useful groundwork having being done - so that the next Government with EMAG’s help can make use of that background work when setting up the **independent, transparent and simple scheme** recommended by the Parliamentary Ombudsman.

“The Chadwick Process” seems to have been devised to delay, deny and reduce the substantial compensation found to be warranted by the PO. Meanwhile, the grim reaper scythes away 15 more victims of this scandal each day. On 18 February EMAG called for interim payments on account to be made to the 44,000 oldest and worst affected, at an estimated cost of £214 million. These are just a fraction of the hundreds of thousands of Equitable Life policyholders that the PO deemed as warranting compensating for serial maladministration by the regulators.

EMAG has, thus far, dealt promptly and constructively with all questions posed by Sir John Chadwick to try to steer him in the right direction. But there will come a point very soon when we will have to review our co-operation. Despite our repeated requests, there has

been no release of any of the actuarial figures (types of policyholders, quantification of their losses etc) and no commitment for those to be made available.

However, EMAG's position remains that:

- we stand ready to help design and deliver proper compensation;
- justice cannot be rationed or cherry-picked;
- the Government's policy of ex gratia payments, only for those 'disproportionately affected', cannot deliver justice for policyholders;
- however flexible and practical Sir John Chadwick might be, he is merely a paid adviser to HM Treasury – one of the parties found guilty of maladministration. The Treasury should not be trusted to determine who gets what;
- a proper scheme, independent of Government, is essential to restore credibility and trust amongst policyholders and pensions savers;
- this has dragged on for far too long – people are dying without the justice they deserve, while many are living in poverty or much reduced circumstances. Interim payments, followed by quick, full compensation through an independent scheme, is the decent and moral way forward.

Will the future finally be FAIR?



Paul Braithwaite
For EMAG Ltd
paulbraithwaite@gmail.com

6 suggested questions to ask on Wednesday

1. What is your estimated total of relative losses?
2. Will the Government commit to accepting Sir John's advice, particularly on a flexible approach?
3. In the interests of transparency, will you publish the detailed actuarial reports?
4. How can it be fair for justice to be rationed through a concept like 'disproportionate impact', and how will disproportionate impact be defined?
5. When will victims start receiving payments?
6. Will the Government agree to payments on account for those worst affected – the With Profits Annuitants?

Appendices;

EMAG: www.emag.org.uk

Second Interim Report, Sir John Chadwick: http://www.hm-treasury.gov.uk/equitablelife_press02.htm

Most recent press articles 18th – 21st February, 2010

Telegraph leader:

<http://www.telegraph.co.uk/comment/telegraph-view/7266695/Equitable-Life-savers-get-callous-treatment.html>

Telegraph:

<http://www.telegraph.co.uk/news/newstopics/politics/7257638/David-Cameron-Labour-waiting-for-Equitable-Life-victims-to-die.html>

Mail on Sunday:

<http://www.dailymail.co.uk/money/article-1252594/COMMENT-JEFF-PESTRIDGE-Battered-savers-wait-miracle-new-tenant-No-10.html>

Guardian:

<http://www.guardian.co.uk/money/2010/feb/18/equitable-life-payments-honor-blackman>