

A new Government, a way forward to justice for Equitable Life's victims.

The new coalition Government has committed to *“implement the Parliamentary and Health Ombudsman’s recommendation to make fair and transparent payments to Equitable Life policyholders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure.”*

EMAG welcomes this commitment and congratulates the Government on its approach. We are conscious that Sir John Chadwick is expected to publish his report in the next couple of weeks. New Ministers and MPs might expect it to assist in honouring this commitment. However Sir John’s report must be viewed in the light of its covert purpose:

- a) The ‘Chadwick Process’ was conceived by the Labour Government not to implement the Parliamentary Ombudsman’s findings and her recommendation for compensation based upon relative loss, but to mutilate those findings and to implement an ex-gratia payments scheme, subject to a series of major restrictions, which were not as recommended by the PO. Only as a result of EMAG’s judicial review was the Treasury forced to re-instate some of the PO’s findings and accept possible eligibility back to the year 1991.
- b) The PO recommended an independent Tribunal, answerable to Parliament, to implement the compensation which she recommended. Sir John Chadwick and his actuarial advisers were appointed by the Treasury and instructed by the Treasury. His secretariat is supplied by the Treasury and he will report not to Parliament but to the Treasury (whose sub-contractors perpetrated the maladministrations).
- c) Sir John Chadwick’s third interim report clearly showed that he did not comply with the PO’s recommendations for the compensation process to be independent, transparent, simple and swift. Most of those who have engaged positively in a dialogue with Sir John over the last year have become disillusioned with the direction of travel and the way that the Treasury’s views have increasingly prevailed.
- d) Sir John Chadwick’s considerations of individual findings of maladministration, the responsibility of third parties and ‘disproportionate impact’ have no basis in the PO’s report. Their origin is the Labour Government and the Treasury’s attempts to emasculate her recommendations. These should be abandoned.

Note that despite Liam Byrne's repeated claims that Sir John Chadwick is designing a Scheme, Sir John has explicitly denied this – asserting that he is merely advising on the five questions posed to him in order for the Treasury itself to design a Scheme. Given the pattern of behaviour for over a decade, we do not trust the Treasury to play any part in a Scheme design. Where the responsibility for the deplorable behaviour to Equitable Life's sufferers since July 2001 lies between Ministers and Civil Servants is unclear.

In EMAG's view the 'Chadwick Process' is fatally flawed and incapable of resulting in a report in accordance with the PO's recommendations. Its Terms of Reference, restricted to advising on contentious questions, are simply incompatible with the Conservative and Liberal-Democrat agreement, both of the governing parties' election manifestos and the EMAG Pledge that over 360 new MP's have signed.

This does not mean that all of Sir John's work will need to be wasted or that the independent tribunal will have to start from scratch. In particular, two aspects of his work can be salvaged for future use:

- a) He has recommended a 'flexible approach' to the evaluation of losses. In short, this involves assessing all policyholders losses by reference to what their funds would have produced if invested with competitor companies and then applying an explicit discount to reflect the likelihood that not all policyholders would have taken that opportunity.
- b) We believe that his actuaries have created a database of millions of premiums paid into hundreds of thousands of policies and devised a means of assessing the losses of individual policyholders by reference to investment in an appropriate comparator. In our view this should comprise the results of the top ten with profit companies, weighted by market share.

Using the flexible approach and a 'top-ten' comparator it should be possible for Sir John's Treasury-appointed actuaries to prepare an accurate estimate of policyholder losses, which will be in accordance with the PO's recommendations and which will be seen to be fair.

The overall determination of the cost of funding compensation would remain in the hands of the new Government.

To follow the recommendations of the Parliamentary Ombudsman means two immediate tasks have to be tackled:

1. Appointment of a new independent team to lead a new Scheme to fruition.
2. Design the Scheme to honour the agreed commitment. EMAG offers its resources to help this happen as speedily as possible.

On the mechanics of contacting policyholders who will benefit from the scheme, EMAG on 30 April contacted the Treasury team and invited them to consider the utilisation of our “cleansed” database. No response to our offer has been received as yet. The database includes up-to-date information about 500,000 individuals who were members of Equitable Life, when policy value cuts were imposed in 2001. Of these, the database contains 350,000 reasonably reliable current addresses. This has been achieved with the generous assistance of Equitable Life itself.

A clear majority of MPs have adopted EMAG’s Pledge to their own constituents, so to adopt the Treasury’s proposal of a limited ex-gratia payment scheme would be seen as an endorsement of the previous Government’s approach to the Equitable Life scandal – an approach characterised by delay, obfuscation and unfairness and no commitment to transparency and fairness. There is a simple alternative. EMAG is ready to help make it a reality.

It is in light of the above that EMAG recommends reading the forthcoming report from Sir John Chadwick with considerable scepticism.

Paul Braithwaite and Colin Slater
For EMAG Ltd
17th May, 2010

The new coalition Government, a way forward to justice for Equitable Life's victims?

The new coalition Government has committed to *“implement the Parliamentary and Health Ombudsman’s recommendation to make fair and transparent payments to Equitable Life policyholders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure.”*

EMAG wholeheartedly welcomes this commitment and congratulates the Government on its approach.

To follow the recommendations of the Parliamentary Ombudsman means two immediate tasks have to be tackled:

1. Appointment of a new truly independent commission to finally advise government on total relative loss, having regard to evidence from Equitable Life, Sir John Chadwick, EMAG and the other interested parties

2. Devise and supervise a compensation scheme that is fair, swift and simple

The overall cost of funding compensation is in the hands of the new Government and Parliament but should certainly not be built solely on the sand of Sir John Chadwick’s answers to the loaded questions in his TORs.

EMAG offers its resources to help this happen as speedily as possible.

The previous Government rejected much of the Parliamentary Ombudsman’s report and merely suggested an unfair ex-gratia scheme to be based upon advice obtained from Sir John Chadwick who was supposed to provide his final advice in May 2010. We are told that he is being allowed a delay until mid-July before presenting his advice – two years after the PO reported. EMAG rejects the majority of the work of Sir John Chadwick as having been a time-wasting and irrelevant exercise designed to delay and minimise any payments.

However, comprehensive data on policies will have been collected from Equitable and processed by the appointed actuaries Towers Watson. This data should prove invaluable in taking forward the new fair scheme. Also, suggestions as to the comparator compiled from leading competitor insurance companies under what is called Head A losses may be acceptable. A single real composite comparator could produce rapid results in the form of a just distribution to ALL policyholders who have suffered relative loss.

Such an approach would follow the actual recommendations of the Parliamentary Ombudsman, published 23 months ago, and would be simple and quick.

On the mechanics of contacting policyholders who will benefit from the scheme, EMAG contacted Treasury officials on 30 April and invited them to consider using our up-to-date “cleansed” database. This had been assembled with the generous assistance of Equitable Life itself.

A clear majority of MPs (380) have adopted the EMAG Pledge. To continue with the Treasury’s proposals based on advice from Sir John Chadwick would be seen as an endorsement of the previous Government’s approach to the Equitable Life scandal – an approach characterised by unfairness, delay and obfuscation. There is a simple alternative that’s fair and transparent. We are ready to help make it a reality.

Assessing loss

An objective method of assessing losses is by reference to what policyholders would have got if they had invested in the average of a group of other with-profit life companies, weighted by market share.

Assessment of losses based upon Sir John Chadwick’s speculations as to what **might** have happened if Equitable Life had been properly regulated, or based upon investment in a totally different group of companies, will neither be fair nor seen to be fair.

Background

The Parliamentary Ombudsman report in July 2008 **recommended that a compensation payment scheme be set up by December 2008 and that all payments should be completed by the end of year 2010.** The scheme proposed by the Treasury in January 2009 under the Labour Government was to be based on the advice of Sir John Chadwick. He has now been given an extension to report in July 2010 – fully two years after the PO’s report which had taken four years to conduct.

A lost opportunity

“The Chadwick Process” has merely served to delay and obscure matters. If the PO’s advice had been followed we would now be more than 70 per cent of the way through the process of making payments, with only difficult cases left to be resolved before the end of 2010. Instead, another 10,000 of those who would by now have received some compensation, have died since July 2008 with no payment process set up two years on.

The “Chadwick Process” –systemically flawed

EMAG, whilst having disengaged in early March from “The Chadwick Process” on grounds of both first-hand experience and principle, has been able to monitor what has happened since Sir John’s Third Interim Report through his exchanges in writing with third parties. There are several fundamental aspects and unresolved matters which are of grave concern and which we detail as follows:

“Report-based” approach or a “Flexible approach”

The Parliamentary Ombudsman never suggested that a “report-based approach” be used, as has been repeatedly insinuated by Sir John Chadwick. Instead, she recommended (as is EMAG’s view) that the failures of regulation should be viewed **cumulatively**, so that all those who suffered relative loss in the period should be compensated.

Sir John Chadwick proposed a “flexible approach” in the summer of 2009 as if it was an original idea - when in fact it was similar to the PO’s cumulative view - only to see The Treasury argue against it. It is clear from the Third Interim Report that Chadwick now prefers a “report-based approach” and in particular, in his recent letter to the Treasury of 25th May, he indicates that the actuaries advising him have entered into a fog of “counter-factual” speculation, which is just actuarial alchemy. EMAG’s view is that although Sir John has claimed that this is akin to his flexible approach, it simply is not.

The Treasury’s continuing refusal to accept the PO’s findings

Initially in the Command Paper in January 2009 the Treasury rejected many of the findings of the PO so that effectively 90% of the policyholders were excluded and only losses after 1999 were to be taken into account. EMAG then initiated a successful judicial review of that Command Paper and in October 2009 obtained a judgement whereby the most important findings, by monetary value, were reinstated - taking the period of losses to be compensated back to July 1991. This left certain much less valuable findings of the PO still disputed by the Government.

Sir John Chadwick is now claiming that because these minor findings were not accepted, the holistic approach recommended by the PO is no longer valid. He has gone back to what he calls the “report-based approach”, which involves evaluating each finding of injustice separately and individually to hypothesise what would have happened if there had been no such injustice. This piles assumption on assumption in a highly questionable fashion.

The result of this report-based approach is that, in respect of the findings of injustice prior to 1999, Sir John claims the regulators could have intervened so little that their failures made no difference to the eventual outcome. Effectively, this negates the judicial review by minimising losses prior to 1999. EMAG anticipates that, if this were to have been put forward as the basis of a Treasury-designed payment scheme, there would have been a outcry from

policyholders asking for the Judgement in the judicial review to be respected both in the letter and the spirit.

A report-based approach requires “counter-factual investigation”

Sir John Chadwick’s approach of considering what **might** have happened if there had been no injustice in the 1990s is fatally flawed.

It is the same approach that ended in the time-wasting and disastrous litigation case of Equitable versus Ernst & Young and the previous directors of Equitable Life. Hypothesis was piled upon hypothesis over the nine months in Court until the pile of cards eventually collapsed, at enormous legal costs to the policyholders – some £50m. This must not be allowed to happen again.

In any event, the methodology for such a “counter-factual” investigation is fundamentally flawed, as has been shown in excellent submissions from Doctor Andrew Goudie. It is also contrary to natural justice.

The Parliamentary Ombudsman sought an enormous volume of actuarial evidence which was genuinely independent and stress-tested with proper peer-reviewing. That evidence, known as the Leandro Report, is in the possession of the Treasury and yet it has refused to disclose the contents to Sir John Chadwick. Instead, he is being fed opinions by actuaries employed and instructed by the Treasury, without any genuine independent peer-reviewers, who should have been selected by the professional institute. Any scheme Sir John recommends cannot be considered independent.

Thus far the Treasury-employed actuaries have come up with a mass of figures, some of which are truly unbelievable. In Sir John Chadwick’s Third Interim Report they suggested that Equitable could have slashed its guaranteed bonuses by over 50 per cent without any investors noticing!

Falsifying and ignoring statutory powers

Lord Penrose and the Parliamentary Ombudsman have both demonstrated at enormous length that the regulators had ample statutory powers to enforce corrective action on Equitable Life, with demands about directors, threats of closure etc if they did not comply. Nevertheless, the Treasury and Sir John Chadwick are trying to rewrite history as though they did not. In his latest letter of 25th May Sir John suggests that the regulatory regime was such that the regulators could not have prevented the final collapse of Equitable. This is completely contrary to the findings of Lord Penrose, the European Parliament’s (EQUI) enquiry and the Parliamentary Ombudsman’s view that **the regulatory regime was perfectly adequate but implementation by the regulators was wholly inadequate.**

There were statutory powers for the prudential regulators to ensure that Equitable Life was taking proper notice of what the relevant Insurance Companies Act referred to as “Policyholders’ Reasonable Expectations” (PRE). Thus, for instance, policyholders might reasonably expect that at the time a bonus was announced, Equitable had made real profits to justify such an announcement. In fact it hardly at any time had any assets to justify these bonuses. Again, the regulators were under a duty to ensure that the management of Equitable was “prudent”. They failed abysmally.

On his own admission, Sir John Chadwick, in his Third Interim Report failed to have sufficient regard for PRE and prudent management. However the latest suggestion by actuaries Towers Watson that PRE merely covered full distribution shows a lamentable lack of understanding of what happened and the concept of PRE. It reveals a failure to understand the inherent contradiction in Equitable’s business plan, which the regulators spotted but did nothing about. The same goes for the lack of any smoothing fund – keeping money back for difficult times – which has not had a mention. While this may be addressed in his final report, action groups and others will have had no chance to comment in this respect. Likewise inviting comment, as Sir John has, on the actuaries’ entirely hypothetical model of a reconstructed Equitable within a three-week window is blatantly unreasonable.

The With-Profits Annuitants

It is generally recognised that With-Profits Annuitants are the most severely affected group. The Labour Government claimed that the PO did not recommend any compensation for with-profits annuitants – a deliberate, downright misrepresentation. It sought to claim that it had generously brought such annuitants within the scope of its proposed ex gratia scheme.

Sir John Chadwick has since set out to reduce the value of these claimants by saying that they were mis-sold and that mis-selling is not covered by the PO’s report (whose terms of reference only covered failure of prudential regulation). The previous Government went to lengths to make sure that “conduct of business regulation”, which covers mis-selling, has never been investigated.

Apportionment

The PO has insisted that the compensation she has recommended is **entirely** down to the failure of regulation. Sir John Chadwick’s remit from the Treasury seeks to apportion blame to others – Equitable itself, their auditors Ernst & Young, others such as actuaries and even the policyholders, as the owners of a mutual. As far as Ernst & Young are concerned, their professional body has now decided that they were not at fault except insofar as they failed to warn policyholders in 1999 of the dangers of the Hyman litigation. In fact, Equitable was insolvent by the end of 1998, so that finding is of no consequence. The inquiry into the conduct of certain Government actuaries is still on-going.

“Disproportionate impact” and reductions in payments

The previous Government asked Sir John Chadwick to specify those who have been “disproportionately impacted”. He is suggesting that with-profit annuitants are such but with the get-out about mis-selling mentioned above. He also includes late-joiners – but without defining who they are. Under his scheme **everyone else** would be excluded. Other discounts are proposed to be applied in respect of those who could have moved but did not do so. A scheme based on “disproportionate impact” cannot deliver fair justice for all policyholders. Any scheme incorporating this approach must be rejected.

Summary

There are other inadequacies in “The Chadwick Process” such as the arbitrary shifting of the start date for compensation, his vacillation over several matters, the latest being his volte-face in now deciding that he can invent a properly regulated Equitable – a task he previously claimed to be impossible. The new view is substantiated first by saying that the actuaries have worked hard at it the degree of public scrutiny to which it has been exposed. EMAG is unaware of any such public scrutiny as it is the first time that these speculations have been published. The lack of transparency over the Treasury-appointed actuaries’ work is disturbing; particularly in view of previous dishonesty by the Treasury: For example, the Treasury’s previous actuaries reported to the Divisional Court in EMAG’s judicial review that Equitable’s actuary had been exonerated, when in fact he had been struck off.

It is impossible to believe that the advice from Sir John in answer to the five questions posed to him by the Treasury can be anything but a disingenuous concoction purporting to be a reasoned analysis by a retired Judge.

Any endorsement by the new Government of this charade in the handling of the Equitable Life scandal will not be viewed as the necessary break with the past and it would be perceived to be renegeing on the coalition’s commitment.

Gordon Brown, the Treasury and the FSA knew of the multi-billion pound depth of prudential regulatory failure at the latest by 1999 but they conspired to deny justice. As such, the Treasury, having itself been found culpable by the PO is highly suspect in any advice it may give – seeking to post-rationalise its own unsavoury behaviour. This is why EMAG has fought for a fair compensation scheme to be independent of Government (and Sir John). The new Parliament must assert authority, re-establish respect for the PO and not rely solely on the advice of the highly questionable Chadwick Report.

Nicolas Bellord and Paul Braithwaite


EMAG directors, 7th June, 2010

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 June 2010

Dear John

EQUITABLE LIFE

Thank you for meeting with me on Monday 24 May and for your follow-up letter of 28 May. I believe that the discussion we had was useful and a break from the previous, more adversarial relationship between EMAG and the Treasury. My aim is to maintain a more positive approach and I hope you share that aspiration.

I would like to begin by reiterating our commitment to implement the Parliamentary and Health Ombudsman's recommendation to make fair and transparent payments to Equitable Life policyholders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure.

As you know, included in the Queen's speech was the announcement that a Bill would be introduced in the first session of Parliament to enable payments to be made in relation to Equitable Life. This is a sign of our commitment to deliver on the pledge we made in our Coalition Agreement and this is reflected in our

decision to devote significant resources to resolving this issue at a time when Ministers and officials are dealing with a wide range of challenging issues.

One of the key elements of the Ombudsman's recommendations was that any scheme should be independent of Government. As I said when we met, we therefore plan to establish an independent commission that will determine the design of the scheme.

I am very keen to get the commission working soon after Sir John Chadwick has submitted his final report. As such, I am gathering views from various parties as to whom they feel should form its membership.

When we met, you gave some initial thoughts on the individuals you felt should be part of the commission. It would be very helpful if you could reply formally with some further names that you feel should be considered for this task.

Regarding the concerns you outlined in your letter about Sir John Chadwick's report, I am clear that it is for the Government to decide the quantum of compensation and for the Commission to determine on its allocation. Sir John's work will help inform this process, but it is one of the building blocks not the foundation of our approach to implement the Ombudsman's recommendations. I do not believe therefore that at this stage it would be constructive to modify the Terms of Reference. Sir John has been working for a considerable amount of time under his current terms and is close to the completion of his work.

I would prefer that he focus on completing his work as quickly as possible so that we can then focus on the next steps in the process, and in particular delivering on the Government's pledge of an independently designed payment scheme. His work will inform the next steps, but it will be for the independent commission to determine the payments scheme.

My main aim is to ensure that we have an approach that is thorough, transparent and fair while keeping in mind the need to act quickly. I believe that allowing Sir John to continue under his current Terms of Reference is an



important part of achieving this. I suggest we meet again in a few weeks time, near to the time of the publication of Sir John's report, for a discussion of further steps. I am confident that we can find a way to reach the resolution that policyholders have fought so hard for and I believe if we can work together then we will have the best opportunity to achieve this.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'M. Hoban'.

MARK HOBAN MP
FINANCIAL SECRETARY TO THE TREASURY



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15 June, 2010

Mark Hoban MP
The Financial Secretary to the Treasury
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Dear Mark,

Thank you for your letter of 8 June. We are deeply disappointed by it. You have accepted "The Chadwick Process" with NO change to his flawed terms of reference, save to extend the time available to him. It was the Labour government, hostile to any compensation, that crafted Chadwick's terms of reference, designed specifically to produce minimal "ex-gratia" payments.

As the PO commented on 6 May 2009:-

"Whatever the outcome of the work to be done by Sir John, it is clear that not everyone who has suffered injustice will be eligible for a payment and that not all of the injustice suffered will be put right. The injustice I identified in my report will not therefore be remedied as a result of the Government's response".

The process is patently not independent of the Treasury – one of the guilty parties - and should be stopped now.

In your letter you assure us that Sir John's work is: "only one of the building blocks not the foundation of our approach to implement the Ombudsman's recommendations". So we were taken aback when your colleague Steve Webb said in Parliament yesterday:

"The hon. Gentleman will know that Sir John Chadwick will produce his report in July. I understand from discussions with the Treasury that a compensation package will be produced on the basis of that"

Will you please tell us (and Steve Webb) what other "building blocks" you intend to use?

You have, thus far, not sent us the "Head A" calculations for all policyholders that we requested and which we first raised with you at our meeting with Oliver Letwin on 31 March. We have no doubt that Sir John has long had those figures, which are the obvious basis for compensation intended by the PO and which we imagine were the amongst the first numbers requested by the Treasury. The commitment in your letter to transparency demands that we should see them as soon as possible. In our view, "Head B" is specious, contrived actuarial alchemy that should be summarily binned.

You intend to establish an independent Commission to *distribute* the compensation, "as the PO suggested". But crucially, you omit to acknowledge the PO's recommendation that the independent Commission should first determine the *extent* of the comparative losses as the basis for the government determining compensation. We consider you should respect the PO's recommendations regarding loss, and then use an independently-validated figure transparently as a platform for Government and Parliament to determine the quantum of compensation. Sir John Chadwick's efforts, based on his toxic and obsolete remit, simply do not comply with the PO's recommendation.

You are aware that EMAG has fought for nine years against the devious, dissembling deceit of the Treasury under Labour.

We were very pleased that the Conservative manifesto stated:

"We must not let the mis-selling of financial products put people off saving. We will implement the Ombudsman's recommendation to make fair and transparent payments to Equitable Life policyholders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure".

and that the Liberal Democrat manifesto stated:

"We will make pensions and benefit fair and reward savers by: meeting the government's obligations towards Equitable Life policyholders who have suffered loss. We will set up a swift, simple, transparent and fair payment scheme".

and that 380 MPs – mostly Conservative and Liberal Democrat (including David Cameron, Nick Clegg, George Osborne and yourself) signed our Pledge which stated:

"I pledge to the voters of this constituency that if I am elected to Parliament at the next general election, I will support and vote for proper compensation for victims of the Equitable Life scandal and I will support and vote to set up a swift, simple, transparent and fair payment scheme – independent of government – as recommended by the Parliamentary Ombudsman".

We told EMAG victims, particularly in marginal constituencies, about these manifesto commitments and personal pledges (and have just explained to them the current situation). We all looked forward to a fair and transparent approach to compensation in line with the foreword of “The Coalition: our programme for government”, which proclaims the coalition is: “inspired by the values of...fairness...” and that “we will extend transparency to every area of public life”.

But now we are deeply concerned. We still hope that your government will respect those manifesto and personal pledges. We call upon you to demonstrate that by stopping “The Chadwick Process”, and by creating an independent Commission to establish the comparative losses and share key calculations with us, the Equitable Life and the other interested parties.

At present we fear that you will continue to deny us the information we have been requesting, and then in mid-July you will present victims with the fait accompli of a derisory fixed amount for the Commission to allocate. And at the same time you will publish hundreds of pages of complex actuarial detail along with the Chadwick Report, without any adequate prior sight by EMAG or Equitable Life and no right or opportunity for the victims to challenge any of it.

Our suspicions are founded on years of the Treasury’s devious behaviour towards Equitable’s victims. But there is still time for you to draw back from the brink and implement a transparent process that’s not only fair but seen to be fair.

We put three names to you on 24 May as potential members of the Commission - Tom Winsor, Claire Spottiswoode and Brian Pomeroy – and we have no other names to propose at this time.

We reiterate EMAG’s commitment to the distribution of fair compensation to the victims swiftly and we once again offer our invaluable up to date master address file of in excess of 350,000 policyholder (and former policyholder) addresses.

In conclusion, we repeat our request that you give us the detailed “Head A” numbers now. We can then verify them prior to publication of the Chadwick Report, so that we can all agree on the aggregate “Head A” loss for all eligible with-profits policies.

Yours sincerely,

John Newman MA FCA
Chairman

PS: Inasmuch as this letter engages your colleague Steve Webb, I am copying it to him.