

INTRODUCTION

In July 2008 The Parliamentary Ombudsman presented her report entitled “Equitable Life - a decade of regulatory failure” and recommended compensation for policyholders, based upon losses incurred relative to investment elsewhere and to be administered by an independent Tribunal.

In January 2009 the Treasury responded by rejecting the most expensive of the Ombudsman's findings and appointing Sir John Chadwick to advise it on an ex gratia payments scheme. In April 2009 EMAG took on a judicial review of the minister's decision to reject the Ombudsman's findings. In October 2009 the Court found largely in EMAG's favour and the Treasury was obliged to issue further instructions to Sir John Chadwick, reinstating the PO's findings and vastly increasing the range of policyholders who might benefit from his scheme.

Although EMAG still had reservations about the “Chadwick Process”, it was clear that potentially Sir John could do a useful job of evaluating losses, reducing the time that the tribunal recommended by the PO would take to put a proper compensation scheme into effect. EMAG therefore decided to contribute and participate in the “Chadwick Process”, whilst continuing to campaign for a tribunal to design and administer a proper scheme of compensation. We made very substantial

representations in response to Sir John’s August and December 2009 Interim Reports.

On 4 March 2010 Sir John published his latest advice to the Treasury in his last interim report. His final report is expected some time in May, after the general election. EMAG has now examined Sir John's Third Report, reviewed his progress to date and decided reluctantly to withdraw co-operation from his process.

EMAG has taken this action because, in its view, Sir John has failed to meet any of the objectives set out by the Ombudsman in her report. Sir John's process has not shown itself to be independent, transparent, simple or rapid.

INDEPENDENCE

Over the years EMAG has witnessed many investigations into Equitable Life. These include the Penrose enquiry, the EQUI investigation for the European Parliament, the Ombudsman’s Report, the reports of the Public Administration Select Committee and the judicial review by the Administrative Court. In all these cases we saw the investigators bombarded with Treasury arguments to minimise the effect of any adverse finding. In each case, the investigator viewed such representations sceptically and most were rightly dismissed out of hand. Sadly, the same cannot be said of Sir John Chadwick's investigation which simply displays far too many Treasury influences

TRANSPARENCY

Sir John Chadwick has been commendably open on the concepts he intends to use in his advice to the Treasury. However, the devil is in the actuarial detail. EMAG explained to Sir John that we expected to be able to make a contribution towards the evaluation of the losses for the various classes of policyholders. It is now very clear that this will not happen. Instead the loss evaluations will be presented as a *fait accompli* in Sir John's final report after the election and by then it will be too late to make any contribution or to correct any iniquities.

SIMPLICITY

The Parliamentary Ombudsman requested a simple process and this is what EMAG had suggested. We demonstrated that well over 90% of relevant premiums could have their losses assessed against an objective comparator in the form of a basket of household name competitor companies. We acknowledged that not every policyholder would necessarily have redirected their premiums to such a competitor and recommended an explicit discount to reflect this.

It is now clear from Sir John Chadwick's third interim report that the Treasury have insisted upon the use of a second comparator (Head B). This is

intended to represent what would have happened if Equitable Life had been properly regulated, but Sir John accepts that such a comparator is impossible to create on an objective basis. Instead he has selected group of insurance companies, whose results will form the basis of this second comparator, but subject to some further unspecified deductions.

RAPIDITY

When EMAG was supplied with the PO’s draft report on 22 February 2008, it took less than three months to provide an outline scheme of compensation, including an estimate of cost - £4.7 billions.

More than a year after his appointment, Sir John Chadwick has still not reached this stage. EMAG has always believed that the Treasury’s unwritten instructions to Sir John were that he should not report finally until after the general election. This is indeed what has transpired and his third interim report is still enmeshed in convoluted matters of principle, which should have been decided months ago. With 15 policyholders dying every day, this is simply not good enough.

CONCLUSION

In EMAG’s view, the Treasury having lost comprehensively before the European Parliament’s EQUI investigation, lost before the Parliamentary Ombudsman and lost before the Administrative Court, has simply appointed its own judge to retry its case from a partisan viewpoint against a loaded brief and produce a different verdict and a very different financial outcome. EMAG can no longer be associated with this charade.

Colin Slater

EMAG (Equitable Members’ Action Group)

15th March 2010

EQUITABLE LIFE – SIR JOHN CHADWICK’S INTERIM REPORT OF MARCH 2010 – BRIEFING FOR MEMBERS OF PARLIAMENT

DETAILED NOTES

Extract from the PO’s Report - Page 396

“148 I recognise that the decision as to how best to establish and administer any compensation scheme is a matter for Government and Parliament. However, I would offer, as a contribution to that debate, my view of the principles which should govern any such compensation scheme.

149 It seems to me that such a scheme:

should be independent and constituted along the lines of a tribunal or adjudication panel, with three members – one broadly representing the interests of citizens and one representing those of the relevant public bodies, with an independent chair;

should operate in a transparent manner, with the basis being made public of the decisions as to how compensation is to be calculated, as to what procedure will govern the consideration of individual cases, and as to the criteria which will be taken into account when considering those cases. Those decisions should only be made after appropriate consultation is undertaken, including with those directly affected;

should be simple, not imposing undue burdens, whether evidential or procedural, on those making claims to the scheme.

150 The above principles would, I hope, be accepted widely as being an appropriate and effective mechanism of decision and delivery of the remedy that I have recommended should be provided.

151 I hope, also, that it would be accepted that this mechanism has to have, as its guiding principle, the need to deliver as speedy a remedy as is possible in the circumstances, consistent with recognising the complex issues that would need to be addressed and resolved. In my view, the scheme should take no longer than two years from the date of its establishment to complete its work.”

Extract from EMAG’s submission to the Parliamentary Administration Select Committee in January 2009.

“The ‘Chadwick Process’ falls a very long way short of the transparent and independent Tribunal recommended by the PO. Sir John Chadwick is a retired Appeal Court Judge, but in this instance he is merely acting as an advisor to the Treasury, itself found guilty, through its sub-contractor the FSA, of 5 counts of maladministration. Sir John owes no duty to Parliament and reports privately to the Treasury. He is not required to hear representations from interested parties. Parliament has no control over the timing of his work. The Government’s action is arguably an insult to the Parliamentary Ombudsman and to Parliament.”

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Examples of Undue Treasury Influence

The 1990 Regulatory Return

The Society’s Regulatory Return for 1990 contains the most blatant example of its Appointed Actuary’s undervaluation of liabilities and one which the Court found that the regulators should have investigated. Sir John does not propose to examine this Return at all, on the grounds that the regulators did not look at it until the following year was almost over and in practice they would have concentrated upon the next return for 1991.

This overlooks the facts found by the PO that the regulators knew, even before 1990 ended, that the Society was in difficulties and was considering not declaring a bonus for that year.

PO Report Page 102

“27 On 14 November 1990, DTI and GAD officials met the Appointed Actuary of the Society and another actuary employed by Equitable, as the first in a recently initiated round of such meetings with insurance companies. A detailed description of the content of the note of that meeting, prepared by GAD, is contained within the chronology entry for that date within Part 3 of this report.

28 The meeting discussed the financial position of Equitable and ways of improving their reported financial position. Equitable informed the DTI and GAD that they were considering not paying any reversionary bonus for 1990, although the Society indicated that it would pay an interim bonus in respect of policies maturing in 1991.”

On this evidence, the regulators were aware of the problem and could and should have taken action in respect of the 1990 Return. They did not have to wait for another year.

Amendment of Returns

Sir John takes the view in paragraph 2.25 that “the regulators are unlikely to have insisted on the re-publication of the Society’s regulatory returns for 1990 to 1996 in an amended form. Support for that view is found in the fact that when, in 1999, the regulators were faced with a decision whether or not to require a re-publication of returns – having identified a serious deficiency in the position reported by the Society in relation to its 1997 returns – they decided not to do so. Reasons for that decision were set out in a letter of 7 January 1999 from the FSA’s director of insurance to his chairman:

“This [requiring republication of corrected 1997 returns] would demonstrate the FSA’s willingness to take action where insurance companies fell short of meeting their obligations. However, there are significant doubts about whether the legislation empowers us to require companies to correct their returns where we consider them to have been prepared on an inappropriate basis. Each case would have to be considered on its merits and in many cases we doubt we would have sufficient grounds to intervene. Therefore, it is unlikely that such action would produce a clearer position for the public — certainly in the period before publication of the next returns.

Even if such action could be enforced, we would need to allow companies time to do the necessary work. In practice, companies would be unlikely to be in a position to

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correct their 1997 returns much before they were superseded by their 1998 returns (at best the end of February assuming the request were issued immediately and instantly accepted by the company). Bearing in mind that the overall financial position in the resubmitted returns might look little different in the majority of cases (see below) and would already be more than a year out of date we believe that the costs of such an approach would be disproportionate to the benefits.”

EMAG has two objections to Sir John’s view.

Firstly, the PO found as a matter of fact that regulators did indeed require changes to Returns (Page 215):

“64 During the period covered by this report, there is clear evidence of the prudential regulators communicating with insurance companies, pursuant to the duty imposed by section 22(5) of the 1982 Act.

65 In respect of every year covered by this investigation, the insurance industry annual reports laid by Ministers before Parliament show that the duty to communicate to seek corrections to the returns led to the prudential regulators communicating with insurance companies on more than one hundred occasions in each year and, in most years that are relevant to this investigation, on many more occasions than this. Details are shown in Table 9a below.”

Secondly, the FSA’s director of insurance, whose evidence Sir John prefers to that of the Parliamentary Ombudsman, is the same person who quite wrongly reported to the FSA’s board on 26th Feb 1999 “that Equitable have now arranged satisfactory reinsurance for their guaranteed annuity rate liabilities and that this had ‘cleared the way for them to decide on bonus rates which they will announce (5% for most pension policies) next week”. PO Report - Part 3 26/02/1999 [entry 3] Page 358.