

Rt Hon Frank Dobson MP
House of Commons
London
SW1A 0AA

9 September 2010

Dear Mr Dobson,

EMAG briefing for the Second Reading of the Equitable Life (Payments) Bill on 14 September 2010:

"It seems to me that those [Sir John Chadwick's] proposals, if acted upon, would not in any sense enable fair and transparent compensation to be delivered."

Ann Abraham, the Parliamentary Ombudsman, letter to all MPs dated 26 July

EMAG welcomes legislation to enable payments to Equitable Life sufferers.

However, EMAG is alarmed about the following:

- The continuing reliance by the Treasury on Sir John Chadwick's advice, despite the clear view of the Ombudsman that it is "*an unsafe and unsound basis on which to proceed*".
- There is a mismatch between the formal acceptance of all the Ombudsman's recommendations by the new government and the Treasury's dogged determination to ignore the PO and build upon Chadwick's advice, seemingly to provide a phony justification for derisory payments.
- The lack of a proper comprehensive assessment of "relative losses" based on all of the PO's findings.
- The inappropriate inclusion of Chadwick's work as the central building block in the terms of reference for the independent payment commission.

EMAG's position:

- The previous Labour government did not accept many of the Ombudsman's findings, instead proposing its own system of ex-gratia payments, and only for those 'disproportionately affected'. It was on that basis that Sir John Chadwick was commissioned to produce his advice to the Treasury, to minimise payments.
- **The Ombudsman's central recommendation was for compensation to be based on the "relative losses"** arising from the injustices she found. She had considered and rejected the alternative "absolute loss" method selected by Sir John. Both Conservative and Liberal Democrat front benches accepted the Ombudsman's independent report and campaigned for it to be honoured, to replace the "Chadwick Process" limited charity scheme. **Nevertheless, the new coalition**

government has yet to reaffirm unequivocally that it accepts all of the Ombudsman's findings and recommendations.

- **A full assessment of "relative loss" has yet to be undertaken based upon all of the Ombudsman's findings.** But even based on the previous government's rejection of key findings by the Ombudsman, "relative loss" was calculated by the Treasury's actuaries, Towers Watson, as being between £4bn - £4.8bn. **This needs urgently to be recalculated to take in all findings, for the whole period (the first 18 months are currently omitted) and to exclude the exit costs which wouldn't have been necessary if invested elsewhere (including MVAs). These inclusions would confirm that "relative losses" exceeded £5 bn.** It is important that a true figure is calculated and published before any decision is made on compensation.
- The government should reject Sir John Chadwick's advice outright and should set it aside even as a 'building block'. Indeed it should have done so when the Coalition affirmed its commitment in May to honour the Ombudsman's recommendations, since the "Chadwick Process" was designed for a different purpose – as Sir John freely admits, he addressed different questions. The terms of reference for the independent payment commission should not be required to 'have regard to' his work that has been so clearly condemned by the Ombudsman herself.
- Members of Parliament, in particular those who have signed a personal pledge to their constituents, should send a clear message to the government that there must be no renegeing on their promise to accept the Ombudsman's recommendations. To do so would be a betrayal of the victims of this scandal who have been fighting for a decade for the justice they deserve.
- The public purse of course needs to be considered, but any 'haircut' should be fair, and not disproportionate to reductions in benefits and cuts being implemented elsewhere.
- EMAG has been consistently thwarted, even since May, from working co-operatively with the Treasury. We have been shocked by the persistent withholding of information, deliberate ongoing obfuscation and having our position misrepresented in the Treasury's communications to MPs - see EMAG's formal Submission to HMT (3 September) at "www.EMAG.org.uk/documents/EMAGsubmission2HMTSept10.PDF".

EMAG is calling for:

- **Transparency** on the total "relative losses" suffered – based on all of the Ombudsman's findings of injustice for the entire period July 1991 to 2009 – to be recalculated and published in September.
- **Compensation to be based on "relative loss" as the Ombudsman concluded, not on Sir John's Chadwick's estimate of "absolute loss" further discounted by a guesstimate of 80%.**
- **Fairness in any public purse 'haircut', comparable to that imposed elsewhere – not a 90% reduction of true losses.**
- **Payment on account to with-profits annuitants this year of circa £220 million, to be offset against the final agreed compensation.**
- **Compensation payments to be free of tax, for the sake of speed and simplicity.**

***** PLEASE NOTE *****

"Loss of opportunity" discount

The Treasury has been giving MPs the impression that EMAG agrees broadly with an 80% discount that Sir John Chadwick proposed. **We vehemently disagree with Chadwick on this** - both on the level of discount he suggests and how he sought to apply it to his estimate of "absolute loss", rather than the much higher figure for "relative loss".

For clarity and to explain where and why EMAG raised the possibility of a discount: When EMAG made representations to the Ombudsman in May 2008, we knew that there were 1.5m victims and tens of millions of premiums. It was obviously impractical to establish in respect of each premium whether policyholders relied upon newspaper reports etc and would have taken the opportunity to invest elsewhere. Compensation schemes which require proof from individuals have taken eight years to implement. Instead, we suggested that a simple discount could be deducted, and for the purposes of rough and ready calculation we used a figure of 30%. This concept of a discount was derived from the practice of the Courts in dealing with similar cases. The Ombudsman looked at two sample groups which suggested discounts of 22% and 40%. She published our representations and referred to them approvingly. Ann Abraham concluded that: *"absent the serial maladministration I had determined occurred from July 1991 onwards, no reasonable investor would have joined or remained with Equitable Life throughout that period – going instead to another life insurance company."*

EMAG has obtained a new Counsel's opinion from insurance expert Anthony Boswood QC. He concludes that Sir John Chadwick's approach to discounting of not "relative loss" but "absolute loss" is *"logically indefensible and could not result in fair compensation to policyholders."*

Kind regards,



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Appendices:

The PO's letter of 26 July 2010:

http://www.ombudsman.org.uk/__data/assets/pdf_file/0018/4365/20100726-Dear-Member-Letter-.pdf

EMAG Submission to HMT (3 September):

www.EMAG.org.uk/documents/EMAGsubmission2HMTSept10.PDF

Equitable Life's Submission to the Treasury:

www.emag.org.uk/documents/ELASubmission2HMTsept10.PDF

Press about Submissions to the Treasury:

www.emag.org.uk/documents/ELASpress7Sept10.pdf