

Ombudsman is nailed by Neill over Equitable

Last Updated: 12:01am GMT 05/02/2007

Lord Neill's investigation into the supposedly independent arbitrator has uncovered evidence of complaints brushed aside and bias towards the stricken life insurer. Liz Dolan reports

The Financial Ombudsman Service failed in its duty to give unbiased support to victims of the Equitable Life affair, a European Parliamentary committee of inquiry heard last week.

Lord Neill, a former chairman of the Committee on Standards in Public Life, said in Brussels that the Financial Ombudsman Service had demonstrated a lack of impartiality that seriously damaged victims' chances of achieving a fair settlement.



Scathing: Lord Neill, pictured with Mairaed McGuinness, who chaired the EU Committee, attacked Equitable in his report

Lord Neill's findings, published on Friday, offered compelling evidence that the ombudsman had colluded with the Financial Services Authority in allowing the new Equitable board to dictate events, rather than making independent decisions about whether and how those who suffered losses as a result of mistakes by the previous board should be compensated.

In the executive summary of his report, which was commissioned by the Equitable Members Action Group (Emag), Lord Neill accused the ombudsman's staff of being "unhelpful, unnecessarily argumentative or even aggressive" when dealing with complainants.

Adjudicators from the ombudsman commonly required victims with limited understanding of life insurance practices to respond to complicated arguments within weeks, while Equitable itself, with seemingly limitless access to expensive legal opinion, was given several months to respond – and sometimes allowed to go back and re-examine points that had already been fully covered at earlier stages of the investigation. This gave rise to suspicions that the whole process was aimed at wearing down the resolve of complainants to continue.

In one case examined by Lord Neill, Walter Merricks, the chief ombudsman, abruptly decided to terminate an investigation, citing "a fundamental breakdown of trust on the part of the complainant towards the FOS". The complainant, referred to as "Mrs A", had approached the ombudsman in December 2001.

advertisement By July 2004, she was so worn down by the process that she handed responsibility for future correspondence with the ombudsman to her husband.

A few weeks later Merricks pulled the plug, apparently simply because he did not like the tone of her husband's subsequent communications. Lord Neill describes this summary dismissal of the case – which, remember, had been rumbling on for almost three years – as "grounded on the chief ombudsman's wounded amour propre and his displeasure that Mr A had had the temerity to criticise in

robust terms the manner in which the FOS handled complaints ... while pretending to the world that it was perpetually striving to provide a level playing field for complainants".

Extracts from correspondence between Mrs A and the ombudsman during the long years of battle, contained in Lord Neill's report, show her to be a highly intelligent woman with a full grasp of the relevant facts. She sent endless letters patiently explaining the nature of her complaints and why she considered that Equitable Life had "knowingly declared policy bonuses for which there was insufficient backing since at least 1996".

Despite the fact that an adjudicator from the ombudsman service had formally rejected this contention, she was subsequently told that she would have to restart the process from scratch as this particular aspect had not been mentioned in her original complaint.

Lord Neill says in his report: "By no stretch of the imagination could it be said that Mrs A was raising new concerns ... Equitable Life had already had ample opportunity to comment [on this particular point]."

This was just one of several reversals and delays she suffered during of the investigation, in the light of which it was scarcely surprising that her nerves, and her husband's patience, had become frayed over the period. The Neill report raises important questions about the way in which the ombudsman chose to deal with evidence in the Penrose report, published in March 2004, which gave substance to Mrs A's contention that Equitable had been guilty of "overbonusing".

Lord Penrose, a senior Scottish judge, was appointed by the Government in August 2001 to "inquire into the current situation of the Equitable Life Assurance Society". Penrose found that cumulative bonuses over the relevant period always exceeded assets, and that the company failed to set up a "smoothing fund" as used by other life insurers to back bonus promises.

He also found that Equitable had made no secret of this fact, which gives rise to important questions about why regulators had failed to step in and put an end to this practice years before the society was forced to close to new business in 2000.

While regulators should have been aware of what was going on, this was a highly technical area and policyholders could not reasonably have been expected to understand the dangers. It would therefore appear reasonable to assume that they had good grounds to demand compensation when the problem became generally known and understood.

Presenting the Penrose report to the Commons, Ruth Kelly, who was then the financial secretary to the Treasury, directed policyholders seeking redress in the wake of the report to the ombudsman, which she said was there to help in such circumstances.

After seeking actuarial and legal opinions (which it has never published), the FSA later announced that complaints by Equitable victims arising from the effects of overbonusing were unsustainable. The ombudsman, which is supposed to operate independently of the FSA – and, according to its remit, must judge cases according to "the rules of natural justice" rather than legal niceties – nonetheless informed complainants that it reserved the right to reject any complaints related to the Penrose report.

Merricks denied collusion with the FSA on this, but internal e-mails obtained from the Treasury last month under the Freedom of Information Act for use in Lord Neill's report indicate that the ombudsman service and the FSA had discussed the subject before the ombudsman announced its decision.

David Cresswell of the ombudsman service says: "Lord Neill specifically turned down our offer of input into his work. It's rather ironic, given his criticism of us, that his one-sided report is based entirely on the views of an aggrieved minority [Neill appended 30 case studies to the main report] and that it was commissioned and paid for by an action group [Emag] with its own specific interests.

"Only 50 of the thousands of complaints we received were Penrose-related. We are accused of bias in favour of Equitable Life, but Equitable paid compensation to thousands of people."

Paul Braithwaite of Emag says: "Cresswell's attack on a man who oozes integrity was made without seeing the report, which is now on our website. We decided that, since the report was commissioned for the [European Parliamentary] inquiry, we'd observe protocol and delay publication until after its personal presentation by Lord Neill"

Walter Merricks wrote to Lord Neill for the first time just three weeks ago. The letter ran as follows: "I

understand that, at the request of Emag, you have been asked to prepare a report on our handling of complaints against Equitable Life. If there's any assistance you need in understanding our procedures or other aspects of the way we work, please let me know." Lord Neill said, in his equally brief reply, that he did not consider he required assistance with "any of the topics which you mention".

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