

THE EQUITABLE LIFE ASSURANCE SOCIETY

and

(1) ROGER Q BOWLEY

(13) DAVID G THOMAS

**SUMMARY OF AREAS TO BE ADDRESSED IN THE ORAL
OPENING STATEMENT TO BE MADE ON BEHALF OF THE
FIRST AND THIRTEENTH DEFENDANTS**

This summary is served in accordance with the directions of Langley J given at the CMC on 4 February 2005. Submissions will be made on the issues set out below only insofar as is necessary to make the points which are considered to be important for the defences of Mr Bowley (RB) and Mr Thomas (DT). Due regard will be had to matters already covered in the openings served on behalf of other director defendants.

A. Introduction

- A1. Personal background and circumstances of RB and DT.
- A2. The positions held by RB and DT in the Society, their roles and functions.
- A3. General overview of the claim and the nature of the proceedings. The purpose of, or which lies behind, the litigation against RB and DT.
- A4. Limitation.

B. Factual Background

- B1. The Society, its history, culture and business.
- B2. The board of directors – executives and non-executives.
- B3. The role of the appointed actuary.
- B4. Board meetings.
- B5. The Society's full and fair distribution policy.
- B6. The role and satisfaction of the regulators.
- B7. Policyholders' reasonable expectations.

- B8. Guaranteed annuity rate policies.
- B9. The bonus declaration process.
- B10. Bonuses and Article 65. The normal understanding of Article 65.

C: Key events and the allegations made by the Society

- C1. The 1993 bonus declaration: the introduction of differential terminal bonuses - the natural extension of the earlier decisions on bonuses (the mirror image point).
- C2. The allegation that legal advice ought to have been taken at any earlier stage.
- C3. The legal advice which would have been received had the Society done so.
- C5. What would, and would not, have occurred had legal advice been taken having regard to the legal advice that would have been received
- C6. A test action? The difference between the position in 1993-4 and 1998.
- C7. The later bonus decisions 1994-1997 – the absence of any new decision.
- C8. Complaints about the differential terminal bonus policy that were unknown to RB and DT until 1998.
- C9. Events in August and September 1998:
 - (i) Obtaining legal advice – the real world (reprise).
 - (ii) Other advisers.
- C10. The period between September 1998 and February 1999
 - (i) The legal advice actually given compared with the evidence about the legal advice given before the Court
 - (ii) Involvement of the regulator and reserving issues.
 - (iii) The bonus declaration 1999.
- C11. The period following the 1999 bonus declaration to the High Court hearing.
 - (i) Continuing legal advice following the bonus declaration and up to the High Court hearing
 - (ii) Contingency planning in the period up to the High Court hearing.
- C12. The decision of the Vice Chancellor in September 1999. Plainly therefore not a decision or an opinion that no reasonable person could hold;
- C13. Contingency planning and further legal advice in the period leading up to the Court of Appeal hearing
- C14. The Court of Appeal decision in January 2000 to March 2000

- (i) Legal advice up to March 2000.
 - (ii) Contingency planning.
 - (iii) The 2000 bonus declaration.
- C15. The period leading up to the House of Lords hearing
- C16. The House of Lords hearing and surprising decision
- C12. Events following the Hyman litigation

D: Summary of the Defences of RB and DT

- D1. Alleged breaches of fiduciary duty.
- D2. Alleged failure to take reasonable skill and care
- (1) 1993 bonus resolution
 - (2) 1994 – 1997 bonus resolution
 - (3) 1998 bonus resolution (DT only)
 - (4) 1999 bonus resolution (DT only)
 - (5) 2000 bonus resolution (DT only)
 - (6) Mis-selling (DT only)

E: Quantum

F: S727 relief from liability

- F1. The law and the correct approach
- F2. Breach of fiduciary duty, without proof of negligence;
- F3. Finding of negligence

Christopher Symons Q.C
Sonia Tolaney

3 Verulam Buildings
Grays Inn
WC1R 5NT
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