

Warwick Court
5 Paternoster Square
London EC4M 7DX

Telephone: (020) 7489 6400
Fax: (020) 7489 6404 or (020) 7489 6406
Website: equitable.co.uk

Walter Merricks
Chief Ombudsman
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

15 November 2004

Dear Mr Merricks,

PENROSE RELATED COMPLAINTS

As you will be aware, the waiver which the Society received from the FSA in respect of "over-bonusing" complaints expired at the end of September. The Society does not intend seeking a further extension but will deal with such complaints in accordance with the applicable DISP rules.

It is to be expected that a number of such complaints will ultimately be referred to the FOS. I am therefore writing to set out the Society's position on jurisdiction in relation to such complaints. For the avoidance of doubt, the Society relies on this letter in respect of each individual complaint raising Penrose-related issues. In referring to Penrose related or "overbonusing" complaints we mean complaints relating to the following specific matters identified in the Penrose Report dated 8 March 2004:

- The Society's aggregate policy values allegedly exceeded total with profit asset values;
- The Society allegedly over allocated bonuses, whether as a result of the matters described above or otherwise;
- The background and rationale for the July 2001 cuts;
- Cuts to terminal bonuses;
- The Society's smoothing policy;
- The Society's reserving for terminal bonus (other than for GARs);
- Alleged representations made to policyholders and prospective policyholders (and/or disclosures allegedly not made by the Society) in respect of the above.

Although I have inevitably included some comments regarding Lord Penrose's findings, this letter should not be mistaken for a substantive response to those findings, or any individual claims based on them. We suggest that when you have had a proper opportunity to consider and respond to this letter, we then discuss with you whether, and possibly when, any further

information might be required from the Society, whether generically or in relation to any individual complaints.

Finally, as I am sure you will understand, to the extent that this letter makes reference to or relies upon advice provided to the Society, we are not waiving any applicable privilege and/or confidentiality.

1. SUMMARY OF THE SOCIETY'S POSITION

- 1.1 The Society submits that there are "compelling reasons" under DISP 3.3.1R(17) why FOS should not seek to determine "over-bonusing" complaints. There would be insurmountable difficulties for the FOS in fairly determining such claims given the scale of the task and the evidence which the Society would properly wish to advance in its defence. In our respectful view the FOS is not an appropriate forum for resolving complex actuarial expert issues and matters requiring extensive disclosure from non-parties, compulsion of witnesses and extensive cross-examination.
- 1.2 We are also mindful that the FSA has publicly concluded that *"generic claims against Equitable Life regarding its basis for allocating bonuses during the 1990s are unlikely to succeed"*. In a letter to the Parliamentary Ombudsman dated 7 July 2004 the Chairman of the FSA Callum McCarthy stated: *"[o]n Lord Penrose's view, many policyholders were in fact paid out more than their asset share. While others will get less than they had come to expect, it is very unclear, even after considerable analysis by legal and actuarial experts, that this can be shown to result from any culpable conduct by the company itself"*.
- 1.3 It would clearly be contrary to the objective and spirit of the Memorandum of Understanding (which expressly recognises the *"need to cooperate and communicate constructively"*) for the FOS to nevertheless attempt to adjudicate "over-bonusing" allegations. Furthermore, any such attempt would inevitably entail FOS addressing fundamental industry-wide issues such as the acceptable scope of smoothing. Such matters should properly be left for regulatory guidance and/or intervention.
- 1.4 FOS rules also expressly provide (at DISP 3.3.1(11)) that FOS will not deal with a complaint if satisfied that it relates to the legitimate exercise of a firm's commercial judgement. The setting of bonuses and the operation of smoothing is pre-eminently a matter of commercial judgement.
- 1.5 Finally, the Parliamentary Ombudsman's 19 July Special Report provides a number of further "compelling reasons" why it would in any event be inappropriate for the FOS to address "over-bonusing" complaints at this stage. Particularly as the Parliamentary Ombudsman will be in a significantly better position to reach an informed conclusion on some of the core issues relating to "over-bonusing" (because of her powers to compel witnesses and evidence), it would be wholly inappropriate and wasteful for the FOS to simultaneously undertake its own, more limited, investigation of substantially the same issues.

2. "OVER-BONUSING" ALLEGATIONS & FOS JURISDICTION

2.1 For the reasons set out below the Society submits that the FOS is not an appropriate forum to provide a full and independent assessment of the facts. We summarise below some of the areas which give rise to insurmountable difficulties for the FOS in fairly determining such claims, given the scale of the task and the evidence which the Society would wish to advance in order to properly defend such claims. As stated in our 26 May 2004 letter, we therefore believe that there are "compelling reasons" under DISP 3.3.1R(17) why FOS should not seek to determine "over-bonusing" claims.

2.2 It will be critical to determine whether there was, both as a matter of fact and expert evidence, any historic "over-allocation" of bonus and, if there was, whether this is actionable and/or gives rise to properly attributable loss. It will then be necessary to give consideration to what individual policyholders were told about smoothing at the point of sale and the extent to which any representations made by the Society regarding its bonus policy were not only inaccurate but legally actionable. Additionally, it will be necessary to consider the extent to which the directors acted on advice from, and with the knowledge of their auditors and the regulators. The following specific points can be made.

- (a) Although Lord Penrose's findings were at times expressed in uncompromising language, it was no part of his remit to address questions of legal fault or redress. He made it very clear that his report *"has not provided answers to two questions: who is at fault? ... and who deserves redress"*.
- (b) Lord Penrose acknowledges that *"any court or other adjudicator resolving issues of duty or professional conduct will require to make an independent assessment of the facts, in default of agreement, and that may agree or disagree with the views I have expressed"* (Chapter 20, para 79). This is particularly so, given that in looking for lessons for the future, Lord Penrose inevitably considered matters with the benefit of hindsight. As the Parliamentary Ombudsman has acknowledged in the context of her own investigation (see for example paragraph 62 of her Special Report) any investigation by her cannot be made with the benefit of hindsight. This applies equally to FOS.
- (c) Furthermore, as Lord Penrose acknowledges, the task of any court or other forum adjudicating claims would be far greater than that faced by his inquiry. In noting that it was no part of his remit to address questions of fault or redress, Lord Penrose noted that to do so: *"inevitably involves issues of the scope of duty and of breach of duty that I was not asked to consider and that I would have been unwilling to consider as part of an inquisitorial process. The current proceedings at the instance of the Society speak eloquently of the complexity of the questions that arise from allegations of breach of duty relating to a relatively short period compared to the period covered by the inquiry, and a selection of the issues from the wider range that I have discussed"* (Chapter 20, para 77).
- (d) Lord Penrose's Report is not evidence. It is a settled principle of law that the findings and conclusions of an inquiry cannot simply be relied upon by a court or

tribunal which itself has the task of deciding related issues. To do so would be fundamentally unfair to the parties involved, particularly where they were not represented before the inquiry (see for example, Three Rivers DC v Bank of England (No.3) [2003] 2 AC 1, at 238 D-E). You will have seen from the Parliamentary Ombudsman's 19 July 2004 Special Report (paragraph 60) that she accepts this principle in connection with her own proposed investigation.

- (e) The factual background to alleged "over-bonusing" covers a period going at least as far back as the 1980s. In order to properly assess claims related to "over-bonusing", any Court or adjudicator would have to undertake a detailed examination of the relevant industry standards, the development of the Society's business model and policyholder communications over a number of decades. Lord Penrose's Report itself took two years to prepare, with the documentary evidence disclosed to the Inquiry running to many thousands of documents (some 55,000 provided by the Society alone).
- (f) It is clear from the Penrose Report and the Parliamentary Ombudman's 19 July 2004 Report that the FSA, GAD and the Treasury are in possession of relevant information and documents relating to the allegation of "over-bonusing". Indeed, the Penrose Report records that the FSA in its representations to the Inquiry *"maintained that there was no over allocation of bonus, or 'overbonusing'"*. It would not be possible for the FOS to compel the FSA to produce such information. Similarly Lord Penrose interviewed a number of FSA/GAD/Treasury Officials who had previously been involved in assessing the Society's bonus policies, a number of whom the Society would clearly seek to call as witnesses in any claim to support its position. The FOS cannot compel these witnesses or the production of underlying evidence.
- (g) The Society's former auditors also have relevant documents and potential witnesses relating to allegations of "over-bonusing". We could not rely on any evidence already disclosed by Ernst & Young in the audit negligence claims for a different purpose unless either Ernst & Young consented or we obtained leave of the court (except where the material has already been referred to in open court). Again, the FOS cannot compel the former auditors to give evidence or disclose relevant documents.
- (h) The Society will certainly need to call evidence from the former directors to ascertain the state of their knowledge and whether the basis on which the Society proceeded was reasonable or not. As the former directors are no longer employed by the Society (and indeed many are being sued by the Society) they are unlikely to assist unless under compulsion. The FOS cannot compel them to give evidence.
- (i) The case will require detailed expert actuarial evidence not only as to the Society's bonus policies, but also regarding appropriate benchmarks for the operation of smoothing and the management of with-profits business. These issues are discussed in more detail in section 3 below. Given the disagreement between Lord Penrose on the one hand, and the Society, the FSA and GAD on the other hand, these will undoubtedly be very difficult and highly contentious issues.

As discussed below, the result of the FSA's own review of "over-bonusing" is that there is unlikely to be any generic claim. We doubt whether the FOS could provide its own expertise in this area (nor whether it would necessarily be appropriate as a matter of natural justice for it to do so whilst acting in an adjudicative role). In any event, however, a FOS adjudication is not in our respectful view an appropriate forum for resolving complex actuarial expert issues and matters requiring extensive disclosure from non-parties, compulsion of witnesses and extensive cross examination.

3. GENERIC OBSERVATIONS ON "OVER-BONUSING"

3.1 As noted above, it is not the purpose of this letter to set out an analysis of Lord Penrose's findings. I enclose for your information, however, a copy of the Society's "factsheet" which will be sent to any policyholders raising "over-bonusing" issues, forming an enclosure to the Society's final response to their complaint. I have briefly expanded below on a couple of the points made in that factsheet which are pertinent to the question of jurisdiction. As mentioned at the outset, once you have had an opportunity to consider and respond to this letter, it may be useful to discuss with you whether any further information might be required from the Society.

3.2 July 2001 Policy Value Reductions

Lord Penrose's key assertion was that the policy value reductions applied in July 2001 were an attempt to "*claw back past over-allocation from in-force business*" (Chapter 19, para 60). Those cuts are the only loss which Lord Penrose suggests might have been suffered by individuals as a result of alleged "over-bonusing". In fact, the reductions in July 2001 can for all practical purposes be accounted for by the substantial falls in the equity markets during 2000 and 2001.

I note that this issue has previously been considered by the FOS. The Society's analysis set out in the enclosed factsheet is consistent with an adjudication issued in May 2004. The Adjudicator concluded that "*the reason for the July 2001 reduction was... the very large decline in the stock market in 2000 and the first half of 2001. The FTSE 100 index had fallen almost 20% since January 2000 and more than half of that fall had been in the first half of 2001*" (FOS ref: 4309646/AT/25).

This analysis represents a fundamental obstacle to any complaints which might be asserted on the basis of Lord Penrose's findings. As the FOS' own analysis appears to recognise, there is in fact no case for claiming that any material component of the cuts could be attributable to any alleged "over-payments". As a claimant is only entitled to redress in respect of losses caused by the defendant's wrongful act, it follows that there is a very strong argument, that even if it were possible to establish any culpable historic "over allocation" of bonus, claimants would be unable to demonstrate any recoverable loss.

3.3 Alleged Historic "Over-Payments"

The enclosed factsheet does not attempt to address whether or not any "over-bonusing" or "over-payments" in fact took place. Any attempt to do so clearly involves highly complex issues with any adjudication having far-reaching consequences for the with-profits sector as a whole.

The analysis in the Penrose Report is based on a comparison of aggregate policy values with available assets. However, as explained in the factsheet a figure for aggregate policy values necessarily includes amounts for all policies, including those which would not be eligible to receive that amount if they left immediately (because the Society would have the right to apply a financial adjustment). As a result, an excess of policy values over assets is not necessarily significant.

As indicated in the factsheet, the Society also takes issue with the assumption which appears to be made by Lord Penrose that *any* amounts paid in excess of an aggregate policy value to asset value ratio of 100% constitute an unreasonable "over-payment". It goes without saying that with-profits returns are smoothed. This is after all an *"integral part of the with-profits concept"* (as recognised by the FSA in the October 2004 edition of Money Management).

Lord Penrose's analysis does not, for example, address whether individual policyholders were either "overpaid" or "underpaid" relative to their notional asset share. The FSA's article in the October 2004 edition of Money Management recognises that in some cases payouts made by with-profits offices will exceed asset share. The article quotes the range of payouts on a 10 year regular premium life policy as currently being between 97% and 127% of notional asset share. At what point any divergence from notional asset share becomes questionable is undoubtedly an extremely complex question and one on which views and expert evidence will be required. Indeed, this has recently been the subject of detailed consideration by the FSA as part of the "Treating with-profits policyholders fairly" consultation where the FSA has recognised that *"payout levels in relation to individual policy asset shares are - quite fairly - likely to vary considerably"* (CP 14/04). As discussed below, it is not the function of the FOS to attempt to provide, in effect, regulatory guidance on such a fundamental issue.

Any forum seeking to address "over-bonusing" allegations would therefore undoubtedly have to resolve highly complex expert issues. In addition, as discussed in more detail below, any adjudication by the FOS in respect of these issues would clearly have far-reaching consequences for the management of with-profits funds generally and in relation to which the FSA is likely to have views (see further below).

Finally, it is evident from the Penrose Report that the FSA, GAD and DTI/Treasury all have in their possession evidence which would undoubtedly be relevant to any assessment of the bounds of "reasonable" smoothing. As discussed above, such evidence and witnesses would not be compellable by the FOS.

In addition, there are a host of further issues which would require complex actuarial evidence, including the following:

- (a) Whether Lord Penrose was right to "roll up" his alleged "over-payments" to reflect "lost" investment return.
- (b) Whether Lord Penrose's calculations include a significant element of "double counting" as a result of errors in his methodology.
- (c) Whether the Penrose Report is correct in suggesting that the Society rarely used financial adjustments to reduce payments on surrender or early transfer.

3.4 Legal Analysis

The Society has received clear legal advice that it has very substantial defences to any claims or complaints which might be asserted on the basis of Lord Penrose's findings.

As briefly discussed in the enclosed factsheet, it is in this regard necessary to bear in mind the Society's sales literature and policyholder communications. By way of example, the 1998 With-Profits Guide specifically explained that the investment return passed on to policyholders was subject to "*smoothing and averaging*".

The Society's policyholder communications are equally clear that the terminal bonus is not guaranteed. The significance of the terminal bonus not being guaranteed is that the Society is entitled, if in its commercial judgement it is necessary, to reduce policy values (subject to the operation of any guarantees). This has previously been expressly recognised by FOS. For example, in the adjudication referred to above, the Adjudicator concluded that "*[i]n accordance with the terms and conditions set out in the policy document, Equitable Life has a wide discretion as to the declaration of bonuses... I understand you feel strongly about Equitable Life's decision to reduce the value of your With-Profit pension policy. However, Equitable Life is entitled to make adjustments to the non-guaranteed elements of the With-Profits fund. In my view it is a legitimate exercise by Equitable Life of its commercial judgement*".

Similarly, Lord Penrose quotes from a letter from Michael Pickford (the directing actuary at GAD dealing with the Society) to Roy Ranson in April 1995 which recognised that the allocation of bonuses is a matter of commercial judgement. Pickford expressed the following view: "*...if higher bonuses are awarded than have been earned, this is principally a matter of commercial judgement* (Chapter 16, para 174). Although he expressed a caveat that this was "*provided the reasonable expectations of the other policyholders are not affected*", you will of course be mindful of the conclusion of the Vice-Chancellor, Sir Richard Scott, in the Hyman litigation that: "*a reasonable expectation does not become a contractual right*" ([1999] OPLR 228, at para 84).

Any court or other tribunal determining mis-selling claims will also need to consider whether the Society had "reasonable ground to believe" (under s.2(1) of the Misrepresentation Act 1967) that any representations it did make were true. In this regard, the discussions between the Society and its regulators are again likely to be critical. For example, according to the Penrose Report the GAD wrote to Equitable on 16 January 1998 noting the excess of policy values over "*available free assets*" and confirmed that "*this does not necessarily cause me any concern*" (Chapter 16, para 236). The extent

to which, as a matter of both fact and law, the directors did and were entitled to rely on external comfort is one which inevitably requires close examination of relevant documents and witnesses. As noted above, FOS cannot compel these witnesses or documents.

4. MEMORANDUM OF UNDERSTANDING

- 4.1 As noted above, having conducted its own investigation following the publication of the Penrose Report, the FSA has come to a conclusion consistent with the Society's position. In a letter to the Parliamentary Ombudsman (dated 7 July 2004 and appended to the Ombudsman's Special Report) the Chairman of the FSA stated: *"[o]n Lord Penrose's view, many policyholders were in fact paid out more than their asset share. While others will get less than they had come to expect, it is very unclear, even after considerable analysis by legal and actuarial experts, that this can be shown to result from any culpable conduct by the company itself ... we think it is much more likely that losses were in fact caused by a combination of a full distribution policy, about which the company made no secret, and very substantial falls in the equity market which as a result of this policy the company had no cushion to absorb"*.
- 4.2 The Memorandum of Understanding between the FSA and the FOS requires that you should exercise your responsibilities in a complementary manner and *"cooperate constructively"*. This is particularly important in the present case given, not only the potential implications for the Society's financial position were "over-bonusing" complaints to be upheld, but also the regulatory implications of any adjudication by FOS in relation to such industry-wide issues as smoothing.
- 4.3 As noted above, any attempt by FOS to adjudicate "over-bonusing" complaints would necessarily entail addressing generic issues of fundamental importance to the with-profits sector, such as the appropriate scope of smoothing. Any decision issued by the Ombudsman is likely to be taken by other with-profits life offices as effectively setting regulatory standards for the management of with-profits funds, given the inevitable perception that FOS would adopt the same approach in other cases. Any such decision would therefore clearly have far reaching consequences for a very large number of consumers and the commercial practices of the with-profits sector as a whole.
- 4.4 The interaction between the FSA and FOS has of course been the subject of the FSA's recent FSMA Year 2 Review (CP 04/12). Any attempt by the FOS to adjudicate "over-bonusing" issues will fall foul of the professed aim for the two bodies to *"achieve consistency of approach and avoid confusion or misunderstanding as to their respective roles"*.
- 4.5 The Consultation Paper referred to above notes that *"the FSA and FOS have made it very clear that, in the interests of consistency and to help avoid confusion, they will continue to work together so that the industry has guidance which is clear and consistent"*. Given the public conclusion reached by the FSA, it would clearly be contrary to the spirit of the Memorandum of Understanding for the FOS to act inconsistently by attempting to adjudicate "over-bonusing" complaints.

- 4.6 Furthermore, the FSA's "Treating Customers Fairly Progress Report", published in June 2002 reported that the FOS recognises that *"its role as adjudicator of individual customer complaints should not be seen as that of setting regulatory standards"*. Any adjudication by FOS of "over-bonusing issues" can only increase the risk of *"regulatory arbitrage between FSA and FOS"*.
- 4.7 Finally, we note that FOS rules expressly provide (at DISP 3.3.1(11)) that FOS will not deal with a complaint if satisfied that it is a complaint about the legitimate exercise of a firm's commercial judgement. As recognised in the adjudication referred to above, and by the FSA in their Maxwellisation submissions to Lord Penrose, the setting of bonuses and the operation of smoothing is pre-eminently a matter of commercial judgement.

5. THE PARLIAMENTARY OMBUDSMAN'S REPORT

- 5.1 As noted above, DISP Rule 3.3.1R(17) states that complaints can be dismissed if the Ombudsman is satisfied that there are other "compelling reasons" why it is inappropriate for the complaint to be dealt with by FOS. In our view, the 19 July 2004 report by the Financial Ombudsman stating her intention to conduct a further investigation provides a number of additional "compelling reasons" why it would be inappropriate for FOS to address "over-bonusing" complaints, at least at this stage.
- 5.2 It is clear from the Parliamentary Ombudsman's report that she will indeed be considering the "over-bonusing" allegations. For example, in paragraphs 48 and 49 of her report, the Parliamentary Ombudsman sets out a number of general criticisms of prudential regulation which she considers warrant investigation. These include, specifically, the allegation *"that the Regulators permitted over-bonusing which was a contributory factor in the Society's demise and in the losses sustained by those who held policies on 16 July 2001"*.
- 5.3 Although the Parliamentary Ombudsman states that she will not be considering complaints about the mis-selling of policies or about the conduct of the Society (paragraph 23), any assessment of the role of the regulators in relation to alleged "over-bonusing" is inevitably highly interwoven with the issue of any possible culpability on the part of the Society. To take it at its simplest, if there was no "over-bonusing" at all (an issue which the Parliamentary Ombudsman will inevitably have to consider) there will be no question of either the regulators or the Society being liable.
- 5.4 In the circumstances, it is clear that the highly complex matters to be investigated by the Parliamentary Ombudsman will overlap very significantly with those that would need to be considered by the FOS, including many of the points summarised earlier in this letter. Assuming it is appropriate for FOS to consider "over-bonusing" issues at all (which we consider it is not for the reasons set out above), it would be wholly inappropriate for the FOS at this stage to be conducting its own investigation of substantially the same issues as those which the Parliamentary Ombudsman is about to investigate in detail. There would, for example, be a clear risk that FOS and the Parliamentary Ombudsman might reach inconsistent conclusions on the same issues, particularly as the FOS will not have access to all the same witnesses and evidence as will be compellable by the Parliamentary Ombudsman. The Parliamentary Ombudsman will be in a significantly

better position to reach an informed conclusion on some of the core issues relating to the "over-bonusing" allegations because of her powers to compel witnesses and evidence.

- 5.5 We have expressed above reservations as to whether it is appropriate for the FOS to address properly the highly complex expert issues which must be considered in the context of alleged "over-bonusing". The Parliamentary Ombudsman indicates in paragraph 81 of her report that she intends to establish a full, designated team of experienced investigators, supported, where appropriate, by expert actuarial, accounting, legal, regulatory and insurance advisers. We welcome that approach. However, it may be doubted whether the same expertise would be readily available to FOS. In any event, it would clearly be enormously wasteful and duplicative for FOS to seek to gather (as it would have to do) a similar team with wide-ranging expertise to investigate the very same matters. The costs to the Society and its members of addressing these issues which are after all generic ones would be disproportionate to the value of individual claims brought.
- 5.6 We accept that the report eventually produced by the Parliamentary Ombudsman will not be binding on FOS. However, as the Parliamentary Ombudsman will be looking at substantially similar issues as FOS is now contemplating addressing, it must be proper and necessary for FOS to have some regard to the information contained in the eventual report by the Parliamentary Ombudsman. Indeed, FOS would be rightly criticised if it failed to do so.
- 5.7 If the Parliamentary Ombudsman recommends that redress be paid by the government to current and/or former Equitable policyholders in relation to "over-bonusing", this would inevitably impact upon any assessment of causation, redress and quantum which FOS might otherwise have to make. For example, it is clear that FOS should not order compensation if the complainants have already been compensated in full by the government in relation to the same alleged wrong. Alternatively, if the Parliamentary Ombudsman recommends no compensation or compensation to particular categories of claimant only, then that is also a factor which would clearly need to be taken into account by FOS.
- 5.8 A number of the factual and actuarial issues which would need to be considered in the context of alleged "over-bonusing" will be the subject of detailed factual and expert evidence in the Society's ongoing claims against its former directors and auditors which are due to come to trial in April 2005. Such issues, which are complex, include: the relationship between asset values and policy values; PRE in connection with policy values; and the Society's smoothing policies and their inter-relationship with its policy of full distribution.
- 5.9 As noted above, we do not consider that FOS is an appropriate forum for assessing and resolving complex actuarial issues, particularly if there are significant differences in expert views on these topics. This must be particularly the case where some of the expert actuarial issues which FOS would be required to attempt to address are being considered in pending court proceedings.

6. OTHER ISSUES

- 6.1 Finally, we note that if the FOS accepts our submission that it should not proceed to adjudicate "over-bonusing" allegations, at least until the conclusion of the Parliamentary Ombudsman's investigation, this would not prejudice many of the complaints currently pending. Many such complaints may fall to be resolved without the need to address "over-bonusing" at all.
- 6.2 For example, some cases may have pending non-GAR leaver claims which can continue to be determined. Indeed, depending upon the FOS' final decisions on quantum in the non-Gar leaver "lead cases" (and subject to any subsequent Court challenge by the Society), there may be no additional compensation which can conceivably arise out of any "over-bonusing" allegation.
- 6.3 Similarly, other cases may raise general suitability issues. If FOS were to conclude that those allegations were made out, any redress ordered is likely to be duplicative of any loss which is contended for on the basis of alleged "over-bonusing".
- 6.4 We therefore submit that the FOS need not now investigate "over-bonusing" issues in relation to such complaints, or require the Society to expend considerable costs and effort in responding in further detail to such allegations, at least pending completion by FOS of its investigation into other complaints made by such individuals where that is the case.

Yours sincerely

Julie Houston
Legal and Compliance Director
enc