



A note to all MPs from EMAG about the Equitable debate, 16 March 2010

During the Commons debate on Equitable Life on Tuesday 16 March there was a fatalistic assumption that “The Chadwick process” is the ‘only game in town’, that its conclusions must determine who will get compensation, and that “we are where we are”.

EMAG strongly disagrees with this:

EMAG has always had objections in principle to this Treasury imposed process because:

- it is not independent of government
- it is not transparent
- it has been (as expected) extremely slow*

All these aspects are contrary to the recommendations of the Parliamentary Ombudsman (PO).

Nevertheless, in the light of EMAG’s successful Judicial Review, we expended a great deal of effort - over several months and in good faith - providing thoughtful analysis and comprehensive responses to Sir John. We hoped that they might, notwithstanding, lead to a fair if not independent compensation scheme for policyholders.

With the publication of Sir John’s Third Interim Report it is now crystal clear that this will not be the case. The Treasury - with Sir John’s help – is continuing to do all it can to limit the scope and amount of compensation,

rationing justice and continuing to deny regulatory culpability. Details on how this is being done below.

We believe that after the general election, the next administration should take a hard new look at Sir John's commissioned advice to consider whether it will lead to the fairness and justice that policyholders deserve. Having seen the clear direction of travel, we are now convinced that it will not.

Let us be clear: EMAG does not expect Sir John to be removed ahead of his final Report. But we do expect that Report to be treated with great caution. Sir John is certainly not the first appointee by this government to perform a lengthy study with a toxic remit, chosen both for his legal cloak of respectability and as a "safe pair of hands". We believe that his final Report – and any useful work such as the extensive database that is being created - should be considered and taken forward by an independent body, created along the lines recommended by the PO.

EMAG, more than anyone, wants this scandal concluded as quickly as possible. But we cannot agree to let that happen at the expense of fairness and justice.

We have launched a Pledge campaign for prospective parliamentary candidates standing in the next general election. We hope that as many as possible of you who are standing will sign it.

Paul Braithwaite
General Secretary, EMAG

* Yet again, despite clarification from the Ombudsman herself about how her recommendation could work, Liam Byrne wrongly suggested that it would have entailed millions of policies and circumstances having to be individually assessed. Neither the Ombudsman or EMAG have ever suggested or accepted this.

Appendix: How Sir John Chadwick's Third Interim Report indicates the prospect of his likely failure to deliver fairness and justice:

Not independent

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. Some examples are shown below.

The effect of Regulation

The Treasury habitually adopts a two-faced approach to regulation. When presenting its regulatory systems to Parliament it emphasises their extensive powers and effectiveness. When evading responsibility for regulatory failure it presents a vision of regulation which is feeble, doomed to failure and would not be recognised by MPs. Lord Penrose, the PO and the Court rejected this vision, but Sir John Chadwick appears to have accepted it.

His proposed treatment of the 1990 regulatory return

The Society's Regulatory Return for 1990 contains the most blatant example of its Appointed Actuary's undervaluation of liabilities. The PO found that the regulators should have investigated this return and their failure to do so meant that the maladministration period started in July 1991, immediately after this return was published. The Treasury rejected this finding, but

the Court found this rejection unlawful and it was forced to reinstate it.

Sir John Chadwick's Third Report indicates that he does not propose to examine this Return at all. This avoids his considering the undervaluation of the Society's mainstream pension business liability by hundreds of millions of pounds, ignores the PO's finding and the Court's reinstatement of that finding and delays the start of maladministration (and relevant losses) by a year. It also overlooks the fact 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. The year's delay, which he proposes, is unjustifiable.

Amendment of Returns

The PO found as a matter of fact that regulators required retrospective changes to and re-submission of Regulatory Returns, which they found did not properly evaluate liabilities. Sir John Chadwick's report indicates that he intends to ignore this finding. This reduces the likelihood of (and delays the point at which) policyholders would have placed their money with competitor companies, which wrongly and unfairly reduces losses.

Insufficient 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. The actuarial reports and advice relied on need to be published so they can be assessed for fairness and objectivity. So far there is no commitment from the Government that they will be.

No urgency – grim reaper (and election) coming

When EMAG was supplied with the PO's draft report on 22 February 2008, it took EMAG less than three months to provide an outline scheme of compensation, including an estimate of total 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. It will produce the minimal, hardship-relief scheme, which the Treasury intended. It will not produce justice or fairness.

We still believe an independent tribunal should be created - as the Ombudsman recommended - to decide on the attributes of the final payment scheme. We believe this could be done very quickly after the general election, with an agreed payment scheme published within weeks.