

Fighting for your rights



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Dr Tony Wright MP (Chairman)
Public Administration Select Committee
Committee Office, House of Commons
7 Millbank
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Dear Dr Wright

The directors of EMAG have asked me to write to congratulate you and your colleagues on your latest report on Equitable Life. Your firm support of the office of Parliamentary Ombudsman in providing a means of redress for citizens is of enormous constitutional importance and your Report deserves support in the Commons.

Therein you speculated upon the effects of the judicial review, which we are considering, of the Government's far from satisfactory response to the PO's Report.

"We do, however, have two thoughts on the prospect of judicial review: first, that it is likely to mean further delay; second, that, even if it were successful, it would not necessarily force the Government to provide a more generous compensation scheme. As the Ombudsman has suggested, it is open to the Government to accept all of her findings, and yet refuse to pay any compensation whatsoever, for reasons of the state of the public purse. A successful judicial review could result in a better process, but one with a worse outcome for policyholders. (Paragraph 24)

We should like to make the following points, some of which you may already be aware, but which are included for completeness:

THE PARLIAMENTARY OMBUDSMAN'S REPORT

The PO has found maladministration leading to injustice and has recommended compensation. Opposition parties and many Labour MPs support compensation. The Treasury has accepted most of the findings of maladministration in whole or in part, but has rejected the PO's most important findings of injustice and her recommendation of a Tribunal, which should be independent, transparent, simple and answerable to Parliament. The Government's approach has been found inadequate by all those best qualified to judge, including the Ombudsman herself, Equitable Life, EMAG and now by your own Committee.

The Treasury is attempting to thwart the Parliamentary Ombudsman, the Public Administration Select Committee and Parliament itself. The means which it used was to give a false impression to Members in the House of a proper apology and compensation proposal, both of which were reduced to minimal proportions by the subsequent Command Paper.

We believe that Members of Parliament will support their own Ombudsman when they realise how they have been misled. Your Committee's latest Report, the

Ombudsman's statement that the injustice which she found will not be remedied and EMAG's lobbying both at Westminster and in selected constituencies are important factors in raising their awareness. However, in spite of the Ombudsman's and your Committee's commendable promptness, this seems unlikely to come to fruition in the immediate future.

JUDICIAL REVIEW

Mechanics

The judicial review process allows those affected by a Ministerial decision to have that decision examined by a judge for its lawfulness. The formal request for this review has to be submitted within 3 months of the decision and there is no provision for the parties to extend this time limit. In the case of Equitable Life, the deadline is the 14 April; in practice it occurs rather earlier because of the Easter holiday.

Principle

In the case of a Minister's rejection of the Parliamentary Ombudsman's findings, the law established last year by Sir John Chadwick in the Court of Appeal is that the Minister has to demonstrate not only that his selected response is a rational alternative to that found by the PO, but also that there are compelling reasons for adopting his approach instead of hers. We believe that the reasons contained in the Treasury's Command Paper will not stand up to independent review.

Consequences

In EMAG's view, the Treasury's instructions to Sir John Chadwick eliminate from any prospect of compensation policyholders' losses arising from 8 out of the 10 years of maladministration found by the PO, approximating to 90% of losses by value. EMAG seeks to re-instate these by political action as well as by the judicial review, which we are considering.

As you know, a successful judicial review does not mean that the Minister must adopt the PO's findings. But it does mean that he or she must produce a different decision and present it to Parliament. This would give MPs another opportunity to support their own Ombudsman and to 'hold the Government to account'. They would do so in the light of the Court's ruling and in the knowledge of the Treasury's previous attempt to deceive them. This is one political effect, which EMAG seeks to obtain from judicial review, if we decide to proceed with a claim.

As your report acknowledges, a judicial review can undoubtedly improve the process and that must, in itself, be of inestimable value in helping preserve the constitutional position of the office of the Parliamentary Ombudsman.

Sub Judice and Delay

It is widely assumed that judicial review necessarily restricts debate in the House of Commons. This is emphatically wrong. The relevant Motion of the House (15 November 2001) says:

"1. Cases in which proceedings are active in United Kingdom courts shall not be referred to in any motion, debate or question... **But where a ministerial decision is in question**, or in the opinion of the Chair a case concerns issues of national

importance such as the economy, public order or the essential services, **reference to the issues or the case may be made in motions, debates or questions.**”

In presenting the motion, Stephen Twigg, Parliamentary Secretary, Privy Council Office said:

“Thirdly, **the rule does not apply to cases in which a ministerial decision is in question in the courts—that is, where a decision is being judicially reviewed.**”

“The purpose of the sub judice rule is to protect the courts from parliamentary interference; it is not to provide Ministers with a convenient protection against questioning in the House.”

There is no valid reason why the ‘law’s delays’ should prevent MPs, or indeed your Committee, from questioning the decisions of Treasury Ministers or from holding the Government to account. Putting the Equitable Life ‘ball’ back in the court of Parliament, where it rightly belongs, is a firm EMAG objective.

We trust that your Committee will help by drawing attention to these rules of the House.

Political Risks

The average Equitable Life policyholder’s fund (before cuts) was £46,000, which would buy a pension of less than £3,000 per year. The idea that Equitable Life victims are all ‘fat cats’ is nonsense. The idea that they are all Conservative voters does not accord with EMAG’s considerable experience. There are over 500,000 policyholders, plus another 1,000,000 group scheme members. A great many people, including family members, are watching the performance of their Members of Parliament on the Equitable Life issue.

EMAG’s directors have always appreciated that, with or without the use of judicial review, ultimately the amount of compensation is a matter for Parliament, rather than the Ombudsman or the Court. Like Ann Abraham, we know that theoretically Parliament could decide upon compensation of any amount, from billions of pounds down to nothing. Indeed, we have suggested that Parliament sets the total compensation amount and lets the PO’s proposed Tribunal get on with distributing it fairly and swiftly.

In practice, with billions of pounds being paid out to other investors without a PO’s Report, a General Election looming, support from the major opposition parties and lobbying from EMAG both at Westminster and in the Constituencies, we judge that the risk is small that the resulting compensation level will be less than that imposed upon Sir John Chadwick by the Minister’s decision. Further, that the group of prospective recipients would, in all probability, be considerably widened.

Thank you again for your support for Equitable Life victims and for the Parliamentary Ombudsman. We hope you will find the above comments helpful.

Yours sincerely

Colin Slater

EMAG Director

INFORMATION ON EMAG

EMAG has been fighting the campaign for Equitable Life policyholders since 2000 and has been instrumental:

- a) In revealing the Equitable Life story, including the abysmal performance of the regulators, to politicians, the media and policyholders and keeping the matter in the public eye.
- b) In petitioning for the EQUI Report, which was overwhelmingly endorsed by the European Parliament.
- c) In obtaining and informing a series of Reports, notably this (the second) PO's Report on Equitable Life.
- d) In canvassing political support

This has required EMAG to fight in many arenas, political, media, financial and actuarial as well as legal. Our success in doing so is reflected in our growing (paying) membership (now over 20,000).

Thanks to the contributions of our stalwart members, EMAG can call upon extensive professional help, for example

Our solicitors, Messrs Bindmans LLP, acted for us in our judicial review in 2004/05 of the PO's first Report on Equitable Life, which helped the Ombudsman to decide to undertake her current investigation covering the decade of the 1990s. They also acted for the Occupational Pensioners in the Bradley case, which resulted in a volte face and ultimately their more generous treatment by the Department of Work and Pensions

Our Accountants, Burgess Hodgson, produced the only credible estimate of the cost to the public purse of Parliament accepting the Ombudsman's findings and recommendations and which was incorporated in her Report. We believe that this has helped inform PASC's consideration.

Our Counsel, Rabinder Singh QC and Duncan Fairgrieve, were the source of the concept of applying a discount to compensation, reflecting that regulators were not wholly responsible for policyholders' losses, which was mentioned with approval in the recent PASC report.

The question of judicial review has and will continue to be considered by our Board in the light of appropriate professional advice.