

EQUITABLE LIFE ALL PARTY GROUP OF MEMBERS OF PARLIAMENT

THE TREASURY RESPONSE TO THE OMBUDSMAN'S REPORT

MPs might be forgiven for thinking that compensation is at last on the horizon for victims of the Equitable Life scandal, but this is not the case. In Parliament on 15 January, Treasury Minister Yvette Cooper appeared to deliver a fulsome apology, implied comprehensive acceptance of the Parliamentary Ombudsman's report and provided the services of a retired Lord Justice of Appeal to deal with technicalities. What she did not say was that the Command paper released later that day was totally at odds with the tone of her Statement. In the small print, the apology, the 'ex gratia' payments scheme and the Treasury's instructions to Sir John Chadwick were all restricted to those of the PO's findings, which the Treasury accepted, and it rejected three out of four of the expensive issues.

THE MONEY FINDINGS

The PO made ten findings of maladministration against the regulators. However, for compensation to arise, the Ombudsman also has to determine that this led to injustice. For compensation to be substantial, that injustice needs to apply to the majority of policyholders. After eliminating the matters that do meet these criteria, the "money findings" boil down to four issues. The first three we can take conveniently together:

- 1) Discounting the Society's mainstream pension business by up to half **from 1990** onwards.
- 2) The lack of any provision for guaranteed annuity rate liabilities **from 1993** onwards.
- 3) Standard & Poor's AA rating of the Society **from 1995** onwards, which the regulators knew was mistaken but did nothing about.

The PO's cumulative findings in relation to those three matters mean the Society's regulatory returns were grossly misleading from 1990 and for the rest of the decade. These Returns were the source of all the information about Equitable Life's finances, including its own publicity material, industry surveys and newspaper reports. This put the start date for injustice at 1 July 1991, when the Society's 1990 regulatory return was filed and includes as potential subjects for compensation more than a million savers who entrusted their money to Equitable Life after that date.

The fourth finding relates to the financial reinsurance contract where the FSA allowed Equitable Life treat a worthless re-insurance policy as an asset valued at £800m. This enabled Equitable to declare its 1998 bonus and to carry on in business. In this instance, the Parliamentary Ombudsman found maladministration leading to injustice in respect of all of those who joined the Society or paid a premium that was not required under contract from 1 May 1999.

THE TREASURY RESPONSE

The Treasury's written response to the PO's report, accepted all the findings of maladministration relating to those four issues, but rejected the findings of injustice in respect of the first three, derived from the Returns for 1990, 1993 and 1995. The effect of that is to move the start date for eligibility for compensation from 1 July 1991 to 1 May 1999, almost eight years out of the ten years of regulatory failure.

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Excluding losses incurred during 80% of the maladministration decade reduces the losses eligible for compensation by 90%. The Treasury has firmly instructed Sir John Chadwick to consider only those findings that it has accepted, and it has not accepted the expensive ones. When he does his calculations on relative loss, appropriate proportion, and the disproportionate effect, he is only going to be applying them to about one tenth of the money lost by policyholders through the maladministration found by the PO.

To handle compensation, the PO recommended a Tribunal, which should be independent, transparent, simple and answerable to Parliament. The Chadwick process is instructed by, financed by and answerable to the Treasury and intended to be slow. The Treasury is attempting to thwart the Parliamentary Ombudsman, the Public Administration Select Committee and Parliament itself.

JUDICIAL REVIEW

EMAG appreciates that 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.

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 to extend this time limit. In the case of Equitable Life, the deadline is the 14 April. EMAG either makes the claim before that date or loses the opportunity.

It is widely assumed that judicial review necessarily restricts debate in the House of Commons, by reason of its sub judice rule. This is not correct. The relevant Motion of the House 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...reference to the issues or the case may be made in motions, debates or questions."

In presenting the motion the relevant Minister 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."

Judicial review does not slow down the campaign.