



## **Equitable Members Action Group Ltd**

### ***Press release***

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## **Equitable victims triumph - Court overturns Government rejection of Ombudsman's report**

**Policyholders' action group EMAG has won another significant victory in its battle to get proper compensation from the Treasury for victims of the Equitable Life scandal. EMAG's successful High Court bid to quash the Government's response to the Parliamentary Ombudsman's report into the failed regulation of the Equitable Life Assurance Society means that the Government will have to greatly expand the number of policyholders eligible for recompense.**

Granting the claim for judicial review brought by the Equitable Members Action Group (EMAG) the Divisional Court held that the Government had unlawfully rejected the Ombudsman's findings that maladministration by the regulators had caused injustice to policyholders. The court held that the Government had misinterpreted several of Ombudsman Ann Abraham's key findings, and that its response, prepared over six months, simply "lacked cogency".

"If EMAG's members had not paid for this legal action there's little doubt that, despite the Parliamentary Ombudsman's recommendations for substantial compensation, the government would have got away with limiting payments to a small number of Equitable's victims for losses post 1999," said EMAG's general secretary Paul Braithwaite. "The effect of today's ruling is to roll back eligibility to the date originally proposed by the PO – July 1991. This is a triumph for Equitable's long suffering victims."

Equitable Life closed to new business in December 2000, since when policyholders' pensions have been substantially reduced by successive policy value cuts. In July 2008 the Ombudsman's report "A decade of regulatory failure" recommended substantial compensation for hundreds of thousands of policyholders. Despite this, in January 2009 the Government rejected large parts of Ann Abraham's report.

The effect of today's ruling is to extend back to the early 1990s the period of policyholder losses which the Government should compensate.

The Government was refused leave to appeal. The judge has ordered the Treasury to reappear before the court in 28 days to say how the Government will respond to the judgment.

"The Judges have made it clear that the correct response to the PO's report is the prerogative of Parliament" said Braithwaite. "Today EMAG is urging MPs from all parties to respond to that challenge and to honour the PO's recommendation of an independent tribunal to pay out compensation swiftly."

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## Editors notes

*In a report published in July 2008, the Ombudsman found “A decade of regulatory failure” in the regulation of the activities of the Equitable Life Assurance Society, and recommended that the Government set up a scheme of compensation which was independent, transparent and simple. In January 2009, the Government’s response rejected a substantial number of her findings of maladministration and injustice. In May, the Ombudsman published a further report, “Injustice unremedied”, in which she criticised the Government’s response.*

*The judgment was handed down by Lord Justice Carnwath in the Royal Courts of Justice on 15 October 2009.*

*EMAG was represented by “Barrister of the Year” Dinah Rose QC and Stephen Grosz, partner at leading public law solicitors, Bindmans LLP. Colin Slater of Burgess Hodgson and actuary Steve Dixon provided expert advice.*

## Extracts from the Judgment

85. Thus the key to the Government’s approach is that, notwithstanding the Ombudsman’s wider concerns in relation to affordability and sustainability, the finding of injustice turned solely on the narrow issue of compliance with regulatory requirements.

86. If that is the correct interpretation of the Ombudsman’s report, then it is hard to criticise the response. However, it seems to us important to read this part of the Ombudsman’s report as whole. The actual finding of injustice must be seen in the context of the preceding discussion. Viewed in that light, it seems to us that the thrust of the claimants’ submission is correct. The finding of injustice was directed to the impact of the returns on those relying on them, because that was the mechanism by which the Ombudsman moved from the general adverse effects of the maladministration, to the “injustice” suffered by particular individuals. However, she clearly saw that issue as directly connected with the general failures to which she had referred earlier in the same chapter. Otherwise, there would have been no purpose in mentioning those “consequences” as part of the immediate background to her finding of injustice.

94. We have already referred to the table taken from the Penrose report which, at least on its face, indicates that, from the early 1990s, Equitable would have had serious difficulties in demonstrating its ability to meet policyholders’ reasonable expectations, in accordance with its existing practices. Even more striking, because it provides an objective expert view, is the conclusion of the disciplinary panel of the Institute of Actuaries. This related to charges brought against Mr Ranson, Equitable’s appointed actuary at the relevant time.

The panel found breaches of PRE, because of the failure to have regard to the practical implications if, in order to meet the cost of guaranteed benefits, the Society had to reduce future bonuses. They held that annual policy values reported to policyholders overstated their share of the assets in that – “... aggregate policy values exceeded the value of the fund and consequently policyholder expectations were aroused that could not in practice be fulfilled.” (para 122)

96. We observe that Mr Lewis’ helpful summary of the Government’s case on this issue contains no reference to the OW report. He says simply: “The Ombudsman did not make a finding of injustice based on PRE or any failure by the regulator to exercise statutory powers of intervention (including requiring the provision of additional information to policy holders or other interventions).”

97. We agree that, if that were the correct interpretation of the Ombudsman’s findings, the disputes over PRE and the other broader issues would be irrelevant. However, for the reasons we have given, and in agreement with the claimants, we think that it ignores the context in which the finding of injustice was made. In this respect we conclude that the Government’s response lacked cogency, and fell short of the statutory requirement.