

Executive summary of disciplinary proceedings against three former directors of the Equitable Life Assurance Society

The 1995 disciplinary scheme of the Institute of Actuaries requires the Institute to make public written decisions reached by a tribunal as soon as reasonably practicable. The Institute publishes such determinations on The Actuarial Profession's website and in *The Actuary*. All cases which arose before 1 January 2004 continue to be considered under the 1995 scheme. Information about the 1995 disciplinary scheme can be found at the Professional Conduct section of the Profession's website.

The Institute will not comment on individual disciplinary proceedings.

This summary presents the background to the case against three former directors of the Equitable Life Assurance Society (the Society) and the determination of the tribunal. For a full description of the charges and the tribunal's deliberations, please visit The Actuarial Profession's website, www.actuaries.org.uk.

Background

In August 2004 the Institute of Actuaries announced that an investigating committee had laid charges against four of its members: Barry Sherlock FIA, Roy Ranson FIA, Christopher Headdon FIA and Alan Nash FIA. All had been employed at the Equitable Life Assurance Society.

On 14 October 2004, Roy Ranson, Chris Headdon and Alan Nash applied to the High Court for a Judicial Review of the decision of the tribunal not to stay their disciplinary proceedings until after their civil litigation with the Equitable Life Assurance Society had been concluded.

At the Judicial Review Hearing the High Court Judge, Mr Justice Moses, ordered that the disciplinary proceedings in respect of Messrs. Ranson, Headdon, and Nash should be stayed until after the judgment or sooner settlement in the civil litigation.

The tribunal was reconvened when the civil proceedings came to an end. At a directions hearing of the tribunal on 24 March 2006, the investigating committee confirmed it did not intend to offer any evidence in respect of Mr Sherlock at any subsequent meeting of the tribunal. The tribunal therefore ordered the charges against Mr Sherlock be dismissed with no order for costs. At that time the tribunal issued instructions to continue with the separate charges of misconduct, in regard to their conduct of the affairs of the Equitable Life Assurance Society over part or all of the period 1988-2000, against Mr Ranson, Mr Headdon and Mr Nash.

The final hearing took place over a number of days in a four-week period during November and December 2006, during which time legal representatives for the investigating committee and for Mr Headdon and Mr Nash presented their arguments and called witnesses. Mr Ranson was not represented at, and took no part in, the hearing but his defence and arguments were considered in detail.

However, Mr Ranson did submit a written defence and the tribunal was careful to ensure all aspects of the case were fully considered so Mr Ranson was not disadvantaged.

The tribunal sent its determination to the respondents on 30 January 2007. The respondents had 28 days during which they could appeal against the determination. They decided not to appeal.

Roy Ranson

It was alleged Mr Ranson's conduct failed to comply with guidance issued to members of the profession, and/or fell short of the standards of competence and/or professional judgment and/or integrity which other actuaries or members of the public might reasonably expect of an actuary, and/or constituted a breach of the Memorandum on Professional Conduct.

As the appointed actuary, and as managing director and actuary, Mr Ranson was charged with failing to:

- identify and/or monitor and/or manage the risks that the Society was running which cumulatively led to the Society being weakened and unable to meet the reasonable expectation of policyholders and alleged failure adequately to notify the Society's board of such risks
- act appropriately with regard to the actuarial practices of the Society generally, and the advice to the Society's board in particular in circumstances where the value of the Society's policies as reported to policyholders consistently exceeded the value of its assets
- take proper steps to ensure that the:
 - reasonable expectations of the Society's pension policyholders as to the value of their policies were consistent with their actual value
 - board was properly advised and policyholders were properly informed in relation to the differential terminal bonus practice
 - reasonable expectations of both GAR (guaranteed annuity rates) and non-GAR policyholders were not allowed to develop in a way which could not be met in the aggregate.

A fourth charge relating to the regulatory returns was withdrawn by the investigating committee, following consideration of Mr Ranson's written defence.

Determination

On the first charge, the panel found that in implementing the stated philosophy of providing a full and fair return to policyholders, holding no estate apart from a revolving estate providing working capital, and treating policyholders as participating in a managed fund, Mr Ranson, over a long period of time:

- consistently failed to apply an appropriate smoothing policy
- failed to provide appropriate information to the Society's board to enable proper consideration to be given to the consequences of his recommendations
- failed to maintain the publicised relationship between the investment reserve and total policy values notified annually to policyholders.

The panel found these failures were in breach of The Actuarial Profession's guidance notes 1 1.1, 1 4.2, 1 8.3.2, and 1 8.3.3

On the second charge, the panel found that, in addition to the points above, the information provided to policyholders created a misleading impression of the Society's financial strength. The Society's board was provided with little information showing the relationship between the totality of the policy values including accrued terminal bonuses as notified to policyholders and the Society's actual asset strength. No evidence was provided to the panel to indicate any proper degree of financial analysis undertaken by the Society during the period under examination.

The panel found Mr Ranson had failed to comply with The Actuarial Profession's guidance notes 1 1.1, 1 8.3.2 and 1 8.3.3.

On the third charge, which the panel considered to be the most serious of the charges against Mr Ranson, the panel found a failure to properly distinguish, in spite of the significantly different terms and conditions, between the pension policies issued prior to 1988 and those subsequently issued, both in internal analyses of the financial performance and in communications to policyholders. The panel found this failure created the basis for the subsequent problems of the Society. This failure, compounded by the unresponsiveness of management to signals and questioning of the policy adopted, in the light of changing circumstances, was viewed by the panel as irresponsible. The introduction of the differential terminal bonus policy and its implications under different economic scenarios was not properly addressed either in the board or in the communications to policyholders.

The panel found Mr Ranson had failed to comply with The Actuarial Profession's guidance notes 1 1.1, 1 3.3, 1 6.3, 1 8.3.2, 1 8.3.3, 1 8.3.4(d).

The panel found in relation to the particulars which it found proved that each and all the matters constituted a breach of the standards of integrity, competence and professional judgment which other members of the Profession and the general public might reasonably expect of a member of the Profession.

The panel ordered that, notwithstanding the mitigating circumstances of Mr Ranson's personal circumstances and the recent stresses of numerous investigations into the Society's affairs (with which Mr Ranson had cooperated fully), and Mr Ranson's stated intention to resign from the Institute of Actuaries, considering the seriousness of the findings and the panel's duty to maintain public confidence in actuaries, Mr Ranson should be expelled from the Institute.

Christopher Headdon

It was alleged Mr Headdon's conduct failed to comply with guidance issued to members of the Profession, and/or fell short of the standards of behaviour and/or competence and/or professional judgment and/or integrity which other actuaries or members of the public might reasonably expect of an actuary, and/or constituted a breach of the Memorandum on Professional Conduct.

As the senior assistant actuary, Mr Headdon was charged with failing to:

- take appropriate action, on becoming aware of what appeared to be a breach by another member of the Memorandum on Professional Conduct and/or guidance notes, and causing and/or contributing to the breaches by the other member.

As the appointed actuary of the Society, Mr Headdon was charged with failing to:

- provide full information to the Society's board on the financial position of the Society and failed to advise the board accurately on its policyholders' reasonable expectations.
- disclose to the regulator the signing, in April 1999, of a side letter to the Society's reinsurance agreement with ERC Frankona, which was possibly relevant to the value attributed to such agreement in the regulatory returns.

A fourth charge relating to the regulatory returns was withdrawn by the investigating committee, following consideration of Mr Headdon's written defence.

Determination

On the first charge, the 'whistleblowing' charge, the panel heard evidence about Mr Headdon's position and function in the Society's management and of his professional relationship with Mr Ranson. It was clear to the panel that while assisting Mr Ranson with actuarial matters and working closely with him in some areas, Mr Headdon was not in a position to assess the totality of Mr Ranson's relationship with the Society's board. Furthermore there were other, more senior,

actuaries in the executive management and on the Society's board upon whom it was reasonable for Mr Headdon to rely in this respect.

While not wishing in any way to question the importance of 'whistleblowing', the panel dismissed this charge of misconduct in the specific circumstances examined.

On the second charge, the panel considered the actions of Mr Headdon on becoming appointed actuary of the Society on Mr Ranson's retirement. It noted that while Mr Headdon had identified, in an internal memorandum to Mr Nash, a number of features of the then financial position of the Society resulting from the bonus smoothing policy which had been followed, these were not immediately reported to the board although Mr Headdon took account of them in his subsequent bonus recommendations. The panel found no case proven in respect of these elements of the charge. However, the panel did find a failure to notify and warn the board of the potential consequences for the Society of the valuable guarantees contained in certain policies on which the Society was continuing to accept increments, and of the existence of the differential terminal bonus policy and the likely PRE (policyholder reasonable expectations) problems arising from the failure to communicate that policy sufficiently to policyholders.

The panel found Mr Headdon had failed to comply with The Actuarial Profession's guidance notes 1 1.1, 1 7.2, and 1 8.3.3.

On the third charge, the panel reviewed the circumstances surrounding and events leading up to the signing of the reinsurance agreement in 1999 with ERC Frankona. This agreement allowed the Society to recognise an asset of £809m, without which it would not have been permitted to pay a bonus, in its end-1998 regulatory returns. The panel heard that the regulator had been fully consulted about the terms of the agreement and had expressed particularly strong concerns about the terms of any cancellation clause. Mr Headdon stated that his agreement to provide a side letter was on the basis that it had no legal effect on the agreement. Although Mr Headdon admitted that with hindsight he probably ought to have disclosed the letter to the regulator, the panel felt strongly that the system of Appointed Actuary was heavily dependent upon full and open disclosure and dialogue with the regulator.

The panel considered any material departure from complete openness and candour brings discredit to the Profession. The panel found Mr Headdon guilty of misconduct.

The panel noted the Financial Services Authority (FSA) had made an order that Mr Headdon was not to hold any appointment for which FSA approval is required until 2010. The panel decided that if Mr Headdon had held a current practising certificate, it would have suspended the certificate for three years.

The panel ordered Mr Headdon be admonished in respect of the two charges on which misconduct was found.

Alan Nash

It was alleged Mr Nash's conduct failed to comply with guidance issued to members of the profession, and/or fell short of the standards of behaviour and/or competence and/or professional judgment which other actuaries or members of the public might reasonably expect of an actuary, and/or constituted a breach of the Memorandum on Professional Conduct.

As managing director and actuary, Mr Nash was charged with:

- failing to ensure that the board was properly informed and advised in circumstances where the aggregate policy value of the Society's policies as reported to policyholders consistently exceeded the value of its assets

- authorising and signing a letter to policyholders dated 1 February 2000, upon which policyholders were likely to rely, that allegedly misrepresented the Society's position in the event of its appeal to the House of Lords failing.

Determination

The panel found the first charge not proven for the following reasons:

- although Mr Nash should have ensured that further information went to both policyholders and the board, bonus decisions taken after his appointment as managing director and actuary were commensurate with PRE in the inherited circumstances
- the excess of maturity payments which had reduced the Society's financial strength was a consequence of decisions predating Mr Nash's tenure.

On the second charge the panel reviewed in detail the events leading up to the issuing of the letter to policyholders dated 1 February 2000. The panel heard that the letter was intended to address press comments arising from the Court of Appeal's verdict, which the Society felt were misleading. However, the panel found that in signing the letter Mr Nash should have taken into account all the possible outcomes in the House of Lords, and have ensured that a policyholder, reading the letter without detailed knowledge of the technical arguments of the Court of Appeal's verdict, could not have misunderstood or been misled by the statements made.

The panel found that the letter, in an effort to provide an unambiguous assurance for the future, went further than was appropriate under the sensitive circumstances. While the panel noted an appropriate process had been followed (with legal advice being obtained and consultation with the board), Mr Nash had ultimate responsibility for the content of the letter.

The panel found Mr Nash guilty of misconduct, and ordered he be admonished.

Taking into account the circumstances relating to all three Respondents the panel considered a financial penalty would not be appropriate for any of the findings. No application was made for costs.