



House of Commons
Public Administration Select
Committee

Equitable Life

Third Report of Session 2010–11



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*Report, together with formal minutes and
written evidence*

*Ordered by the House of Commons
to be printed 14 October 2010*

The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via www.parliament.uk

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>

Committee staff

The current staff of the Committee are Clive Porro (Clerk), Ben Williams (Second Clerk), Louise Glen (Senior Committee Assistant) and Su Panchanathan (Committee Assistant)

Contacts

All correspondence should be addressed to the Clerk of the Public Administration Select Committee, Committee Office, First Floor, 7 Millbank, House of Commons, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5730; the Committee's email address is pasc@parliament.uk

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Conclusions and recommendations

1. The search for compensation for Equitable Life members has been heavy on inquiries but light on solutions. We welcome the Government's commitment to resolving matters speedily. It is no less than those involved deserve. (Paragraph 1)
2. We welcome the fact the Financial Secretary to the Treasury has made clear that the Government accepts all findings of maladministration made by the Ombudsman. (Paragraph 7)
3. There is a fundamental incompatibility between the position of the Ombudsman and Sir John Chadwick's approach. Sir John's remit does not reflect all ten of the Ombudsman's findings. Sir John and the Ombudsman may have reached different answers because they addressed different questions. (Paragraph 9)
4. We regret that despite the Government's commitment to meet the Ombudsman's recommendations that it did not properly explore the possibility of amending Sir John's terms of reference back in May. Had this change been made then it would not have significantly altered the timescale for delivering compensation. (Paragraph 15)
5. We therefore recommend that the Government re-engages Sir John Chadwick to establish what conclusions he would reach under terms of reference which reflect all ten of the Ombudsman's findings. We believe this work can be done in parallel with the Independent Commission's work to design a compensation scheme. We think that this need not delay payment to policyholders. It would however leave open the extent of the Government's liability in the spending review, but the timetable for the CSR should not be the driving factor. Alternatively the Government must find some other way of resolving the incompatibility between the Ombudsman's findings and Sir John Chadwick's existing terms of reference. If the Government's proposals remain based on Sir John's existing terms of reference, we concur with the Ombudsman that they are, in principle, an "unsafe and unsound" basis on which to proceed. (Paragraph 16)
6. We welcome the broad consensus on the quantum of relative loss around the provisional figures produced by Towers Watson of between £4 and 4.8 billion. EMAG are of the view that this is still a considerable understatement. The only way this disagreement can be resolved is if Towers Watson are instructed to recalculate their estimate in line with the Ombudsman's findings. (Paragraph 20)
7. There is no dispute that the burden on the public purse must be taken into account in assessing the level of compensation. It follows that there must be some reduction of the compensation awarded. The reduction must strike an appropriate balance between the interests of taxpayers and the interest of policyholders. (Paragraph 25)
8. The Ombudsman's objection was to the challenge posed to her idea of injustice, not to the level of compensation that the Government finds to be affordable. The fact the Government may not be able to afford to compensate fully for relative loss is a separate issue from the how relative loss is calculated. (Paragraph 27)

9. The Government should be open with Parliament and the policyholders. It must explain the basis for the final loss figure. It must also set out how it has determined what is affordable. (Paragraph 28)
10. The Government should provide an early opportunity for Parliament to debate the announcement, and quantum, in government time. (Paragraph 29)
11. If the public is to have trust in its elected representatives, we must keep our promises. Expectations have been raised by many of those seeking election. The coalition should focus on how to meet the political commitment it has made. (Paragraph 38)
12. Given the circumstance of this case, and that legislative changes mean that the FSA no longer falls within the Ombudsman's jurisdiction, it is important to note that the decisions the Government makes cannot set a precedent for future cases. (Paragraph 39)
13. We welcome the appointment of the Independent Commission and endorse the Government's intention that it should work quickly and make the first payments in the early part of next year. We seek an assurance from the Government that the cost of administering the scheme should not come out of the total compensation sum. (Paragraph 45)
14. We endorse the principles that it should be transparent, fair, and independent as well as swift. We encourage the Commission to design a payment scheme which allocates compensation as fairly as possible and strikes a balance between speed and proper compensation to individual policyholders for their loss. (Paragraph 46)

1 Introduction

1. The search for compensation for Equitable Life members has been heavy on inquiries but light on solutions. We welcome the Government's commitment to resolving matters speedily. It is no less than those involved deserve.

2. We have had a long-standing interest in the prudential regulation of Equitable Life. This stems from our responsibility for reviewing special reports from the Parliamentary and Health Service Ombudsman to Parliament. The Ombudsman published her report, Equitable Life, 'A Decade of Regulatory Failure', in July 2008, which made ten findings of maladministration.¹

3. Our predecessor committee undertook two inquiries. The first, 'Justice delayed: The Ombudsman's report on Equitable Life', was published before the Government had responded to the Ombudsman.² The second, 'Justice denied?' which dealt with the Government's response to the Ombudsman's recommendations.³

4. The Government accepted only some of the Ombudsman's ten findings of maladministration. It announced that it would establish an *ex-gratia* payment scheme and commissioned Sir John Chadwick to advise independently on the extent of relative losses suffered by Equitable Life policyholders. His remit was based on this partial acceptance of the Ombudsman's findings.

5. There has since been a change of government. The Coalition's Programme for Government commits it to implementing the Ombudsman's recommendation "*to make fair and transparent payments to Equitable Life policyholders for their relative loss as a consequence of regulatory failure*".⁴ In July, the Financial Secretary published Sir John's advice which has proved controversial because it proposes that policyholders should receive around 20-25% of their relative losses.

6. This report is inevitably short and intended to inform discussion before the Government announces the total compensation figure as part of the Spending Review. Therefore it does not consider Sir John's advice or Towers Watson's supporting actuarial advice in detail. It does, however, make observations about the political commitments given by this Government and by Members of this House, and whether the process followed by government is based upon safe and sound principles. It draws on the written evidence we have received from our witnesses, as well as EMAG and Equitable Life. It also reflects the oral evidence we heard.

1 Parliamentary Ombudsman, Fourth Report of Session 2007-08, HC 815

2 Public Administration Select Committee, *Justice delayed: The Ombudsman's report on Equitable Life*, Second Report of Session 2008-09, HC 41

3 Public Administration Select Committee, *Justice denied? The Government's response to the Ombudsman's report on Equitable Life*, Sixth Report of Session 2008-09, HC 219

4 Cabinet Office, *The Coalition: our programme for government*, May 2010

2 Developments since our last Report

7. There has been uncertainty surrounding whether the current Government accepted all the Ombudsman's ten findings of maladministration. During our evidence session we sought clarity from the Financial Secretary on this point. **We welcome the fact the Financial Secretary to the Treasury made clear that the Government accepts all findings of maladministration made by the Ombudsman.**

Ombudsman's report v Chadwick Advice

8. The Financial Secretary, in his statement of 22 July said that the Government was committed to implementing the Parliamentary Ombudsman's recommendation to pay compensation, made two years ago. At the same time he said that the Chadwick Report would contribute to the process of establishing a scheme that is fair both to policyholders and to taxpayers. He added that it would be one of the "*building blocks*" in resolving what is a complex matter.

9. However, **there is a fundamental incompatibility between the position of the Ombudsman and Sir John Chadwick's approach. Sir John's remit does not reflect all ten of the Ombudsman's findings. Sir John and the Ombudsman may have reached different answers because they addressed different questions.** In a letter to all MPs, in July, the Ombudsman stated categorically that Sir John Chadwick's advice was an "unsafe and unsound" basis on which to proceed. In her evidence, she elaborated on the reasons why she took this view. She explained that:

- a) Sir John's terms of reference required him to start from a different place, i.e. the previous Government's response to her report, rather than the report itself. His report is not based on all the findings of maladministration and injustice that she had made, only on those findings accepted by the previous Government.
- b) Sir John's advice is predicated on a rejection of her central recommendation for redress. She recommended compensation to all policyholders who had suffered relative loss as a consequence of regulatory failure. Sir John was asked to propose limited compensation only for those people '*disproportionately affected*' by the maladministration the previous Government accepted had occurred.
- c) Sir John took a different view to her about what would have happened if maladministration had not occurred. Her recommendation for redress was based on the view that, if the regulators had been doing their job properly, and information about the real state of Equitable Life had been in the public domain as it should have been, people would not have decided to invest, or add to their existing investments. Sir John thought otherwise.⁵

10. In his evidence, Sir John recognises this incompatibly. He confirms the principal reasons why he and the Ombudsman have taken different views. They are the consequence of his terms of reference. First, the terms of reference required him to disregard those

findings of maladministration and injustice which the Government did not accept. “*The effect of that requirement was that the Ombudsman reached her conclusions on the basis of findings of maladministration which were more extensive than those on which I based my advice*”.⁶ Second, unlike the Ombudsman, his remit required him to consider what steps the Equitable Life would have taken in response to the concerns that would have been raised by the Government Actuary Department (GAD) and the prudential regulators, had maladministration not occurred.⁷

11. He also takes a fundamentally different view from the Ombudsman about the behaviour of investors. In her letter to him of 20 August 2009, she explains that, “*in essence*” absent serial maladministration, no reasonable investor would have invested in or remained in Equitable Life. Sir John finds it impossible to accept this view. He points out that the Ombudsman’s report does not expressly say what she “*in essence*”.

12. At the heart of this difference is the fact that the Ombudsman’s jurisdiction and Sir John Chadwick’s terms of reference are fundamentally different. Added to this they took radically different views about how investors would have behaved had there been no maladministration. Sir John also went on to consider how Equitable Life would have reacted to regulatory actions, which the Ombudsman did not. It is these key differences in approach which then led Sir John to advise that relative losses should be reduced by around 75-80%. As the Financial Secretary recognised in his evidence, to us the controversy arises because “*these are the steps influenced by Sir John’s restricted terms of reference and are most based on subjective judgment [...]*”.⁸

13. We asked Sir John if his conclusions would have been different had his terms of reference been compatible with the Ombudsman’s findings. He said he was unable to say with certainty that this would have led him to reach a different conclusion. However, conclusions naturally followed from terms of reference. A change in one was likely to result in a change in the other.

14. We asked the Financial Secretary whether he had actually asked Sir John, back in May, whether he was prepared to amend his terms of reference and how long it would take him to do the work. He told us he had not. Sir John said it would not take long to amend the instruction to Towers Watson, but the actuarial work would probably take a few months.

15. We regret that despite the Government’s commitment to meet the Ombudsman’s recommendations that it did not properly explore the possibility of amending Sir John’s terms of reference back in May. Had this change been made then it would not have significantly altered the timescale for delivering compensation.

16. We therefore recommend that the Government re-engages Sir John Chadwick to establish what conclusions he would reach under terms of reference which reflect all ten of the Ombudsman’s findings. We believe this work can be done in parallel with the Independent Commission’s work to design a compensation scheme. We think that this need not delay payment to policyholders. It would however leave open the extent of the

6 Ev 1

7 Ev 1

8 Ev 20

Government’s liability in the spending review, but the timetable for the CSR should not be the driving factor. Alternatively the Government must find some other way of resolving the incompatibility between the Ombudsman’s findings and Sir John Chadwick’s existing terms of reference. If the Government’s proposals remain based on Sir John’s existing terms of reference, we concur with the Ombudsman that they are, in principle, an “unsafe and unsound” basis on which to proceed.

Quantum of relative loss

17. There seems to be a convergence of views around the quantum figure for relative loss. The Chadwick process identified what he termed an ‘external relative loss’ element—the difference between the payout which would have been received had the policyholders invested in comparable product offered by an alternative provider and the payout which has actually been received (or will be received) in respect of the Equitable Life policy. A provisional figure of £4-4.8 billion has been calculated by Towers Watson, the actuaries appointed by the Treasury to assist Sir John.

18. The Ombudsman agrees that this figure is broadly consistent with the amounts claimed by those who complained to her while she was finalising her July 2008 report. “*On that basis it appears to me to be a credible estimate*”.⁹ Equitable Life thinks this figure “[...] *seems to match most closely the relative loss described by the Parliamentary Ombudsman’s description of relative loss*”.¹⁰ Equitable Life Trapped Annuitants (ELTA) say, “*This is the only worthwhile figure provided*”.¹¹

19. Only EMAG dispute it. While they concede that it is the main element worth saving from the Chadwick process, they contend that it still considerably understates the final relative loss by not factoring in three large items: the first 18 months losses; removal of exit penalties and provisions for those already invested at July 1991. This leads them to conclude the quantum of relative loss to be well in excess of £5 billion.¹²

20. We welcome the broad consensus on the quantum of relative loss around the provisional figures produced by Towers Watson of between £4 and 4.8 billion. EMAG are of the view that this is still a considerable understatement. The only way this disagreement can be resolved is if Towers Watson are instructed to recalculate their estimate in line with the Ombudsman’s findings.

Burden on the taxpayer

21. One of the more difficult questions with regard to compensation is how to ensure the package is fair to both the policyholders and the taxpayer.

22. Unusually, the Ombudsman qualified her recommendation by accepting that any compensation package should take account of the potential impact it would have on the

9 Ev 5

10 Ev 9

11 Ev 24

12 Ev 15-16

taxpayer. This is echoed in the Financial Secretary's view that it is "important, particularly in these times when difficult decisions need to be made with respect to the country's finances, that we carefully balance, in the Ombudsman's words '*fairness both to those affected and to taxpayers generally.*'"¹³

23. In assessing relative loss Sir John first assessed absolute loss, that is the loss actually suffered by policyholders. Sir John has proposed that external relative loss should be capped at the absolute loss. "*The principle behind this is to ensure fairness for taxpayers.*"¹⁴ In his view it would be unfair to the taxpayer to be paid more through redress than they would actually have lost.

24. Both EMAG and Equitable Life accept the need for some reduction in compensation. In EMAG's proposals a reduction of 20% reflecting the anticipated average cuts across the public sector.¹⁵ In addition they suggest phased stage payments over the life of the Parliament.¹⁶

25. There is no dispute that the burden on the public purse must be taken into account in assessing the level of compensation. It follows that there must be some reduction of the compensation awarded. The reduction must strike an appropriate balance between the interests of taxpayers and the interest of policyholders.

Affordability

26. In his evidence the Minister notes the scheme will be a significant spending commitment for this Government. As such, he felt that it would be best to consider the amount affordable as part of the Spending Review.¹⁷ He has undertaken to set out the final loss figure when the Spending Review is announced on 20 October, alongside the funding available for the scheme.

27. We recognise that affordability will be a factor in the Government's final decision about the level of compensation. The Ombudsman was explicit that she would not object to a heavily reduced compensation sum (up to as much as 70%), so long as the Government clearly distinguished between the final loss suffered by policyholders and the amount the Government was able to pay given the current financial situation. **The Ombudsman's objection was to the challenge posed to her idea of injustice, not to the level of compensation that the Government finds to be affordable. The fact the Government may not be able to afford to compensate fully for relative loss is a separate issue from the how relative loss is calculated.**

28. The Government should be open with Parliament and the policyholders. It must explain the basis for the final loss figure. It must also set out how it has determined what is affordable.

13 Ev 22

14 Ev 19

15 Ev 12

16 Ev 16

17 Ev 22

29. The Government should provide an early opportunity for Parliament to debate the announcement, and quantum, in government time.

The Chadwick Advice

30. Sir John proposed a five stage process for calculating compensation that is due to policyholders. This began with a calculation of absolute loss, which is the loss that policyholders actually suffered. Then Sir John identified what he called external relative loss – which is the difference between the returns that policyholders actually received from their Equitable Life policies and the returns they would have received if they had invested in a comparable product in an alternative life assurance company.

31. For some policyholders, their external relative loss is greater than their absolute loss. This is because of the strong performance of comparable companies. Sir John therefore proposed that external relative loss should be capped at the absolute loss. He believed this would deliver fairness for the taxpayer. The Ombudsman does not accept this.

32. From his detailed analysis and the expert actuarial support he has received, Sir John concludes that the majority of policyholders would have made the same investment decision, even if Equitable Life had been properly regulated. The Ombudsman contests this as a legitimate premise for compensation, but on this basis, he proposes that policyholders should receive 20-25% of their capped external relative loss.

33. Finally, Sir John looked at the returns which those policyholders who would have stayed with Equitable Life would have received if it had been properly regulated. He called this internal relative loss.¹⁸ Again, the Ombudsman does not recognise the legitimacy of such an assumption.

34. Sir John Chadwick's advice has proved controversial because of the much lower level of compensation it entails. Nonetheless, we acknowledge his efforts and commitment to meet the terms of reference he was given by the previous Government.

35. However, as the Financial Secretary notes, those steps in Sir John's advice which reduce relative loss calculations by around 75-80% are those most influenced by his restricted terms of reference and involve the greatest amount of subjective judgment.

Political commitments

36. This Government came to office with the promise of early resolution to the vexed question of compensation. In its Programme for Government the new Coalition Government stated that it would:

[...] implement the Parliamentary and Health Service Ombudsman's recommendation to make fair and transparent payments to Equitable Life policyholders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure".¹⁹

18 Ev 40-42

19 Cabinet Office, *The Coalition: our programme for government*, May 2010

37. Since then ministerial pronouncements that a compensation scheme would be based on the outcome of the Chadwick process have given rise to ambiguity.²⁰ In particular Mark Hoban's reference to Chadwick in his July statement as a "*building block*" has caused great concern to policyholders.²¹

38. There is a political obligation which also extends to Parliament. At the time of the last election campaign a number of Members made the following pledge:

that if I am elected to Parliament at the next general election, I will support and vote for proper compensation for victims of the Equitable Life scandal and I will support and vote to set up a swift, simple, transparent and fair payment scheme— independent of government—as recommended by the Parliamentary Ombudsman.

If the public is to have trust in its elected representatives, we must keep our promises. Expectations have been raised by many of those seeking election. The coalition should focus on how to meet the political commitment it has made.

39. Given the circumstance of this case, and that legislative changes mean that the FSA no longer falls within the Ombudsman's jurisdiction, it is important to note that the decisions the Government makes cannot set a precedent for future cases.

The Independent Commission and design of the compensation scheme

40. One of the main areas of contention between Sir John and the Ombudsman is around the nature of the compensation scheme. For him "[...] a payment scheme based on the need to establish, on an individual basis, that a policyholder relied on the Society's regulatory returns must be seen as unacceptable in practice", because of the impossibility of knowing what individuals would have done under a different situation 15 years ago.²² He judged that only 20% of policyholders would have left Equitable Life if maladministration had not occurred. Given the impossibility of identifying this group he decided to share their compensation between all the policyholders. In this way each policyholder should receive a proportion of the compensation regardless of whether they relied on the information or not. He says the potential unfairness of this approach, as between policyholders, is the price to be paid for finality and certainty.

41. The Ombudsman strongly refutes Sir John's understanding of the approach she took. She does not agree that her approach was based on an assessment of each individual transaction and that eligibility should be restricted to those who could show they had relied on regulatory returns. She argues that in fact she left open the actual design of the scheme and recommended that an independent commission should adjudicate on the matter.

42. The Government has now established an independent commission to design a compensation scheme. Its role is to:

20 Ev 10-11

21 HC Deb 22 July 2010 cc576-7

22 Ev 1

- Recommend how best to fairly allocate funds provided for the Equitable Life Payments Scheme as part of the Autumn 2010 Spending Review to those persons found to have suffered relative losses as a result of accepted government maladministration; and
- Advise on any groups or classes of persons that should be paid as a priority.²³

43. In providing its advice, the Commission shall have regard to the practicalities of delivering the payment scheme and to the work undertaken by Sir John Chadwick on the methodology for calculating relative loss and base its allocation to policyholders on the relative loss figures provided to HM Treasury by Towers Watson.

44. In addition, in the interests of speed and of the public purse, the Commission should ensure that it does not unnecessarily replicate existing analysis determining relative loss. It will also have regard to, but need not be bound by findings on disproportionate impact carried out by Sir John Chadwick.

45. We welcome the appointment of the Independent Commission and endorse the Government's intention that it should work quickly and make the first payments in the early part of next year. We seek an assurance from the Government that the cost of administering the scheme should not come out of the total compensation sum.

46. We endorse the principles that it should be transparent, fair, and independent as well as swift. We encourage the Commission to design a payment scheme which allocates compensation as fairly as possible and strikes a balance between speed and proper compensation to individual policyholders for their loss.

3 Conclusion

47. We hope that this long and drawn out process will soon be coming to a conclusion, policyholders have waited long enough for justice. We strongly welcome the Financial Secretary's explicit acceptance of the Ombudsman's recommendation. This leads us to the conclusion that the Government cannot base its judgement on the level of compensation owed on the Chadwick approach. The Government had the opportunity to salvage this by amending the terms of reference in May, but failed to do so.

48. We have therefore recommended that the Government re-engages Sir John Chadwick to establish what conclusions he would reach under terms of reference which reflect all ten of the Ombudsman's findings. We believe this work can be done in parallel with the Independent Commission's work to design a compensation scheme. We think it is unlikely that this will delay payment to policyholders, but we acknowledge that it would leave open the question of the Government's liability in the spending review. Alternatively the Government must find some other way of resolving the incompatibility between the Ombudsman's findings and Sir John Chadwick's existing terms of reference. If the Government's proposals remain based on Sir John's existing terms of reference we concur

23 <http://equitablelifepayments.independent.gov.uk/tor.html>

with the Ombudsman that they are, in principle, an “unsafe and unsound” basis on which to proceed.

49. However, should it announce the sum available for compensation as part of Spending Review it must specify how it has adjusted the final loss figure to account of the need to balance fairness to the taxpayer and affordability. Only in this way will the Government meet its commitment to implement the Ombudsman’s findings in full.

Formal Minutes

Thursday 14 October 2010

Members present:

Mr Bernard Jenkin, in the Chair

Kevin Brennan
Nick de Bois
Charlie Elphicke
Paul Flynn

Robert Halfon
Greg Mulholland
Mr Charles Walker

Draft Report (*Equitable Life*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 49 read and agreed to.

Resolved, That the Report be the Third Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence reported and ordered to be published on 12 October was ordered to be reported to the House for printing with the Report.

[Adjourned till Tuesday 19 October at 10.00 am

Witnesses

Thursday 14 October 2010

Ann Abraham, Parliamentary and Health Service Ombudsman

Sir John Chadwick

Mark Hoban MP, Financial Secretary, HM Treasury

(The transcript of the above oral evidence session will be published separately at a later date as HC 485-i)

List of written evidence

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List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010-11

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Second Report	Government Responses to the Committee's Eighth and Ninth reports of Session 2009-10 (<i>agreed, yet to be published</i>)	HC 150
Third Report	Equitable Life	HC 485