



House of Commons  
Public Administration Select  
Committee

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**Justice delayed: The  
Ombudsman's report  
on *Equitable Life***

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**Second Report of Session 2008–09**

***Volume I***

*Report together with formal minutes*

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## 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 current staff of the Committee are Steven Mark (Clerk), Laura Dance (Second Clerk), Pauline Ngan (Committee Specialist), Louise Glen (Senior Committee Assistant), Lori Verwaerde (Committee Assistant) and Miguel Boo (Committee Support Assistant). Simon Fuller (Legal Specialist) also assisted the Committee in this inquiry.

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## Summary

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There were more than 1,500,000 members of Equitable Life at the time it was forced to close to new business in December 2000. Over the last eight years many of those members and their families have suffered great anxiety as policy values were cut and pension payments reduced. Many are no longer alive, and will be unable to benefit personally from any compensation. We share both a deep sense of frustration and continuing outrage that the situation has remained unresolved for so long.

We congratulate the Ombudsman on her comprehensive and compelling report, which paints a damning picture of the prudential regulation of Equitable Life throughout the 1990's and early 2000's. In short, the members of Equitable Life were seriously let down by the Financial Services Authority, the (then) Department of Trade and Industry, and the Government Actuary's Department. We support her recommendation for a full and unreserved apology from those public bodies concerned.

This Report contains our views on the Ombudsman's main conclusions and recommendations. We have decided to publish it as speedily as possible, so that debate on the Government's response to the Ombudsman—and possibly even the response itself, which is imminent—can be informed by our views. We will return to these issues in the New Year if we need to. We look forward to the publication within the next few days of a what we trust will be a thorough and well-reasoned response.

The Government should, without further delay, accept the Ombudsman's findings of maladministration. We support the Ombudsman's recommendation for a full and unreserved apology from those public bodies concerned. There are valid arguments to be had about the means of providing redress, but we would be deeply concerned if the Government chose to act as judge on its own behalf by refusing to accept that maladministration took place. This would seriously undermine the Ombudsman's office and the ability to learn lessons from the Equitable Life affair. If it were to happen, there should be a debate on the floor of the House to allow Members to discuss these constitutional issues and re-establish the Parliamentary Commissioner's role.

We also strongly support the Ombudsman's recommendation for the creation of a compensation scheme to pay for the loss that has been suffered by Equitable Life's members as a result of maladministration. Where regulators have been shown to fail so thoroughly, compensation should be a duty, not a matter of choice. However, like the Ombudsman, we are acutely aware of the substantial sums of money involved.

The decision to compensate must not be the equivalent of signing a blank cheque on taxpayers' behalf. While the aim should be to restore individuals to the position they would have been in had maladministration not occurred, it is essential that the public purse benefits from an appropriate measure of protection. In particular, the emphasis must be upon compensating individuals only for that loss that is fairly attributable to regulatory failure. Not all policyholders suffered loss as a result of regulatory failure; this should not be a case of compensation for all. Rather, it should be a case of the State making good its own serious failure.

We endorse the Ombudsman's proposal for a compensation scheme that is independent, transparent and simple, administered by a tribunal. There is an inherent tension between speed and accuracy in the way that a compensation scheme can measure loss. Despite the basic presumption that loss must be accurately assessed, the main priority must be prompt redress. Policyholders have already been waiting for almost a decade and substantial numbers have either died or are advancing in years. Justice further delayed will mean justice denied to even more people. The personal circumstances of many policyholders will make it difficult for them to engage with a complex claims procedure. The compensation scheme should therefore avoid placing a burden on individual policyholders wherever this is possible.

We are not in a position to gauge whether the Ombudsman's two year timetable to implement the compensation scheme is viable. There is, however, a grave danger that any further delay will turn the last decade of regulatory failure into this decade's even greater failure to provide adequate redress. Regulation is never an easy job and mistakes, even serious ones, will occasionally be made, but the real test for government is how it then responds. In this case the Government must treat the smooth and rapid progress of the compensation scheme as a matter of high priority. We intend to monitor progress carefully.

It would not be appropriate to compensate only those policyholders and annuitants who are experiencing financial hardship; the payment of compensation is not a matter of charity but a requirement of justice to redress a wrong. However, priority or interim payments should be made to individuals suffering hardship.

The "central story" of the Ombudsman's investigation is the failure of regulators to exercise their powers to ensure that a company with a sound reputation was in fact observing minimum standards. The Government should take this opportunity to learn lessons from the criticisms that have been (and continue to be) levelled against the regulators. We also draw other lessons from this story, including the need to reflect on whether the Financial Services Authority and key regulators more widely are sufficiently and coherently accountable, and on whether it should have been possible to hold the former directors and advisors of *Equitable Life* more effectively to account for losses for which they were found to be principally to blame.

Having failed to establish a comprehensive and fit for purpose investigation into the *Equitable Life* affair, the Government must review the way in which serious failures of this kind are investigated in the future. In the meantime, the Government has reason to apologise for the delay and frustration caused by its piecemeal approach.

# 1 Introduction

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1. Equitable Life is the world's oldest mutually owned insurance company. It used to be known by its reputation as a leading provider of life insurance and pensions. For many years a substantial proportion of the policies that were sold entitled policyholders to purchase an annuity at their retirement which then guaranteed minimum payments for the rest of their lives. A decline in the profitability of Equitable Life's investments made this commitment increasingly difficult to fund. Its former management decided, amongst other things, to implement a "differential terminal bonus" policy as a way of reducing the costs of the guaranteed rate pensions.

2. The new bonus policy was challenged in court in 1999; critically, it was found to be unlawful by the House of Lords in July 2000. Faced with an estimated £1.5 billion shortfall in its reserves and unable to find a buyer, Equitable Life closed to new business on 8 December 2000, leading to major policy value cuts in July 2001 and subsequently. A number of investigations have since taken place, each with different remits, none of them overarching. The Parliamentary and Health Service Ombudsman ('the Ombudsman') initially rejected complaints of maladministration, but she began a second and far broader investigation into the prudential regulation of Equitable Life in July 2004.

3. The Ombudsman's report of this second investigation, *Equitable Life: a decade of regulatory failure*, was published in July 2008.<sup>1</sup> We are responsible for reviewing each special report of this kind and our inquiry has been centred around its key conclusions and recommendations. We have taken evidence from groups representing the interests of Equitable Life's members, former regulators (including the Chair of the Financial Services Authority at the relevant time), expert commentators and HM Treasury. We are grateful for their contribution to our consideration of what are challenging and complex issues about accountability and redress.

**4. We had thought that the Government would publish its response to the Ombudsman's report on Equitable Life in time for us to consider it as part of our inquiry. We now understand that it will be available only very shortly before the House rises for Christmas. We have therefore decided to publish this Report as speedily as possible, so that debate on the Government's response—and possibly even the response itself—can be informed by our views. Whether we need to return to these issues in the New Year will depend on what the Government has to say—but if it gives us any cause for concern, we will not hesitate to do so.**

5. There were more than 1,500,000 members of Equitable Life at the time it was forced to close to new business in December 2000. Over the last eight years many of those members and their families have suffered great anxiety as policy values were cut and pension payments reduced. We acknowledge the determination of all those individuals who have campaigned tirelessly to find out what went wrong and to seek recompense from those responsible. Many are no longer alive, and will be unable to benefit

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1 Parliamentary Ombudsman, Fourth Report of Session 2007–08. HC 815 (henceforth 'Ombudsman's report')

**personally from any compensation. We share both a deep sense of frustration and continuing outrage that the situation has remained unresolved for so long.**

## 2 The Ombudsman's report

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6. The Parliamentary Ombudsman's report, *Equitable Life: A decade of regulatory failure*, investigated 898 complaints in respect of 1,008 people referred to her Office by Members of Parliament. The Ombudsman also received direct representations on behalf of a further 1,480 people. The investigation "centred on allegations of regulatory failure on the part of the public bodies responsible for the prudential regulation of [Equitable Life] in the period prior to 1 December 2001".<sup>2</sup> Prudential regulation of life insurance companies, such as Equitable Life, was governed by the Insurance Companies Act 1982: "[s]uch regulation primarily related to the supervision of the solvency of life insurance companies and their ability to meet and continue to meet their liabilities to policyholders and to fulfil the reasonable expectations of policyholders or potential policyholders".<sup>3</sup>

### Maladministration

7. The Ombudsman's report made ten determinations of maladministration—one against the Department of Trade and Industry (DTI), four against the Government Actuary's Department (GAD), and five against the Financial Services Authority (FSA)—with each representing a failure that "fell far short of acceptable standards of good administration" most notably in the way that the public bodies scrutinised the annual returns submitted by Equitable Life.<sup>4</sup> In particular:

- The DTI, which was responsible for prudential regulation prior to 5 January 1998, failed to insist on Equitable Life's Appointed Actuary stepping down upon his appointment as the new Chief Executive and then allowed the situation to continue between July 1991 to July 1997. During this period "there was effectively no 'whistle-blower'" within the Society;<sup>5</sup>
- GAD, which was responsible for providing actuarial assistance to the prudential regulators throughout the period under investigation, failed to question the affordability of bonus payments or the legitimacy of certain discount valuations that were set out in Equitable Life's regulatory returns for 1990 to 1993;
- GAD failed to question Equitable Life about the differential terminal bonus policy that was originally included in the 1993 returns; it also failed to inform the regulator about the new policy, which later became the subject of decisive litigation;
- GAD failed adequately to resolve various issues arising in the 1994 to 1996 returns, including the absence of reserves to meet the guaranteed annuity rates and the affordability of bonus declarations made by Equitable Life;

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2 Ombudsman's report, Summary, para 1.4

3 Ombudsman's report, Summary, para 2.14

4 Ombudsman's report, Summary, para 6.3

5 Ombudsman's report, Summary, para 7.4

- GAD failed to question valuations included in the 1995 returns that affected whether Equitable Life met the minimum level of financial strength that was required to continue in business;
- The FSA, which took over the regulation of Equitable Life, initially on behalf of the Treasury, in January 1999, wrongly permitted a re-insurance agreement to be taken into account in the 1998 returns without a necessary concession being made about its value;
- The FSA failed to require Equitable Life to make proper disclosure in the 1998 and 1999 returns about the risk of losing the litigation that had then begun in relation to the differential bonus policy;
- The FSA failed to record its reasons for allowing Equitable Life to remain open to new business after it lost the litigation in the House of Lords;
- The FSA's decision to allow Equitable Life to remain open to new business after losing the litigation was taken on an unsound basis;
- Finally, the FSA produced misleading information about the solvency of Equitable Life and its compliance with regulatory requirements in the period between the loss of the litigation and its closure to new business.<sup>6</sup>

8. The findings of maladministration have been divided by the Ombudsman into three distinct periods. The earliest period of regulation under DTI and GAD was described by the Ombudsman as “passive, reactive and complacent”.<sup>7</sup> The next period, in which the FSA took charge in the lead up to Equitable Life's closure to new business, was regarded by her as “largely ineffective and often inappropriate”, while post-closure the prudential regulators were considered to be “largely effective but, when giving information to the Society's policyholders and to others about the situation Equitable was in, the FSA provided information which was inaccurate and misleading”.<sup>8</sup>

## Injustice

9. The Ombudsman's statutory remit requires her to consider whether any of the findings of maladministration resulted in injustice to the individuals who made the complaints.<sup>9</sup> In this respect, the Ombudsman identified three general consequences arising from the acts of maladministration:

[F]irst that there were unreliable returns in the public domain; people should have been entitled to rely on those returns and because of the regulator's failure those returns were unreliable. The second consequence was both the regulator's and the Society's lost opportunities to address at an early stage issues which eventually became critical – a growing exposure to guarantees, the differential terminal bonus

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6 Ombudsman's report, Part 1, Chapter 11; Summary, Section 6

7 Ombudsman's report, Part 1, Chapter 13, para 151

8 Ombudsman's report, Part 1, Chapter 13, paras 156 and 159

9 Parliamentary Commissioner Act 1967

policy – and things could have taken a different course. The third consequence was that regulators made decisions that did not have sufficient regard to the range of powers they possessed, not only did they not use the powers they could have used, they often did not even consider using them.<sup>10</sup>

10. These considerations led the Ombudsman to make five detailed determinations of injustice arising from financial loss, lost opportunities and a “justifiable sense of outrage”. These determinations were:

(i) that injustice was sustained by any policyholder who can show that they relied on the information contained in the Society's returns for 1990 to 1996 and who suffered either a financial loss or a lost opportunity to take an informed decision about their financial affairs as a result of such reliance;

(ii) that policyholders sustained injustice in the form of the loss of opportunities in the period between July 1991 and April 1999 to take informed decisions about their financial affairs in full knowledge of the exposure of the Society to guaranteed annuity rates and of the risks that such exposure generated;

(iii) that all those who joined the Society or who paid a further premium that was not contractually required in the period after 1 May 1999 have sustained injustice in the form both of any financial loss they may have suffered and also in the form of lost opportunities to take informed decisions about their financial affairs;

(iv) that those individuals who can show, having regard to their particular circumstances, that they relied on deficient information provided by the FSA in the post-closure period, that such reliance was reasonable in the circumstances, and that it led to a financial or other loss have sustained injustice; and

(v) that all those who have complained to me have sustained injustice in the form of a justifiable sense of outrage at the failings of the system of prudential regulation that are epitomised by my findings of maladministration relating to the prudential regulation of the Society during the period prior to its closure to new business.<sup>11</sup>

## Remedy

11. Prior to publishing her report, the Ombudsman outlined her general approach to redressing injustice in *Principles for Remedy*.<sup>12</sup> The Ombudsman's overall aim is to ensure that the relevant public body restores people to the position they would have been in, had maladministration not occurred. In the circumstances of this case, the Ombudsman made two recommendations for remedy; first, an apology by the public bodies concerned and, second, the prompt creation of a compensation scheme:

My first recommendation is that, in recognition of the justifiable sense of outrage that those who have complained to me feel about the maladministration in the form

10 Q16; see also Ombudsman's report, Chapter 13, para 59

11 Ombudsman's report, Part One, Chapter 13, para 181

12 October 2007, available at [www.ombudsman.org.uk/improving-services/principles/remedy/index.html](http://www.ombudsman.org.uk/improving-services/principles/remedy/index.html)

of the serial regulatory failure identified in this report, the public bodies should apologise to those people for that failure.<sup>13</sup>

My second – and central – recommendation is that the Government should establish and fund a compensation scheme with a view to assessing the individual cases of those who have been affected by the events covered in this report and providing appropriate compensation.<sup>14</sup>

## Reaction

12. The Ombudsman's report received a strong welcome from Equitable Members Action Group (EMAG), which stated: "We have nothing but praise for the quality of the work that Ann Abraham has done"<sup>15</sup> and "After so many whitewashes, cover-ups, and delaying actions, EMAG congratulates the [Parliamentary Ombudsman] upon having the courage and integrity simply to tell the truth".<sup>16</sup>

13. Equitable Life's Chair, Vanni Treves, is also reported as saying that the Ombudsman's "reasoning and recommendations are beyond argument".<sup>17</sup> The board of directors has added: "If the Government fails to respond positively to a report from Parliament's own Ombudsman—a report which so thoroughly and unequivocally describes a 'decade of regulatory failure'—we will fail to understand and to explain to our policyholders what the point of the role of the Ombudsman is".<sup>18</sup>

14. The report has not received universal support. For instance, Sir Howard Davies, who was Chair of the Financial Services Authority at the relevant time, has rejected the findings made against the FSA;<sup>19</sup> other commentators and interested parties are divided over the case for compensation more generally.<sup>20</sup>

15. We had hoped to receive the Treasury's response to the Ombudsman's report in time for us to consider it as part of our inquiry. The report has been publicly available since July 2008 and we are aware that the public bodies have been working on their approach to the issue of compensation since at least February 2008.<sup>21</sup> The Economic Secretary to the Treasury has previously promised the House a response "in the autumn".<sup>22</sup> Ian Pearson MP, the current occupant of that post, has since told us that a response will be made as part of an oral statement to the House of Commons on or if possible before 18 December 2008. He also stated that the Ombudsman's report raised "very complex and technical" issues

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13 Ombudsman's report, Part One, Chapter 14, para 136

14 Ombudsman's report, Part One, Chapter 14, para 138

15 Q50 (Paul Braithwaite)

16 The Parliamentary Ombudsman's Report on Equitable Life, EMAG's comments, available at [www.emag.org.uk/documents/EMAGsubmissionp02.pdf](http://www.emag.org.uk/documents/EMAGsubmissionp02.pdf)

17 'Compensation Call Over Equitable', BBC Online, 17 July 2008, available at <http://news.bbc.co.uk/1/hi/business/7510129.stm>

18 EQL 03, para 2.8

19 Q237, 247

20 Ombudsman's report, Part 1, Chapter 3

21 Ombudsman's report, Part 1, Chapter 14, para 13

22 HC Deb 17 July 2008 Column 40WS

forming part of a “unique set of circumstances”, which the Government is committed to examining fully.<sup>23</sup> He disagreed that a period of four months to reply represented unreasonable delay in the circumstances, but acknowledged the concern of policyholders that the situation had been going on “for far too long”.<sup>24</sup>

16. In particular, Equitable Members' Action Group has estimated that around 15 members of Equitable Life are dying each day, with more than 30,000 having died since Equitable Life closed to new business in 2000. The new board of Equitable Life has stated: “It is certainly disappointing and some would say unconscionable that after a further three and a half months [i.e. now four and a half months since the Ombudsman's report] there is still no response”.<sup>25</sup>

**17. We congratulate the Ombudsman on her comprehensive and compelling report, *Equitable Life: a decade of regulatory failure*. The report paints a damning picture of the prudential regulation of Equitable Life throughout the 1990's and early 2000's. In short, the members of Equitable Life were seriously let down by the Financial Services Authority, the (then) Department of Trade and Industry, and the Government Actuary's Department. We support her recommendation for a full and unreserved apology from those public bodies concerned.**

**18. It is disappointing that the publication of the Government's response has been delayed. While the Ombudsman's report raises complex issues, the Government has had sight of her report for many months. There can be few cases more deserving of a prompt response than the present, particularly given the increasing age of the policyholders and the length of time that they have waited already. We do, however, welcome the fact that the Government seems to be treating the Ombudsman's report with the seriousness it deserves, and we look forward to the publication within the next few days of a what we trust will be a thorough and well-reasoned response.**

19. The remaining sections of this report are primarily concerned with exploring the Ombudsman's second – and central – recommendation for the creation of a compensation scheme. Our report then goes on to consider the lessons that must be learned from the Equitable Life affair.

20. Allegations have been raised with us which fall outside the scope of the Ombudsman's report—in particular, that the failings of the prudential regulators went beyond maladministration and involved misfeasance in public office. These are not issues that we have been able to investigate or on which we can reach a considered judgement.

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23 Oral evidence taken before the Committee from Ian Pearson MP on 9 December 2008, transcript due to be published as HC 41-i (2008–09)

24 As above

25 EQL 03

### 3 The case for compensation

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21. During the Ombudsman's investigation, the public bodies invited her to refuse compensation on a variety of public policy grounds, including the cost to the taxpayer and the diversion of scarce public resources, the risk that it might make regulators over-cautious in the future, or that it could set a dangerous and costly precedent. For these reasons, the public bodies urged the Ombudsman to adopt the cautious approach that has traditionally led the courts to "shy away from imposing a duty of care on regulators".<sup>26</sup>

22. The Ombudsman's report carefully addressed and then rejected each of these concerns.<sup>27</sup> The Ombudsman has, however, highlighted being "acutely conscious of the potential scale" of her recommendation for a compensation scheme and invited Parliament to debate the issue.<sup>28</sup> She has accepted that

it would be appropriate to consider the potential impact on the public purse of any payment of compensation in this case. That one group of taxpayers might have to underwrite the payment of compensation to another group is something that cannot be left out of all account.<sup>29</sup>

23. An *Equitable Life* annuitant, Anthony Wilson, highlighted some of the dilemmas that face our consideration of the case for compensation:

I find myself ambivalent how the government should respond to our situation. On the one hand, I did what both Tory and Labour administrations told me to do: save hard... I assumed that regulation was sufficiently effective to protect me... On the other hand, does *caveat emptor* apply here (though how could I have found out that *Equitable* was insubstantial)? And people depending on the state pension who are facing rising fuel and food bills must have a higher priority than private investors on the public purse. Would 'compensation' create a precedent which could cause endless problems for years ahead?<sup>30</sup>

24. The Law Commission recently published a consultation paper, *Administrative Redress: Public Bodies and the Citizen*, to review the availability of legal redress, including compensation, for substandard administrative action by public bodies.<sup>31</sup> Its key objective is "to achieve the correct balance between fairness to aggrieved citizens and appropriate protections to public bodies and the public funds they use."<sup>32</sup> In many ways a similar balance has been proposed by the Government. For instance, the Economic Secretary to the Treasury has stated in relation to the issue of compensation that: "the Government

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26 Ombudsman's report, Part 1, Chapter 14, paras 55 to 67

27 Ombudsman's report, Part 1, Chapter 14, paras 68 to 133

28 Ombudsman's report, Part 1, Chapter 14, paras 68 and 152; Q6.

29 Ombudsman's report, Part 1, Chapter 14, para 113

30 EQL 08

31 Law Commission Consultation Paper, *Administrative Redress: Public Bodies and the Citizen*, July 2008, available at [www.lawcom.gov.uk/docs/cp187\\_web.pdf](http://www.lawcom.gov.uk/docs/cp187_web.pdf)

32 Law Commission press release, 3 July 2008, available at [www.lawcom.gov.uk/remedies.htm](http://www.lawcom.gov.uk/remedies.htm)

must weigh in the balance the interests of policyholders and taxpayers generally”.<sup>33</sup> This section of our Report outlines the many factors that were raised as part of our inquiry, before we offer our own view on the case for compensation.

## Factor 1: Burden on taxpayers and regulators vs fairness to policyholders

25. At the heart of this difficult issue is the potential impact on the taxpayer. The potential sums involved remain unclear. EMAG estimates that compensation will cost approximately £4.66 billion, while Equitable Life Trapped Annuitants (ELTA) estimates that compensating the annuitants alone would be around £6 billion.<sup>34</sup> Based on ELTA's figures, the total cost of compensating all policyholders could be £10 billion or more. Neither ELTA's nor EMAG's estimates are endorsed by the Ombudsman, who has told us that she does not possess the necessary information to calculate loss.<sup>35</sup> The board of Equitable Life, who maintain a record of the information that would be needed to make such a calculation, has stated that it will not be possible to provide a meaningful estimate until the principles of a compensation scheme are established.<sup>36</sup> In the meantime, its Chair, Vanni Treves, has stated it would be “irresponsible” to speculate upon the amounts involved.<sup>37</sup> The Economic Secretary stated that there was “not very reliable evidence” about the potential cost of compensation, but was unable to give us any indication of what the likely cost could be.<sup>38</sup> Regrettably, in these circumstances we are unable to assess the accuracy of EMAG's and ELTA's estimates, although we note that EMAG's approach is more closely aligned to the Ombudsman's proposals. What is clear, however, is that the cost of compensation is likely to run into the billions.

26. It is plainly apparent that the public purse is facing intense and conflicting demands in light of the current economic difficulties. The weight that this deserves has been a matter of dispute. For instance, EMAG states that current restraints should be irrelevant in the context of compensating individuals for events taking place eight or more years ago: “the delays are almost entirely of the Treasury's making. That the cupboard is temporarily bare in 2008 is hence not a fair consideration”.<sup>39</sup>

27. The former rail regulator, Tom Winsor, has stated that the cost is secondary to the requirements of justice: “in this case it is a lot of money. If it were £10 million and not £10 billion, the Chancellor would probably write a cheque to make the problem go away. The degree is not relevant. The principle is. The State has failed these people and the State should compensate them. Justice requires it.”<sup>40</sup>

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33 HC Deb, Col 212WH, 25 November 2008 (Ian Pearson MP)

34 EQL 04; EQL 05; EQL 28

35 Q42

36 Q149 (Vanni Treves); Q159 (Charles Thomson)

37 Q152

38 Oral evidence taken before the Committee from Ian Pearson MP on 9 December 2008, transcript due to be published as HC 41-i (2008–09)

39 EQL 04

40 Q238

28. The undoubtedly high cost of compensation is also mirrored by the high impact of falling pension payments on Equitable Life's members, particularly (but not exclusively) the "trapped" annuitants who had already retired by the time that Equitable Life closed to new business. We have received evidence from many such individuals who emphasise the anxiety and hardship that has been caused by cuts of up to 50% or more in their retirement income.<sup>41</sup>

## Factor 2: Degree of regulatory failure

29. Another important factor is the degree of regulatory failure involved. Sir Howard Davies, who chaired the FSA at the relevant time, emphasised that regulators are faced with a difficult task:

it is important for people to understand that these judgments are very, very awkward ones for the regulator to make. Sometimes they turn out well, sometimes they turn out less well, but in my view a system which did not allow regulators to make those judgments would be one which would be very hazardous for policyholders and depositors because precipitate judgments would be made on the basis of a small breach in regulatory requirements.<sup>42</sup>

On this basis he argued that compensation should only be paid in the event of fraud by a regulator, but not where the regulator makes the wrong judgment or fails to prevent "financial imprudence" on the part of a company's directors.<sup>43</sup> John Kay of the Financial Times stated similarly that compensation should be restricted to cases of "egregious failure" or "conspicuous hardship" and that the present case "rather weakly" fell within these grounds.<sup>44</sup>

30. In contrast, the Ombudsman has stated that she is "acutely aware that those exercising regulatory functions are often placed in very difficult situations in which they have to exercise judgment in relation to complex matters which require the balancing of a range of often competing pressures and interests".<sup>45</sup> It was for this reason that the Ombudsman deliberately applied "a standard that was grounded in the reality of the relevant regulatory regime as it existed at the relevant time and not in my own opinion as to what such a regime should have looked like".<sup>46</sup>

31. In others words, the Ombudsman set the bar very high before concluding that there had been maladministration: "I have approached this in a way which is not simply saying that the regulator made a few errors, there was one set of returns that was not very good and therefore we are automatically into maladministration and injustice and redress. I think the report sets the bar very high in terms of what constitutes maladministration."<sup>47</sup>

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41 Q57 (Peter Scawen); Q117 (Ann Berry)

42 Q246

43 Qq236, 277

44 Q231

45 Ombudsman's report, Foreword, Vol 1, p. viii-ix

46 Ombudsman's report, Foreword, Vol 1, p. viii-ix

47 Q7

Tom Winsor agreed: “This is, as I understand it, a case of regulators neglecting their duty, looking the other way in some respects, and not understanding their powers. Those are not judgmental errors; they are culpable errors. The distinction needs to be made.”<sup>48</sup>

### Factor 3: Public policy

32. A public policy consideration that has been raised by a number of commentators is whether the payment of compensation would make regulators over-cautious in the future. For instance, Jeremy Warner of the Independent has stated that routine payment of compensation “would lead to such oppressive ‘safety first’ regulation... that it would stifle innovation, enterprise and activity. Far from making people feel safer about saving, it would so diminish returns that they would give up saving altogether.”<sup>49</sup> The Ombudsman turned this argument on its head:

I would like to think it would have the opposite effect. At one point in this investigation when we were thinking about what we would call this report we had a working title of *The Reluctant Regulator* and at the end of the day that seemed a bit flippant.... However, it seems to me that actually what this report argues for—if it argues for anything—is more effective, stronger regulation which actually means that regulators know and understand their duties, know and understand their powers, know when they should consider using those powers and use them when it is appropriate to do so.<sup>50</sup>

33. Ian Cowie of the Telegraph re-iterated the potential impact of failing to pay compensation on the incentive to save for pensions in the future:

the costs of compensating the victims of Equitable Life need to be seen in the context of what amounts to a savers’ strike that has been underway in this country for many years now... People have looked at Equitable Life and formed their own conclusions: Saving does not pay. Unless the Government takes decisive action here... more people will decide that saving does not pay.... There are tens of thousands of effectively negative salesmen out there in the country now saying to people, ‘Whatever you do, don’t put any money in a pension. I did. It was a waste of time.’<sup>51</sup>

34. A slightly different argument has been raised by EMAG, which states that compensation is required to restore confidence in the FSA.<sup>52</sup> Its Chair, Paul Braithwaite, had drawn an analogy between “having quite a powerful car which has got seat belts and the seat belts give you a sense of security but unfortunately those seat belts, the regulator, were not anchored. They gave you a false sense of security. If it had been caveat emptor

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48 Q247

49 *Now there’s a surprise. Government is being forced to suspend its fiscal rules*, Jeremy Warner, The Independent, 19 July 2008

50 Q17

51 Q233

52 Q133; Q104

that would have been fine, I would have understood it.”<sup>53</sup> Others, such as Tom Winsor, reiterated that the main issue should be about the principle of justice:

The regulators are emanations of the State. They are the creations of Parliament. They are the custodians and stewards of a precious public interest. They are part of the apparatus of government. They are given functions and duties and they must adhere to standards, high standards - standards which in this case have been found to have been woefully neglected. There is a considerable degree of public interest, public trust, public confidence, public reliance, in the regulators doing their job properly. If regulatory failure is the direct and proximate cause of people sustaining loss, then my view is the State should pay financial compensation.... Justice requires it.<sup>54</sup>

#### Factor 4: Precedents

35. The Treasury has reportedly received legal advice stating that any decision to create a compensation scheme might set a difficult precedent for the future.<sup>55</sup> Some commentators have questioned whether the case of Barlow Clowes already provides a direct precedent.<sup>56</sup> Others question whether ex gratia payments to the retail depositors of Icesave represents a recent and less deserving illustration of public funds being used.<sup>57</sup> The Chancellor, Rt Hon Alistair Darling MP, has dismissed analogies to Icesave and to the banking sector more generally:

That is a different problem to the problem we are dealing with just now. Equitable Life is not a bank. It has problems which, as you know, go back for 15 or 20 years. There was an inquiry by Lord Penrose six or seven years ago... Lord Penrose found that the company, as he put it, was substantially the author of its own misfortunes.<sup>58</sup>

36. EMAG has, in contrast, re-iterated that Icesave's retail depositors were neither “guaranteed anything” by a UK regulator nor do they benefit from a finding of maladministration.<sup>59</sup> Ian Cowie of the Telegraph told us:

Equitable was not some dot.com fund that attracted reckless investment from people seeking the highest possible returns. It was not a company that had recently been set up on the internet, as I say, based in Iceland or wherever, offering the highest rates of return. It was a company that had been around for more than 300 years. It appeared

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53 Q130

54 Q238

55 *Pensions: Darling faces Equitable Life payout of £4.5bn*, Rupert Jones and David Hencke, The Guardian, 17 July 2008

56 *Ghost from 1980s returns to No 10*, George Parker, Financial Times, 17 July 2008; the Ombudsman has also drawn parallels between Equitable Life and Barlow Clowes: Ombudsman's report, Foreword, p v.

57 *It's an Inequitable Life: Icesave v Equitable*, Retirement & Pensions, 13 October 2008, Malcolm Wheatley, available at <http://www.fool.co.uk/news/retirement-pensions/2008/10/13/its-an-inequitable-life-icesave-vs-equitable.aspx>

58 Uncorrected transcript of evidence taken before the Treasury Committee, 3 November 2008, HC 1167-i (2007–08), Qq18-19. See also HC Deb, 8 October 2008, Col 287.

59 Qq 56, 57, 107

to be offering low risk investments. It was regulated, it was authorised, and it turned into a disaster.<sup>60</sup>

37. Lord Norton of Louth, however, highlighted the need to treat the case for compensating Equitable Life's members on its own merits: "the Ombudsman has made rather a powerful indictment in this particular case. As you have said, she has set the bar high, and therefore I see this as a case that has to be looked at on its individual merits."<sup>61</sup>

## Factor 5: Turning regulators into guarantors

38. Howard Davies has previously stated that the FSA must not be tasked with running a "no failure" regime: "Failure is an inherent part of a flexible, competitive, innovative capitalist system. We should not aim to oversee a race in which all shall win prizes".<sup>62</sup> He elaborated that this should not be used as an excuse for regulatory failure, but simply that "It is not our job to stop some [companies] failing. We will take proper regulatory risk assessments and so on but it is not our job to underpin the system, to offer any kind of guarantee."<sup>63</sup> John Kay has written that expecting the taxpayer to take responsibility for regulatory failure in this kind of case amounts to "nationalisation".<sup>64</sup>

39. The Ombudsman has rejected the suggestion that paying compensation would turn regulators (or ultimately the taxpayer) into an effective guarantor of failed businesses, stating that compensation is appropriate to remedy regulatory failure rather than to meet a guarantee against company failure:

I do not think the regulator is there to guarantee anything... I think, as a member of the public and a potential policy holder investor, I or indeed my financial advisor, ought to be able to rely on the information that goes into the public domain, having been looked at by the regulator and verified by the regulator. They did not do that... there were some fundamentals which, without saying that this is regulated by DTI or the Treasury or FSA therefore all my money is guaranteed, I do not think any reasonable citizen could take that away but actually there were very specific tasks which the regulator was charged to do which the report shows they did not do.<sup>65</sup>

## Factor 6: Mismanagement

40. The public bodies have previously argued that paying compensation would "obscure the fact that the immediate and material cause of the loss in this case was Equitable itself."<sup>66</sup> This reflects the numerous occasions on which Ministers have referred to Lord Penrose's conclusion that Equitable Life was "principally ... the author of its own misfortunes" as a

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60 Q234

61 Q235

62 CASS/IEA Lecture, 26 February 2003, available at [www.fsa.gov.uk/Pages/Library/Communication/Speeches/2003/sp115.shtml](http://www.fsa.gov.uk/Pages/Library/Communication/Speeches/2003/sp115.shtml)

63 Q259

64 Financial Times, 5 November 2008

65 Q37

66 Ombudsman's report, Part 1, Chapter 14, para 57

material factor in relation to compensation. The current board of Equitable Life and many others have acknowledged the legitimacy of Lord Penrose's conclusion; few people dispute that its former management were primarily to blame.

41. The Ombudsman has, however, highlighted the full conclusion of Lord Penrose, in which he went on to state that: "the practices of the Society's management could not have been sustained over a material part of the 1990s had there been in place an appropriate regulatory structure adapted to the requirements of a changing industry that happened to manifest themselves in an extreme form in the case of Equitable Life."<sup>67</sup> The Ombudsman continued: "whether or not Lord Penrose was saying that Equitable's management were the villains here, I think he was also saying that if the police—in this case the regulators—had been doing their job properly they would have been caught a lot earlier."<sup>68</sup> It is also apparent that Lord Penrose was unable to consider these issues: "The jurisdiction to adjudicate on regulatory failure in duty is not mine. Even less is it for me to comment on how government should respond if it were to acknowledge that there had been regulatory failure."<sup>69</sup>

### Factor 7: Equitable members' personal circumstances

42. A general objection that has been raised by some witnesses and commentators is that Equitable Life's members are somehow undeserving. For instance, Patrick Collinson of the Guardian has stated: "The beneficiaries will be lawyers, doctors, dentists, and dare I say journalists and media types... That may explain why you hear so much bleating about it."<sup>70</sup> John Kay has written along similar lines in the Financial Times: "this is not the most deprived group of people who may have suffered from ineptitude of government policy of one kind or another."<sup>71</sup>

43. In contrast, EMAG has been keen to emphasise that the majority of Equitable Life's policyholders had modest sized pensions and were not "fat cats" who "risked their money to get above average returns."<sup>72</sup> In particular, the average investment of the half million individual policyholders amounted to £45,000 each, which in today's money would buy a pension paying around £75 per week according to EMAG.<sup>73</sup> Ian Cowie has commented: "In some ways, the fact that many of Equitable Life's policyholders are professional, middleclass people has worked against them."<sup>74</sup>

### Factor 8: General market performance

44. The poor performance of many other pension providers besides Equitable Life has also been a factor that is sometimes raised in opposition to compensation. As Jeremy Warner

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67 Report of the Equitable Life Enquiry by the Rt Hon Lord Penrose, HC 290 (2003–04), p 746

68 Q16

69 Penrose Report, p 746

70 *Equitable ruling will tax us all*, The Guardian Money, 12 July 2008

71 Q231

72 EQL 04

73 Q50

74 Q241

states, there are “other life funds which have also turned out to be dogs,” but he carries on to emphasise that “the distinguishing feature was that Equitable contractually agreed bonus and guaranteed annuity rates which it didn’t have the capital to pay when investment conditions turned against it. Other life funds which have performed equally badly or worse were able to find the capital from reserves or parent companies”.<sup>75</sup>

45. As we address below, the Ombudsman has accepted that market wide underperformance must be taken into account when assessing compensation, but she did not view it as a reason to refuse payments all together: “Other companies faced difficult market conditions and reduced the proceeds paid to policyholders... What made the Society different was that the methods available to it were constrained by the nature of the financial position in which the new Board found itself.”<sup>76</sup> Paul Braithwaite has also emphasised that a simplistic comparison to the performance of other funds would unduly take account of the investors who benefited from Equitable Life’s good years (and would not, therefore, be eligible for compensation) while masking the individuals who suffered the most.<sup>77</sup>

46. In this respect, we underscore the Ombudsman’s declaration that she was “very far from concluding” that all of Equitable Life’s policyholders suffered a financial loss.<sup>78</sup> Her Inquiry Manager, Iain Ogilvie, estimated the number of individuals that might fall within a scheme as between 300,000 to 1,000,000: “Clearly how many people would apply and how many cases would have to be looked at would depend on the nature of a scheme... So we are not talking about the whole population that has ever had an involvement with the company but there is no real way of knowing the exact numbers at this stage.”<sup>79</sup>

## **Our view: the case for compensation**

**47. We strongly support the Ombudsman’s recommendation for the creation of a compensation scheme to pay for the loss that has been suffered by Equitable Life’s members as a result of maladministration. Where regulators have been shown to fail so thoroughly, compensation should be a duty, not a matter of choice. However, like the Ombudsman, we are acutely aware of the substantial sums of money involved. This calls for a careful balance to be struck between the interests of the taxpayer, on the one hand, against the competing need to be fair to the large number of policyholders affected, on the other. We take full account of the current and extreme pressure on the public purse. But at the same time the regulators were installed to promote confidence in us all to save for retirement. They were given extensive powers to carry out their task. Not only did the regulators fail, but they failed over a prolonged period and at a fundamental level. The impact has been severe for many of those who were worst affected; it would be unacceptable for current financial pressure to override failings which took place seven or more years ago.**

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75 *Now there’s a surprise: Government is being forced to suspend its fiscal rules*, The Independent, Jeremy Warner, 19 July 2008

76 Ombudsman’s report, Part 1, Chapter 12, para 184

77 *Enough is Enough*, Daily Telegraph, Paul Braithwaite, 28 July 2008

78 Ombudsman’s report, Summary, para 9.8

79 Q26

48. We fear that a failure to compensate could further undermine the incentive to save for retirement and could weaken trust in the regulators. While we acknowledge concerns that the threat of compensation may make regulators over-cautious in the future, we do not accept this will happen. The payment of compensation should, if anything, sharpen minds and encourage the effective use of their powers. Neither do we accept that compensation would set a difficult precedent. Each case must be decided on its merits, just as happened in the case of Barlow Clowes and the Ombudsman's many other previous investigations.

49. It would also be wrong for the Government to refuse compensation on the basis of Lord Penrose's conclusion that *Equitable Life* was "principally ... the author of its own misfortunes". This often quoted phrase must not mask Lord Penrose's further conclusion that it was regulatory failure which permitted *Equitable Life*'s management to carry on undermining the interests of its members for so long. We also take into account that Lord Penrose was not tasked with determining issues of regulatory failure or, more particularly, the case for compensation. This was the task of the Ombudsman and we stand behind her well-considered views.

50. The decision to compensate must not, however, be the equivalent of signing a blank cheque on taxpayers' behalf. It is essential that the public purse benefits from an appropriate measure of protection. In particular, the emphasis must be upon compensating individuals only for that loss that is fairly attributable to regulatory failure. The impact of internal mismanagement must be taken into account. It is on this basis that we reject the suggestion that compensation would be the equivalent of turning the State into the guarantor of a failed business; in contrast it would be a case of the State making good its own serious failure. We also highlight the Ombudsman's conclusion that not all policyholders suffered loss; this should not be a case of compensation for all.

## 4 A compensation scheme

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### (a) General principles

51. The Ombudsman reminded us that “a compensation scheme and the terms have not been developed, consulted on and settled.”<sup>80</sup> Her report did, however, outline her proposals in relation to certain key features. In particular, she calls for the compensation scheme to be independent from Government, transparent both in the way that it operates and calculates compensation, and simple in its operation in particular by not imposing undue burdens (evidential or procedural) on those entitled to compensation.<sup>81</sup> She envisages the creation of a “tribunal or adjudication panel, with three members—one broadly representing the interests of citizens and one representing those of the relevant public bodies, with an independent chair”.<sup>82</sup>

52. EMAG and Equitable Life have both offered their full assistance in aiding the design and operation of a compensation scheme.<sup>83</sup> Both they, and others, have understood that the Ombudsman’s proposal will require the independent tribunal, as its first task, to develop the principles on which compensation will be paid. Equitable Life has offered its assistance in “coming to those principles” and “in applying those principles to the hundreds of thousands, possibly a million policyholders, that were affected”.<sup>84</sup> ELTA put on the record its concern that compensation should not be paid to Equitable Life to distribute: “the idea that once again we are reliant on the Society for our future income would not be acceptable.”<sup>85</sup>

**53. We endorse the Ombudsman’s proposal for a compensation scheme that is independent, transparent and simple. It is only fair that the difficult assessments which have to be made are carried out at arm’s length from Government and based on principles that are publicly available. Like the Ombudsman and several of the witnesses who appeared before us, we believe that this will require an independent compensation tribunal to be established. The first task of the tribunal must be to determine and then publish the principles and procedures that will be used to calculate compensation. We welcome the commitment of the current board of Equitable Life to provide full and prompt assistance both in relation to this task and subsequently.**

### (b) Speed vs accuracy

54. An important factor in deciding how to compensate Equitable Life’s members is whether to aim for a scheme that is fast and simple or, alternatively, to assess loss as accurately as possible even though this may involve a slow and potentially onerous process

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80 Q26

81 Ombudsman’s report, Summary, para 9.33

82 Ombudsman’s report, Part 1, Chapter 14, para 149

83 Q122; Q163

84 Q150 (Vanni Treves)

85 EQL 28

for the individuals concerned. The Ombudsman acknowledged that there may be an “inherent conflict” between these two aims.<sup>86</sup>

55. While she offered “no concluded view” on the design of a scheme, her report outlined two principal alternatives:

“One method is that chosen by EMAG – the identification of quantifiable amounts which are then set at a global level, with the resulting amount shared out to those deemed eligible by some predetermined formula. Another is that used by the Financial Ombudsman Service which, on an individual level, makes a comparative assessment of the performance of the company in question against an average-performing competitor. I have no concluded view on the relative merits of such proposals, which are a matter for others to determine.”<sup>87</sup>

56. EMAG has described its approach as “rough edged”; in other words, while it benefits from speed and simplicity the “pre-determined formula” would not necessarily reflect the detailed circumstances of each individual policyholder.<sup>88</sup> In particular, it would require compensation of every policyholder to be reduced by standard discounts. This could lead to some policyholders receiving more than their appropriate share of compensation, while others receive less. Although this would not increase the overall cost of compensation to the taxpayer, it does raise issues of fairness as between policyholders themselves. As Tom Winsor stated: “It is a question of the number of possible claimants. They could be grouped but justice really requires individual assessments.”<sup>89</sup> ELTA agrees.<sup>90</sup> It is also questionable whether this feature of EMAG’s proposal would comply with Treasury Guidance which states that compensation schemes should not allow individuals “to gain a financial advantage compared to what would have happened with no service failure”.<sup>91</sup> A further complication concerns the way in which the “pre-determined formula” would be worked out. As Peter Scawen of ELTA stated: “If you are going to come in with a sum of money, we have to find a way of separating out the classes of claimant. Otherwise, I can see the investors and the annuitants at war with each other for the next thousand years.”<sup>92</sup>

57. While the approach that is taken by the Financial Ombudsman Service does not attract these criticisms, EMAG argues that an “FSA style” compensation scheme may take another eight years to conclude,<sup>93</sup> a timescale which it views as unacceptable given that thousands more policyholders would be likely to die during this period.<sup>94</sup> Howard Davies stated:

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86 Ombudsman’s report, Part 1, para 143

87 Ombudsman’s report, Part 1, Chapter 14, para 22

88 Qq 59, 69, 143

89 Q270

90 EQL 28

91 HM Treasury, *Managing Public Money*, Annex 4.14.9, available at [http://www.hm-treasury.gov.uk/d/mpm\\_annex4.14.pdf](http://www.hm-treasury.gov.uk/d/mpm_annex4.14.pdf)

92 Q73

93 EMAG, *Comments and Proposals for Redress*, page 59, available at [www.emag.org.uk/documents/EMAGsubmission02.pdf](http://www.emag.org.uk/documents/EMAGsubmission02.pdf)

94 *It’s an Inequitable Life: Icesave v Equitable*, Retirement & Pensions, 13 October 2008, Malcolm Wheatley, available at <http://www.fool.co.uk/news/retirement-pensions/2008/10/13/its-an-inequitable-life-icesave-vs-equitable.aspx>

whatever solution is chosen should be faster rather than slower because it seems to me that nobody can be particularly satisfied by the length of time which this whole process has taken.... [The worst thing] is to have expectations raised and then find that another ten years go by before you get some cheque, so I would be inclined to say that if you are going to go down this route at all then go down it in as fast and as simply and potentially in as by-and-large a way as you can because I think that to create a further very complicated process would be unreasonable.<sup>95</sup>

58. The Chief Executive of Equitable Life, Charles Thomson, has suggested that speed and accuracy can be reconciled:

what I have in mind is broadly what I think the Parliamentary Ombudsman had in mind, that the Commission in its first six months would investigate the issues, would define how relative loss is calculated and you would then be able to set up a scheme which worked on a limited number of parameters, like the class of policy, the date or dates money was paid in, the dates money was taken out, and work out a matrix on the basis of those parameters what the loss was related to those and you would then have something that you could build in a computer model and push through for the very large number of people affected. It would be both individual and fair and relatively simple once you had constructed it.”<sup>96</sup> He described his model as an “individual approach case-by-case but the brush is not so broad that it would give compensation where compensation was not deemed to be due.”<sup>97</sup>

**59. We are concerned that there is an inherent tension between speed and accuracy in the way that a compensation scheme can measure loss. In ordinary circumstances it would, in our view, be inappropriate to depart from the basic presumption that loss must be accurately assessed. But the main priority must be prompt redress given that policyholders have already been waiting for almost a decade and substantial numbers have either died or are advancing in years. Justice further delayed will mean justice denied to even more people. Where possible, we urge the compensation tribunal to reconcile the twin goals of speed and accuracy; we take comfort from Equitable Life's belief that a sensible compromise can be achieved.**

### **(c) Reliance upon misleading information**

60. A number of the regulatory failures identified by the Ombudsman caused injustice only to individuals who relied upon misleading information that was in the public domain as a result. For instance, the Ombudsman has stated:

injustice was sustained by any policyholder who relied on the information contained in the Society's returns for 1990 to 1996 and who suffered either a financial loss or a lost opportunity to take an informed decision as a result of such injustice. Where a

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95 Q270

96 Q227

97 Q228

policyholder neither relied on this information nor suffered a loss of either type, I find that no injustice resulted from this maladministration.<sup>98</sup>

61. This raises the issue of whether individuals must prove their reliance on misleading information as part of recovering compensation. EMAG is strongly opposed, preferring to apply a substantial discount to every policyholder's compensation instead: "the alternative is to get very elderly people to dig out some very old documents to try to prove or not prove that they would or would not have done something many years ago and argue about it for years and years. By the time they all get paid half of them will be dead."<sup>99</sup> Colin Slater of EMAG stated that his recommended discount was based on "a reasonable estimate of the sort of number of people who would have moved their money had they known."<sup>100</sup> It would, in effect, lead to some policyholders (i.e. those who could prove reliance) subsidising the recovery of those who are unable (i.e. either due to the lapse of time or because they did not rely at all). While, as above, a discount at the right level would not increase the overall bill faced by taxpayers, it again raises an issue of fairness as between individual policyholders.

62. The Ombudsman has stated: "By reliance I do not mean that it should be expected that an individual policyholder or annuitant should now, perhaps twenty years after the relevant events, be expected to produce copies of the information or advice on which they relied."<sup>101</sup> *Equitable Life* maintains that the compensation tribunal is best placed to resolve the way in which the issue of reliance is approached:

It seems unreasonable to expect policyholders to produce information that they are likely to have discarded many years ago. The delay is primarily a result of the Government's reluctance to accept regulatory maladministration – a delay which the Ombudsman has roundly criticised. Consequently it seems unreasonable for policyholders to be disadvantaged by that delay. Perhaps policyholders could be asked to declare their reliance where that is critical to compensation. More detail could be sought in cases where the amounts involved were especially large.<sup>102</sup>

**63. An accurate assessment of loss would require policyholders to establish whether they relied upon misleading information or advice. This causes obvious difficulties; the relevant events may have taken place many years ago and substantial numbers of policyholders are either ill, infirm or deceased. A number of alternative approaches have been suggested, which we urge the Compensation Tribunal to consider before placing onerous requirements on policyholders. In our view the circumstances of the policyholders and the delays of recent years require the compensation scheme to avoid placing a burden on individual policyholders wherever this is possible.**

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98 Ombudsman's report, Chapter 12, para 100; see also para 168.

99 Q70 (Colin Slater)

100 Q71

101 Ombudsman's report, Part 1, Chapter 12, para 96

102 EQL 24

### (d) Consequences of regulatory failure

64. There are three key factors that have contributed to the losses sustained by Equitable Life's members: mismanagement by Equitable Life's former directors; the historically poor performance of the stock market between the late 1990's and early 2000's; and the regulatory failure that has been identified by the Ombudsman. The Ombudsman states that the main aim of compensation should be to restore individuals to "the position that they would have been in had maladministration not occurred."<sup>103</sup> As outlined above, we agree, but this makes it necessary to consider the extent to which loss should be attributed to regulatory failure.

**65. The fairness of requiring taxpayers to compensate Equitable Life's policyholders firmly depends upon making sure that public funds do not pay for loss that is fairly attributable to the poor performance of the stock market or to the mismanagement of Equitable Life's former directors that could not have been prevented by adequate regulation. The aim should be to restore individuals to the position they would have been in had maladministration not occurred.**

### Market performance

66. The Ombudsman's report states that it is necessary to take into account the fact that losses were suffered across the "with-profits industry" during the period under investigation. There appears to be general agreement that market based losses of this type should be excluded. For instance, Ian Cowie, who supports the case for compensation, told us: "It is important, I think, to distinguish between investment losses in the market, for which there is no claim for compensation. Nobody claims that the taxpayer should pick up the tab when an investment does not work out."<sup>104</sup> The Ombudsman proposes to achieve this by requiring an assessment of "relative loss", which involves comparing each individual's return on their investment against what they would have achieved by investing in a comparable with-profits fund: "the individual circumstances of each complainant and other people similarly affected are key to establishing whether those people are in the category of those who have suffered relative loss. Accordingly, whether relative loss in a particular case has been sustained has to be determined at an individual level."<sup>105</sup>

67. The Ombudsman's approach mirrors that adopted by the Financial Ombudsman Service (FOS), who has also used it to assess loss in relation to those claims that he has resolved between Equitable Life and its policyholders. A further benefit of the Ombudsman's approach is that it automatically takes into account the benefit of any compensation that policyholders have already received from Equitable Life, as this compensation would reduce the difference between their current circumstances compared with the circumstances they would be in had they invested with an average competitor.

68. In the past, the FOS approach has revealed that approximately 60% of policyholders suffered a relative loss; although it is unclear whether a similar percentage of policyholders

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103 Ombudsman's report, Summary, para 9.27

104 Q240

105 Ombudsman's report, Summary, paras 9.12 to 919

would benefit under a broader compensation scheme, the Ombudsman notes that in many respects “[t]hose who have complained to me are in substantially the same circumstances”.<sup>106</sup> A great deal, however, depends upon the way in which relative loss is assessed. *Equitable Life* and others highlight a variety of ways in which it could be done.<sup>107</sup> Charles Thomson told us:

The Parliamentary Ombudsman spent years on it and has not produced a definition. I do not think it is appropriate for us to try to speculate what that should be. It involves different groups of policy types, different dates coming in, different dates going out, but I do believe that if these parameters are set down and relative loss is looked at in a handful of cases it would then be possible to expand that across the entire population in order to get a figure, but that is the job for a Commission, not for us.<sup>108</sup>

**69. We agree with the Ombudsman that any element of loss that is accountable to general market underperformance during the period under investigation should be discounted by assessing each individual's relative loss. This would be by comparing the performance of *Equitable Life* against an appropriate competitor or group of competitors. The compensation tribunal will need carefully but promptly to decide in which of the many possible ways this should be done.**

### **Mismanagement**

70. EMAG has considered the impact of mismanagement in some detail:

EMAG is advised that in cases of maladministration it is traditional for those found guilty to meet the whole cost of the loss, even though others were partly responsible. However, in a case such as that of *Equitable Life* where the amounts are very substantial indeed and where primary responsibility for the Society's demise rested with its directors, the matter of whether it is reasonable for the public purse to bear the whole cost does need to be considered.<sup>109</sup>

EMAG proposes that compensation payments should be discounted by 10% “on leading Counsel's advice” to reflect their view that the directors were “primarily responsible”.<sup>110</sup>

71. The Chair of *Equitable Life* stated that he does not “recognise” this figure; while he wouldn't be drawn into allocating blame in percentage terms he stated that his “visceral feeling is that our responsibility was much greater than that”.<sup>111</sup> But he argued that any discount was “illogical” on the basis of his Chief Executive's statement that “the company has accepted responsibility for what it got wrong and has done its best to try to put that right between policyholders and in general terms. We do not take responsibility for the maladministration of the regulator and therefore we would see the regulator as 100%

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<sup>106</sup> Ombudsman's report, Summary, para 9.16

<sup>107</sup> EQL 24; Q173

<sup>108</sup> Q159

<sup>109</sup> EQL 04

<sup>110</sup> EQL 04

<sup>111</sup> Q167

responsible for that maladministration and the consequential losses that flow from it”.<sup>112</sup> They stated that Equitable Life has paid out around £1.5 billion in compensation, while reminding us that “moving money from one group to another is all a mutual could ever achieve”.<sup>113</sup>

72. Peter Scawen of ELTA also opposed any discount based on mismanagement, on grounds that many policyholders might not have suffered any loss at all if it had not been for regulatory failure: “The regulator got it wrong for between 10 and 12 years. I think I speak for many of my members. I would not have bought my with profits annuity with Equitable Life, had I understood the financial situation of the company. That was known from almost 1990 onwards. It was in a difficult situation. It was known to the company. It was known to the regulator and it was known to the industry.”<sup>114</sup>

73. The Ombudsman has also emphasised: “I think it is really important to remember that the wrongs done here and the injustice here in describing this report is the wrong done to these people by the regulators; it is not the wrongs done by the company, it is not the wrongs done by the auditors. It is the wrongs done by the regulators and the remedy is very specifically addressing those failings.”<sup>115</sup>

74. Others have argued that responsibility could be apportioned between the regulators and Equitable Life through the general principles of “contribution” that are well known within the legal system. For instance, Tom Winsor stated “a thorough judicial process would be able to allocate responsibility among the various players who have failed in some respect”.<sup>116</sup> Equitable Life accepted this could have been achieved as part of “an overarching assessment had [that] been carried out from the start” but argued “[t]hat did not happen”.<sup>117</sup>

75. A key reason it could not happen was that neither the Ombudsman’s investigation, nor any of the other investigations that have taken place, benefited from a sufficiently broad remit to look at regulatory failure and mismanagement at the same time. The Ombudsman’s report accepts that regulatory failure contributed to policy value cuts, but stated that it was “impossible” for her to determine to what extent: “I have not investigated the Equitable Life Insurance Society and I would be *ultra vires* if I did.”<sup>118</sup> And as Lord Penrose stated in his report: “The jurisdiction to adjudicate on regulatory failure in duty is not mine.”<sup>119</sup> Thus no-one is ideally placed to apportion responsibility between the company and the regulators.

76. ELTA has stated: “Where two wrongdoers are responsible for an individual’s loss, the individual should be compensated in full and it is a matter between those wrongdoers as to

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112 Q167

113 EQL 24

114 Q87

115 Q40

116 Q263.

117 EQL 24

118 Q16; The Ombudsman’s report, Part 1, Chapter 12, paras 185 -186

119 Penrose Report, p 746

any apportionment between them”.<sup>120</sup> This refers back to the principle of “joint and several liability”<sup>121</sup> under which one wrongdoer must pay full compensation but can then seek a “contribution”, as referred to above, from the other wrongdoer. The Law Commission has recently reconsidered this state of affairs in relation to circumstances where one of the wrongdoers is a public body. The preliminary conclusion in its consultation is that there is a “strong case” for altering the rule so that (at a judge’s discretion) the public body only pays that share of the compensation that is fairly attributable to their degree of responsibility. The Law Commission refers to a growing number of jurisdictions where this is already the law, including in France and certain states in the United States of America. In France, “this has had a significant impact in cases concerning regulatory and supervisory failure. In [the case of] *Kechichian*, for example, the state regulator was found to be negligent in its supervision of a bank but was held liable for only 10% of the claimants’ total loss, the primary cause being the fraudulent activities of the directors”.<sup>122</sup>

**77. One of the most difficult tasks is determining the best way to take into account the principal responsibility of Equitable Life’s former management. We have already concluded that this should not be a reason for refusing compensation. It is, however, clear that some of the policyholders suffered loss that was caused both by regulatory failure and mismanagement. We commend Equitable Members’ Action Group for accepting that compensation payments should be discounted to reflect this issue, primarily due to the amount of taxpayers money at stake. Yet we remain unconvinced that their proposal for a 10% discount represents either a fair or a principled approach. The core difficulty is that neither the Ombudsman nor any other investigation has had a sufficiently broad remit to apportion responsibility between the regulators and Equitable Life’s former managers and advisors. In other words, no one is ideally placed to achieve fairness to the taxpayer by apportioning blame (and therefore requiring it pay) for that share of loss that is fairly attributable to regulatory failure (taking into account all compensation paid by Equitable Life to date).**

**78. At this late stage, we believe the pragmatic response is to require the compensation tribunal to make a determination on the appropriate share of blame. While this is not an easy role for a new tribunal to assume, the outcome would at the very least benefit from being independent and transparent. We emphasise that this issue is not about regulators being able to escape responsibility. On the contrary, it is about ensuring that the taxpayer provides compensation that fairly represents the extent to which regulatory failure was to blame for any losses suffered.**

79. We should acknowledge that there are three likely consequences to following this course:

- a) that the tribunal will need to exercise a degree of judgment rather than exact science in apportioning blame—a similar degree of judgment to that exercised by the courts;

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120 EQL 28

121 The Law Commission explain the meaning of joint and several liability as follows: “where two or more persons acting independently contribute to the same loss, the claimant can sue any of them for the entire loss irrespective of their actual ‘share’ in the overall blame. The defendant who is in fact sued then has a right to seek contribution from the other wrongdoer(s) in respect of their pro rata share in the blame”, *Administrative Redress: Public Bodies and the Citizen*, para 3.176

122 As above, para 4.91

- b) that the tribunal will need to decide whether to apply an 'across-the-board' discount, or to apply different discounts to different Equitable members according to their circumstances, and
- c) that many individual Equitable members will be unable to recover a portion of their loss.

### (e) Timetable

80. The Ombudsman has called on the Government to ensure that a compensation scheme is established within six months of a decision to pay compensation, and that the scheme should then complete its work within a further two years.<sup>123</sup> There is no doubt that this will be challenging in light of EMAG's suggestions that an "FSA" style scheme could take up to another eight years to achieve, and ELTA's assessment that it would take "51 man years of actuarial effort" to assess the loss of the annuitants alone.<sup>124</sup> But the Ombudsman stated that her proposed timetable was based on "realism"<sup>125</sup>. This has been confirmed by *Equitable Life*.<sup>126</sup> And as we have noted above, EMAG has also emphasised the importance of speed in light of the circumstances of policyholders. Tom Winsor re-iterated the adage "Justice delayed is justice denied."<sup>127</sup>

**81. We are not in a position to gauge whether the Ombudsman's two year timetable to implement the compensation scheme is viable or is setting the Government up to fail. There is, however, a grave danger that any further delay will turn the last decade of regulatory failure into this decade's even greater failure to provide adequate redress. Regulation is never an easy job and mistakes, even serious ones, will occasionally be made, but the real test for government is how it then responds. In this case the Government must treat the smooth and rapid progress of the compensation scheme as a matter of high priority. We intend to monitor this progress carefully.**

### (f) Hardship

82. It has been suggested that policyholders should only receive compensation in the event that they are suffering financial hardship.<sup>128</sup> This was strongly opposed by groups representing policyholders both for reasons of principle and practice. For instance, EMAG has stated that compensation payments are necessary to redress injustice to policyholders and that hardship payments alone would fail to achieve this purpose.<sup>129</sup> The Ombudsman also strongly opposed, describing the proposal as a "novel and worrying development".<sup>130</sup> ELTA added: "It smacks of injustice. Why should any one individual receive less because

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123 Ombudsman's report, Summary, para 9.31 and 9.36

124 EMAG, Comments and Proposals for Redress, page 59, available at [www.emag.org.uk/documents/EMAGsubmissionp02.pdf](http://www.emag.org.uk/documents/EMAGsubmissionp02.pdf); EQL 05

125 Q27

126 Q164

127 Q272

128 Q267 (John Kay)

129 Q64 (Paul Braithwaite)

130 EQL 21

by chance they happen to be better off than someone else?"<sup>131</sup> Paul Braithwaite questioned whether "steelworkers" would face the same proposal as Equitable Life's largely "white collar" policyholders.<sup>132</sup> EMAG questioned whether individuals would be willing to put themselves forward for hardship payments, while ELTA considered that it might be difficult to set a dividing line between those who should receive something and those who get nothing at all.<sup>133</sup>

83. There was, however, broader support for interim hardship payments to support policyholders on their "beam end".<sup>134</sup> The Chair of Equitable Life stated: "I have enormous sympathy... with the suggestion that there be a hardship fund in the interim because we do know that many of our policyholders are in dire straits... [with] payments to be made on account of the eventual payments by the taxpayer."<sup>135</sup> Tom Winsor stated means testing would allow for such payments to be workable in practice: "the legal system provides for interim damages to be awarded in deserving cases before the full determination has been finished and that is something that could be worked out in this case."<sup>136</sup> Although Ian Cowie added: "it is equally true that the Government does it very badly, according to Age Concern, for example. They estimate that something like £5 billion worth of means-tested tax credits are not claimed by people who are eligible for them, so going down that route surely is a recipe for further delay?"<sup>137</sup> However, the Ombudsman believed interim payments would be "perfectly viable and, given the passage of time since the complaints of those affected arose, entirely reasonable".<sup>138</sup>

**84. It would not be appropriate to compensate only those policyholders and annuitants who are experiencing financial hardship; the payment of compensation is not a matter of charity but a requirement of justice to redress a wrong. However, we consider that there is scope to reduce the financial pressure on those who are struggling the most, including the eldest and those in ill-health. Specifically, we recommend that priority or interim payments are made to individuals in those circumstances. We hope that the representatives of Equitable Life's members will be able to assist in identifying those most in need; in any event, hardship payments must not delay the payment of compensation to all those who are eligible.**

### **(g) Capping costs**

85. Some witnesses have suggested a cap on the total amount of compensation that is available as a way of preventing the sums involved creeping higher. For instance EMAG proposes that: "Parliament decides what the aggregate sum of compensation should be and pays it to the compensation tribunal and lets them get on with distributing it. That puts a stop to the creeping additional cost and it also means that the compensation tribunal has

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131 Q62

132 Q79

133 Q79 (Mr Braithwaite); Q61 (Mr Scawen)

134 Q65 (Mr Scawen)

135 Q219

136 Q265

137 Q268

138 EQL 21

the money to get on with doing it.”<sup>139</sup> Equitable Life has stated: “Obviously, it is the prerogative of Parliament to consider a cap”,<sup>140</sup> while its Chair, Vanni Treves, added: “If the Government can make a judgment eventually when the Commission reports, and if at that stage it says, ‘We cannot afford it’, or, ‘We can only afford it over a period of time’, so be it.”<sup>141</sup>

86. Others have highlighted the disadvantages of imposing a cap, based on reasons of both principle and practicality. For instance, Tom Winsor stated: “I would not put a cap on it because the citizen has a contract with the State and the regulators are emanations of the State. If the contract is broken, there should be redress and that redress should not be diminished by the willingness, the inclination, of the person against whom the redress is determined.”<sup>142</sup> The Board of Equitable Life added: “Unless it is certain that the amount given exceeds the amount due (plus expenses), it seems likely that the Commission would either risk paying nothing to those who were assessed after the funds ran out, or complicate the process considerably by having to make all the assessments before deciding that it had only enough funds to pay all policyholders X% of their losses. (This would also mean no cases would be closed until very late in the process).”<sup>143</sup>

87. The main advantage of a cap on the total amount of compensation to be paid would be that it would limit the taxpayer’s liability, particularly in a circumstance where the potential costs are very high. However, it would pre-empt the findings of an independent tribunal. It would also make it very difficult to achieve any speed in the distribution of the money available, without running the risk that there would be none remaining for those identified and assessed late in the process.

88. A cap on individual payments is a separate possibility. Paul Braithwaite of EMAG told us that this would be an issue “for Parliament to decide”.<sup>144</sup> There is an ethical case to be made for such a cap, but, to ensure a reasonable retirement income for all those involved without requiring a hardship test, it would need to be set at a level well above that of the average Equitable member’s investment, which, as already mentioned, was modest. Thus, although a cap would ensure that the taxpayer was not liable for paying a very large amount of compensation to any one individual, it might have very little impact on reducing the overall cost of compensation. There is also a risk that such a cap could penalise those who depend mainly or entirely on Equitable Life for their pension provision, as against those who have a mix of investments. **It would be reasonable for the compensation tribunal to consider a cap on compensation, as a way of limiting the impact on the public purse. We doubt, however, that a cap on the total amount of compensation to be paid could be applied without causing either significant unfairness to some of those who might benefit, or delay to the majority. We would be particularly concerned if a cap of any kind penalised those with modest investments or those worst affected.**

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139 Q67

140 EQL 04

141 Q185

142 Q248

143 EQL 24

144 Q 81

89. We have not attempted to, nor would it be possible for us, to deal with all of the issues that a compensation tribunal is likely to need to address. These include, for example, the tax status of compensation payments, and whether to treat payments to the estates of those policyholders who have died in the same way as payments to policyholders who are still alive. For us, the important step to be taken is the establishment of an independent compensation tribunal, with the freedom to take into account whatever factors it believes are relevant.

## 5 Lessons for the future

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### (a) Investigating failure

90. Since Equitable Life closed to new business in 2000 there have been numerous inquiries into what went wrong. Each has had a different remit, but all have been united in lacking the jurisdiction to review comprehensively all those organisations and individuals who were potentially to blame. The Ombudsman's remit did not extend to reviewing the actions of Equitable Life's former directors. While Lord Penrose's investigation considered the directors' role, his report could not consider the further issues of regulatory failure and redress. The Ombudsman has described this fragmented approach as "iniquitous and unfair" and has stated her hope that she "never again [has] to draw Parliament's attention to such a disjointed process for resolving complaints that have affected so many of the constituents of almost every Member."<sup>145</sup>

91. The Ombudsman has made it plain that she views the Government as responsible for failing to establish a "comprehensive and fit for purpose inquiry":

It seems to me that there is a direct link between the time that it has taken since the closure of the Society to new business to seek a final resolution of the complaints made about that closure and related matters and the piecemeal approach that the Government has adopted to handling the relevant issues.

The failure at the outset to establish a single inquiry which was not hampered by terms of reference or a statutory jurisdiction which limited the issues that could be addressed and resolved has resulted in such an extended and long drawn out process. The adage 'justice delayed is justice denied' has rarely been far from my thoughts as publication of this report has drawn nearer. And the continual uncertainty that this has caused for many individuals – and also for the Society itself – must have been difficult to bear. I find it hard to accept that the establishment of a comprehensive inquiry was not possible in this case.<sup>146</sup>

92. The former Chair of the FSA, Sir Howard Davies, set out his view of the approach that should have been taken by the Government:

I think that what policyholders in these circumstances might reasonably want is a report that looked at the economic situation of the company, what had actually gone on in terms of the finances of it but looked at the responsibilities of those who had been responsible in the company and the various bits of decoration around them, like the actuaries and the auditors, but also the responsibilities of the regulator, and they would want to look at whether the regulatory regime was adequate and whether the regulatory regime had been well operated, which I guess in some ways are two separate points. They would then want to look at whether there was any justification as a result of all of that for compensation by the state or by somebody else, and then they would want to know what that compensation should be and how it should be

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<sup>145</sup> Ombudsman's report, Foreword, p x to xii

<sup>146</sup> As above

calculated. In the eight years since the House of Lords judgment, which I guess precipitated this crisis, we have had a whole series of reports but we have not had a report which did what I have just described.<sup>147</sup>

He believed this to be an important lesson for the future: “a series of partial reviews ... and all of this over eight years, has not in fact delivered an answer, either yes or no, to the big question which the Equitable members asked.”<sup>148</sup> Lord Norton added that “the present mechanisms in relation to accountability and the law in this process are extremely slow.”<sup>149</sup> While the Economic Secretary acknowledged these concerns, he added that it was not necessarily the case that one inquiry would have been sufficient to review all the issues that were raised.<sup>150</sup> Although it may on occasion be desirable to hold a number of smaller inquiries to review discrete issues, this does not, however, remove the need for a central inquiry that can achieve the core aims outlined by Howard Davies.

**93. The Government is responsible for failing to establish a comprehensive and fit for purpose investigation into the Equitable Life affair. Not only has this failure caused unnecessary expense, but worse still it has resulted in years of delay, anxiety and unanswered questions. The Government must review the way in which serious failures of this kind are investigated in the future. In the meantime, the Government has reason to apologise not only for the maladministration identified by the Ombudsman, but also for the delay and frustration caused by its piecemeal approach.**

## **(b) Approach to regulation**

94. The Ombudsman has focused her criticism upon the way in which the regulators carried out their role rather than on the system of regulation itself. She has criticised among other things an over-reliance on the status and reputation that Equitable Life then enjoyed:<sup>151</sup>

The central story of this report is that this robust system of regulation was not, in respect of the Society, implemented appropriately – that is, consistently, fairly, and with proper regard to the interests of those directly affected – by the prudential regulators and those providing assistance and advice to those regulators ... Assessing the risks relevant to a particular insurance company cannot be appropriately achieved through relying on its longevity or reputation.<sup>152</sup>

95. Vanni Treves, the current Chairman of Equitable Life, concurred: “the system was there, the structure was there, it was simply that it was not operated as it should have been. Therefore, I do not think we could say that there were serious failings in the system.”<sup>153</sup>

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147 Q283

148 Q283

149 Q287

150 Oral evidence taken before the Committee from Ian Pearson MP on 9 December 2008, transcript due to be published as HC 41-i (2008–09)

151 Ombudsman's report, Part 1, Ch 15, paras 13 to 15, 32 to 33

152 Ombudsman's report, Part 1, Ch 15, paras 32 to 33

153 Q226

96. The Ombudsman went as far as to state that (prior to the FSA's involvement) the regulators were "mesmerised by the Society":

Here was a long-established, extremely well-thought of, highly successful Society that had been that way since anybody could remember and therefore somehow, although the stark facts were in front of them, they could not quite believe it. There is a sort of sense that somehow it would come right. The metaphor I have used again in my own mind is that the regulators were on the bank really watching this pleasure steamer sailing towards the edge of Niagara Falls; all of the information was there in front of them and they could even see this boat taking on new passengers, but it was heading inexorably for disaster. Somehow there was a sense that because it was Equitable they were going to do a miraculous u-turn at the last minute and it would all come right. There is something in there, a sense that because it was Equitable it could not go down.<sup>154</sup>

97. The "central lesson" that the Ombudsman draws from her investigation is "the need for absolute clarity as to what can and cannot be expected from the system of financial regulation".<sup>155</sup> She has observed a "big gap between what the system was designed to do, what people in charge of it said it would do and what government has said in response to my report now", adding that:

One of the responses to a fairly early draft of my report from the FSA was a comment which basically said the system of regulation I was describing here would not be recognised anywhere in the world. My response to that comment was that that may be so, but it is the law.<sup>156</sup>

98. The Ombudsman has also drawn a tentative comparison to the regulation of Northern Rock arguing that a similar assessment about its status and reputation appears to have been behind the way in which it was regulated.<sup>157</sup> She added that other comparisons were "matters for others – and perhaps history – to consider."<sup>158</sup> Paul Braithwaite was less tentative: "the current banking bail out, has very close similarities. These were companies with flawed business models who were not satisfactorily regulated by the FSA."<sup>159</sup> Colin Slater, also of EMAG, added:

They had lessons to learn in Equitable Life, two in particular. One was to watch very carefully companies with unique business models, which may sound familiar and was certainly Equitable Life. The second one was to look very hard at complex legal documents which purported to be worth huge sums of money. If they had had to pay compensation in 2001 as a result of not doing those things, they would have tried much harder in the subsequent period and we may not have had Northern Rock, because they would have seen that business model coming. We may not have had

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154 Q43; Q36

155 Ombudsman's report, Part 1, Ch15, para 17

156 Q38

157 Ombudsman's report, Part 1, Chapter 15, para 15

158 Ombudsman's report, Part 1, Chapter 15, para 16

159 Q50

much of the banking crisis because they would have looked much harder at all those collateral debts and whatever they called them, the various complicated documents that turned out to be valueless. The cost of that has been infinitely more than the cost of paying up for Equitable Life in 2001.<sup>160</sup>

99. Howard Davies reflected upon the current regulatory regime in light of recent events, before concluding:

As to whether we now have the balance right, I think in the light of the current financial crisis many people would conclude that tougher regulation was needed in parts of the economy and parts of the financial sector. Indeed, my successor but one at the FSA has said - and I am sure he is right - that he needs more people in order to get a grip of the current financial crisis. This question of regulatory intensity is one that you do need to revisit from time to time, but I personally think there is a happy medium which is somewhere between what was done pre-FSA - I think in the case of life insurance companies where they went to visit them perhaps every three years if they had time - and where we are now. I think that has been a positive move.<sup>161</sup>

100. In contrast, John Kay suggested that regulation should focus upon “consumer protection” in the future:

either we have to greatly increase the resources which we devote to prudential supervision - in a way that seems to me quite unrealistic - in a way that will prevent business failures largely in this sector, or we have to limit the scope of regulation, we have to abandon the idea that there is a generalised duty of prudential supervision and focus narrowly on consumer protection. My strongly felt view is that the latter is the direction in which we should take it. All our experience, I believe, of regulation from other sectors is that regulation works best when it identifies specific evils and is targeted at them, and worst when it is allowed to interfere in the generalised management of businesses in the sector. I would take the lesson of this case as being an important lesson for the structure of financial services' regulation generally and one which to some degree leads in the opposite direction to that in which government thinking is taking it.<sup>162</sup>

101. Lord Norton, however, emphasised the “danger of generalising about the regulatory state from this particular case”, stating that in his view this case was “particular through its light-touch approach because the FSA is in a distinct position relative to other regulators.”<sup>163</sup> The Economic Secretary also pointed out that there have been major changes to the system of regulation that was in place during the period under investigation. In this respect, he emphasised that lessons had been learned and, where appropriate, the Government would be willing to “take it on the chin”.<sup>164</sup> He also added that the Chair of the FSA, Lord Turner, has been tasked with considering “whether the current system of

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160 Q89

161 Q245

162 Q260

163 Q281

164 Oral evidence taken before the Committee from Ian Pearson MP on 9 December 2008, transcript due to be published as HC 41-i (2008–09)

regulation is working sufficiently well”, particularly in light of recent events in the banking sector.<sup>165</sup>

**102. The “central story” of the Ombudsman’s investigation is the failure of regulators to exercise their powers to ensure that a company with a sound reputation was in fact observing minimum standards. It is not for us to assess whether a failure to learn this lesson has contributed in whole or part to the crisis that is currently being experienced worldwide in the banking sector. Nonetheless, we urge the Government to take this opportunity to consider carefully – and to set out in its response to this Report - what lessons need to be learned from the criticisms that have been (and continue to be) levelled against the regulators. This includes the need for absolute clarity as to what can and cannot be expected from the system of financial regulation.**

### **(c) Accountability of regulators: Who watches the watchmen?**

103. A report from the House of Lords Constitution Committee, *The Regulatory State: Ensuring its Accountability* (May 2004),<sup>166</sup> noted that two of the key elements of holding regulators to account were, firstly, exposing regulators to scrutiny and, secondly, ensuring “the possibility of independent review” of the decisions that they reached.<sup>167</sup>

104. The FSA no longer falls within the Ombudsman’s jurisdiction, but rather has its own specific complaints commissioner.<sup>168</sup> It was only because the FSA was acting on behalf of the Treasury (rather than independently) for the period under investigation that the Ombudsman was able to investigate maladministration on its part.

105. The Ombudsman felt that it was not for her to comment upon whether her Office should regain its remit over the FSA, but she expressed her general view that “any public body should be in an ombudsman’s jurisdiction unless there is a good reason for them not to be.”<sup>169</sup> She provided the following compelling reasoning:

there is nothing like a recommendation from the ombudsman for compensation to concentrate minds in government departments and with permanent secretaries and ministers, but whereas compensation should never be a penalty – it should always be a remedy for a wrong done – if that were removed then the feedback, the learning and the improvements in public services which come from having to provide remedies is in danger of being diminished and diluted. I would be very concerned if we got ourselves into a situation where actually civil servants could simply live in a world where there were never any consequences for their failings.<sup>170</sup>

106. In addition to not being subject to the Parliamentary Ombudsman’s jurisdiction, the FSA has statutory immunity against the courts awarding compensation, which (in broad

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165 Oral evidence taken before the Committee from Ian Pearson MP on 9 December 2008, transcript due to be published as HC 41-i (2008–09)

166 Public Administration Select Committee, Sixth Report of Session 2003–04, HL Paper 68,

167 HL Paper 68-I (2003–04)

168 Financial Services and Markets Act 2000, Schedule 1, Part 1, Paragraphs 7–8

169 Q35

170 Q21

terms) applies unless “bad faith” is proven on its part. Colin Slater of EMAG objected to this immunity. Tom Winsor stated: “if they can just shrug their shoulders helplessly and say, ‘It does not matter. We cannot face any kind of sanction for this’, then of course they will have a tendency to neglect their duty and not be diligent and honest in their prosecution of their duty in many cases.”<sup>171</sup> He added: “I think that the statutory immunity of the FSA... is going to have to be reassessed because when you have immunity the incentive to perform well has been diminished. I am not saying it has been extinguished but it has been diminished.”<sup>172</sup>

107. Howard Davies disagreed. He stated that the decision to provide statutory immunity had been fully debated by Parliament and introduced for good reason, since without it: “the regulator would be subject to a whole variety of claims - the argument typically related to claims from firms who would pursue the regulator to contest regulatory action against them - and that the system would thereby be much less effective.” Howard Davies also highlighted that the Treasury Select Committee contributes to ensuring the accountability of the FSA.<sup>173</sup>

108. Ian Cowie argued that “at the very least” the Ombudsman and the National Audit Office should both be given a scrutiny role in relation to the FSA in the future.<sup>174</sup> Lord Norton took a different approach by suggesting that more needed to be done to oversee the activities of regulators rather than simply to react where there is failure:

There is a problem within Government because there is not a whole of Government view of regulation, so there is no understanding of regulation qua regulation. When we did a second inquiry into economic regulators we had three ministers before us each responsible for regulation of a particular sector. That was the first time they had come together to discuss the nature of regulation. Similarly, there is no parliamentary view of regulation, there is no mechanism in place for that, so, rather like this Committee, it is a one-off investigation and quite often it is reactive. There are two elements from Parliament's point of view: deciding the overall framework of regulation but then making sure you have got some mechanism for keeping a check on what regulators are doing, holding them to account, not interfering necessarily, but determining best practice, keeping a check on it and making recommendations in the light of that.<sup>175</sup>

109. Tom Winsor agreed. He stated that Parliament should “do far more in terms of ongoing proactive scrutiny of the behaviour and competencies of regulators far more than they do now. This after-the-event bloodletting is all very well but what people want is prevention rather than cure or arguments about redress, because the fact is that regulators in this country right now get away with far too much.”<sup>176</sup>

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171 Q89 (Colin Slater); Q261 (Tom Winsor)

172 Q282

173 Q287

174 Q282

175 Q 274

176 Q286

110. The Financial Services Authority no longer falls within the jurisdiction of the Ombudsman. The courts are also unable to award compensation against the Authority, except where bad faith is proven on its part. The Ombudsman's candid assessment of the Financial Services Authority leaves us with a question for the Government: can we be assured that if an investor is failed by the Financial Services Authority in the future that it will be held accountable, to enable lessons to be learned and, if appropriate, any loss to be made good? If not, the time may have come to reconsider how our key regulators are held to account. The Government must also heed the adage that prevention is better than cure: in particular, there is a need for reflection upon whether more could be done in Government, Parliament, and the National Audit Office to maintain an overview of regulators as a way of mitigating the risk of serious regulatory failure in the future.

#### (d) Accountability of directors and advisors

111. The new board of directors commenced claims against the former directors and certain professional advisors of Equitable Life, but the proceedings were later discontinued. Equitable Life ended up paying for its own costs of £35 million, together with an additional £10 million contribution to the costs of some of the former directors.<sup>177</sup>

112. Ian Cowie told us that he shared our astonishment at this situation, adding: "It is one of the peculiarities of regulation of financial services in this country that so much money can be lost on behalf of so many people and nobody should even face charges.... In America, for example, it is inconceivable that something like this would have happened without anybody facing charges."<sup>178</sup> Patrick Collinson of *The Guardian* has made a similar point:

The fact remains that the management was principally at fault, but they've paid nothing in compensation. Non-exec directors were supposed to oversee the company; they have paid nothing. Auditors were paid millions to comb through the books; they have paid nothing. The actuaries were supposed to match assets with liabilities; they have paid nothing. Yet you and I – the taxpayers of this country – are supposed to cough up... I just don't get it.<sup>179</sup>

113. We struggle to understand how the former directors and advisors of Equitable Life have walked away without making good any of the losses that have been sustained. Quite apart from any issue of regulatory failure, this represents a serious lack of accountability on the part of those who were viewed as principally to blame. We ask the Government to reflect upon whether this would have happened in other leading jurisdictions and, if not, to consider what must be done to prevent it happening again.

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177 EQL 24 (Equitable Life)

178 Qq 278 to 280

179 *Sticking up for the taxpayer*, Guardian Money, 19 July 2008

## 6 Conclusion

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114. The Ombudsman's report is not the first inquiry to criticise the prudential regulation of Equitable Life. A report by a Committee of Investigation of the European Parliament (2007) considered that the Government was in breach of the Third Life Directive and subject to an obligation to recompense Equitable Life's members.<sup>180</sup> The internal review carried out by the FSA was critical of its actions, and Lord Penrose concluded: "the practices of the Society's management could not have been sustained over a material part of the 1990s had there been in place an appropriate regulatory structure adapted to the requirements of a changing industry that happened to manifest themselves in an extreme form in the case of Equitable Life."<sup>181</sup> Howard Davies also described the arm of the DTI from which formerly regulated Equitable Life as "ill-considered" and in need of being "tightened up significantly."<sup>182</sup>

115. We are, however, concerned that the Government may seek to reject the Ombudsman's determinations of maladministration. The Government has rejected the Ombudsman's findings on several previous occasions, which we considered in our previous Report, *The Ombudsman in Question: the Ombudsman's report on pensions and its constitutional implications* (July 2006).<sup>183</sup> While we are encouraged by the fact that the Government has taken more time to consider the report on Equitable Life than was taken in relation to the Ombudsman's report on occupational pensions, we were concerned by the Economic Secretary's suggestion that the Government could reject one of her findings simply "where we disagree with her".<sup>184</sup>

116. Following the Bradley case, the law requires "cogent reasons" for the Government to disagree with any of the Ombudsman's findings of maladministration, as the Economic Secretary has acknowledged.<sup>185</sup> The Ombudsman's Equitable Life investigation has been particularly thorough and painstaking: "a work of technical accomplishment and endurance", as the Minister put it to us. We cannot see how the Government could plausibly substitute its own judgment for that of the Ombudsman in these circumstances. During our 2005–06 inquiry into tax credits the Ombudsman told us:

there is an important constitutional point here. I think it is my job to determine maladministration. If I make a finding which is wholly unreasonable that no reasonable ombudsman can make, and people have, complainants have challenged that in the High Court. Now, I am not suggesting for a moment that we should all toddle off to the High Court on these issues, but seems to me that there is a starting presumption that the Ombudsman knows her job and if I say that there is maladministration, I have not reached that view lightly and I do not expect the

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180 European Parliament, Report on the crisis of the Equitable Life Assurance Society, May 2007

181 Penrose report, page 746

182 Q245

183 Sixth Report of Session 2005-06, HC 1081

184 Oral evidence taken before the Committee from Ian Pearson MP on 9 December 2008, transcript due to be published as HC 41-i (2008–09)

185 Oral evidence taken before the Committee from Ian Pearson MP on 9 December 2008, transcript due to be published as HC 41-i (2008–09)

Government or permanent secretaries to say, “We don’t agree” and walk away. They can argue with me, of course they can, and I may not be right and this Committee may take the view that I have done something completely off the wall. ... but I think the place for those discussions is not in the Government or in the NHS where the Government somehow decides to pick and choose which of my findings it likes. There is an important constitutional principle here, it seems to me. This is Parliament’s Ombudsman and I am here for a purpose.<sup>186</sup>

117. We agreed then and we agree now. **We urge the Government to act without further delay and to accept the Ombudsman’s findings of maladministration. She is Parliament’s Ombudsman and it is imperative that the Government respects her conclusions. There are valid arguments to be had about the scale of compensation and the way that such cases should be handled in the future, but we would be deeply concerned if the Government chose to act as judge on its own behalf by refusing to accept that maladministration took place. This would undermine the ability to learn lessons from the Equitable Life affair. If it were to happen, we consider it would be necessary to hold a debate on the floor of the House to allow Members to discuss these issues and re-establish the Parliamentary Commissioner’s role.**

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186 Oral evidence taken before the Committee on 20 October 2005, HC 577 (2005–06), Q 43

# Conclusions and recommendations

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## Introduction

1. We had thought that the Government would publish its response to the Ombudsman's report on *Equitable Life* in time for us to consider it as part of our inquiry. We now understand that it will be available only very shortly before the House rises for Christmas. We have therefore decided to publish this Report as speedily as possible, so that debate on the Government's response—and possibly even the response itself—can be informed by our views. Whether we need to return to these issues in the New Year will depend on what the Government has to say—but if it gives us any cause for concern, we will not hesitate to do so. (Paragraph 4)
2. There were more than 1,500,000 members of *Equitable Life* at the time it was forced to close to new business in December 2000. Over the last eight years many of those members and their families have suffered great anxiety as policy values were cut and pension payments reduced. We acknowledge the determination of all those individuals who have campaigned tirelessly to find out what went wrong and to seek recompense from those responsible. Many are no longer alive, and will be unable to benefit personally from any compensation. We share both a deep sense of frustration and continuing outrage that the situation has remained unresolved for so long. (Paragraph 5)

## The Ombudsman's report

3. We congratulate the Ombudsman on her comprehensive and compelling report, *Equitable Life: a decade of regulatory failure*. The report paints a damning picture of the prudential regulation of *Equitable Life* throughout the 1990's and early 2000's. In short, the members of *Equitable Life* were seriously let down by the Financial Services Authority, the (then) Department of Trade and Industry, and the Government Actuary's Department. We support her recommendation for a full and unreserved apology from those public bodies concerned. (Paragraph 17)
4. It is disappointing that the publication of the Government's response has been delayed. While the Ombudsman's report raises complex issues, the Government has had sight of her report for many months. There can be few cases more deserving of a prompt response than the present, particularly given the increasing age of the policyholders and the length of time that they have waited already. We do, however, welcome the fact that the Government seems to be treating the Ombudsman's report with the seriousness it deserves, and we look forward to the publication within the next few days of a what we trust will be a thorough and well-reasoned response. (Paragraph 18)

## The case for compensation

5. We strongly support the Ombudsman's recommendation for the creation of a compensation scheme to pay for the loss that has been suffered by *Equitable Life*'s members as a result of maladministration. Where regulators have been shown to fail

so thoroughly, compensation should be a duty, not a matter of choice. However, like the Ombudsman, we are acutely aware of the substantial sums of money involved. This calls for a careful balance to be struck between the interests of the taxpayer, on the one hand, against the competing need to be fair to the large number of policyholders affected, on the other. We take full account of the current and extreme pressure on the public purse. But at the same time the regulators were installed to promote confidence in us all to save for retirement. They were given extensive powers to carry out their task. Not only did the regulators fail, but they failed over a prolonged period and at a fundamental level. The impact has been severe for many of those who were worst affected; it would be unacceptable for current financial pressure to override failings which took place seven or more years ago. (Paragraph 47)

6. We fear that a failure to compensate could further undermine the incentive to save for retirement and could weaken trust in the regulators. While we acknowledge concerns that the threat of compensation may make regulators over-cautious in the future, we do not accept this will happen. The payment of compensation should, if anything, sharpen minds and encourage the effective use of their powers. Neither do we accept that compensation would set a difficult precedent. Each case must be decided on its merits, just as happened in the case of Barlow Clowes and the Ombudsman's many other previous investigations. (Paragraph 48)
7. It would also be wrong for the Government to refuse compensation on the basis of Lord Penrose's conclusion that *Equitable Life* was "principally ... the author of its own misfortunes". This often quoted phrase must not mask Lord Penrose's further conclusion that it was regulatory failure which permitted *Equitable Life*'s management to carry on undermining the interests of its members for so long. We also take into account that Lord Penrose was not tasked with determining issues of regulatory failure or, more particularly, the case for compensation. This was the task of the Ombudsman and we stand behind her well-considered views. (Paragraph 49)
8. The decision to compensate must not, however, be the equivalent of signing a blank cheque on taxpayers' behalf. It is essential that the public purse benefits from an appropriate measure of protection. In particular, the emphasis must be upon compensating individuals only for that loss that is fairly attributable to regulatory failure. The impact of internal mismanagement must be taken into account. It is on this basis that we reject the suggestion that compensation would be the equivalent of turning the State into the guarantor of a failed business; in contrast it would be a case of the State making good its own serious failure. We also highlight the Ombudsman's conclusion that not all policyholders suffered loss; this should not be a case of compensation for all. (Paragraph 50)

### A compensation scheme

9. We endorse the Ombudsman's proposal for a compensation scheme that is independent, transparent and simple. It is only fair that the difficult assessments which have to be made are carried out at arm's length from Government and based on principles that are publicly available. Like the Ombudsman and several of the witnesses who appeared before us, we believe that this will require an independent

compensation tribunal to be established. The first task of the tribunal must be to determine and then publish the principles and procedures that will be used to calculate compensation. We welcome the commitment of the current board of Equitable Life to provide full and prompt assistance both in relation to this task and subsequently. (Paragraph 53)

10. We are concerned that there is an inherent tension between speed and accuracy in the way that a compensation scheme can measure loss. In ordinary circumstances it would, in our view, be inappropriate to depart from the basic presumption that loss must be accurately assessed. But the main priority must be prompt redress given that policyholders have already been waiting for almost a decade and substantial numbers have either died or are advancing in years. Justice further delayed will mean justice denied to even more people. Where possible, we urge the compensation tribunal to reconcile the twin goals of speed and accuracy; we take comfort from Equitable Life's belief that a sensible compromise can be achieved. (Paragraph 59)
11. An accurate assessment of loss would require policyholders to establish whether they relied upon misleading information or advice. This causes obvious difficulties; the relevant events may have taken place many years ago and substantial numbers of policyholders are either ill, infirm or deceased. A number of alternative approaches have been suggested, which we urge the Compensation Tribunal to consider before placing onerous requirements on policyholders. In our view the circumstances of the policyholders and the delays of recent years require the compensation scheme to avoid placing a burden on individual policyholders wherever this is possible. (Paragraph 63)
12. The fairness of requiring taxpayers to compensate Equitable Life's policyholders firmly depends upon making sure that public funds do not pay for loss that is fairly attributable to the poor performance of the stock market or to the mismanagement of Equitable Life's former directors that could not have been prevented by adequate regulation. The aim should be to restore individuals to the position they would have been in had maladministration not occurred. (Paragraph 65)
13. We agree with the Ombudsman that any element of loss that is accountable to general market underperformance during the period under investigation should be discounted by assessing each individual's relative loss. This would be by comparing the performance of Equitable Life against an appropriate competitor or group of competitors. The compensation tribunal will need carefully but promptly to decide in which of the many possible ways this should be done. (Paragraph 69)
14. One of the most difficult tasks is determining the best way to take into account the principal responsibility of Equitable Life's former management. We have already concluded that this should not be a reason for refusing compensation. It is, however, clear that some of the policyholders suffered loss that was caused both by regulatory failure and mismanagement. We commend Equitable Members' Action Group for accepting that compensation payments should be discounted to reflect this issue, primarily due to the amount of taxpayers money at stake. Yet we remain unconvinced that their proposal for a 10% discount represents either a fair or a principled approach. The core difficulty is that neither the Ombudsman nor any

other investigation has had a sufficiently broad remit to apportion responsibility between the regulators and Equitable Life's former managers and advisors. In other words, no one is ideally placed to achieve fairness to the taxpayer by apportioning blame (and therefore requiring it pay) for that share of loss that is fairly attributable to regulatory failure (taking into account all compensation paid by Equitable Life to date). (Paragraph 77)

15. At this late stage, we believe the pragmatic response is to require the compensation tribunal to make a determination on the appropriate share of blame. While this is not an easy role for a new tribunal to assume, the outcome would at the very least benefit from being independent and transparent. We emphasise that this issue is not about regulators being able to escape responsibility. On the contrary, it is about ensuring that the taxpayer provides compensation that fairly represents the extent to which regulatory failure was to blame for any losses suffered. (Paragraph 78)
16. We are not in a position to gauge whether the Ombudsman's two year timetable to implement the compensation scheme is viable or is setting the Government up to fail. There is, however, a grave danger that any further delay will turn the last decade of regulatory failure into this decade's even greater failure to provide adequate redress. Regulation is never an easy job and mistakes, even serious ones, will occasionally be made, but the real test for government is how it then responds. In this case the Government must treat the smooth and rapid progress of the compensation scheme as a matter of high priority. We intend to monitor this progress carefully. (Paragraph 81)
17. It would not be appropriate to compensate only those policyholders and annuitants who are experiencing financial hardship; the payment of compensation is not a matter of charity but a requirement of justice to redress a wrong. However, we consider that there is scope to reduce the financial pressure on those who are struggling the most, including the eldest and those in ill-health. Specifically, we recommend that priority or interim payments are made to individuals in those circumstances. We hope that the representatives of Equitable Life's members will be able to assist in identifying those most in need; in any event, hardship payments must not delay the payment of compensation to all those who are eligible. (Paragraph 84)
18. It would be reasonable for the compensation tribunal to consider a cap on compensation, as a way of limiting the impact on the public purse. We doubt, however, that a cap on the total amount of compensation to be paid could be applied without causing either significant unfairness to some of those who might benefit, or delay to the majority. We would be particularly concerned if a cap of any kind penalised those with modest investments or those worst affected. (Paragraph 88)

### Lessons for the future

19. The Government is responsible for failing to establish a comprehensive and fit for purpose investigation into the Equitable Life affair. Not only has this failure caused unnecessary expense, but worse still it has resulted in years of delay, anxiety and unanswered questions. The Government must review the way in which serious

failures of this kind are investigated in the future. In the meantime, the Government has reason to apologise not only for the maladministration identified by the Ombudsman, but also for the delay and frustration caused by its piecemeal approach. (Paragraph 93)

20. The “central story” of the Ombudsman’s investigation is the failure of regulators to exercise their powers to ensure that a company with a sound reputation was in fact observing minimum standards. It is not for us to assess whether a failure to learn this lesson has contributed in whole or part to the crisis that is currently being experienced worldwide in the banking sector. Nonetheless, we urge the Government to take this opportunity to consider carefully – and to set out in its response to this Report - what lessons need to be learned from the criticisms that have been (and continue to be) levelled against the regulators. This includes the need for absolute clarity as to what can and cannot be expected from the system of financial regulation. (Paragraph 102)
21. The Financial Services Authority no longer falls within the jurisdiction of the Ombudsman. The courts are also unable to award compensation against the Authority, except where bad faith is proven on its part. The Ombudsman’s candid assessment of the Financial Services Authority leaves us with a question for the Government: can we be assured that if an investor is failed by the Financial Services Authority in the future that it will be held accountable, to enable lessons to be learned and, if appropriate, any loss to be made good? If not, the time may have come to reconsider how our key regulators are held to account. The Government must also heed the adage that prevention is better than cure: in particular, there is a need for reflection upon whether more could be done in Government, Parliament, and the National Audit Office to maintain an overview of regulators as a way of mitigating the risk of serious regulatory failure in the future. (Paragraph 110)
22. We struggle to understand how the former directors and advisors of *Equitable Life* have walked away without making good any of the losses that have been sustained. Quite apart from any issue of regulatory failure, this represents a serious lack of accountability on the part of those who were viewed as principally to blame. We ask the Government to reflect upon whether this would have happened in other leading jurisdictions and, if not, to consider what must be done to prevent it happening again. (Paragraph 113)

## Conclusion

23. We urge the Government to act without further delay and to accept the Ombudsman’s findings of maladministration. She is Parliament’s Ombudsman and it is imperative that the Government respects her conclusions. There are valid arguments to be had about the scale of compensation and the way that such cases should be handled in the future, but we would be deeply concerned if the Government chose to act as judge on its own behalf by refusing to accept that maladministration took place. This would undermine the ability to learn lessons from the *Equitable Life* affair. If it were to happen, we consider it would be necessary to hold a debate on the floor of the House to allow Members to discuss these issues and re-establish the Parliamentary Commissioner’s role. (Paragraph 117)

## Oral and Written Evidence

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A volume of oral and written evidence will be published in due course as HC 41-II.

## Witnesses

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### Thursday 30 October 2008

**Ann Abraham**, Parliamentary and Health Service Ombudsman, **Bill Richardson**, Deputy Chief Executive and **Iain Ogilvie**, Investigation Manager, Office of the Parliamentary and Health Service Ombudsman

### Tuesday 11 November 2008

**Paul Braithwaite**, **Colin Slater**, **Liz Kwantes** and **Ann Berry**, Equitable Members' Action Group (EMAG), and **Peter Scawen**, Equitable Life Trapped Annuitants (ELTA)

**Mr Vanni Treves**, Chair and **Mr Charles Thomson**, Chief Executive, Equitable Life Assurance Society

### Thursday 13 November 2008

**Sir Howard Davies**, former Chair of the Financial Services Authority, **Lord Norton of Louth**, Former Chair of the Constitution Committee, House of Lords, **Tom Winsor**, former Rail Regulator, **Iain Cowie**, The Telegraph, and **John Kay**, economist

### Tuesday 9 December 2008

**Ian Pearson MP**, Economic Secretary to the Treasury

# Formal Minutes

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The following declarations of interest relating to the inquiry were made:

## 30 October 2008

Paul Flynn declared the following interest: his spouse's pension.

Kelvin Hopkins declared the following interest: his parliamentary pension.

## Thursday 11 December 2008

Members present:

Dr Tony Wright, in the Chair

Mr David Burrowes  
Paul Flynn  
David Heyes  
Kelvin Hopkins

Mr Ian Liddell-Grainger  
Julie Morgan  
Mr Gordon Prentice  
Mr Charles Walker

Draft Report (Justice delayed: The Ombudsman's report on *Equitable Life*), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 117 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chairman 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 was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 11 November, 13 November and 26 November 2008.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Tuesday 16 December at 1.45 pm]

# List of Reports from the Committee during the current Parliament

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

## Session 2008-09

First Report	Lobbying: Access and Influence in Whitehall	To be published as HC 36
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## Session 2007-08

First Report	Machinery of Government Changes: A follow-up Report	HC 160 ( <i>HC 514</i> )
Second Report	Propriety and Peerages	HC 153 ( <i>Cm 7374</i> )
Third Report	Parliament and public appointments: Pre-appointment hearings by select committees	HC 152 ( <i>HC 515</i> )
Fourth Report	Work of the Committee in 2007	HC 236 ( <i>HC 458</i> )
Fifth Report	When Citizens Complain	HC 409 ( <i>HC 997</i> )
Sixth Report	User Involvement in Public Services	HC 410 ( <i>HC 998</i> )
Seventh Report	Investigating the Conduct of Ministers	HC 381 ( <i>HC 1056</i> )
Eighth Report	Machinery of Government Changes: Further Report	HC 514
Ninth Report	Parliamentary Commissions of Inquiry	HC 473 ( <i>HC 1060</i> )
Tenth Report	Constitutional Renewal: Draft Bill and White Paper	HC 499
Eleventh Report	Public Services and the Third Sector: Rhetoric and Reality	HC 112 ( <i>HC 1209</i> )
Twelfth Report	From Citizen's Charter to Public Service Guarantees: Entitlement to Public Services	HC 411 ( <i>HC 1147</i> )
Thirteenth Report	Selection of a new Chair of the House of Lords Appointments Commission	HC 985
Fourteenth Report	Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants	HC 664

## Session 2006-07

First Report	The Work of the Committee in 2005-06	HC 258
Second Report	Governing the Future	HC 123 ( <i>Cm 7154</i> )
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122 ( <i>HC 1057 Session 2007-08</i> )
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 ( <i>HC 88 Session 2007-08</i> )
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 ( <i>HC 922</i> )
Sixth Report	The Business Appointment Rules	HC 651 ( <i>HC 1087</i> )
Seventh Report	Machinery of Government Changes	HC 672 ( <i>HC 90 Session 2007-08</i> )
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006-07	HC 922 ( <i>HC 1048</i> )

Ninth Report	Skills for Government	HC 93 ( <i>HC 89</i> )
First Special Report	The Governance of Britain	HC 901
<b>Session 2005–06</b>		
First Report	A Debt of Honour	HC 735 ( <i>Cm 1020</i> )
Second Report	Tax Credits: putting things right	HC 577 ( <i>HC 1076</i> )
Third Report	Legislative and Regulatory Reform Bill	HC 1033 ( <i>HC 1205</i> )
Fourth Report	Propriety and Honours: Interim Findings	HC 1119 ( <i>Cm 7374</i> )
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 ( <i>HC 91, Session 2007–08</i> )