



House of Commons
Public Administration Select
Committee

**Justice delayed: The
Ombudsman's report
on *Equitable Life*:
Government Response
to the Committee's
Second Report of
Session 2008–09**

**Fourth Special Report of Session
2008–09**

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The current staff of the Committee are Steven Mark (Clerk), David Slater (Second Clerk), Pauline Ngan (Committee Specialist), Louise Glen (Senior Committee Assistant), Lori Verwaerde (Committee Assistant) and Shane Pathmanathan (Committee Support Assistant)

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Fourth Special Report

The Public Administration Select Committee reported to the House on *Justice delayed: The Ombudsman's report on Equitable Life* in its Second Report of Session 2008-09, published 15 December 2008 as HC 41. The Government Response was received on 14 July 2009 and is published below as an appendix to this Report.

Government response

Letter from Sarah McCarthy-Fry MP, Exchequer Secretary, HM Treasury to Chairman of the Committee

Justice delayed: the Ombudsman's report on Equitable Life

I am writing with regard to the report published by the PASC on 15 December 2008 under the above title.

The Government has since responded to the report of the Parliamentary Ombudsman ("the Ombudsman"), on 15 January 2009,¹ and has also responded to the PASC's further report of 19 March about the Government's response.² In consequence, events have moved on. Many of the issues covered in your December report address the Committee's views and recommendations about how you consider the Government should respond to the Ombudsman, and so have been overtaken by events (being covered in the response and in subsequent debates in the House).

In the circumstances, I feel that a detailed response to each of your conclusions and recommendations would not be of much help to the Committee. Nevertheless, I outline a brief summary below of the key points of the Government's response, in relation to the main issues raised in your December report.

Timing of the Government's response

The PASC report commented on the length of time that has passed in resolving this case, and delays in the Government making its response. In the event, the period taken to respond did exceed that originally envisaged, but this reflected the seriousness with which the Government treated the Ombudsman's report and the great care with which it examined her findings and recommendations. The Government is committed to introducing the ex gratia payments scheme it has announced as swiftly as possible, taking account of the practical considerations involved.

1 HM Treasury, *The Prudential Regulation of the Equitable Life Assurance Society: the Government's response to the Report of the Parliamentary Ombudsman's Investigation*, Cm 7538, January 2009

2 Public Administration Select Committee, Third Special Report of Session 2008-09, *Justice denied? Government Response to the Committee's Sixth report of Session 2008-09*, HC 569

The case for compensation

The Government set out its reasons for rejecting the Ombudsman's compensation recommendation in its response document. This issue was also touched upon in the response to your March 2009 report, conclusion 16.³

With regard to the issues of investor confidence and trust in the regulators, I note your concerns about the possibly harmful consequences of a failure to compensate. The Government made clear in its response that it believes there could also be serious repercussions for the nature and practice of regulation and the relationship between governments and financial markets were the taxpayer to provide a remedy for all losses whenever financial institutions fail and maladministration by the regulator was found.

No system of regulation can guarantee that problems will not occur. Attempting to provide such a guarantee would carry the risk that regulators would be constrained to shadow each company being regulated, with consequent loss of managerial independence and the potential for increased costs (with consequent reduction in investment returns), the stifling of innovation and flexibility, loss of market efficiency and damage to the UK's competitive position. The Ombudsman herself recognised that regulators should not act as a "shadow director". Nevertheless, the Government believes that investors can take confidence from the help it has announced.

Compensation scheme

The PASC report set out a number of features that the Committee considered should be taken account of in the design and operation of a scheme. Although the Government did not accept the Ombudsman's compensation recommendation, which the PASC report endorsed, the *ex gratia* payments scheme that the Government is developing shares a number of the features that the Committee recommended.

These include recognition that taxpayers should only fund payments for loss that is fairly attributable to regulatory failure. You also refer to the "difficult assessments which have to be carried out at arm's length from Government". The Government decided that the establishment of a tribunal would be inappropriate, given the potential for delay if a complex structure were to be constituted. But its appointment of Sir John Chadwick to advise on the extent and impact of losses sustained by different groups of policyholders and the proportion of losses which it would be appropriate to apportion to the public bodies involved provides the element of independence envisaged by the PASC.

The PASC report also identified the need for reconciliation of the twin goals of speed and accuracy. The Government's approach, to work on practical issues in parallel with obtaining Sir John's advice, seeks to achieve that. The Government will also bear in mind this issue when designing the payments scheme, to keep the burden on individual policyholders to the minimum necessary.

I would conclude this letter by acknowledging that the Government's response has been the subject of much scrutiny. This is only to be expected. But the Government continues to believe that the response it made was the best it could do to balance the interests of

3 *Ibid*, p 6

Equitable Life policyholders and taxpayers as a whole. The focus now must be to achieve the quickest possible resolution to this case by establishing an ex gratia scheme that can pay out as swiftly as possible.

Lessons

The PASC report refers to the failure to establish a “comprehensive and fit for purpose” investigation into Equitable Life. The events surrounding Equitable Life are complex, and have been the subject of a number of reports and inquiries. It cannot be assumed, even with the benefit of hindsight, that they could have been unravelled easily and speedily with a single inquiry. The Ombudsman herself conducted two investigations, and came to quite different conclusions in her second, on the basis of new evidence.

The investigation the Government commissioned from Lord Penrose had a wide ranging remit and set out lessons for the future: it was intended to look forward to reform, not back, and as such took into account factors (such as hindsight) which could not fairly be taken into account when holding the actions of the Regulators to account

The Government has apologised to policyholders on behalf of the public bodies and successive governments responsible for the regulation of Equitable Life between 1990 and 2001 for the maladministration it accepts took place.

The circumstances behind the events at Equitable Life are quite different to those that have affected the banking sector in recent times. The Government addressed these points in its response to your March 2009 report, conclusions 26 to 29.⁴

With regard to the Financial Services Authority (FSA) and the jurisdiction of the Ombudsman, I would observe that Parliament has already made provision for an appropriate complaints scheme and an independent complaints commissioner, with powers similar to those of other statutory ombudsmen, to review complaints against the FSA. The Treasury may also arrange independent inquiries in certain circumstances. These provisions were the subject of extensive public consultation and detailed scrutiny by Parliament.

Conclusion

The Government did not “choose to act as judge on its own behalf” by not accepting all of the Ombudsman’s findings (as urged by the PASC). In rejecting the Ombudsman’s findings the Government cannot simply take a different view, it must properly have cogent reasons for doing so. The Government addressed this point in its response to conclusion 13 of the Committee’s March 2009 report.⁵ The Government has the power to consider and reject the Ombudsman’s findings where it has good cause to do so, as has been recognised by the courts. It would be failing in its duty to the wider public were it not to examine the Ombudsman’s findings as it has.

I would conclude this letter by acknowledging that the Government’s response has been the subject of much scrutiny. This is only to be expected. But the Government continues to believe that the response it made was the best it could do to balance the interests of

4 *Ibid*, pp 9-10

5 *Ibid*, p 5

Equitable Life policyholders and taxpayers as a whole. The focus now must be to achieve the quickest possible resolution to this case by establishing an ex gratia scheme that can pay out as swiftly as possible.

July 2009