Report on Non-Gars Meeting - 11th January 2002 by Nicholas Bellord

When attending the Non-Gars meeting I was not anticipating writing a report so this is a somewhat impressionistic view and I apologise if I have omitted any important points and in particular important questions or just got it wrong! The meeting was reasonably well attended by a few hundred policyholders – although Mr Treves started by asking if anyone objected to the fact that not everyone there was a policyholder!

There were in fact 2 meetings. The formalities were as expected and Mr Treves, as Chairman, had them all in hand and endeavoured to get through them as quickly as possible leaving a reasonable time for 26 questions which handed in beforehand. Many of the questions served to demonstrate that a great number of policyholders were still at sea as to what it was all about. I am not sure that the answers they got were particularly enlightening and I think many left as confused as they had arrived. This was not entirely the Board´s fault as I believe they were not supposed to give any further advice than what had been given in the documents so as not to influence the vote by giving advice which the absentees had not had the benefit of.

There were three questions that interested me. The first concerned the MVA or Market Value Adjuster. The questioner claimed that many large groups of policyholders such as the Civil Service or MPs had managed to escape from the fund with an MVA as low as 5% whilst individual policyholders had to pay a flat 10%. Charles Thomson explained that the MVA could be calculated differently for each policy and the calculation depended upon a number of factors, which I did not quite catch, such as how long they had been with the company etc. Apparently some were being asked to pay much more at levels up to 20% or more whilst others were only paying 5%. I had previously understood that one of the reasons a block pension scheme could negotiate a lower rate was because there was less paper work or expenses involved but now it seemed to be all a lot more complicated and was not based upon the muscle involved. They admitted that in theory the MVA could be calculated for each policy individually but this was just not practical so individual policyholders had to put up with a flat 10%. Obviously we must learn to take the rough with the smooth.

The second interesting question came from a policyholder who had written to the Daily Telegraph in early December, had actually got a reply and then written to the Board and had had a reply from them. He insisted on reading all 6 pages of this out to the Board much to the displeasure of Mr Treves. His letter to the Daily Telegraph followed the announcement about Herbert Smith´s investigations and that they were going to write to former directors, the auditors and the previous board´s legal advisors. The questioner asked why the DPP and the FSA had not been written to. He said that a risk had been taken with the Society´s assets in muddling up the funds of the GARs and the non-GARs and if a risk is taken in using the assets of the Society which no director could honestly believe to be taken in the interests of the Society and which is to the prejudice of the rights of others, that is taking a risk which there is no right to take and is fraudulent. Did the Directors act dishonestly? He pointed out that whereas in the accounts for 1999 they made a provision of £50 million the return to the Regulators showed a provision of £1.5 billion. (This is a point which the House of Commons Treasury Committee has drawn attention to).

The Daily Telegraph had shown this letter to the Equitable and were told it was being passed to Herbert Smith. They expressed some sympathy for the Board.

The questioner had then written a similar letter addressed to the Board asking them to make an assurance … that there was no FRAUD committed by the various parties involved in the implementation and sale of the non-GAR Policies before the vote on relinquishing the legal right to sue? (That being the subject of the 2nd vote).

He had had a reply (copied to Lovells) from Charles Thomson dated the 10th January 2002 in which he said "The Board has repeatedly made it clear that it will pursue all matters relating to the past whenever it was in the interests of policyholders to do so".

At the meeting Mr Treves explained that in the view of the Board it was NOT in the interests of policyholders for them to look at the question of fraud. He went on say that if the DPP got involved and criminal proceedings resulted then all civil proceedings including this compromise would be stayed. He believed that the overriding interest of the policyholders was to get the compromise through. He was leaving the question of any possible fraud to Penrose.

One can only assume that they have not found any evidence of fraud as if they have could they not be said to be doing a cover-up or even constituting themselves as accessories after the fact? Pure speculation! I would be a teeny bit worried if I was on the new Board.

Anyway the Board did not give the assurance that there had been no fraud and the questioners asked that all his documents be minuted.

The point of all this is that if there is evidence of fraud then the judge might hesitate before sanctioning the compromise. Further the loss of their legal rights for mis-selling would be overturned if fraud was discovered, leading perhaps to an even greater flood of litigation.

Strangely the only other question I can remember as being important was my own which was addressed to Sir Philip Otton:

" In view of the several Counsels´ opinions, the Baird report, the Blake 'Assessment', which provide prima facie evidence that the non-gars were were induced into buying policies as a result of mis-representation by the Society, is he happy that the House of Lords is not being given an opportunity to review it´s decision in view of the deceit by the Society and their abuse of process of the Court when claiming to represent the non-GARs when it was actively deceiving them".

Sir Philip Otton is in charge of the legal audit team for the Board. He said that in the first opinion of Mr Warren Q.C. it was stated that there was no chance of re-opening the House of Lords decision and that he accepted that advice.

I replied by saying that Mr Warren had said that in the absence of abuse there was no chance of re-opening the representation of the non-GARs and that it now appeared that there may have been abuse of process. I said that if the House of Lords had been misled

and deceived in any way then it seemed elementary justice that the decision should be reviewed.

Rightly or wrongly I got the impression that Sir Philip Otton and his legal audit team had not taken on board the evidence that has come to light in the last two or three months about mis-selling. Perhaps they will look at this further?

Altogether rather a sad meeting where many were lost as to what it was all about, placing their trust in the Board. I wish I could feel that sense of trust.