Equitable Life ex-gratia payment scheme

Representations and Comments

from

EQUITABLE LIFE TRAPPED ANNUITANTS (ELTA)

to

Sir John Chadwick

Second Interim Report

January 2010

CONTENTS

1) Introduction

Over the last seven months Sir John Chadwick has produced several reports:

My Proposals to be adopted (**PRO**)	June 2009
Interim Report (**IR1**)	August 2009
Note of Explanation (**IR1+)**	November 2009
Second Interim Report (**IR2**)	December 2009

These in turn have led to a significant series of exchanges by e-mail and letter, often with additional submissions from many of the stakeholders who have an interest in assisting Sir John in the preparation of his Final Report (**FR**), which I understand is planned to be presented to the Treasury later this year, after the production of a Third Interim Report (**IR3**).

The stakeholders include those directly affected by this work, the Treasury, the policyholders, either by direct submissions or through the various actions groups, EMAG and ELTA, as well as bodies such as Equitable Life, the Prudential, the Parliamentary Ombudsman, Ernst & Young, Lord Penrose, PASC and Parliament. As ever in the background are the European Commission and European Parliament, at present with a watching brief, but to whom and where the policyholders may, I fear, end up some years in the future if a satisfactory implementation of the Parliamentary Ombudsman's Report is not achieved in due course.

The Second Interim Report seems to me to adopt a new approach that at first glance appears discontinuous with **IR1** and **IR1+** and in some respects reverts to Sir John's original proposals contained in **PRO**.

It seems to me that **IR2** leaves open and unanswered issues arising in **IR1** and **IR1+** and even accepting that there is a plan for **IR3**, I have decided to deal with the issues raised in **IR2** in conjunction with the unresolved issues that I believe remain from **IR1** and **IR1+.**

The structure of this submission is to:

A) Discuss the major issues in as much they affect the With-profits Annuitants – sections 3 through 5 and

B) Discuss the Second Interim Report in detail – section 6.

Peter Scawen
January 29th, 2010

2) Management Summary

As Sir John Chadwick moves towards the production of his final report to the Treasury, albeit with one further Interim Report to be produced, I believe it is important that I set out some key strategic requirements that in my opinion Sir John should satisfy in order for his report to be widely accepted as being fair and just.

It is not that we are all going to reach a consensus on his conclusions. That is not a practical possibility with so many conflicting, sometimes antagonistic, opinions and claims for compensation between the various policyholder classes that are in many respects incompatible with each other.

However, it will be possible for Sir John to set out the criteria he has chosen that have led him to his final set of recommendations to the Treasury.

It is axiomatic that these criteria must be objective, based on facts, totally transparent and formulated in such a way that removes any possibility of subjectivity.

In this very complex problem I do not anticipate consensus, but I do expect to be able to understand where my opinions and those of others *do not* agree with the decisions ultimately made by the Treasury.

In the case of the With-Profits Annuitants, this is particularly important in respect of five elements:

1) The Start Date: At first glance, this appears to be a trivial problem for With-Profits Annuitants as logically it is the start date of the policy, however, this is not the case. Whilst some transferred their investments from other life companies, others used the money they had invested in the Society to buy an annuity. Consequently, this latter sub-group will have benefited of any "over-bonussing" that took place in the 1970's and 1980's, if they had a relevant policy at that time. There does not appear to be a methodology immediately available to determine the *quantum* of the "over-bonussing", without an extensive and long-drawn out analysis of the Society's records going back some decades. As a result, such an approach appears not to be practical.

2) The choice of the Comparator: The two key issues in the choice of a comparator are that:

a. It is transparent – it makes sense to all policyholders, even if they do not agree with the choice. For this to be the case, all the calculations and assumptions must be available in the public domain and

b. The choice is logical and must be easily understood by policyholders.

Any logic and formulae must be objective and not influenced by the value judgements of third parties, whose interests and perceptions may not be congruent with those of the policyholders.

Sir John has set out the possible criteria in his report (6.12). I consider that:

a. Each policyholder class should have it own comparator, or a basket of comparators, weighted by size as that ensures that this decision is objective; and

b. The Prudential is the only suitable comparator for the With-Profits Annuitants for the reasons set out in the report.

3) The End Date: This is of particular relevance to the With-Profits Annuitants as the only logical end date must be the death of the policyholder, or the last surviving policyholder where a spousal annuity exists. The choice of the relevant age tables, future bonus rates and discount rates, etc. can have a profound effect on the quantum of loss for this policyholder class. There can be no true objective test for any of these values so it is critical that:

a. They should be transparent – that is the values used are in the public domain; and

b. They should be subject to peer review – that may not ensure agreement but at least policyholders can see where the differences lie.

The methodology proposed by Sir John in the Second Interim report (4.24 (i) and (ii)) accepts that With-Profits Annuitants suffer disproportionately from losses that will occur in the future and that is to be welcomed. But the precise method of calculating these anticipated losses is flawed, in that it appears to assume that the losses for each year will be constant between the annuity as actually paid and the comparator. In fact, the future losses of the With-Profits Annuitants are likely to continue to increase until their anticipated death and that their income will never recover enough to offset the losses.

The method envisaged by Sir John is unquestionably simple to understand and apply, but it will not treat all With-Profits Annuitants in a way that is equable. The methodology proposed for the With-Profits Annuitants in this response overcomes this problem

4) Apportionment: The Government has a responsibility to minimise any claims on the public purse and as taxpayers we cannot argue against that as a general policy, but any such approach must be seen to be fair and objective.

In the specific case of Equitable Life, it is clear that over an extended period of time, at least 10 years, there were repeated failures of regulation, a point now belatedly accepted by the Government.

In consequence, policyholders who were, by any reasonable test, reliant on the Government "seal of approval" have a right to expect compensation when and where the Government failed in its duty. That others may or may not have contributed to this failure is not relevant here, as it is not their competence that is being evaluated. Indeed, if others were in part responsible, then, as is the current procedure, the Government should pursue them through any available due legal process if they so choose.

Uniquely in my experience of the Equitable saga, all the pressure groups, organisations and individuals involved appear to be in agreement that apportionment is not appropriate in the context of the Ex-Gratia Payment for Equitable Life Policyholders, a reflection of the consensus view that apportionment is wrong.

5) Full Distribution: This is an issue of particular importance to the With-Profits Annuitants. In reading though the material, the conclusions that I drew were that in effect two categories of documents are particularly relevant:

1) Those sent by ELAS to the policyholders in the form of contracts, bonus declarations and their policyholder documentation. Reading these documents leads inevitably and irrevocably to the conclusion that policyholders would have believed that far from adopting a policy of full distribution (as it now understood) the Society was in fact:

a) Practising a prudent "smoothing" policy of setting aside reserves in the "good" years to cover shortfalls[1] in the "bad" years; and

b) Implementing a long-term strategy for maintaining its financial position.

2) The formal returns made available to the regulator, Companies House, etc. By contrast, in these documents (which one assumes Lord Penrose and The Parliamentary Ombudsman have read) the Society was keen to make clear that it was, in fact, following a policy of full distribution and not retaining any but the most minimal reserves – a position, as we now know, that accurately stated the true position.

Nobody will ever know what motivated the Society to create two sets of almost conflicting documents. However, I am sure that had policyholders "known" of the policy of full distribution <u>as practised in reality by the Society</u>, most would either have withdrawn their investments, had they been able to do so, or stopped making any new ones, since such a policy flies in the face of common sense and indeed the norms of the Pensions and Life Assurance Industry!

The business would have died on its feet within a year!

It is not only a great pity, but also incomprehensible that the Regulators failed to apply common sense, and the reasons for their failure so to do have never been made clear.

In general t**he Second Interim Report** contains many proposals that are to be welcomed, not least the provisional but firm conclusion to adopt the flexible approach with a comparator rather than an analysis of finding specific losses associated with specific findings.

On the other hand there are issues that still needed to be addressed, such as the start and end dates as they apply to With-Profits Annuitants, the choice of comparator, and apportionment, which are addressed in more detail in this submission.

However whilst there is no direct mention of "full and fair distribution", which is good, it is hoped that in light of the literature and information provided in this submission, those arguments should be concluded once and for all.

It is to be hoped that Sir John's Third Interim Report will address these issues so that his Final Report can be sent to the Treasury soon after.

[1] There is well documented evidence that the Sales Representatives of the Society emphasised the Society's smoothing policy. See letter to Simon Bor dated 6th November 2009 and on Sir John Chadwick's web site.

3) Full Distribution

The underlying premise of this section is that a policy of "full distribution", as presented to the Regulator and others, is incompatible with a policy of "smoothing", as presented to the policyholders. It cites actual documentation, which demonstrates that the information policyholders received from the Society constantly makes reference to a policy of smoothing and makes **NO** reference to full distribution.

In Sir John's first Interim Report he makes mention of Equitable Life's policy of full distribution being known to policyholders.[2] I think one can safely state that this phrase created a storm of protest and yet it is based on Lord Penrose's report and was subsequently accepted by the Parliamentary Ombudsman. It seems evident from both reports that they were reviewing the statutory reports and accounts presented by the Society.

However, the statutory reports present a very different picture to the sales literature, policy and other documents sent to policyholders. It is here that the problem arises, since these were the documents most likely to have been in the possession of, read and relied upon by the policyholders.

Even a cursory review of the sales documents produced by the Society leads inevitably and irrevocably to the conclusion that policyholders would have concluded that ELAS, far from adopting a policy of full distribution, was in fact:

a) Practising a prudent "smoothing" policy of setting aside reserves in the "good" years to cover shortfalls[3] in the "bad" years; and

b) Implementing a long term strategy for maintaining its financial position.

The fact that its actions in reality were completely opposite to its commercially presented position - a fact that should have been known to the regulatory authorities - is in part at least why we are here!

> **It follows that the conclusion that policyholders might reasonably have understood that the Society was practising a policy of full distribution is completely erroneous.**

If one reads the Society's literature sent to its policyholders and compares it to what it was saying in its more "official announcements" to the auditors, the regulator, etc., it raises a fundamental question: why was the Society so keen on the one hand to make clear to official bodies that it was following a policy of full distribution and not retaining any but the most minimal reserves, whilst on the other simultaneously saying to its policyholders that it was in fact doing quite the opposite.

I have learnt over the years that the words and phrases used by Equitable Life in its communications are very subtle. The true meaning only becomes obvious after the event. I am not prone to a "conspiracy theory" approach, but it is clear that the deliberate impression provided by Equitable Life to its policyholders was that adequate

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[2] "This consideration is likely to be influenced by the fact that Equitable Life's business was carried on pursuant to a policy of full distribution. This fact was known to all policyholders, or would have been known to any who made the most rudimentary inquiry into the life assurance industry." Interim Report (IR1) 2.46

[3] There is well documented evidence that the Sales Representatives of the Society emphasised the Society's smoothing policy. See letter to Simon Bor dated 6th November 2009 and on Sir John Chadwick's web site.

reserves were being maintained. *Consequently, it is both illogical and unreasonable to impose on those policyholders an alternative model that assumes "full distribution".*

For example, full distribution is a phrase used by the Society in many places and at many times, but usually with some qualifier[4]. Depending on what, when and where you read it and how you interpret it, a policy of full distribution might mean:

a) We have no inter-generational transfers, all money earned in one year is passed through as bonuses save for a small amount to provide some liquidity.

b) We keep no reserves beyond commercial prudence.

c) We must take a reasonably long-term view of the intrinsic value of assets and smooth short-term peaks and troughs of performance.

These are all phrases used by the Society to explain full distribution. It is not surprising that Lord Penrose, the Parliamentary Ombudsman and the policyholders will look at those phrases from different perspectives. What is clear is that the Society did not in fact keep any reserves. If I understand correctly the passage by Lord Penrose – "*the statement* (by Mr Headdon) *that since 1986 "there had been times" when aggregate policyholders' asset shares exceeded the Society's assets. There had in fact been no year-end at which that had not been the case*." - then technically the Society had been insolvent, as policyholders would have understood it for many, many years. Either this situation was not recognised by the Regulators, or they recognised it yet still took no apparent action.

Of course nobody will ever know what motivated the Society to in effect create two sets of almost conflicting documents. However, I am sure that had policyholders "known" of the policy of full distribution as practised in reality by the Society, most would have withdrawn their investments, had they been able to do so, or stopped making any new ones, since such a policy flies in the face of common sense and indeed the norms of the Pensions and Life Assurance Industry!

The business would have died on its feet within a year!

It is not only a great pity, but also incomprehensible that the Regulators failed to apply common sense, and the reasons for their failure so to do have never been made clear.

In Appendix A and its subsequent sub-appendices (**a.** though **c.)** can be found the detailed discussions and/or details about each of the following points.

a) The Annuity Contract

I have set out my annuity contract set out in Appendix A. I have edited out the personal details to maintain my privacy and have slightly altered the layout to reduce the number of pages required.

The particularly relevant paragraph is underlined in the contract and reproduced here:-

[4] See the Penrose and Ombudsman reports extracts below for details.

<u>With-profits contracts have the essential feature of smoothing out fluctuations in earnings and asset values - thereby reducing the effect of severe movements in stock market prices.</u>

This is a remarkable clause. It is a clear statement that the Society held reserves adequate to meet "severe movements" – *their words not mine* – in the market. In other words, there were reserves that were adequate enough to meet a conventionally understood principle of "smoothing". In the context of full distribution as interpreted by Lord Penrose, the Parliamentary Ombudsman and Sir John, this contractual clause is at best disingenuous!

My relationship with the Society is regulated by this contract and informed by the marketing literature and what the salesman told me, not what the company reports in its annual accounts, newsletters and statutory reports to the regulator.

If individuals had been informed of "a policy of full distribution" in light of that commitment on "smoothing", the only conclusion that they would have reached would have been that it therefore follows that:

a) Either it must be doing so in a way that ensures that I am protected from the severe movements in stock market prices and that fluctuations in earnings and asset values are smoothed

b) Or that combined within one With Profits Fund, it is ensuring full distribution to pension and life investors, whilst at the same time it is setting aside reserves to meet the needs of the With-Profits Annuitants, as set out in my annuity contract.

To say that the "policy of full distribution" as currently represented is incompatible with "smoothing" otherwise probably qualifies as understating the obvious!

b) The Society's literature.

Clarke Willmott LLP has a library of copies of Equitable Life literature and they have forwarded a copy to Sir John's team. It is likely that the copies they hold are more complete than those held by Equitable Life, which (if I have understood their earlier statements correctly) has always claimed it does not keep such historic material. The list is set out in Appendix A (b), though it has been slightly edited for the purposes of clarity for this submission. Given the quantity of data available, the list is difficult to read, but the point is to illustrate the range of documentation that has been sent to Sir John. The documents do change over time, though not much each year and they do NOT always use the same phraseology even though they have the same title.

From the copies provided, Sir John can ascertain for himself what annuitants might reasonably have known and understood.

Whilst I cannot claim that the literature database comprises all the documents issued by the Society to its With-Profits Annuitants, it covers the entire period when With-Profits Annuities were being offered by the Society to its policyholders and members of the general public, and I can assert that nowhere within these documents is there any reflection of the policy of Full Distribution as understood by Lord Penrose and the Parliamentary Ombudsman.

c) The Society's Bonus declarations 1992 –1996

A member of ELTA has kindly sent me what I will call his "Dear Policyholder" letters covering the period from 1992 to 1996[5] when he was investing with the Society's With-Profits fund prior to his retirement.

I have extracted sections of these letters (which are set out in full in Appendix A(c)) the following paragraphs:

> *Over reasonable periods of time, however, returns passed on must reflect actual trends in investment conditions and, in the same way that the with-profits system smoothes out troughs in investment performance, so too will it smooth out peaks.* [6]
>
> *As we have said on previous occasions, with-profits business must take a reasonably long-term view of the intrinsic value of assets and smooth short-term peaks and troughs of performance, particularly where a peak or trough is caused by an abrupt shift in investor sentiment which could be reversed just as quickly.*[7]
>
> *It is in such conditions that the benefits of the with-profits system, with its ability to smooth short-term peaks and troughs of performance, become apparent*.[8]
>
> *In the previous five years, earnings on the underlying assets have been very volatile, with returns varying from -8% in 1990 to over 28% in 1993. The troughs in investment performance were smoothed out in that positive returns were allocated to policyholders throughout. Over reasonable periods of time, the returns passed on must reflect actual investment experience. It is therefore necessary to achieve a broad match on a rolling average basis over appropriate periods between returns on the underlying assets and the policy values themselves. In that way, peaks in investment performance are also smoothed, and that is the case for 1995*.[9]

Any reasonable policyholder presented with such documentation, year in and year out, would have concluded that the Society was NOT following a policy of Full Distribution as it was incompatible with Smoothing as conventionally understood and as described in the Society's literature.

d) The PENROSE & OMBUDSMAN REPORTS EXTRACTS

Sir John Chadwick, not unreasonably, has placed great reliance on the Penrose report and the Ombudsman's report and quotes specific paragraphs that support the assertion that the "policy of full distribution was well known"

[5] See Appendix A(c) for the full extracts and commentary

[6] Bonus statement for 1992

[7] Bonus statement for 1993

[8] Bonus statement for 1994

[9] Bonus statement for 1995

As there were only approximately 50,000 (5%) With-Profits Annuitants amongst the 1,000,000 policyholders, it is perhaps inevitable that Lord Penrose and the Ombudsman write about "policyholders", without distinguishing between two very different classes.

Those policyholders with Pension and Life policies were typically still employed and had choices which they could make about their financial affairs, etc. whereas the With-Profits Annuitants were typically retired, beyond working age and could not make any changes to their retirement investment. So it follows that the interests, needs and expectations of the With-Profits Annuitants are not the same and, indeed, are arguably conflicting with the other policyholder classes.

It is also perhaps inevitable that it is difficult to keep on seeing the world through the eyes of With-Profits Annuitants and, perhaps not surprisingly, that sadly too often the perspectives of the With-Profits Annuitants were lost in the generalities of the work performed by Lord Penrose and the Parliamentary Ombudsman for the overwhelming majority (95%).

It is not least why ELTA was established and continues its work.

The conclusion from reading the extracts[10] from these reports is that:

1. **The Society was managing itself prudently.**

2. **The typical With-Profits Annuitant would have interpreted the information that was reasonably available to the public and emanating from the Society in this way**

3. **Their reasonable expectations would have been that reserves to meet current and future liabilities existed!**

i) Penrose Report Extracts

I refer to various passages below occasionally quoting their content:-

4/82-3 Professor Smith's presidential statement in the 1992 accounts includes:"--The fundamental philosophy is that each generation of policies should receive benefits commensurate with the earnings produced during its lifetime. Beyond the bounds of normal commercial prudence, it would be alien to our culture to hold back benefits from one generation to build reserves for a future generation. As we say in our literature, for new policyholders future bonuses must depend primarily upon the earnings produced on the investments of the new premiums. Any deliberate cross subsidies between generations would not be "equitable". Lord Penrose comments: "As appears frequently in these documents, there was an inherent contradiction in the statement. If nothing was held back for the future, any over-allocation had to be recovered from the future. That had to involve deliberate anticipatory cross-generational subsidy and to be, in these terms, 'inequitable'"

My comment is that Lord Penrose identifies precisely the fundamental flaw in the Society's strategy and poses the question why did the regulator neither recognise this problem and/or take no action? Further it does not seem reasonable that the

[10] See Appendix E: ELTA Submission to Sir John Chadwick's Interim Report and available on his web site for a more complete version of these extracts. - Ombudsman Pages 35 to 36 - Penrose Pages 36 to 40

responsibility for identifying such an action should be placed at the door of the policyholders. Equally it is not clear, assuming With-Profits Annuitants actually understood the implications of Professor Smith's statement, what action they could have taken.

4/139. In his statement to members in the 1996 annual report, the president highlighted three achievements for the Society during the year:

"Our new U.K, annual premium income, at over £400m, broke all previous records for the industry. Our total new premium income exceeded £2 billion for the first time, and included our highest ever single premiums at £1.59bn. Our expense ratio fell, for the eighth consecutive year, to the remarkably low level of 4.3%. We confidently expect this figure yet again to be the lowest in the industry. These achievements, together with many others over the years show that a well run mutual organisation can consistently produce outstanding performance."

In discussing mutuality, the president stated that throughout the Society's history it had tried to ensure that each generation of with-profits policyholder received the returns it had deserved on its investment with the Society.

My comment is that this statement is quite misleading as the alleged policy was only introduced after the With Profits Without Mystery paper presented to the Institute of Actuaries in 1989. This extract should be read, compared and contrasted with the commentary by Lord Penrose at 14/11 further on in the extracts.

14/78. *"Viewed in isolation from the other communications with policyholders at this stage, the statements in the published accounts expressing the accumulating fund characterisation of the policyholder's interest could have given rise to misunderstanding. But there were other documents in issue at the same time and it is necessary to have regard to the total range."*

My comment is that it is quite unrealistic for Lord Penrose, who had the benefit or a large team of trained assistants to help with his research, to conclude that policyholders had either the expertise, or, if they did, the time to read the total range of communications. Many policyholders did not have access to the Internet, which anyway has only become a medium for mass communication in recent years, nor is any layman likely to be competent to read and interpret correctly such documents

14/85. "On 31 August 1990, the Society published a With-Profits Guide in accordance with LAUTRO rules. Chapter F of the guide dealt with "Recent bonus policy". It described the full distribution policy. It described the Society's approach to final bonus in apparently unambiguous terms:

"The approach to final bonus is that the investment reserve, which is the excess of assets over liabilities, is averaged over time and notionally apportioned amongst the with-profits policyholders in the fund at the current time in direct relation to the liabilities under their policies."

As discussed in chapter 6, this statement does not reflect the reality of bonus allocation practice as I have found it."

My comment is that the overwhelming majority of With-profits Annuitants joined the Society after August 1990 and given the regulator's seal of approval would read such a phrase as meaning that within the context of full distribution there is an investment reserve

14/110. "The guide discussed recent bonus policy, giving emphasis to full distribution, the characteristics of the declared bonus, and the final bonus. It stated: "The approach to final bonus is that the investment reserve, which is the excess of assets over liabilities, is averaged over time and notionally apportioned amongst the with-profits policyholders in the fund at the current time in direct relation to the liabilities under their policies. The intention is to avoid too great a volatility in bonuses by smoothing and averaging. Whilst declared bonuses can be expected to be relatively stable, final bonuses may fluctuate rather more because they are the balancing item in the overall return."[11]

My comment is that the guide appears to be saying the Society practices *full distribution* but that it also holds an investment reserve and that there is *smoothing and averaging*. As actually practised by the Society, the statement is at best contradictory if not very misleading.

17/64. GAD then expressed the view that if the Society had not been mistaken in its interpretation of the regulations, it would not have made the bonus declarations it had. The minutes noted that:

"Questions were also raised regarding the prudence of trying to operate without an estate."

GAD pointed out that a fair proportion of the previous year's reversionary bonus had been paid out of "asset value gains".

My comment in this regard is that this reads as if GAD is describing an approach, which would be termed colloquially as a "PONZI scheme"!!

17/64.continues *"In response: "Mr Headdon argued that since 1986 reversionary bonus rates have been managed down although he did admit that it was possible that there had been times when the value of the accumulated policyholders' asset shares had been greater than Equitable's assets. Nevertheless he argued that he did not believe that it was in the interests of policyholders for the Equitable to build up a large estate."*

The statement was not entirely new: regulators had known for some considerable time that the Society's advertised policy was one of full distribution. However, on the information communicated by the Society, the regulators would not have been in a position to challenge the statement that since 1986 "there had been times" when aggregate policyholders' asset shares exceeded the Society's assets. There had in fact been no year-end at which that had not been the case."

Lord Penrose appears to be saying that Mr Headdon was making at best statements open to misinterpretation! It is a great pity that the regulators did not notice that asset shares exceeded assets, as had they done so and stopped the practice from the outset, we might not be here today. Further, with all their expertise and access to the data, if they couldn't spot the error it is not clear to me why policyholders should have been expected to do so.

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[11] This of course is the same extract used by Lord Penrose quote above 4.82-3.

And from the perspective of the Society, since the regulator did nothing then their rational conclusion would have been that this practice was acceptable.

20/5. *"The gap between the representation of the Society's financial position in its published financial statements, for regulatory and Companies Act purposes, and its realistic financial position arose in large part from the absence of a coherent and consistently applied policy on bonus distribution and smoothing. The Society's frequently acclaimed principle of full distribution combined with its claim to ensure a smoothed return seem to have acted as an effective shield against a proper consideration by the regulators of Equitable's approach to bonus distribution."*

I would comment here that this shield was even more effective against the policyholders and in particular the With-Profits Annuitants that had received specific representations in both policy literature and through the representatives. It goes without saying that the policyholders would have placed great reliance on words such as 'Regulated by the FSA'.

ii) PARLIAMENTARY OMBUDSMAN REPORT EXTRACTS

I refer to various passages below occasionally quoting their contents:

36 "Another example of the Society's distinctiveness was its bonus policy introduced from 1989. Equitable stated that this reinforced their philosophy of providing a 'full and fair' return to policyholders. The Society treated its with-profits policyholders as participating in a managed fund, which allowed them to benefit from investments in a wide range of assets."

The policy was introduced at a meeting of the Institute of Actuaries in 1989 and was widely criticised. I am not clear why it would be reasonable to expect With-Profits Annuitants to be "regular readers" of the proceedings of the Institute!

37 "In the Society's accounts for 1992, its then President said: *In the Equitable we pride ourselves on allocating earnings from our investments across all classes and durations of contract in as fair and consistent a manner as possible. The fundamental philosophy is that each generation of policies should receive benefits commensurate with the earnings produced during its lifetime. Beyond the bounds of normal commercial prudence, it would be alien to our culture to hold back benefits from one generation to build reserves for a future generation."*

Of course it assumes that With-Profits Annuitants would have read and understood the 1992 accounts, but assuming that to be the case, how would the typical With-Profits Annuitant interpret the phrase *"Beyond the bounds of normal commercial prudence"* other than as a statement that Equitable Life would have set aside reserves to meet any shortfalls and the liabilities to its policyholders? It is not reasonable to interpret this statement as meaning we practice a policy of full distribution (as subsequently understood and interpreted).

In practice, of course, they were normally be reliant on advice from the Society's representatives, the marketing literature and promotional activity on the assumption that Equitable Life was properly regulated.

38 "Equitable thus did not maintain an estate – that is, assets in excess of the amount needed to meet policyholder benefits, including terminal bonus. Apart from maintaining what was sometimes referred to as a 'revolving estate' to provide some working capital, the Society said that it made a full distribution to its participating policyholders."

After many enquiries and reports this is now known, but it is self-evident that it was not known at the time the With Profits Annuity policies were purchased not least as this is not what we were being told by the Society's representatives.

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It seems to me that the key phrases here are:

"in implementing a stated philosophy of providing a full and fair return to policyholders, holding no estate apart from a revolving estate providing working capital, and treating policyholders as participating in a managed fund, the actuary had, over a long period of time, consistently failed to apply an appropriate smoothing policy, had failed to provide appropriate information to the Society's board to enable proper consideration to be given to the consequences of his recommendations and had failed to maintain the publicised relationship between the investment reserve and total policy values notified annually to policyholders; in addition to the points above, the information provided to policyholders created a misleading impression of the Society's financial strength.

The Society's board was provided with little information showing the relationship between the totality of the policy values including accrued terminal bonuses as notified to policyholders and the Society's actual asset strength.

No evidence was provided to the panel to indicate any proper degree of financial analysis undertaken by the Society during the period under examination."

My comment here is that if, in other words, **neither** the board at the time, **nor** the panel, knew what was going on, clearly it is unreasonable to conclude (as has been argued) that somehow the policyholders should all have known about the policy of full distribution and understood it!

104 "The public bodies also said that it was not clear from where policyholders had derived a reasonable expectation that Equitable would set aside reserves for terminal bonuses, given the lack of a statutory requirement to do so and given the Society's well publicised policy of full distribution. The public bodies submitted that, had Equitable set aside reserves, it would arguably have gone against the reasonable expectations of with-profits policyholders that there would be full distribution."

The key phrase here is "not clear from where policyholders had derived a reasonable expectation that Equitable would set aside reserves for terminal bonuses" since that acknowledges that policyholders had a reasonable expectation that reserves had been established. So in addition to the debate as to the accuracy of the "Society's well publicised policy of full distribution", there is the acceptance that in any event, it was totally ineffective, since the Parliamentary Ombudsman recognises and accepts that the policy was in fact NOT, repeat NOT, well understood.

The phrase "had Equitable set aside reserves, it would arguably have gone against the reasonable expectations of with-profits policyholders that there would be full distribution." only makes sense from the perspective of the "public bodies". Since policyholders did not understand that there was a policy of full distribution, then their reasonable expectations would have been the complete opposite!

4) Comparator

i) Introduction

The key issues in the choice of a comparator are that:

a. It is transparent – it makes sense to all policyholders even if they do not agree with the choice. For this to be the case, all the calculations and assumptions must be available in the public domain.

b. The choice is logical and must be easily understood by policyholders.

c. Any logic and formulae used must be objective and NOT subject to value judgements by third parties whose interests and perceptions may not be congruent with those of the policyholders. [See my earlier comment in the introduction.]

The overarching emphasis must be that, if there is ever to be a satisfactory end to this disgraceful affair, it must be transparent and meet policyholders' expectations and entitlement. In my opinion, it cannot be emphasised enough that whilst financial considerations are very important, some evidence that the Government recognises and accepts its failings in this matter is equally as important, and the key to that is absolute transparency.

In the Introduction, see above, I have already alluded to some of the proposals in IR2 relating to the choice of comparator.

a) There is no obvious value in separating losses into Head A and Head B in the context of deriving a comparator.

b) The idea that a comparator is constructed that consists of some basket of companies, weighted differently through time based on some selective interpretation of the Parliamentary Ombudsman's findings and their characteristics, and which would be a completely theoretical construct, would, to put it mildly, create a considerable degree of concern amongst policyholders regarding its integrity.

c) It seems to be accepted by the three major submissions[12] that discuss With-Profits Annuitants they can and should be treated differently from other classes of policyholders. In the sense that they are a unique, homogenous group and were transferred en-bloc to the Prudential, makes this easily achievable, although the inter-relationship of their global loss compared to other policyholders still has to be determined. (I am pleased to note that none of the suggestions put forward regarding With-Profits Annuitants has considered the idea that Equitable Life, somehow re-constructed into a properly managed organisation, would form the basis of a comparator for the With-Profits Annuitants, which I believe would be both illogical and irrational. It would be a far too theoretical, difficult and arbitrary approach. A concrete non-theoretical comparator is clearly far more soundly based on reality and transparent.

[12] That is submissions by Equitable Life, EMAG and ELTA

Now, as always, I am writing about these issues as they face the With-Profits Annuitants and the logical process, which might permit the construction of a relevant comparator.

This will be addressed below, but there are some general points that need stating about all policyholders:

i) Each class of policyholder should have its own comparator, either unique, or some basket. It is then a simple matter of comparing performance of the comparator against the performance of Equitable Life without any need to make adjustments.

ii) Through at least the 1980's policyholders were paid bonuses that were in excess of what the true financial position of the Society justified. Equally, of course, policyholders suffered during the 1990's and up to the closure of the Society for new business. It is plainly far too difficult and cumbersome to endeavour some form of historic off-setting exercise as it cannot be achieved in any sensible timeframe, if indeed it could be achieved at all.

ii) With-Profits Annuitants database

a) Introduction

Somewhat surprisingly, ELTA is the **only** organisation that has the complete set of statistics that are required to make a logical assessment of any proposal for a Comparator for the With-Profits Annuitants. The data was provided by a sub-set of members and covers the period from 1990 to 2000 and has been extensively checked and verified.

Whilst Equitable Life has data regarding the With-Profits Annuitants, they do not have any first hand information on what the With-Profits Annuitants would have done if they NOT purchased a With-Profits Annuity. Their submission [13], needs to be read in that context when discussing With-Profits Annuitants.

There are many members of ELTA who are, not surprisingly, also members of EMAG, none of whom has reported being consulted by EMAG as to the nature of neither their policies nor their alternative transactions. I do not criticise EMAG for this, but their proposals[14] need to be read in that context when discussing With-Profits Annuitants.

b) Data

i) On the ELTA database, records show that there are:

404 Policyholders who between them held

740 With-profits Annuity policies

ii) Self evidently, some policyholders held more than one policy. The distribution is set out on the table below.

[13] Equitable Life ex-gratia payment scheme, dated 1st October 2009 and available on Sir John's web site

[14] Principles of Compensation, dated 17th November 2009 and available on Sir John's web site

Count	No of Policies	% of Total
218	1	54
108	2	27
48	3	12
16	4	4
9	5	2
1	6	0
4	7	1
	8	0
1	9	0
1	10	0

iii) Of the 404 policyholders, 40 were couples. The above table treats them as separate policyholders, but it poses the question of how to deal with this sub-group when discussing some of the proposals put forward.

iv) The distribution of policy values, that is the "purchase price", is set out in the table below,

Policy Values	Count	% of Total
Upto £50,000	332	45
Upto £100,000	145	20
Upto £200,000	140	19
Upto £300,000	88	12
Over £400,000	35	5

Again it is surprising how many relatively small policies there are. This is also significant.

v) One of the responses that individuals have provided is to indicate what alternative conventional annuity they would have bought had they not been sold a With-Profits Annuity. The table below sets out the responses. The purchase/loss ratio is the relationship between the loss figure for each choice as a function of the purchase price.

Annuity Type	Count	% of Total	Purchase/ Loss Ratio
3% Escalating	164	23	69
5% Escalating	61	8	149
Level	406	57	35
RPI	87	12	22

This information is only held on the ELTA database.

In other words, a With-Profits Annuitant would have been better off on average by some £35 for every £100 invested had he chosen a Level Annuity, or £22 had he chosen a RPI annuity, £69 had he chosen a 3% escalating and a staggering £149 had he chosen a 5% escalating annuity. (The figures also showed a pattern depending upon the date of the transaction, which influences these figures.)

This is significant because:

It shows that:

a) Whilst the majority would have purchased a level annuity a very substantial proportion would have not.

b) Depending on the choice of the so called "alternative transaction" the loss varies enormously.

So any comparator based on a level annuity will be open to a challenge from some With Profits Annuitants as they can legitimately argue that they are getting a smaller ex-gratia payment than they "are entitled to". Of course those that would have chosen an RPI based annuity would be delighted! The selection of the Prudential With-Profits Annuity avoids this issue.

It has been argued that the ELTA database is not truly representative. As we have said elsewhere, self-evidently it is not and cannot be, not least because the sample was self-selecting and With-Profits Annuitants with small annuities would not have bothered to take the perceived litigation risk.

So the database is skewed, although by how much we do not know, **BUT** and it is a significant "but" we can reasonably infer that whilst the absolute *total* quantum of loss derived from the ELTA database is probably, almost certainly, too high, the *distribution* of the quantum, policy values, etc. is probably a reasonable estimate. The sample constitutes nearly a 1% of With-Profits Annuitants. Governments make strategic policies based on a much smaller sample.

It is in any event the **ONLY complete set of records** available.

c) Choice of Comparator

There have been three proposals regarding the choice of comparator for the With-Profits Annuitants.

(As stated above none has considered the idea of reconstructing Equitable Life as a "properly managed" company in order to form the basis of a comparator. One obvious reason is that any such quite artificial construct would inevitably be prone to some form of subjectivity, in itself a highly undesirable approach and further you would be forced to go back into at least the 1980's if not before when the Society had "adequate reserves" [15] to ensure that the financial base upon which "decisions" that would need to be made was as accurate as possible.

A) The documents submitted by Equitable Life [16] suggest that a Level Annuity is the preferred comparator with the Prudential With-Profits Annuity as an alternative.

[15] Penrose Report 14/11 where it states that "*That formulation of the directors' approach appears to have superseded finally the policy advertised in Ford Geddes statement of 1970 justifying the holding of ample reserves to sustain the office's continuity*"

[16] Equitable Life ex-gratia payment scheme dated 1st October 2009 and available on Sir John's web site

It asserts that the Prudential With-Profits Annuity was not a competitor until the later 1990's, about which I cannot comment, but I can comment that such an annuity was available from 1992, which as it happens fits entirely within Sir John Chadwick's Terms of Reference.

It's main point is that With-Profits Annuitants would have chosen a Level Annuity. This may be a perfectly rational and logical suggestion based on the data available to the Society, but the tables above demonstrate that it is simply not universally correct.

Based on the survey made by ELTA, there is no doubt that many would have chosen a guaranteed level annuity, but by no means all. But as will also be obvious from the tables the choice of the so-called "alternative transaction" (that is the policy that would have been chosen had a With Profits Annuity not been purchased) has a profound effect on the quantum of loss that the policyholder will have incurred.

So in deciding that a level annuity is the correct comparator, the Society's proposal would mean that many annuitants would receive a lower amount than should be the case on their actual choice, whilst others a higher amount. This is manifestly illogical and unjust.

Having said that, the choice of a level annuity as a comparator is simple, easy to understand and implement.

B) The paper produced by EMAG [17]makes several points about With-Profits Annuitants that require some observations.

In discussing possible Comparators, the paper asserts that:

> As regards with profit annuities, our researches show that the average investment was about £47,000.
>
> In EMAGs view, if those buying lifetime annuities with funds of this order had purchased the products of competitor companies, then they would have been sold conventional fixed annuities, not with profits ones.
>
> Firstly, this is a matter of practicality. Only a handful of companies sold with-profits annuities, whereas many sold conventional annuities.
>
> Secondly, this is a matter of suitability. £47,000 would only purchase a small annual income and for such investors the security of that income is of paramount importance. If they had gone anywhere other than Equitable Life, then they would almost certainly have been sold a conventional annuity upon these grounds. The Financial Ombudsman Service maintains a library of historical annuity rates to calculate the compensation payable by those advisors who sell unduly sophisticated products to such investors. In EMAG's view, for most with profits annuitants a conventional annuity is the appropriate comparator.
>
> As regards those with larger retirement funds (say) in excess of £250,000, we accept that a with-profits annuity might have been a suitable investment. In such cases we suggest, that because there were few companies that offered this product and for practical purposes apart from Equitable there was only one company, which dominated the market, the with-profits annuity offered by the Prudential should be the appropriate comparator.

[17] Principles of Compensation, dated 17th November 2009 and available on Sir John's web site

This proposal is entirely logical and makes valid points that warrant further discussion.

a) The £47,000 average investment made by With-Profits Annuitants is based on an analysis of the reports produced by ELAS, whose accuracy and reliability is at best open to doubt, but let us for the moment accept that this figure is as reasonable as can be ascertained by EMAG without undertaking any detailed research of its membership. I am told by members of ELTA many of whom, as I have said, are also members of EMAG, that they have not been consulted by EMAG as to the nature of either their policies or their wishes in this matter.

b) We know that many annuitants have multiple polices, not only with the Society, but other providers. It would not be unreasonable for policyholders who already had a reliable annuity income from other providers and indeed his/her state pension to put some of his/her accumulated pension capital into an additional annuity with the Society. So it is NOT reasonable to assume what policyholders might or might not have done based solely on the amount of money invested in the Society.

c) Any definition of the threshold – that is the point at which the policyholder was "told" you have a level replacement annuity, or you have a Prudential With-Profits Annuity - is quite arbitrary. Let us take for example a threshold of £50,000. As can be seen from the table above, which is a simple sequential list by size, that there is no sharp division of policy values above and below this point. The same characteristic can be found at £100,000 and indeed at £150,000 assuming they were chosen as the threshold.

It is neither reasonable nor logical that a policyholder whose policy is worth £49,608 be treated differently from a policyholder whose policy is worth £50,983?.

For example, in at least one case in the ELTA database, the policyholder (who is known personally to me) invested in excess of £120,000 after taking tax free entitlement, however, the investment was made in three tranches. While he held a retirement fund with ELAS, he also held funds in two other companies. ELAS wrote an initial policy for the funds it held, subsequently issuing two further policies as the funds arrived from the other insurance companies.

d) As is evident from the above data tables, policyholders often had a number of separate polices with the Society, some large and often some quite small. It is not clear how this proposal would deal with:

(i) Policyholders who had one policy above the threshold and one below. Would each policy be treated differently?

(ii) Policyholders who had multiple policies all below the threshold but in combination above the threshold?

(iii) Policyholders who were married with the same issues as (i) and (ii) above.

It is not that it is difficult to construct some "rules" to deal with the above it is simply that it is impossible to avoid them being artificial, arbitrary and subjective.

As I say above and I repeat, the proposals put forward by EMAG, based on the data available to them, contain much that has merit and are entirely logical. There is no question that the choice of a level annuity as a comparator is simple, easy to understand and implement, and the selection of the Prudential for the larger policies is entirely logical. But the proposals create inconsistencies and no matter what rules are constructed they will always create results that are arbitrary and open to criticism.

C) The ELTA response to Sir John's Interim Report (IR1) was that the Prudential is the best comparator, not least as it would appear that the Prudential managed their With-Profits fund in a way that the With-Profits Annuitants expected of Equitable Life.

In this way the With-Profits Annuitants will get more or less precisely what they wanted when they chose a With-Profits Annuity with all of its virtues and vices in a well run company and without the benefit of hindsight to second guess their choices.

In addition the choice of the Prudential as a comparator is logical because:

(i) It is available for the period covered by Sir John's project.

(ii) It avoids all of the pitfalls of the proposals made by Equitable Life and EMAG.

(iii) The data upon which the annuity is calculated and the various bonus rates used are available on its web site.

(iv) When the ELTA members were canvassed, the overwhelming majority supported the choice of the Prudential as the comparator.

(v) It eliminates all the problems and issues that would inevitably arise from "using a number of different comparator companies, weighted appropriately"[18].

Perhaps an equally important consideration, is that the bonus rates, etc. chosen for the basis of determining future losses will be consistent with those chosen by the Prudential for its own annuities thus ensuring full transparency

Summary

The choice of any comparator ultimately is a matter of judgement as there are no perfect solutions. It is my opinion that using the Prudential as the comparator for the With Profits Annuitants seems the best more reasonable and logical decision based on the available evidence as presented above.

[18] Second Interim Report 4.15 page 16

5) Apportionment

Apportionment is part of Sir John's Terms Of Reference and thus this topic must be discussed.

Sir John states in IR2 7.4

> "It is one thing to say that, where the regulator has negligently allowed a regulation to be breached, there should be no apportionment against the entity being regulated. But, in circumstances where the criticism of the regulator is made without any finding that a breach of a regulation has occurred, then serious consideration must be given to whether it would be appropriate for the public purse to make good the whole of policyholders' relative losses. In particular, if it can be said that policyholders' losses were caused in part by improvident – if not necessarily wrongful – management of Equitable Life's business, then I can see a case for reducing the extent to which those losses should be borne by the public purse."

We have been here before. Of course the Society was responsible for its own actions but the role of the regulator is to ensure that the Society conforms to the regulations. Now it might be argued that the regulator didn't know or couldn't have known and thus claims against it are not warranted. But all the evidence as presented by Lord Penrose and the Parliamentary Ombudsman indicates that the breaches of the regulations were known and that they persisted over many years without any action being taken by the regulator.

It is this cumulative effect of regulatory failure over the Parliamentary Ombudsman's entire period, plus her statement that, absent the failure, nobody would/should have invested in ELAS over the entire period, a statement which everyone now accepts, that mitigates against the argument for apportionment to parties other than the Government.

If one argues that the Society was responsible for its own actions, this does not assist an argument that the responsibility for its cumulative failure to regulate the Society does not rest correctly with the Government. The Society, per se, is not "on trial" here, the regulator is and it is its failure to perform for which the policyholders are seeking compensation.

Those that chose to sue the Society have done so and apart from any extant cases, we are all now statute barred.

Sir John leaves open the issue of Ernst & Young [19] where he states that "– I cannot reach a conclusion on the question raised in paragraph 3.20 of the First Interim Report".

This leaves policyholders in an impossible situation, as the final decision on any apportionment is based on another enquiry that is outside Sir John's control, which may or may not find for or against Ernst & Young on an issue that directly affects policyholders, but at a point where there is no prospect of either policyholders or Equitable taking any action to recover any of the losses apportioned to Ernst & Young. This reinforces the logic that any apportionment would be arbitrary and unreasonable.

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[19] Sir John Chadwick Second Interim Report 7.6 (ii)

In summary, through three reports so far, Sir John has argued that some form of apportionment to third parties may be justified and that as a result, he may reduce the quantum of compensation accordingly. It is my understanding that the current legal procedure is that the body primarily responsible for the failure, in this case the Government, is held fully accountable and it is open to that body to consider any recovery of a proportion of any payment made from those other bodies. In light of that, and in light of the principles of fairness, I do not see how any apportionment can be reasonably made.

6 The Second Interim Report (IR2)

i) Introduction

In general **IR2** contains positive proposals for the With-Profits Annuitants and they can be summarised as follows:

(i) The provisional but firm conclusion to adopt the flexible approach (despite the Government's argument to the contrary) is to be welcomed;

(ii) The definition of the flexible approach with a comparator, rather than an analysis of finding specific losses associated with specific findings is also to be welcomed;

(iii) The reference at 3.7(ii) and its implications for With-Profits Annuitants is plainly helpful; and

(iv) The conclusion that it is unrealistic to expect individuals to prove that they would not have invested is to be welcomed.

On the other hand there are issues that still need to be addressed and/or clarified:

(i) What is the effect of the arguments on start date and in particular arguments against off-setting of any excessive bonuses from the 80's, given the absence of data and the close to impossible analysis required to identify what, if any, excessive bonuses were awarded to which policyholder in the 80s;

(ii) The reintroduction of the Head A and Head B approach seems an unnecessary complication;

(iii) The concept of the same comparator, but with weighting is confusing and creates unnecessary complications. If Sir John can adopt the flexible approach to be swift and fair, then surely the same can be said for a more straightforward approach to a comparator.

However, whilst there is no mention of "full and fair distribution", which is good, this may yet be reintroduced. It is hoped that this will not be the case, particularly in light of the literature provided in this submission, which should conclude those arguments once and for all;

(iv) Despite claims to the contrary, 31.12.07 is a bad date for With-Profits Annuitants as the notional value comparison will not reflect the significant equity falls sustained as a result of the date of transfer to the Prudential (in light of the absence of transferred reserves);

(v) The method proposed to value policies at the end date is flawed;

(vi) The reference at 4.25(v) is only in the With-Profits Annuitants section, whereas it is not only With-Profits Annuitants that have brought claims and that have been compromised; and

(vii) Apportionment remains unresolved.

ii) Detailed discussion

a) Open Questions.
Sir John poses in section 6 the question:[20]

> 6.3 In relation to the second finding, if the requisite action had been taken, how likely is it that policyholders or prospective policyholders would have decided not to take out new policies or to pay money into existing policies; and when would policyholders have taken such decisions?

The questions relate to decisions made as much as 20 years ago, decisions that even if they are recalled accurately, which I seriously doubt, are overlaid with second guesses, "if only I knew then what I know now", etc. Any responses are likely to be partial and biased.

The question, though valid and logical, will generate responses that in this restricted sense have little value. This is important as Sir John is trying to use the responses to place in some way a value on these decisions with the intent of deriving a formula for calculating losses. Self-evidently, this is a very subjective process and not at all transparent, and should be avoided at all costs.

Though the net effect will be the same, it is far better to allow all of the losses to be included and then state the ex-gratia payment should be reduced by X%. At least what would be done is transparent, even if it is not perceived to be fair or just.

b) Start Date.

Logically the start date of a policy is when the policy was started, but it does pose the question about alleged over-bonussing in the 1980's.

Many With-Profits Annuitants purchased their annuities with funds transferred from other Life and Pension companies under the Open market option. For these policyholders the start date is unarguably the actual start date of the annuity.

But there were also With-Profits Annuitants who, in effect, transferred their investments from an Equitable Pension policy, started sometime in the 1970's and 1980's, to a With-Profits annuity. Since they will have benefited from over-bonussing, their annuity payments may be argued to have started at a higher level than would otherwise be justified.

The only practical way of dealing with this problem would be if the relevant level of over-bonussing that occurred in the period prior to the start date of the annuity could be determined. It would appear that it is plainly far too difficult and cumbersome to endeavour some form of historic off-setting exercise. It cannot be achieved in any sensible timeframe, if indeed it could be achieved at all.[21]

c) Comparator

I have already discussed this issue in the context of the With-Profits Annuitants in more detail in **4(ii) c** above but Sir John poses specific questions that require a more detailed answer.

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[20] The question is repeated at 6.5 and 6.7 in respect to the fourth and fifth finding.

[21] See Appendix E

6.10 Is it appropriate to measure relative loss against a single, real comparator or against a notional comparator, based on the performance of Equitable Life's competitors during the period in question?

Response: Where a single real comparator is available, as is the case with the With-Profits Annuitants and the Prudential, then it is logical to use that. If not, then a notional comparator, made up of a basket of life offices, weighted by size, should be used.

6.11 If a real comparator, what is the appropriate comparator in relation to:

(i) each type of policy; and
(ii) each year of entry?

Response: In relation to With-Profits Annuities, I would submit the Prudential With-Profits Annuity (in the absence of a conventional annuity comparison).

6.12 If the comparator is to be a notional comparator, constructed by reference to Equitable Life's competitors, by reference to what characteristics should those comparators be chosen and what would be the appropriate mix and weighting in relation to:

(i) each type of policy; and
(ii) each year of entry?

Response: In my opinion, in respect of alternative With-Profits Annuity providers, the sample is simply too small to make this a realistic proposition. If a weighting is nevertheless considered appropriate, it should be by size of the policy book.

6.12 Continues: My present view is that the following characteristics are likely to be relevant:

(1) mutuality;
(2) history of bonus declarations;
(3) bonus policy (including whether a policy "full distribution" was operated);
(4) length of establishment of the company;
(5) financial position at the relevant time;
(6) financial position as stated in regulatory returns;
(7) range of products offered;
(8) advertised business approaches (such as selling directly rather than through intermediaries);
(9) target market and customer base;
(10) business model, and especially the extent to which it targeted and experienced new business growth; and/or
(11) other characteristics.

Response: This is a good standard "marketing based" list, but probably impossible to apply in practice, since I cannot see how these individual characteristics can be combined in any objective manner when creating a notional comparator.

Let us suppose that:

> Company A has a different target market and customer base from company B.
>
> Company A has a different range of products from company C.
>
> Company D closely matches Equitable with respect to bonus declarations but has a completely different approach to "full distribution",

Now what? The simple answer is that this approach will offer nothing but conflicting evidence and irrational and subjective decision-making. The only practical approach to take in respect of With-Profits Annuities is the Prudential, and, outside of With-Profits Annuities, if absolutely necessary, a selection of Life offices, weighted by size. It will not be perfect, but it is free of bias during the process of selection and it will be transparent.

d) End date

Sir John discusses at 4.23 and onwards the question of End dates as they apply to With-Profits Annuitants and on which he invites comments.

> 4.23 I am satisfied that the arguments canvassed in the preceding paragraphs have no application to holders of With-Profits Annuities: once a person had purchased a With-Profits Annuity, he had no opportunity to make any withdrawal from Equitable Life.
>
> 4.24 Potentially, policyholders who took out With-Profits Annuities may have suffered both loss of past income and the anticipated loss of future income. It seems to me that, in principle, both past and anticipated future loss of income should be taken into account in any fair payment scheme. An end date of 31 December 2007 would allow this to be done. The computation of loss would require two steps:
>
> > (i) First, to determine the difference between the amount the policyholder received by way of annuity payments up to 31 December 2007 and the amount that he would have received if he had invested in the comparator.
> >
> > (ii) Second, to determine the difference between the notional value of the With-Profits Annuity policy as at 31 December 2007 and the notional value that the policy would have had if it had originally been invested in the comparator.

Comment: 4.24 (ii) creates very significant difficulties. It is simple and clear, but I think it may create unintended distortions.

The process envisaged by ELTA and used in the recent litigation was to calculate the total income of the annuity from the start date to the presumed end date (i.e the death of the policyholder). This would include the time with the Society and the subsequent transfer to the Prudential. This can then be compared against an alternative annuity over the life-time of the annuity. Any gains are offset against any losses and the net difference is the loss. This approach, using the Prudential With-profits Annuity as the comparator will achieve the same result. Once the computer model is set up, the calculations are trivial and are exact.

The process as described by Sir John takes the difference between the notional value of the With-Profits Annuity policy and that of the comparator to assess the loss. This approach is simple, but it is based on an assumption that, post the transfer to the Prudential, the loss each year is constant and the future performance of the transferred policies could be expected to match the Prudential policies. If this were correct then the proposed approach would represent a reasonable analogue of the future losses.

In October 2007, I prepared a document prior to the transfer of the With Profits Annuitants to the Prudential, see Appendix C, and which was published on the ELTA website. The document shows that even at its most optimistic the With-Profits Annuities would in general continue to decline. In fact the reality has been substantially worse. The transferred policies are not identical to the Prudential policies.

The problem arose because when the annuity book was transferred to the Prudential, there was no associated reserve. The Prudential stated that it would create a reserve out of growth in the fund, but in the interim it would keep the Overall Rate of Return quite low. In fact it was 3.5% for the first 2 years but now is –5% (minus 5%). If the Prudential has to loan money to the ex-ELAS sub-fund to maintain a reasonable degree of stability, then interest will be charged and the loan re-paid.

The consequence is that

1. The annuity payments will in all probability continue to decrease for the foreseeable future – my estimate is at least 10 years.

2. **The loss figure** of the ex Equitable Life With-Profits Annuitants will continue to <u>increase in relation to **ANY** choice of comparator</u>.

3. In these circumstances the method used for calculating losses as proposed by Sir John will create substantial distortions and is neither fair nor usable.

NOTE: The With-Profits Annuity now with the Prudential has exactly the same characteristics as the old Equitable annuity. In effect all the Prudential is doing, for a fee of course, is managing the annuity fund. This is ring fenced, within it's overall With-Profits fund on the basis that in theory this should produce better results over the long term than had the annuities stayed with the Society.

It is important to understand that the original Prudential With-Profits Annuity is NOT the same, nor does it deliver, or will ever deliver, the same performance, as the ex ELAS annuity now with the Prudential, unless there is a substantial injection of free reserves required to remove these liabilities and ensure full with-profits estate-backed participation. That means that the "participating sub-fund" disappears and any differences in costs for main fund participation to be covered by the Treasury.

There is an additional problem that arises out of the specific transfer date to the Prudential. Subsequent to the transfer there was a very marked fall in equity values (see Appendix D). Whilst this was not foreseeable and beyond the control of the Prudential, the value of the transferred fund would have been badly affected as it had no reserves and this is evident in the negative overall rates of return currently being allocated by the Prudential to the ex Equitable annuitants. By contrast the original Prudential With-profits Annuities have performed relatively well with no reductions as any shortfall has been matched by funds withdrawn from the accumulated reserve. So the difference between the ex-Equitable funds and any chosen comparator will be even greater.

4.25 The approach, which I have suggested in the preceding paragraph would pose a number of further problems of detail, which I am currently considering with my advisers. Those problems include:

(i) How to conduct any off-setting in those cases where the computation under sub-paragraph (i) of the previous paragraph would show that the policyholder had experienced a relative gain but the computation under sub-paragraph (ii) showed a relative loss;

Response: the two computations must be combined so any gains are offset against any losses over the lifetime of the policy. The process that I have recommended would not have this difficulty.

(ii) How to account to the estates of those policyholders who have died since 31 December 2007;

Response: In my opinion these policyholders should receive compensation as if they are still alive and any money paid into their estate.

(iii) How to take into account tax on the income that the policyholder would have received if there had been no maladministration;

Response: Subject to confirmation from the Revenue that no payments would be taxable, loss should be calculated net albeit that future loss should be calculated on the basis that the return if taxed would produce the annualised net loss.

(iv) How (if at all) to account for offsetting across single-and joint-life policies; and

Response: They have to be combined for the purposes of determining losses or gains.

(v) What allowance (if any) to make for payments that policyholders may have received in respect of claims brought or intimated against Equitable Life.

Response: Any payments made to policyholders as a result of litigation, FOS settlements, etc. should be off-set only to the extent that the total amount received would exceed the full actual loss. If the combined sum is less than the actual loss, no deduction should be made. However, it should be noted that all of these settlements were concluded under a Confidentiality Agreement between the Society and the Policyholders. Therefore it is difficult to see how Sir John might determine who received how much and when.

Sir John poses additional specific questions, which require a response.

6.13 By reference to what end date should relative losses be assessed? Should different end dates be adopted for different types of policies?

Response: Yes – albeit I would confirm that my sole interest is in respect of With-Profits Annuities and in that respect I have already set out my position.

6.14 What special provision, if any, should be made in respect of the following classes of policyholders:

(i) Policyholders who have died;

Response: See above

(ii) Policyholders who have surrendered (or made partial withdrawals from) a policy;

Response: This is not relevant to With-Profits Annuitants.

(iii) Policyholders whose policy has been transferred to another life assurance or pensions provider;

Response: This is not relevant to With-Profits Annuitants.

(iv) Policyholders who have policies under group schemes; and

Response: This is not relevant to With-Profits Annuitants.

(v) Holders of true regular premium policies?

Response: This is not relevant to With-Profits Annuitants.

6.15 What subsequent steps taken by policyholders should be taken into account in assessing relative losses? In particular, should regard be had to:

(i) The surrender of an Equitable Life policy and withdrawal of a fund with penalties;

Response: This is not relevant to With-Profits Annuitants.

(ii) The transfer of a fund from Equitable Life to another life assurance or pensions provider; and

Response: This is not relevant to With-Profits Annuitants save in respect of the transfer to the Prudential where I have set out my position above and in fact the issues of significant falls in future returns.

(iii) The conversion of an Equitable Life policy fund into an Equitable Life With-Profits Annuity?

Response: The With-Profits Annuity should have its loss calculated as of its own right. Any loss on the underlying policy should be calculated and added to that figure.

Other matters

6.16 To what extent should relative losses be netted off against relative gains (if any) that have accrued? If gains should be netted off against losses, should that extend to gains and losses accrued in respect of different policies held by the same policyholder?

Response: All policies should be netted off against each other when held by the same policyholder.

How should the following cases be dealt with:

(i) With-profits annuitants who experienced relative gains in the early years of their policies but are facing reduced incomes in the future as a result of maladministration; and

Response: All gains should be offset against all losses over the life time of a policy.

(ii) With-profits annuitants who have experienced a relative gain on a joint-life policy and a relative loss on a single-life policy or vice versa?

Response: Gains and losses should only be offset where the policies are comparable. In this illustration, they are not! However, in any event, on the experience of comparative figures to date, it is not understood how any loss calculation on a With-Profits Annuity could result in a gain.

7 – ACKNOWLEDGEMENTS

This document is a result of the collaboration between the ELTA advisory committee, some members of the ELTA community, myself and with assistance from Clarke Willmott. Roy England responded to the early drafts with some incisive questions and comments that required further thought and Richard Griffiths, who conducted the final edit and proof reading task in his usual thorough and precise manner, also raising questions that require further explanation

Clarke Willmott and Paul Chapman as ever have given many hours of time to assisting in the development of this submission and as previously on a pro bono basis. The ELTA community is indebted to their contributions.

Michael Josephs, Dr Michael Nassim and Nicholas Oglethorpe and myself have conducted our usual round-robin debate on issues as they affect all the policyholders and as usual have helped me clarify my thought process. However, I must stress that the arguments and opinions expressed in this submission are mine and do not necessarily reflect their opinions and beliefs.

Appendix A

Full Distribution

a) **The Annuity Contract**
b) **The Society's Literature database**
c) **The Society's Bonus declarations 1992 –1996**

Appendix B

Annuity Basics

Appendix C

The Proposed transfer to the Prudential

Appendix D

The FTSE

In fact this is my personal annuity contract suitably edited to protect my privacy.

PRIVATE AND CONFIDENTIAL
P R Scawen Esq
34 Firlands
Ellesmeer Road
WEYBRIDGE
Surrey
KT 13 OHR

The Equitable Life Assurance Society

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Aylesbury, Bucks HP21 7QW
Telephone: Aylesbury (01 296) 385588
Facsimile: Aylesbury (01 296) 386383

6 March 1997

Our ref: 1/LT055/782/782/141545.246

Dear Mr Scawen

YOUR RECENT PROPOSAL FOR AN ANNUITY.

Policy number XXXXXXXXXXXXX
Annuitant Peter Raymond Scawen

KEY FEATURES

In accordance with current sales regulations, 1 am required to send you the enclosed 'Key Features' leaflet and illustration of the benefits under the proposed contract.

ADVISER'S STATUS

I am also required to inform you that the person who advised you about this contract represents only the Equitable group of companies.

NEXT STEPS

We will be considering your proposal and you do not need to take any action as a result of this letter. The letter and enclosures are merely to ensure that you are in receipt of certain information regarding the proposed policy. If, however, you do have any queries regarding the contents of this letter, please contact our Telephone Desk on the above number quoting our reference.

Yours sincerely

D B Sammons
Assistant General Manager

Regulated by the Personal Investment Authority a member of the Association of British Insurers

The Equitable Life Assurance Society

KEY FEATURES OF

THE EQUITABLE PENSION ANNUITIES

IMPORTANT

Please read this carefully. It highlights the key points covered in more detail in our leaflet 'Equitable Pension Annuities Product Particulars' which you may also wish to read.

If there is anything which you do not understand, or if you would like more information about any aspect, please ask.

ITS AIMS

- To provide you with an income for life, using the proceeds of a pension scheme.
- To provide your spouse or other dependant with an income for life after your death, if required.

YOUR COMMITMENT

- You use the proceeds of your pension scheme to purchase the annuity.
- You must take various decisions about the form of the annuity at the outset. You cannot alter the annuity subsequently.
- Once the annuity has been purchased, you cannot cancel it or transfer it to another life office.

RISK FACTORS

- If you choose a with-profits or unit-linked annuity, then the level of payments is not guaranteed but will depend on the investment performance of the underlying assets. Payments may go down as well as up and are not guaranteed to keep pace with inflation.
- If you choose a with-profits or unit-linked annuity, the performance of the annuity could be better or worse than the return on underlying guaranteed annuities at the time of purchase. In making such a choice, you will be exchanging the general level of yields available on fixed-interest securities at the time for unknown future performance.
- The total return from the policy will depend upon how long you survive.

Regulated by the Personal Investment Authority. A member of the Association of British Insurers

YOUR QUESTIONS ANSWERED

HOW DOES THE CONTRACT WORK?

- Most of the fund arising from an approved pension arrangement must, under legislation, be used to purchase an annuity for life.
- A pension annuity will pay you an income which will continue throughout your life and will cease on your death.
- You can choose an annuity in various forms, for example, to continue to your spouse after your death or to continue for a minimum guaranteed period.
- The amount of any annuity payment will depend on choices made at the outset and on subsequent experience.
- The rules of the original pension arrangement may impose restrictions on the form of annuity which can be purchased.

WHAT TYPES OF ANNUITY ARE AVAILABLE?

- There are four basic types of annuity.

- Under a GUARANTEED ANNUITY, the gross amount of each payment is set at the outset and guaranteed for life. The series of payments may be level or else can increase each year at a fixed rate.

- Under an INDEX-LINKED ANNUITY, the gross annuity payments vary each year in line with changes in the Retail Prices Index, and so broadly maintain their value in real terms.

- Under a WITH-PROFITS ANNUITY, the cross payments are linked to the performance of investments in a managed fund of fixed-interest securities, equities (both U.K. and overseas) and property.

- Under a UNIT-LINKED ANNUITY, the gross payments are linked to the performance of one or more of The Equitable's investment funds.

HOW CAN I PROVIDE FOR MY DEPENDANTS?

- You can choose an annuity which continues after your death to your spouse (or other dependant) if he or she survives you.
- The level of the spouse's annuity can be equal to or can be a proportion (e.g. '/2or **2/3)** of the annuity which would have been payable if you were still alive.
- You can also choose a minimum period of payment (e.g. 5 or 10 years).
- If you die within that period then the personal annuity would continue for the balance of the period.
- Your personal annuity will be lower if you include a spouse's annuity or a guaranteed period of payment.
- If you do not include either a minimum period of payment or a spouse's annuity then the annuity would cease on your death no matter how soon that occurs after purchase.

WHAT LEVEL OF INCOME IS PROVIDED?

- The Society will provide an illustration of the initial level of income available from your accumulated pension fund.
- The level available depends on:
  - the type of annuity,
  - the payment frequency,
  - any spouse's pension,
  - the minimum period of payment,
  - in the case of guaranteed annuities, the rate of increase in payment and the yield available on-fixed-interest securities,
- in the case of index-linked annuities, the yield available on index-linked securities,
- in the case of unit-linked and with-profits annuities, the rate of overall return anticipated.

HOW DO WITH-PROFITS AND UNIT-LINKED ANNUITIES WORK?

- Within limits, you anticipate a rate of overall return at the outset. There is no intrinsic difference in value for money between levels of anticipation - the starting level and subsequent payments are calculated in accordance with the anticipation.
- If the anticipated rate is achieved in practice then the annuity will be level in payment.
- If the rate achieved is higher than the anticipated rate then the level of annuity payments will increase. If lower, then the level of annuity payments will reduce.
- If a with-profits or unit-linked annuity is chosen then the annuitant is giving up the general yields available on fixed-interest securities at the time in return for unknown future performance.
- WITH-PROFITS ANNUITIES provide the opportunity for investment in a managed fund of fixed-interest securities, equities (both U.K. and overseas) and property.
  - Part of each gross payment is guaranteed. The guaranteed payments decrease each year at a rate equal to the rate of bonus anticipated, before adding any new annual bonus.
  - Total earnings on the invested assets are averaged out and added to the guaranteed benefits by way of bonuses of various kinds. Annual bonuses become part of the guaranteed benefits under the policy. Hence, the total guaranteed benefits from year to year could reduce or increase depending on whether the annual bonus added is less or more than the bonus anticipated. A final (non-guaranteed) bonus may be added, and that will bring the actual level of annuity payable for the year up to that determined by the overall rate of return, after allowing for the anticipated return.
  - **With-profits contracts have the essential feature of smoothing out fluctuations in earnings and asset values - thereby reducing the effect of severe movements in stock market prices.**
- UNIT-LINKED ANNUITIES provide a direct link with the performance of specific investment portfolios.
  - The value of the units in each fund goes up or down each day in response to changes in the market prices of the underlying investments. You can select to which fund or funds payments are linked and can switch from one fund to another.
  - Each gross annuity payment is calculated as the value, one month before the date of payment, of a number of units notionally allocated to the annuity. The number of units reduces each year at a rate equal to the overall rate of return anticipated.

WHAT ARE THE PROJECTED PAYMENTS?

- The illustration for a with-profits or unit-linked annuity shows the projected benefits using assumptions prescribed by the PIA.
- There is no guarantee whatsoever that those assumptions will be borne out in practice - the actual payments will depend largely upon future investment returns which cannot be known in advance.
- The actual results may be above the highest figure, below the lowest figure or somewhere in between.

WHAT TAX IS PAYABLE?

The investments held in respect of the annuities form part of the Society's pension business fund, which enjoys freedom from tax on its income and capital gains.

The annuity payments are taxed as earned income. The Society will deduct tax from each payment under the PAYE system in respect of all annuities other than those purchases in respect of retirement annuities.

WHAT EXPENSES ARE INCURRED AND WHAT CHARGES ARE MADE BY THE SOCIETY?

- EXPENSES

  - The Society incurs expenses at the outset and throughout the life of the plan.

  - The costs of the Society's directly employed field force are included in the expenses at the outset. The Society pays no commission.

- CHARGES

  - The charges are:

    1.6% of the purchase price,
    plus £40 per annum.

  - These charges are allowed for in the illustrated benefits, and are designed to recoup, on average, the costs of writing and maintaining the policy.

FURTHER INFORMATION

CANCELLATION RIGHTS After your proposal is accepted you will not be given the opportunity to cancel the policy. If the policy is bought under an 'open market option' you will be given at least 14 days to reflect before you purchase.

LAW In legal disputes, the Law of England and Wales will apply.

THE EQUITABLE LIFE ASSURANCE SOCIETY is a mutual Society and was founded in 1762. Total funds under management were over £16 billion at 31 December 1995.

QUERIES AND COMPLAINTS For further information or if you wish to complain about any aspect of the service you have received, please contact The Equitable Life Assurance Society. If your complaint is not dealt with to your satisfaction you can complain to the PIA Ombudsman (Centre Point, 103 New Oxford Street, London WC1A 1QH Telephone (0171) 240 3838). Making a complaint will not prejudice your right to take legal proceedings.

COMPENSATION Information on compensation arrangements is available from The Equitable Life Assurance Society on request.

The information contained in this leaflet is based on the Society's understanding of current legislation.

With-Profits
Compulsory Purchase
Annuity
Purchased under an Open Market Option

Date 5 March 1997

Peter Raymond Scawen

The Equitable Life Assurance Society

Male aged over nn years and three-quarters (born dd mmm yyyy)

Retirement date 28 February nnnn

Purchase price £nnn,nnn.nn

The gross amount of each annuity payment will comprise two parts-the basic payment guaranteed in the policy and, after the first year, an enhancement in the form of bonus. This illustration is based on the guaranteed basic payments being arranged so that if the future overall rate of return increases the guaranteed benefits by 7.00 %p.a., the gross annuity will be level throughout.

Initial gross annuity £nnn.nn per month

Please note that the payments from a with-profits annuity con go down as well as up.

This illustration is on a with-profits basis, and uses the same rates of return as other insurance companies' illustrations, but uses the Society's own charges. The projected figures are only examples, none is guaranteed and they do not represent the minimum or maximum amounts. The eventual benefits will depend on how the investments perform and may be more or less then those shown. Do not forget that inflation would reduce what you could buy in the future with the benefits arising.

Benefits on survival

The annuity payments, after the first year, will depend on the level of bonuses applying in the future.

	Guaranteed basic payments	Projected gross payments if future rate of return is: 6% p.a.	9% p.a.	12% p.a.
After 5 years	£nnn	£nnn	£nnnn	£nnnn
After 10 years	£nnn	£nnn	£nnnn	£nnnn
After 15 years	£nnn	£nnn	£nnnn	£nnnn
After 20 years	£nnn	£nnn	£nnnn	£nnnn
After 25 years	£nnn	£nnn	£nnnn	£nnnn
After 30 years	£nnn	£nnn	£nnnn	£nnnn

The annuity payments shown above are amounts per month.

The annuity will be payable by monthly instalments, the first falling due on the first day of the month following immediately after purchase and the last on the due date immediately preceding the death of the annuitant. In the event of the death of the annuitant before 120 monthly instalments have been paid the remainder of those instalments would continue to be paid on the monthly due dates.

WARNING - you cannot cash in this contract.

PLEASE SEE NOTES OVERLEAF

Further information

- The guaranteed basic payments are determined at the outset. These payments will emerge as a series of payments decreasing at an annual rate of the overall rate of return anticipated.
- The guaranteed basic payments are increased by the addition of declared reversionary bonus. A final bonus may also be payable.
- The initial gross annuity shown on the previous page is the amount that would be guaranteed to be paid in the first year.
- Please note that the annuity rates used in this illustration are not guaranteed. An illustration based on guaranteed annuity rates can be provided during the 21 days preceding the retirement date.
- All pension payments will be made after deduction of tax under the PAYE system unless the annuity payments are mode to the Trustees of the pension scheme in which case payments will be made gross.
- Where the pension under an immediate annuity as illustrated is to increase at more than 3% p.a., current Inland Revenue practice requires that the increases should be restricted in certain circumstances, depending on future changes in the Retail Prices Index. Broadly speaking, an employee's total pension from all sources should not, at any time exceed the maximum allowable pension at retirement (or date of death where alternatively a pension is being provided for a spouse only) increased in line with the Retail Prices Index. The policy document will contain a suitable provision, which meets this requirement, which will be based on information which the trustees must provide when proposing for the policy.

Important

- All of the projected figures in the illustrations are only examples and are not guaranteed - they are not minimum or maximum amounts. The ultimate benefits will depend on how your investments grow.
- Your return could be more or less then this.
- All insurance companies use the same rates of growth for illustrations. Each insurance company uses its own charges for illustration.
- Do not forget that inflation would reduce what you could buy in the future with the amounts shown.
- The illustration should not be taken as confirmation that the fund illustrated is available.

How much will the advice cost?

- The allocation of costs for the handling of new business at our branches (which includes the cost of providing advice where appropriate) depends upon the size of the contribution and where relevant the duration of the contract. For this contract, the cost is estimated to be £nnnn.
- The estimate is based on the actual allocation of costs for similar policies effected in 1995. These costs are paid for out of the deductions or charges in the contract, not by any separate payment.

Deductions

- The projections use the Society's current charges, which are designed to cover the cost of advice and other expenses incurred by the Society. The average effect of the charges is such that, if they were not made, the initial gross annuity could have been obtained by anticipating an overall return of 6.7%per annum instead of the 7.0000%per annum actually used.

The Society's Literature database (b) — Appendix A

Title:	Date:	Date:	Date:	Date:	Date:	Date:	Date:	Date:	Date:
General Documents									
The History of The Equitable	Mar-80								
Fact Sheet - The Equitable Life	Aug-95	Mar-96	Feb-97	May-98	Apr-99	Apr-00			
The Equitable Life - Terms of Business	Mar-95	Aug-96	Oct-97	Mar-98	Dec-98	May-00	Nov-00		
With-Profits Guide	31-Aug-90	01-May-91	01-May-94	01-Jul-95	01-Jul-96	01-Jul-97	12-Mar-98	31-Aug-98	31-Aug-99
Financial Strength of Life Offices	Sep-92								
Why choose the Equitable?	Dec-93								
Life Assurance Companies Expenses -	Jul-95								
OFT Ratings - Money Marketing 4	Jan-96								
Total New Business and Expenses -	Nov-97								
Financial Strength of Life offices	Feb-98								
Why the Equitable Life?	May-98								
Guaranteed Annuity Rates - The	24-Jun-99								
Membership of the Society	Sep-00								
Performance, Bonuses, With-Profits									
The Equitable Life's 1989 Bonus Rates	Aug-90								
Bonuses	Jul-90	Mar-91	Mar-92	Feb-94	Mar-96	Mar-97	Mar-98		
Pension and Life Assurance Plans	Feb-99								
1999 Investment returns	Feb-00								
With-Profits bonuses for 2000	Apr-01								
Performance of the With Profits Fund	Apr-01								
Fund Facts and Information on the With	Jul-96	Jun-98	Apr-99	Mar-00	Jan-01				
Equitable Investment Funds - leaflet on	Aug-98	Oct-98							
Assessment of Risk - Relative Risk of	Oct-95	Apr-96	Feb-98	Nov-00					
Life and Pension Funds - Relative Risk of	Apr-96	Feb-99	May-00						
Retirement Income - Past Performance	Mar-95	Mar-96	Dec-96	May-98					
Pension and Annuity Fund performance	Dec-90								
Personal Pension Plans - past	May-95	Oct-96							
With Profits Investment Performance	Oct-95								
Pensions Consistent Performance - 5	Jul-96	Mar-99							
Annuities									
With-Profits Annuities - Performance	Jul-88								
With-Profits Annuities - general overview	25-Apr-91	01-Jul-91	02-Mar-92	04-Mar-92	Jun-92				
With-Profits and Unit-Linked Annuities	Sep-93	May-99							
With Profits Annuities (graphs)	Feb-89	Sep-91	Nov-91	May-92	Apr-93	Oct-93	Nov-94	Apr-95	
Retirement Income- With-profits pension	Nov-95	Apr-96	Mar-97	Mar-98	Jul-98	Mar-99	Mar-00		
Retirement Income - Pensions Annuities	May-95	Apr-97	Nov-97	Apr-98	Aug-98	Apr-99			
Annuities Comparison	1990								
Annuity Past Performance	23-May-91								
Annuities - Relative Past Performance	Dec-93	Aug-95	Nov-95	Jul-97	May-98	Apr-99			
Annuities - Relative Past Performance	Mar-95								
The Equitable Pension Annuities	Dec-88	Mar-89	Jul-91	Jul-92					
Pension Annuities from the Equitable Life	Sep-93	Nov-94							
Pension Annuities- Product Particulars.	Mar-89	Jul-89	Jun-90	Sep-90	Dec-91	Feb-92	Jun-93		
Equitable Pension Annuities - Product	Sep-93	Nov-93	Feb-94	Jun-94	Aug-94	Aug-94	Feb-96	Apr-97	Feb-98
Immediate Annuities - Product	Jun-90	Oct-90	Mar-92	Nov-93	Jun-94	Apr-95	Apr-96	Jul-96	Apr-97
Key Features of the Equitable Pension	Jul-94	Aug-94	Aug-94	Jun-95	Jul-95	Oct-95	Feb-96	Jun-96	Jul-96
Key Features of the Equitable Pension	Aug-98	Jan-99	Mar-99	16-Apr-99	Aug-99	Sep-99	12-Feb-00	18-Apr-00	02-May-00
Key Features of Immediate Annuities	Jul-94	Jul-96	Apr-97						
Choosing your annuity	01-May-90	10-Dec-90	19-Feb-91	05-Jun-92	03-Nov-92	31-May-94			
Annuities - how do they compare?	Dec-91	May-93							
With-Profits Annuity Statements - Further	Feb-99								

The Society's Bonus declarations 1992 –1996 Appendix A (c)

I have extracted the following paragraphs from the Society's "Dear Policyholder" letters for 1992 through 1996 and usually headed **BONUSES FOR 1992** (1993,etc) These letters were sent to a policyholder who at the time was trying to create a pension fund prior to his retirement.

The paragraphs have been scanned and various transcription errors, inevitable in such a process, have been manually edited by. I believe that the editing is correct, but obviously I may have made minor mistakes. However, I am certain that if any errors exist they do NOT have any significant effect on the meaning of these extracts.

The emphases are mine.

The 1992 declaration

The smoothing of troughs in investment returns described above was a particularly significant feature of with profits business in 1990 when, despite negative investment returns, we 'were able to announce a rate of return which reflected the intrinsic earning power of the assets and represented an attractive build up of policy values over the year.

During 1991, more normal investment returns were earned overall, and we felt it appropriate to maintain the same rates of return as for 1990.

Over reasonable periods of time, however, returns passed on must reflect actual trends in investment conditions and, in the same way that the with-profits system smoothes out troughs in investment performance, so too will it smooth out peaks.

For 1992, investment performance was considerably better than in the previous two years. That has, therefore, given us the opportunity to allow for the smoothing of the trough in 1990 by some smoothing of the 1992 return. With that in mind, the Directors have decided to grant an overall rate of return for recurrent single contribution pension contracts for 1992 of 10% in respect of benefits purchased up to 31 December 1991. They have also decided, however, to recognise the more favourable investment conditions in 1992 by granting an overall rate of return fix such pension contracts for benefits purchased in 1992 of 12%. A similar approach has been adopted for recurrent single contribution life contracts, but recognising the different tax position of such contracts.

The 1993 declaration

In 1993 the Society earned about 28% overall on its assets at market value over the year. Equities, both U.K and overseas, performed particularly well and property contributed in a significant way for the first time for many years. Fixed-interest securities also appeared to provide a high yield, but it has to be remembered that most of the return was generated by a rise in market value as interest rates fell significantly, from under 9% at the beginning of the year to close to 6% at the end. Such a change in market values for redeemable fixed-interest securities is transitory because future interest payments and redemption proceeds are unaffected by that change - it is only the interest payments actually being received that should be taken into account. Using that argument, the board identified the total 'attributable' earnings for the year as about 17% before bringing smoothing considerations into account.

As we have said on previous occasions, with-profits business must take a reasonably long-term view of the intrinsic value of assets and smooth short-term peaks and troughs of performance, particularly where a peak or trough is caused by an abrupt shift in investor sentiment which could be reversed just as quickly.

On the other hand, we do not think we should ignore the current buoyancy in capital values. Having balanced these two considerations, and taking into account allocations over the past five years, the Directors have decided to allocate an overall rate of return for recurrent single contribution pension contracts in respect of 1993 of 13%, the highest since 1989. The interim rate for 1994 will be at 10% p.a. That rate is, of course, subject to change in the light of investment conditions throughout the year.

The 1994 declaration

You will recall that, during 1993, there were generally strong rises in capital values as investors took increasingly optimistic views of the prospects about the containment of future inflation. There was, however, a concern that such a dramatic increase in investor optimism might turn out to be short term and be quickly reversed.

In the event, that is broadly what happened in 1994. The strong growth of 1993 continued into the early part of 1994, but thereafter, capital values fell over the year as investors became more cautious about the future and demanded higher yields. In common with the experience of other mixed portfolios, the Society earned around -4 % on its assets at market value last year.

It is in such conditions that the benefits of the with-profits system, with its ability to smooth short-term peaks and troughs of performance, become apparent. Accordingly, I am pleased to announce that the Directors have decided to allocate overall rate of return for with-profits annuity contracts for 1994 of 10% per annum, the rate which has applied to actual payouts during the year.

The 1995 declaration

In 1995, the Society earned around 16% on its assets at market value. *In the previous five years, earnings on the underlying assets have been very volatile, with returns varying from -8% in 1990 to over 28% in 1993. The troughs in investment performance were smoothed out in that positive returns were allocated to policyholders throughout. Over reasonable periods of time, the returns passed on must reflect actual investment experience. It is therefore necessary to achieve a broad match on a rolling average basis over appropriate periods between returns on the underlying assets and the policy values themselves. In that way, peaks in investment performance are also smoothed, and that is the case for 1995*.

Taking due account of these considerations, I am pleased to announce that the Directors have decided to allocate an overall rate of return for with-profits annuity contracts for 1995 of 10% per annum, the rate which has been used at anniversaries during the year to determine the level of annuity payable in the following year. The rate for 1994 was also 10%, but in a year in which -4% was earned.

The 1996 declaration

The 1990's have been a period of unusually volatile investment returns with two years of negative earnings and one year of exceptionally high returns. Beneath that volatility the basic feature seems to be a growing acceptance that the U.K. is *experiencing, and will continue to experience, a sustained period of inflation at a much lower level than was normal in the two preceding decades. As that acceptance develops, expectations will adjust to the new low inflation environment. A general trend towards lower average returns, affecting all types of savings, can now be seen, although overlaid with the effects of short-term changes in investor sentiment, particularly in the case of equity investments.*

As described above, the with-profits system smoothes out fluctuations in asset values, and that can be seen in 1994 and 1995 with bonuses being based on a gross overall rate of return of 10% p.a. The final bonuses used for policy anniversaries during 1996 were also based on a smoothed return of 10% p.a. During 1996 much publicity has been given to stock markets attaining 'all time highs'. That publicity ignores the fact that, if returns are positive, markets will, on average, rise and new 'highs' will be regularly achieved. In fact, investment returns in 1996, although very satisfactory in the context of inflation at around 3% p.a., were by no means exceptional.

The Society earned around 11% gross on its assets in 1996 and I am pleased to announce that the Directors have decided to confirm the rate of 10% p.a., the rate which has been used at anniversaries during the year to determine the level of annuity payable in the following year, as the overall rate of return allocated to with profits annuity contracts for 1996.

Appendix B

Annuity Basics

Ordinarily, pension annuities are purchased between the ages of 50 and 75. Broadly, it is compulsory to use the pension funds to purchase an annuity. Self evidently, as individuals get older, their earning capacity diminishes. Therefore, the purpose of compulsory annuity purchase is to require individuals to secure a safe and reliable income for retirement when, crucially, they will be unable to supplement their income from alternative sources.

It may be stating the obvious, but since it is a key statutory requirement that an individual MUST buy an annuity, it follows that the regulating authorities have an ***absolute*** obligation to ensure that the products offered on the market can meet that statutory objective. Any failure to do so must inevitably result in a justified claim for mal-administration.

It is not widely appreciated that a life company writing a conventional non-profit annuity calculates with the aid of its actuaries, etc, the size of "the fund" based on its forecast for likely investment returns and the personal characteristics of the annuitant, (sex, age, social class, education, geography, etc). When an annuitant gives a lump sum, the consideration money, to the Society, in effect what the Society does, is perform a calculation whereby the money is invested in a spread of products, Equities, Gilts, etc., makes a judgement of future returns over the lifetime of the annuitant, deducts expenses, profits and sets aside a small reserve, and converts the remainder ("the fund") into a series of payments. This is true whether the annuity is a level, RPI linked, or escalating at a fixed rate. The consequence is that the same amount of money from "the fund" will be distributed, just in different ways.

So, irrespective of what type of annuity chosen, the total amount of money received in annuity payments will be more or less exactly the same. All that happens is that the payments are staged differently over time. In theory, if the starting conditions remained the same throughout the duration of the annuity and the annuitant died exactly as forecast in the actuarial life tables then, on the day the annuitant died, "the fund" would become zero.

Obviously if an annuitant dies early, the life company makes a "profit" and if the annuitant lives longer than planned then the life company makes a "loss". If the provider gets it right, the losses are matched by the profits. And of course, starting conditions do NOT remain the same.

However, in the case of fixed escalating or RPI-Linked Annuities the starting income for the annuity is substantially lower than the benchmark annuity—the fixed level annuity. This was a major marketing deterrent, which the Equitable WPA was designed to overcome. The WPA at its inception provided an income equal to, or in some cases, above the fixed level annuity. This feature, plus the "promise" of additional growth, made them a very attractive product for potential annuitants. It achieved this by allowing the annuitant to anticipate future growth, so that effectively receiving tomorrow's bonus today. This exercise, however, was dependent on the Equitable having a culture of sound management and adequate reserves, so that it could withstand dips in the investment market without reducing the annuity income. (Without that, it was doomed to failure and at some point drastic drops in the payments received, but with no chance that the annuitant could surrender the contract.)

Annuitants understand that if you invest in a product that relies on investment to produce growth, then your returns will be dependent in part at least on the markets, be they investment in Equities, Gilts, Cash, Property, or any other investment mechanism. What they could not understand was the "provider risk" represented by the finances of Equitable itself, rather than the markets.

Every annuity type involves some form of risk judgement that the annuitant has to make:

- With a Fixed Level Annuity, the risk relates to inflation. Even a modest 3.5% rate of inflation means that your money more or less halves in value over 20 years, a relatively short time-span in today's world, where people retire at 55 and hope to live well into their 80's.

- With an Escalating Annuity, growing at some fixed rate, then the annuity starts low, but steadily increases so that late on in the annuity the payments are very high. In this case, the risk relates to your longevity.

- With an Index Linked Annuity, the risk relates to the future performance of that index, as well as longevity for the same reasons above.

- With a with-profits annuity the risk relates not only to the markets, but also to the "provider risk" that the life company will not, or will not be able to, declare bonus. In Equitable's case, the "provider risk" was extreme, but hidden by the regulatory mal-administration, which took place.

  Further though much less obvious is that the "risk" associated with all types of annuity has been transferred from the Society, which in theory can carry that risk – that is what Insurance & Pension providers do for a living – to the annuitant who cannot, which of course is why policyholders provided for themselves with a pension fund in a supposedly mature and safe society.

The pension provider has a statutory obligation to ensure that it has set aside and reserved funds in its balance sheets to meet future guaranteed obligations. But a with-profits annuity does not have to be covered in full by reserves, as a proportion (and, as demonstrated below, an increasing proportion) of the income is not guaranteed.

This is the fundamental difference between the various types of conventional annuities and With-Profits Annuities.

Appendix C

The Proposed transfer to the Prudential

Additional Comments added in 2010 are underlined and in italics

As promised and now that we have more details, *(written in Oct 2007)* I am setting out a brief commentary on my understanding of the proposed transfer of the Society's With-Profits Annuities to the Prudential.

There are certain points, which you may wish to consider before casting your vote on the proposed deal. But it is important for you to bear in mind that your vote is an entirely individual decision, as I cannot advise you how to vote nor would I wish to do so. It is a decision you must make for yourself.

However, in order to assist you, I set out a short summary of my understanding. The scheme is very complex and as a result, this is by necessity an over-simplification to make it comprehensible. If you require further detail, please look at the Equitable website and the further details available there and of course seek professional advice.

Summary of the scheme

1. The Annuitants will cease to be members and policyholders of the Society and will instead become with-profits policyholders of Prudential.

2. An amount, estimated initially to be of the order of £1.8 billion, will be transferred to a separate sub-fund of Prudential and will be used exclusively to provide the "unsmoothed component" of annuity payments. The intention is that the sub-fund will be used exclusively for the benefit of Annuitants.

This sub-fund will be within the defined charges participating sub-fund. I refer to this particular element of the defined charges participating sub-fund below as "the DCPSF" (although technically there are, I understand, other elements of the full sub-fund which will be kept separate).

The express intention is that the DCPSF will be used up over the future lifetime of the portfolio of the Annuitants.

The DCSPF will have no liabilities other than the Equitable's with-profits annuities.

The investment risk and part of the mortality risk will be retained within the DCPSF but all other risks will be undertaken by Prudential in return for payment made by Equitable to Prudential. None of the risks nor any of the profits of Prudential's other business will fall upon the DCPSF.

3. The transferred policyholders will have absolutely no recourse whatsoever to Prudential's inherited estate. The future annuity payments you will receive will depend upon the performance of the DPCSF and there is no intention to provide any subsidy or long-term support though there may be some short term support for the smoothing process.

4. The investment mix of the DPSCF's supporting assets is intended to be the same as for Prudential's main with-profits fund which is approximately 50% in equities, 30% in property and 20% in fixed interest investments. Over the long term, most people would expect such an arrangement known as a "50/50" fund to perform better than a fixed interest fund. However, in the shorter term, there is an issue of timing given the cyclical nature of financial and property markets.

There are, however, significant differences between Prudential's main with-profits fund and the DCPSF:

i) The main fund is supported by Prudential's inherited estate whereas the DCPSF has no inherited estate;

ii) The main fund is a continuing entity which is open to new business and which can expect to receive further premiums in the future whereas the DCPSF is closed to new business, will receive no further premiums and is contracting (as the Annuitants die);

iii) The main fund represents policyholders who have paid and will continue to pay premiums to Prudential at different times whereas all of the DCPSF will have been paid to Prudential at the same time; and

iv) Prudential's main with-profits fund will represent a constant or increasing number of policyholders whereas the DCPSF will represent a declining number of polices.

Given the differences set out above, an investment portfolio, that has been selected to meet the needs of Prudential's other with-profits policyholders, is unlikely at all times to be the most suitable portfolio for the DCPSF.

If, in the event, the investment return that is credited to the DCPSF is both positive and greater than that which might have been obtained from the Society's conservative investment policy, the Annuitants are likely to receive future payments that are greater than they might otherwise have been and will benefit from the Scheme becoming operative. If, however, the returns are less than might have been obtained with the Society, the new arrangements, although they might permit the impact to be smoothed, will not create any additional funds that will fill the gap long term. In fact the results for reasons because of Equitable's weak solvency position, it was not able to take the risk of matching liabilities with equity investments. The transfer to Prudential allows that company's stronger solvency to support such a position but I cannot predict whether that would mean higher returns and it is only that which would improve the annuitants' position.

Smoothing

If the scheme becomes operative, you will have the advantage of a clearly stated smoothing policy including the safeguard of a with-profits committee (which is required in non-mutual companies by the FSA). The Prudential's stated intention is to manage the overall rate of return within a range of 0% to 11% per annum*. In practice the overall rate of return has been 3.5% for the first 2 years and –5% (minus 5%) for the current year (2009) and next year (2010).*

Actual Effect

My understanding is that payments will continue to be calculated on the same basis as before but of course subject to the overall rates of return declared by Prudential within the DCPSF.

My experience is that the average ABR for all annuitants is approximately 6.5% (having taken into account real ABR's – see below) with approximately two thirds of the policyholders having ABR's in the range 5.5 to 7.5%.

GIR annuities were typically sold before 1997 and for these annuities; the ABR was uplifted by 1.035. Thus an ABR of say 4.0% in practice becomes 1.04 x 1.035 or

1.0764 so equates to a real ABR of 7.64%. As will be immediately obvious, the effect of the multiplier of the uplift to the real ABR is that a much higher rate of return is required to maintain payments.

Prudential Bonus Rate		0%	2%	3.5%	4%	6%	8%	10%	11%
GIR Policies									
Nominal ABR	Real ABR	1.00	1.02	1.035	1.04	1.06	1.08	1.1	1.11
1.0000	1.035000	-3.38	-1.45	0.00	0.48	2.42	4.35	6.28	7.25
1.0050	1.040175	-3.86	-1.94	-0.50	-0.02	1.91	3.83	5.75	6.71
1.0100	1.045350	-4.34	-2.43	-0.99	-0.51	1.40	3.31	5.23	6.18
1.0150	1.050525	-4.81	-2.91	-1.48	-1.00	0.90	2.81	4.71	5.66
1.0200	1.055700	-5.28	-3.38	-1.96	-1.49	0.41	2.30	4.20	5.14
1.0250	1.060875	-5.74	-3.85	-2.44	-1.97	-0.08	1.80	3.69	4.63
1.0300	1.066050	-6.20	-4.32	-2.91	-2.44	-0.57	1.31	3.18	4.12
1.0350	1.071225	-6.65	-4.78	-3.38	-2.91	-1.05	0.82	2.69	3.62
1.0400	1.076400	-7.10	-5.24	-3.85	-3.38	-1.52	0.33	2.19	3.12
1.0450	1.081575	-7.54	-5.69	-4.31	-3.84	-1.99	-0.15	1.70	2.63
1.0500	1.086750	-7.98	-6.14	-4.76	-4.30	-2.46	-0.62	1.22	2.14
1.0550	1.091925	-8.42	-6.59	-5.21	-4.76	-2.92	-1.09	0.74	1.66
1.0600	1.097100	-8.85	-7.03	-5.66	-5.20	-3.38	-1.56	0.26	1.18
1.0650	1.102275	-9.28	-7.46	-6.10	-5.65	-3.84	-2.02	-0.21	0.70
1.0700	1.107450	-9.70	-7.90	-6.54	-6.09	-4.28	-2.48	-0.67	0.23
1.0750	1.112625	-10.12	-8.32	-6.98	-6.53	-4.73	-2.93	-1.13	-0.24

Non-GIR annuities were typically sold after 1997 until close of business. In these policies, there is no GIR uplift.

Prudential Bonus Rate		0%	2%	3.5%	4%	6%	8%	10%	11%
Non-GIR policies									
1.0000	1.0000	0.00	2.00	3.50	4.00	6.00	8.00	10.00	11.00
1.0050	1.0050	-0.50	1.49	2.99	3.48	5.47	7.46	9.45	10.45
1.0100	1.0100	-0.99	0.99	2.48	2.97	4.95	6.93	8.91	9.90
1.0150	1.0150	-1.48	0.49	1.97	2.46	4.43	6.40	8.37	9.36
1.0200	1.0200	-1.96	0.00	1.47	1.96	3.92	5.88	7.84	8.82
1.0250	1.0250	-2.44	-0.49	0.98	1.46	3.41	5.37	7.32	8.29
1.0300	1.0300	-2.91	-0.97	0.49	0.97	2.91	4.85	6.80	7.77
1.0350	1.0350	-3.38	-1.45	0.00	0.48	2.42	4.35	6.28	7.25
1.0400	1.0400	-3.85	-1.92	-0.48	0.00	1.92	3.85	5.77	6.73
1.0450	1.0450	-4.31	-2.39	-0.96	-0.48	1.44	3.35	5.26	6.22
1.0500	1.0500	-4.76	-2.86	-1.43	-0.95	0.95	2.86	4.76	5.71
1.0550	1.0550	-5.21	-3.32	-1.90	-1.42	0.47	2.37	4.27	5.21
1.0600	1.0600	-5.66	-3.77	-2.36	-1.89	0.00	1.89	3.77	4.72
1.0650	1.0650	-6.10	-4.23	-2.82	-2.35	-0.47	1.41	3.29	4.23
1.0700	1.0700	-6.54	-4.67	-3.27	-2.80	-0.93	0.93	2.80	3.74
1.0750	1.0750	-6.98	-5.12	-3.72	-3.26	-1.40	0.47	2.33	3.26

The tables show a selection of results depending on the chosen (real) ABR and the overall rate of return by the Prudential in any one year. The numbers in red indicate that the annuity will decline in value and the actual number is the reduction in value as a percentage of the previous year's annuity payment. Conversely the numbers in black indicate that the annuity will increase in value and the actual number is the increase in value as a percentage of the previous year's annuity payment. The figures do not take into account the effect of any guaranteed elements in the policies that may exist.

Given that the Prudential has to strip out its expenses and create a reserve for the "bad" years (the "smoothing" above), personally, I cannot see the Prudential paying out much above 4 or 5% over the next few years. Of course, I am not qualified to give advice on likely future returns and I do not attempt to do so. This is purely a personal view based on the stated proposed range of overall rates of return, the intention to "smooth" returns and the expenses required in administering the policies.

Combining the spreadsheets and my experience of ABR's (and real ABR's) above suggests to me that:

a) the overwhelming majority of annuitants will see their policy values continue to fall in the immediate future;

b) even in the longer term it is difficult to envisage any GIR policy increasing in value and the non-GIR policies will only achieve that when the Prudential declares an overall rate of return in excess of in general 6.5%;

c) annuitants are likely to be better off remaining with the Equitable if the Prudential declares overall rates of return in the region of 4% or lower as this appears to be the "norm" for the Equitable (but conversely better off with the Prudential if the overall rates of return are higher – see below); and

d) annuities are likely to fall more slowly if the Prudential declares overall rates of return in excess of 4% compared to staying with the Equitable.

Where does this leave you?

In summary

1. The future level of annuity payments will primarily depend upon the returns secured by the investments backing the DCPSF.

2. The assets are likely to include a significant proportion of equities chosen with the interests of Prudential's wider and continuing with-profits portfolio.

3. It is possible that the net proceeds of the investments backing the DCPSF will be greater than might have been achieved from the Equitable's more restricted investment mix policy.

4. However they may be less.

What is proposed is a transfer of the Society's business model to a new home. The rules are now expressed much more clearly and some of the risks have been replaced by fixed charges. Nevertheless, the fund remains an un-capitalised with-profits fund. The proposed transfer does not supply a new ingredient that mitigates the risks or supplies additional funds. This opinion is very much in line with that of the independent expert (Mr Sarjant) whose report you can read in full on Equitable's website.

As I mentioned at the beginning of this commentary, I cannot advise you on which way to vote. In many ways this may boil down to a straight choice as to whether in light of the position that you now find yourself (perhaps in contrast to the position at the time of the original decision) you would like an annuity income dependant upon a different investment mix than would be the case if the policies remained with the Equitable. That again may be a matter, which turns upon your own personal risk appetite, age etc as it is now given your current income needs and personal circumstances.

There are two other factors you may wish to consider. The first is that if annuities are transferred to the Prudential, you will be in a fund, which does not suffer the risk of any further mis-selling liabilities that may fall upon Equitable. The second is that nobody can predict whether the Parliamentary Ombudsman will press for compensation and even if it did, whether this would be to individuals or into Equitable's with-profits fund. Personally, I consider the latter unlikely.

I will not take questions on the contents of this bulletin as I have solely put this information on the ELTA website partly because I made that commitment and partly because members have asked help.

Peter Scawen

17 October 2007

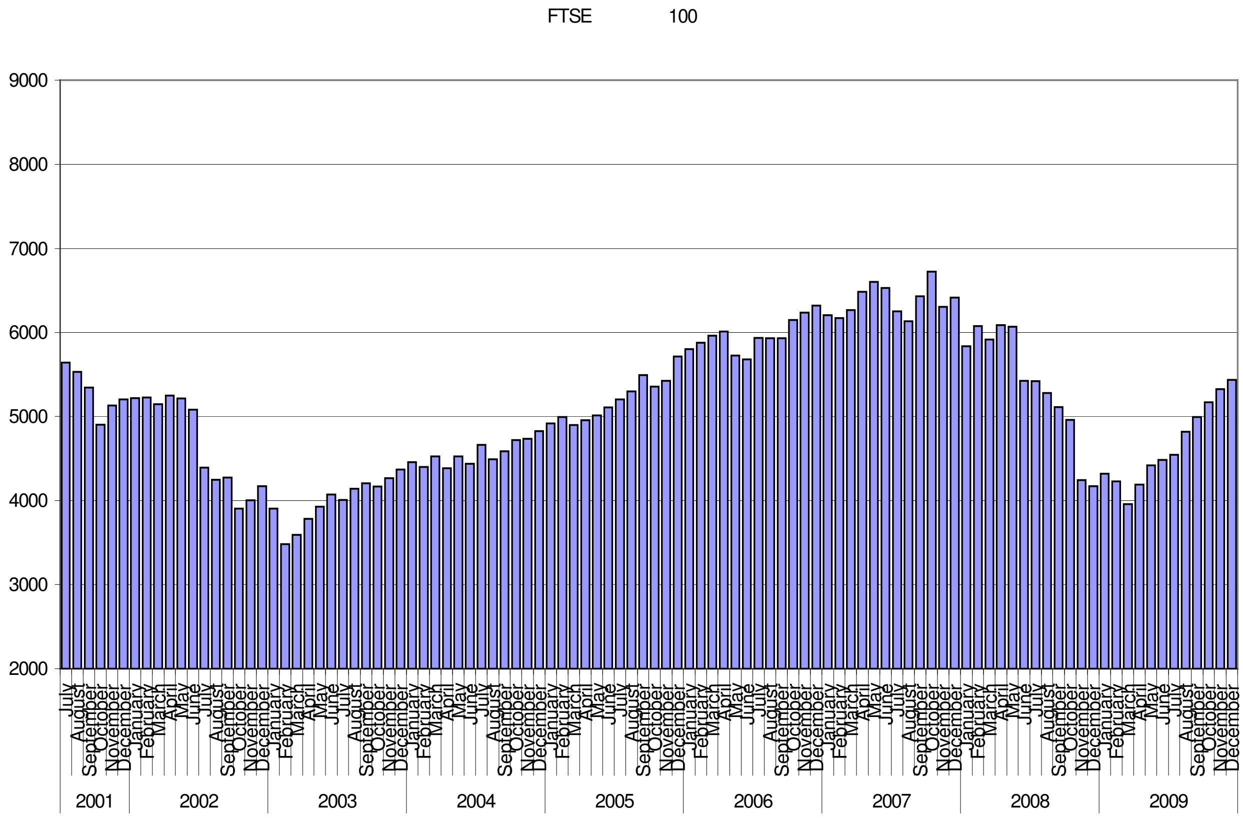
The disastrous consequence of not holding adequate reserves is only too clear following the decline the the markets and subsequent rise. I have selected the FTSE for illustrative purposes but since all the major markets have moved in broadly the same pattern over the same time period it will serve as an adequate analogue for them all.

The Prudential has adequate reserves and thus has been able to ride out the declines in equity values since January 2008 and can take benefit from the current bull markets.

Conversely, even though the ex ELAS fund is now managed by the Prudential and sits within the same With-profits Fund, the downturn has had a major effect on policy values and in its weakened state it is not even able to take full advantage of the up turn as any "growth" must be sued to repay any loans made by the Prudential and the establishment of an adequate reserve according the management policies of the Prudential

Appendix D

FTSE 100 (2001 – 2009)



Appendix E

Electronic Records

The statement that there are no electronic records are not readily available prior to 1992 is simply nonsense[22]. I worked in the IT industry from 1967 onwards, first with IBM, then Unilever and subsequently a multi-national software house. The first project that every Insurance and Life company was to convert its policy book onto computer systems as soon as was possible – certainly the first insurance company I had dealings with in 1968 in Liverpool was highly automated at that time – so it is inconceivable that Equitable Life was not similarly automated by the 1970's.

I can confidently state that Equitable Life has policyholder records in electronic form as far back as is required.

a. They may be in a form that requires substantial transformation and processing, but once the conversion system is operable, handling 1 million or so records is a trivial computer procedure.

b. There is a remote risk that the medium on which the data is recorded might have degraded but since ALL companies had to re-process their entire database systems in preparation for the Millennium Bug I seriously doubt if that is a problem.

c. I do not know the specific Operating System or the specific Data base used by the Society but ALL of the modern systems have easy to use data retrieval software associated with them for use by executives who are not IT professionals.

I am not clear why such an assertion has been made but I am certain that the necessary data records are available in a form that can be readily accessed for the purposes of any calculations that Sir John and/or his actuarial advisors wish to undertake. This is critical since it then converts an almost impossible task – that of assessing the nature and quantum of over bonussing in the 1970's and 1980's - from an almost impossible task to one of relative simplicity and speed.

[22] IR2 4,4 and 4.5