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31 March 2010.

Dear Sir John,

Third Interim Report.

As my wife and I were both Equitable Life policyholders, I have read your Interim Reports with interest, and I now wish to make some comments on your Third Interim Report (IR3), as detailed below.

However, it is perhaps appropriate to express initially my appreciation of the difficult situation you are in. The task given to you by the Government was always going to be highly controversial. Furthermore, you are working under considerable time constraints. I was forcibly struck in the recent Parliamentary debate on Equitable by the number of individual MPs who emphasised the need for haste in the current scheme, although few MPs appeared to have any real understanding of the difficult issues involved. I trust that you will appreciate that my comments are made with these issues in mind.

Summary:-

The following significant weaknesses, or issues that need to be addressed, have been identified from the arguments in the Third Interim Report (IR3):-

1. Apportionment away from the regulators is not justified for two reasons. Firstly, the account of the scope of the regulatory regime described by the Treasury is inaccurate. Regulatory scrutiny involved not merely the Regulatory Returns, but also meetings at which Equitable's business strategies and the role played by the Appointed Actuary were monitored. Secondly, the introduction into the ex-gratia payment scheme of novel ideas about possible changes to the law relating to liability for regulatory failure is inappropriate given that the current scheme does not depend upon liability but upon redress, and that *current* Treasury guidelines for ex-gratia payment schemes indicate that they should lead to full redress.

2. You are experiencing considerable difficulty taking into account prior compensation awarded largely for mis-selling. This obviously highlights the issue of mis-selling. There has never been a proper enquiry into the Conduct of Business regulation of Equitable. In the society's sales literature the concept of smoothing was central. Explicit reference by the Disciplinary

Committee set up by the Institute of Actuaries (investigating the behaviour of Roy Ranson et alia) to Equitable's business model *considered as a whole* indicates that the business model was incompatible with smoothing. It thus appears highly probable that all policyholders were mis-sold. Thus all policyholders should receive full redress.

3. Quantitative resolutions of issues concerned with "Disproportionate impact" are not possible at the level of classes of policyholders, but only at the level of individuals.

4. Although the ongoing peer review process may be similar to procedures used by auditors and actuaries, a comparison with the more rigorous procedures adopted in academic peer review indicates some of the deficiencies in the procedure proposed for a highly controversial scheme involving a considerable amount of public money. Adequate peer review requires the involvement of both independent, skilled policyholder advocates and foreign actuaries.

5. The investigation of "What would have happened if…" is generally known as Counterfactual Thinking. It is known to be fraught with pitfalls. It is a method of enquiry which is invoked whenever it is claimed that some historical event may have been *caused by* some prior event. The counterfactual reconstruction of the scrutiny of the Regulatory Returns is flawed for four reasons. Firstly, meetings between the regulators and Equitable which will have impacted on the Returns have not been properly incorporated. Secondly, the reconstruction ignores the critical issues of motivation and personality, particularly for the regulators involved in maladministration. Thirdly, the construction of counterfactual histories is vulnerable to unconscious bias which must be methodically eliminated and this has not been done. Fourthly, a number of the inferences that have been drawn are either not supported by argument or there are equally likely alternatives not discussed.

6. The Third Interim Report rejects the Ombudsman's view that her findings should be considered cumulatively, and that, given her findings, if there had been no maladministration no policyholder would have invested in Equitable after 1991. No rationale is given for this rejection, which will be seen as partial by policyholders.

7. Collectively these important areas of weakness and controversy suggest that the proposed scheme at present lacks the necessary foundations in fact, logic and even-handedness to be fair in its distribution of large sums of public money to a very large number of victims of poor regulation.

Specific Issues:-

Section 6 on Apportionment.

1. As I understand your analysis, you concur with the Treasury's account of the scope of regulation, and you suggest that their arguments are not relevant to apportionment, but are relevant to the assessment of the quantum of loss, impacting on the choice of the Comparator and introducing possible adjustment of relative loss because some losses resulted from "improvident management decisions".

I regret that I have very great difficulty in understanding the validity of the Treasury's account of the scope of the regulatory regime at the relevant time. In particular, the Treasury suggested that regulation did not protect against a poor business strategy and unwise management decision making such as the policy of full distribution.

In 1992 C.D. Daykin, who was the Government Actuary from 1989 to 2007, described "The developing role of the Government Actuary's Department in the supervision of insurance" (Journal of the Institute of Actuaries 119, II, 313-343). In particular, on page 339, section 16.4 he noted that (I quote verbatim):-

"As part of the process of modernising the system of supervision, and making it more relevant, the GAD and the DTI began in 1991 a programme of visits to companies. On the life insurance side this usually involves a representative from GAD, as well as one from DTI, and includes meetings with the Appointed Actuary, the chief executive, and other senior executives. The visit is *not* primarily concerned with discussing the returns to the DTI, but *focuses on* the future strategy of the company, organisational and management issues and the role of the Appointed Actuary, as well as tackling any issues outstanding between the company and DTI/GAD" (My emphases).

Thus the DTI (the regulator) was involved in discussions about company strategy, as well as organisational and management issues. This was necessary as he needed to understand the business basis for the many assumptions contained in the Insurance Returns, not all of which would be stated explicitly. Also the regulator was required to satisfy himself that there were no serious threats to solvency looming on the horizon (see the Parliamentary Ombudsman's report Part One, Pages 77, 40; and 78, iv 1), as well as ensuring that policyholders' reasonable expectations (PRE) were not in danger or already compromised (see the Parliamentary Ombudsman's report Part One, Page 81).

The Ombudsman also noted (Part One, Page 81), that under the 1982 act, the prudential regulators had the powers to intervene in the affairs of a company in the form of:-

"A requirement for the company to arrange for its Appointed Actuary to investigate *all* or part of the affairs of the company at a time other than the annual investigation and deposit an abstract of the actuary's report with the prudential regulators." (My emphasis).

The Ombudsman also detailed (Part One, Page 77, Para 49) how under the European Third Life Directive:-

"Financial supervision shall include verification, with respect to the insurance undertakings *entire business*, of its state of solvency, the establishment of technical provisions, including mathematical provisions, of the assets covering them." (My emphasis).

It is clear that meetings of the type described above by the Government Actuary did indeed take place with Equitable. One such meeting is described in the Parliamentary Ombudsman's Chronology (Pages 39-40 dated 14th – 22nd November 1990). At this specific meeting, GAD discussed with Equitable's actuaries the financial state of the society, the amount of new business, and the cost of the 1990 bonus since Equitable was considering not paying a reversionary bonus in 1990. The GAD notes on this meeting indicate that due to the financial state of the society the Appointed Actuary implied that if markets fell "He (the Appointed Actuary) would have to consider reducing the level of new business taken on." Thus it is very clear that at such meetings the future business strategy of Equitable was discussed.

I therefore, for various different reasons, have very great difficulty indeed understanding the Treasury's claim, that regulation did not cover poor business strategies and unwise decision making.

Hence, it seems to me totally inappropriate to consider reducing ex gratia payments on the basis of "improvident management decisions" as you suggest in Footnote 39.

2. You are also apparently considering (6.6) that some part of the losses arising from maladministration should be apportioned away from the regulator on the basis of the acts or omissions of the Appointed Actuary in his dealings with GAD or DTI. However, considering again the material from the Government Actuary outlined above, it is clear that meetings with life companies were anticipated to cover "the *role* of the Appointed Actuary, as well as ..... any issues outstanding between the company and DTI/GAD." Given that such meetings were explicitly intended to scrutinise the *role* of the Appointed Actuary and outstanding issues, it is not possible for me to understand why there should be any apportionment away from the regulator on the grounds of the acts and omissions of the Appointed Actuary. This conclusion is strengthened by the fact that the regulator had the power to arrange that at any time the Appointed Actuary investigated *all* the affairs of the company (see above), and also because the European Third Life Directive required supervision of a company's *entire business* (see above).

3. You are also considering possible apportionment away from the regulator on the basis of the actions of the auditors and various unspecified actuaries. In all such apportionment away from the regulators it is my understanding that you do not consider the current principle of Joint and Several Liability appropriate.

The formal minutes of the All Party Parliamentary Group on Justice for Equitable Life Policy Holders held on 24th February 2010 has you on record as saying:-

"I am not applying Joint and Several Liability. This is covered in my first Interim Report. I am not engaged in a quasi-judicial process and I am not recommending Joint and Several Liability".

I trust that this is an accurate account of your views. If it is not I apologise. In your first Interim Report you referred in this context to the Law Commission's Consultation Document on "Administrative Redress: Public Bodies and the Citizen" which considered possible changes to the law of Joint and Several Liability with reference to regulatory failures. This does not seem appropriate since the current scheme does not depend upon liability in any way.

However, it was also outlined in this Consultation Document (at 3.50) that:-

"Ex gratia schemes may provide for compensation to be paid out for personal injury and property damage and also extends to any sort of injustice or hardship including both financial and non-financial loss. As to the level of compensation, HM Treasury's guidance states that a department should provide such compensation as it considers "fair, reasonable and proportionate". *This will normally mean sufficient compensation to restore claimants to their position prior to the maladministration or service failure*." (My emphasis).

Thus under *current* Treasury guidelines the ex gratia payment scheme should provide full redress. This is clearly totally incompatible with the scheme which you are considering, in which there is potential apportionment of various types away from the regulators. Thus we appear to have reached a situation where the ex gratia payment scheme is not to be run under current principles, but under principles derived from possible future changes to the law. This does not seem to me in any way fair, as policyholders should surely receive ex gratia payments under the guidelines present at the time of the relevant maladministration?

I actually have difficulty understanding your claim to the All Party Parliamentary Group that "I'm not engaged in a quasi-judicial process" which I take to be defined as below:-

Quasi-judicial. Referring to the actions of an agency, board, or other government entity in which there are hearings, orders, judgments or other activities similar to those conducted by courts. See:- http://legal-dictionary.thefreedictionary.com/Quasi-Judicial

Since you have introduced into the ex-gratia payment scheme ideas derived from potential novel changes to the law, when the scheme is not actually a formal legal scheme, I find it very difficult to see how you are not involved in "activities similar to those conducted by courts" in the sense that what you are doing is introducing a potentially new "legal" concept into the ex-gratia scheme.

Furthermore, I note that in IR3 on Page 12 in arguing that the regulators only needed to do the minimum necessary to comply with their obligations, you supported this argument "by analogy with the principles that would be applicable to the evaluation of loss in litigation." I therefore repeat that I have very considerable difficulty in understanding how the ex gratia payment scheme is not a quasi-judicial process.

At the time it was set up there was much attention drawn by the Government in Parliament to the merits of using an *independent* member of the judiciary to run the scheme, in accord with the concept that the scheme is indeed a quasi-judicial process. It is probably perceived as such by most individuals. If this perception limits the willingness of individuals to challenge the details of the scheme, the consequences are very unfortunate indeed in the light of the content of IR3.

Section 5 on Prior Compensation.

It is clear (5.5) that this issue is causing you considerable problems due to the fact that those who have been compensated in the past (mainly for mis-selling) might receive more total financial benefit than those policyholders involved in the ex-gratia payment scheme only (due to double counting).

This difficult situation raises the fundamental issue of mis-selling by Equitable. It is therefore quite extraordinary, and needs to be put on record again that, as I am sure you will know, Conduct of Business Regulation, has never been formally investigated at Equitable (including by the Ombudsman).

The Government has gone to very great lengths to ensure that Conduct of Business Issues have been kept from the public domain. A very highly plausible reason for this is that virtually all policyholders were mis-sold.

In previous Interim Reports you suggested, on the basis of the Penrose report, that all policyholders knew about Equitable's policy of full distribution. Following policyholder submissions you appear to have accepted that the concept of full distribution did not actually occur in many documents sent to policyholders. However, what did consistently occur in such documents was the phrase:-

"With Profits policies have the essential feature of smoothing out fluctuations in earnings and asset values generally associated with investment in such portfolios." (See e.g. Pension Product Particulars, 1994, Page 2, Section 1 - The With Profits Approach).

It is therefore of considerable interest that in the disciplinary tribunal related to the behaviour of Equitable's Actuaries, the panel set up by the Institute of Actuaries decided in March 2007 (at Page 56):-

> "In the view of the Panel, the ELAS with-profits fund was run on a very tight shoestring. The aims of giving a "full and fair" return to policyholders, holding no estate and yet being able to smooth returns in difficult periods were incompatible when considered together with the way in which PRE (policyholder's reasonable expectations) were allowed to develop"
> http://www.actuaries.org.uk/__data/assets/pdf_file/0005/27788/tribunal_rep_elas.pdf

I personally find it impossible from this definitive, high-level actuarial decision not to conclude that *taken overall* the business strategy at Equitable was not such that all policyholders were mis-sold. Absent such misrepresentation no reasonable person would have bought ELAS policies in the first place It is important to point out that this seminal actuarial finding was only made circa 6 years after Equitable's problems developed. Thus the finding was not available to policyholders asserting previously that mis-selling had occurred.

Whilst you have reasonably concentrated in the past on only the full distribution issue, it is necessary to consider the business strategy *as a whole*. When this is done, the probable widespread mis-selling becomes apparent. From this follows the extreme Government resistance to a proper enquiry into Conduct of Business Regulation at Equitable, and from this follows your present difficulties. However, it also follows from this discussion that the level of policyholders' ex-gratia redress should be such that it is sufficient to remedy *all* their relative losses as a presumed result of widespread mis-selling.

You may consider that such issues fall outside your Terms of Reference. However, in your prior suggestion that all policyholders knew about the policy of full distribution you effectively introduced Conduct of Business ideas. Moreover, in its correspondence with you of January 11th, the Treasury raised relevant issues in noting (at 36) that "It was Equitable's decision to have a policy of full distribution and not to maintain an estate" which the Treasury suggested may have led to policyholder's losses. This business decision of Equitable was taken at a time outside your Terms of Reference, but nonetheless it was raised by the Treasury. Furthermore, if these issues were determinants of policyholders' losses, why were they incompatible with Equitable's sales literature? This would appear to be yet another example of regulatory failure, in this case at the Prudential/Conduct of Business interface.

<u>Section 7 on “Disproportionate Impact”.</u>

You have provisionally decided on four “classes” of policyholders which you consider to have been “disproportionately impacted” - two who have suffered losses that were “severe beyond the norm”, and two who have experienced losses that were “alleviated by factors not present in the norm.” As you no doubt appreciate, the problem with this analysis is that is not quantitative, and the norm has, critically, not been defined in any way (nor indeed has the concept of “disproportionate impact” except in an intuitive fashion).

It is distinctly possible, and probably highly likely, that some, but not all, of the With Profits Annuitants who you believe have been “disproportionally impacted” in the form of losses, have also experienced alleviation of their losses by overbonusing prior to 1991. Thus it is quite possible for some individuals to belong to more than one of your current “classes”, as you no doubt appreciate. Such problems can clearly only be alleviated by quantitative analysis so as to isolate *individuals* who have been “disproportionally impacted”. It is thus arguable that it is simply impossible for you to fulfil your Terms of Reference to describe “classes of policyholders which have suffered the greatest impact”, as this can only be defined in a rigorous and fair manner at the level of the individual.

I stress that I am *not* arguing that some With Profits Annuitants should not receive considerable ex gratia payments. A very considerable number of them are elderly and have clearly suffered very substantial losses. If calculations at the individual level would delay payments to such individuals, it is obvious that thought should be given to ways in which they can receive partial payments on account.

<u>Peer Review of your Actuarial Advice.</u>

The actuarial advice you have received is of very considerable importance in that it impacts upon the choice of the Comparator to quantify the quantum of ex-gratia payment.

It is my understanding that the status of the review of the advice given to you by the Treasury retained actuaries, Towers Watson, is that it will be subject to peer review by three With Profits actuaries selected by Towers Watson. Whilst such peer-review may not be uncommon amongst auditors and actuaries, I would like to draw your attention to the more rigorous process involved in academic peer review. The application of the more rigorous academic process would seem appropriate to a situation where considerable sums of money are involved and there are matters which are hotly disputed

As a senior University academic who has written over 130 peer-reviewed journal articles and belonged to the Editorial Boards of 7 different academic journals (see Brief CV at the end of this submission), I am very familiar with the process of academic peer review. Typically one submits a paper to a Journal Editor, who then sends it out to anonymous referees who comment on the paper. The Editor then considers these various comments, and, if necessary, reconciles discrepancies between them, in some circumstances sending a paper out for further comments from other referees. Finally, the Editor makes a decision as to whether to publish the paper or not, or to send it back to the authors for revisions, sometimes major revisions, or to reject the paper totally.

The key feature of this process is that the Editor plays a major role in reconciling differences between referees, possibly demanding additional scrutiny or major changes or alternatively rejecting a paper totally. The procedure currently proposed for the ex gratia payment scheme in no way even approximates to academic peer review as typically conducted.

Firstly, in this case Towers Watson have selected the referees, which does not happen in academic peer review; the Editor select referees.

Secondly, the "Editor" in this case is you. This puts you in a very difficult position indeed, and quite likely in conflict with the Treasury. If the actuaries perceive possible errors in Towers Watson's advice, to be an unbiased "Editor" if you believe you have the appropriate expertise, you will have to demand either changes to the advice or outright rejection.

Thirdly, given the involvement of the actuarial profession at the most senior level in the Equitable affair, is it not a priori likely that the three actuaries will simply see nothing wrong with Towers Watson's advice?

It is difficult to overemphasise the reputational damage to the UK actuarial profession that resulted from the Equitable affair and With Profits investments. This is most clearly shown by the fact that the late Dame Sheila McKechnie, Director of the Consumers' Association, stated in 2001, at about the time when she unsuccessfully called for a Government enquiry into all With Profits investments:- "Trust me, I'm an actuary" doesn't have any more resonance with me than Dr. Harold Shipman saying "Trust me, I'm a doctor". (See http://www.financial-ombudsman.org.uk/news/speech/merricks.pdf).

Whilst some might consider Dame Sheila's vocabulary excessive, it does indicate the massive reputational damage to the UK actuarial profession caused by With Profits investments. The major flaws within the profession's perception of its own roles and the deficient mechanisms for satisfying those roles were further elucidated by The Morris Review and the reforms that followed immediately on its completion. (See http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/media/B/D/morris_final.pdf).

In particular note the conclusion at 10 on Page 5 of the Executive Summary:-

"The review has concluded that continued self-regulation by the Profession is unlikely to restore public confidence in the actuarial profession ... ."

It therefore seems singularly inappropriate that Towers Watson's advice should be peer reviewed by three With Profits actuaries alone chosen by them. At the very least, such advice should be evaluated by actuaries from outside the UK and independent non actuaries, as outlined below.

Your advice should be evaluated by a number of appropriate policyholder advocates (as, for example, happened during the recent Aviva estate reattribution). In commenting on BBC Radio 4 on March 24th on the issues arising from ex-ministers potential involvement in lobbying for financial reward, the Chairman of the Committee on Standards in Public Life, Sir Christopher Kelly, pointed out how rare it is nowadays for any profession to be self-regulated in a manner which does not involve any appropriate lay people. Such comments clearly also apply to the actuarial profession

There seems to me no reason at all why a number of independently selected and appropriately skilled lay individuals could not be involved in the review of your advice. A possible candidate for such a post could be the Chief Executive of Which?, Peter Vicary-Smith, who has previously acted as a policyholder advocate in issues concerning With Profits investments (see **http://www.which.co.uk/about-which/press/campaign-press-releases/personal-finance/2009/02/fsa-leaves-policyholders-in-the-lurch.jsp),** although the precise individuals involved would obviously have to be acceptable to, and agreed with, all policyholder action groups, and they would have to be briefed appropriately about the full nature of the regulatory process, not the Treasury's highly selective account.

Reconstructing the History of the Regulatory Returns.

A considerable part of IR3 involves a reconstruction of the Scrutiny of Equitable's Regulatory Returns. You and your advisors have been involved in developing a counterfactual history of Equitable's Returns, a process which I note was recommended to you by the Treasury.

As described above, the regulatory scrutiny of Equitable did not merely involve scrutiny of the Regulatory Returns. It also involved meetings with Equitable and scrutiny of "the future strategy of the company, organisational and management issues." Thus it seems that you are involved in a highly selective re-writing of history.

To conduct a proper counterfactual history of Equitable's regulation absent maladministration you are also going to have to reconstruct the meetings with Equitable absent maladministration since such meetings dealt with very relevant issues. For example, the meeting of November 14th 1990 (see above) considered the solvency of the society and the GAD Actuary explicitly expressed "qualms about the position of Equitable", and he noted that "The Appointed Actuary must be feeling very uneasy about the current position of the society", and "We are carrying out a detailed scrutiny of the 1989 Returns in order to get a better feel for the position of the society." Since such meetings obviously related to the Returns they clearly also need to be incorporated in the reconstruction process.

Given such considerations, it is striking that in IR3 at no time do you or your advisors even consider the possibility that, absent maladministration, the face-to-face meetings that GAD and DTI had with Equitable would have developed in a manner which was very different indeed from that which actually occurred. In her correspondence with you of November 27th, 2009 the Parliamentary Ombudsman referred to "The way in which impermissible methods were used to hide the fundamental weakness of Equitable Life". It is therefore highly relevant to consider whether with appropriate regulation these "impermissible methods" would have been revealed or prevented in face-to-face meetings with Equitable.

More generally, the counterfactual history outlined appears to be a form of history very largely devoid of consideration of fundamental determinants of history - the personalities and motivations of the individuals involved. Whilst there seems to be some limited incorporation of ideas about Ranson's personality, which lead to the suggestion that Equitable would have rigorously contested regulatory interference; there is no corresponding consideration at all of the motivations and personalities of the members of GAD and DTI involved in the regulatory process. Thus we are left wondering why members of GAD have been found to be involved in so many examples of maladministration, an enigma which persists to this day and which continues in the counterfactual history.

It therefore appears that the procedure you have outlined is equivalent to developing a counterfactual history of the Second World War, based almost entirely on a limited set of the available documents, with a limited reference to the motivations and personality of Hitler but none at all to those of Churchill, Roosevelt and Stalin. Such a history must be, by definition, flawed.

You do note that the reconstructed history of the Regulatory Returns contains "an element of subjectivity". You suggest (1.8) that you can reduce this element of subjectivity by considering the views of the peer reviewers. Aside from the fact that the counterfactual history omits both issues of motivation and personality and the meetings with Equitable, this argument is also open to serious challenge at another level - in terms of the cognitive errors inevitably made in constructing counterfactual histories. In this context I refer to recent research on this topic in cognitive psychology. It is therefore appropriate to point out that I am a psychologist by training (see Brief CV at the end of this document).

Academic research on the cognitive processes involved in counterfactual thinking indicates that are such thinking typically involves systematic errors in all individuals. For a comprehensive and recent discussion of this topic see:- R M J Byrne "Précis of *The Rational Imagination: How People Create Alternatives to Reality"*. Behavioural and Brain Sciences, 2007, 30, 439-480. For a consideration of the application of such ideas in a quasi-legal context see D Reiss "Counterfactuals and enquiries after homicide". The Journal of Forensic Psychiatry. 2001, 12, 169-181. In this paper Dr Reiss discusses the cognitive errors typically made in inquiries that follow after homicide by psychiatric patients. He concludes (Page 178) that:-

"Inquiries need to find a way of answering the questions that are posed to them. The counterfactual thinking that might underlie their functioning is a problem-solving method that is a way of organising and understanding events. The generation of a narrative that can be altered with counterfactuals, so as to avoid the eventual outcome, is similar to development of a schema or script. The benefits of using heuristics, developing schemas and forming categories of stereotypes are well-established. They help inquiry members to simplify a complex world and to improve efficiency and effectiveness of thought and action. *But there are many costs of these processes and principles. In particular, they may leave an inquiry subject to biases and errors of judgement that could manifest themselves as incorrect perceptions and the misallocation of blame*". (My emphasis).

To the extent that your actuarial advisors are conducting the equivalent of an (albeit limited) inquiry into the nature of the Regulatory Returns as they would have been absent maladministration, they will be subject to similar biases and errors of judgement. Counterfactual bias would in this instance be reinforced by your advisors and the referees sharing the same background and interests.

Given the unreliability of counterfactual thinking, it is relevant to consider the methodology that your advisors have used. Remarkably in my opinion, they note on page 52 that:- "Towers Watson has had very limited access to the detailed valuation notes/papers or other material used in the preparation or scrutiny of Equitable Life's DTI Returns and solvency". It thus appears that they are involved in reconstructing the history of the Regulatory Returns not only without considerations of personality and motivation and the face-to-face meetings, but also without the data which would possibly be most relevant to attempting accurately to predict, absent maladministration, both the behaviour of Equitable and of the regulators. Thus their reconstructed history must yet again be considered potentially flawed. Such flaws will not be alleviated by using as peer reviewers three With Profits actuaries who presumably will also lack access to such information.

Your advisors have outlined two scenarios representing their perceptions of the range of possible outcomes in terms of the reconstructed Regulatory Returns. You note (2.42) that in your opinion “The most likely outcome is thought to lie within the bounds set by these two scenarios”, although in so far as I can tell, no evidence for this conclusion is presented at all. Indeed, it is impossible not to read Section 2 of IR3 without noting a number of assumptions made which are either not supported by argument or prone to plausible revision. To consider three examples:-

- 2.12. In discussions between the DTI/GAD and Equitable the matters raised would consistently have been limited to those detailed under i) to iv) which are *all* concerned with actuarial details. In terms of the causation of policyholders’ losses it seems undoubtedly the case that the *primary* cause of loss was Equitable’s unique business model, although this is hardly referred to in the Ombudsman's report as the development of this model was not investigated. Thus there is an implicit, although unspecified, assumption in 2.12 that the highly relevant issue of Equitable's unique business model would not have been discussed in any way, and thus it would not have impacted on the conclusions about all the items detailed under i) to iv). .

- 2.14. If Equitable had shown “determined resistance” to regulatory intervention the regulators would only have intervened if they had had a high degree of confidence that the challenge would succeed. This assumption seems to be circular in that it assumes that regulatory failure will almost inevitably occur. The assumption that the regulators would not have intervened is an implicit assumption about the regulator’s level of motivation and personality, which absent maladministration is not discussed.

- 2.22. The regulators would have done no more than the minimum they were obliged to do. Again this assumption seems to be circular and to assume that regulatory failure will almost inevitably occur. There are strong reasons for suggesting in a counterfactual history that the regulators could have done far more than the minimum, specifically with regard to Equitable's well-known unique business model, which should have alerted members of GAD/DTI to the fact that Equitable required the most stringent scrutiny of all life assurance companies.

In summary, for various different reasons the counterfactual history outlined in IR3 is prone to serious challenge in a fashion which cannot be alleviated (and is probably only exacerbated) by your choice of reviewers.

Rejecting the Ombudsman's Characterisation of her Report.

In recent correspondence with the Ombudsman she has indicated to you that her findings of maladministration should be interpreted cumulatively, and that given her findings if there had been no maladministration no policyholder would have invested in Equitable post-1991. This account of her findings is compatible with the title of her report “A decade of regulatory failure”. In IR3 you do not concur with this account of her report, although in so far as I can tell, there is no stated rationale for your rejection of her recent interpretation. Given the very lengthy history of the Equitable affair, which the Ombudsman herself said resulted in policyholders having a justifiable sense of outrage, it is essential if you are to perceived as an independent individual for some reason(s) to be given for your rejection of her most recent account of her findings.

I hope that you will be able to take these comments into account in preparing your final report on your advice to Government, and that my comments have been of some assistance.

Given the very considerable time pressures now involved in IR3, I trust that you will consider it acceptable that this document is placed in the public domain and circulated to other policyholder advocates.

Yours sincerely,

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BRIEF CURRICULUM VITAE

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EDUCATION

1968 - 1971 Oriel College, Oxford University. Open Scholar in Natural Sciences.

QUALIFICATIONS

B.A. lst Class Hons. Psychology and Physiology, Oxford University, 1971.
M.Sc. University College of North Wales, 1974.
Ph.D. University of Liverpool, 1979.

EMPLOYMENT RECORD

1991- Reader in Psychology, School of Psychology, University of Liverpool.

EDITORIAL AND PER REVIEW EXPERIENCE

Member, at various times, of the Editorial Boards of the following international journals:-

Behavioural Pharmacology.
Experimental and Clinical Psychopharmacology.
Psychopharmacology.
Neuropharmacology.
Pharmacology, Biochemistry and Behavior.
Neuroscience and Biobehavioural Reviews.
Behavioural and Brain Sciences.

Peer reviewer for the following journals (as well as the journals listed above):-

Alcohol.
Animal Learning and Behaviour.
Appetite.
Brain Research Bulletin.
British Journal of Pharmacology.
British Journal of Psychology.

Drug and Alcohol Dependence.
European Journal of Pharmacology.
International Journal of Psychopharmacology.
Journal of Neural Transmission.
Journal of Psychopharmacology.
Journal of Pharmacology and Experimental Therapeutics.
Journal of the Experimental Analysis of Behaviour.
Molecular Psychiatry.
Nature.
Neuropsychopharmacology.
Obesity.
Progress in Neuropsychopharmacology and Biological Psychiatry.
Quarterly Journal of Experimental Psychology.
Trends in Pharmacological Sciences.
Trends in Neurosciences.

PUBLICATIONS

Over 130 full peer reviewed publications.