

Mr Michael Josephs
4 Elm Gardens
East Finchley
London N2 0TF

29 March 2010

Dear Mr Josephs

Equitable Life: Third Interim Report

Sir John has asked me to respond to your letter of 24 March 2010. For ease of reference, I shall follow the headings adopted in your letter.

Introduction

The views expressed in the Third Interim Report are, as the Report itself makes clear, provisional. They are subject to revision following further representations, as well as further consideration by Sir John, members of his Office and his actuarial advisers.

You have asserted that "*the Treasury seems to have had a disproportionate impact on [Sir John's] proposals*". It is not clear whether you are directing that criticism to the revised Terms of Reference or to the Treasury's representations. If the former, then it must be appreciated that the Terms of Reference define the matters upon which the Government seeks advice. If Sir John is to carry out the task for which he has been appointed, it is necessary that he address those matters. If the latter, the criticism is rejected.

The representations made by the Treasury have been set out in the bundle of correspondence attached to the Third Interim Report. When those representations are read in conjunction with the Report, it is clear that many have been found unpersuasive and are not reflected in the provisional views expressed in the Report. If there are particular representations made by the Treasury which you consider to be incorrect, the appropriate response would be to identify them and explain the basis for your disagreement.

Parliamentary Ombudsman's findings and recommendations

Sir John's Terms of Reference require him to advise as to the relative losses suffered "in respect of each case of maladministration". As the previous Interim Reports have made clear, Sir John agrees with – and, in fact, himself raised – the need to address the Ombudsman's findings in light of her observations as to the "general consequences of the findings taken together", which are set out at paragraphs 1/12/59-81 (pages 341-344) of the Report. But he is required to take those views into account to the extent that they relate to the accepted findings. To the extent that those views relate to findings which were not accepted – or, as you seem to be suggesting, to failings by the regulators which were not the subject of any findings by the Ombudsman – Sir John is neither required nor permitted to take them into account.

It is impossible to give a considered response to the unparticularised assertion that Sir John has been "rewriting" the Ombudsman's "fundamental conclusions". If you seek a response to that assertion, you must identify which "fundamental conclusions" are said to have been "rewritten"; and where such "rewriting" is said to be found in the Third Interim Report.

Appointed Actuary

The Ombudsman made no finding to the effect that any failings by the Appointed Actuary amounted to maladministration by the public bodies or for which the public purse should be responsible. It does not fall within Sir John's Terms of Reference to consider losses suffered by policyholders which do not result from maladministration found by the Ombudsman and accepted by the Government.

Causation

The Ombudsman made findings of maladministration; but she did not go on to determine the extent of losses caused by the maladministration that she had found – which, in most cases at least, is likely to have fallen outside her remit. Sir John was appointed to advise on the extent of relative losses resulting from maladministration (to the extent that the Ombudsman's findings were accepted). But the point made above bears repeating: Sir John has not been asked to advise on the extent of losses (if any) which do not result from the maladministration which the Ombudsman has found and the Government has accepted: to approach the Third Interim Report on the basis that he should be addressing losses more generally is to misunderstand the scope of his Terms of Reference.

You write that it should be assumed in favour of policyholders that the regulators would have exercised their powers of intervention. The question whether or not the regulators should have exercised powers of intervention – as distinct from raising concerns – is not one on which the Ombudsman made a finding of

maladministration. There is no basis for such assumption. Whether or not the regulators would have exercised powers of intervention had their concerns not been met is a matter on which Sir John has to form a view.

Numbers

I understand that you have been discussing the provision of data with Simon Bor; and that efforts have been made to explain what is and is not available. The substantive points you make at paragraphs 22 and 23 have been noted. They will be given appropriate weight in Sir John's final Advice.

Misuse of "fictionalization"

It is correct that the Treasury has asked Sir John to consider what would have happened if there had been no maladministration: this is a specific requirement of the revised Terms of Reference. But, even absent the specific requirement, it is difficult to see how it could be possible to assess the extent of relative losses resulting from the individual (accepted) findings of maladministration – which is what the (unrevised) Terms of Reference required – without taking a view as to what would have happened had there been no maladministration.

The suggestion that Sir John (or his actuarial advisers) should consider what might have happened if the regulators had taken steps which they did not take – in circumstances where failure to take those steps has not been found to constitute maladministration – is misplaced; for the reasons which I have already sought to explain.

Applicable professional standards

It is not clear what point is being made under this head. If you are suggesting that Sir John should take into consideration the possibility that matters other than those found by the Ombudsman constituted breaches of professional standards by GAD, the criticism is rejected. To do so would fall outside his Terms of Reference.

I have read the article by Mr. Daykin regarding the role of the Government Actuary's Department. I assume that you are referring to the sentence:

"The visit [by GAD and DTI to life offices] is not primarily concerned with discussing the returns to the DTI, but focuses on the future strategy of the company, organizational and management issues and the role of the Appointed Actuary, as well as tackling any issues outstanding between the company and DTI/GAD."

Sir John will give consideration in his final Advice to the question whether this statement is inconsistent with the Treasury's statement (in its representations)

that the regulators did not have a role in relation to certain commercial decisions made by Equitable Life.

I find your references to the Decision of the Panel of the Disciplinary Tribunal of the Institute of Actuaries (the “Decision”) difficult to follow. Could you please identify those paragraphs which have the effect to which you have referred at paragraph 37? I do not see that the passage quoted at paragraph 38 can be said to exemplify your point at paragraph 37.

The point you have made at paragraph 39 fell within the Ombudsman’s remit. To the extent that she has not made a finding on this matter – and, subject to your directing me to a relevant section of her Report, I take the view that she did not – it is not a point that Sir John is able to take into account.

Ambivalence and “even-handedness”

Sir John has not given special weight to the representations of the Treasury. If the representations made by the Treasury (which have been published) are read in conjunction with the three Interim Reports), it is clear that many of the Treasury’s representations have not been found persuasive and are not reflected in the provisional views expressed in the Third Interim Report. If there are particular representations made by the Treasury to which you object, you should take the opportunity to respond to that Report and identify them and explain why you disagree. Likewise, it would assist if you were to identify where what you assert to be “surprising changes in direction” between Sir John’s Second and Third Interim Reports are to be found.

The article in *FT Advisor* to which you have referred does not suggest that Mr Gavin Palmer is a joint author of the Third Interim Report; it identifies his role, correctly, as the source of actuarial advice. Towers Watson’s advice is set out in their letter which is an Appendix to the Third Interim Report.

To address the five questions which you pose at paragraph 45 of your letter:

- a) Towers Watson’s role has been well publicised.
- b) Mr Palmer’s expertise in relation to long term insurance business is not in question. He has extensive experience advising with-profits life insurers on regulatory and other matters.
- c) Mr Palmer did not write the Third Interim Report; he has not written previous Interim Reports; and he will not write Sir John’s final Advice.
- d) Towers Watson, including Mr Palmer, report to Sir John.
- e) I have no reason to think that the article in *FT Advisor* was based on an interview. Certainly, Sir John has had no contact with the author of that article; nor, as I understand it, has Towers Watson. The article would appear to be based entirely on a review of the Third Interim Report.

Nobody has asked TW to “minimize the consequences of maladministration”. The assertion is an unwarranted slur on their professional independence.

“Unjust constraints on scope”

Sir John is satisfied that the provisional views set out in his Interim Reports all fall within the scope of his Terms of Reference. Sir John has sought to give even-handed consideration to all of the representations that have been made to him. The fact that some have been found persuasive and others have not reflects that approach.

Yours sincerely

Laurence Emmett

Counsel to the Office of Sir John Chadwick