Sir John Chadwick & Laurence Emmett,
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The Croft,
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March 12th 2010.

Advance copy by e-mail.

Dear Sirs,

Thank you for Sir John's letter and copy of the Third Interim Report (IR3) and Correspondence. Some of the contents are, however, sufficiently disturbing to warrant an early extra round of query and response before the final closing date for responses to IR3. Indeed without this the whole process and approach may be in danger of breaking down. The reasons for this belief are set out below, and conclude with a summary plus a list of outstanding concerns. Meanwhile, if urgency has caused inaccuracy on my part, I hope that such will be relatively minor, and that given my stated good intentions I may be to some extent forgiven.

My primary concern is the effect that your recent exchanges with HM Treasury have had on the substance of IR3. The latest Treasury position is an ingenious re-working of the Government's traditional stance, such that one can appreciate your need to reflect it at this stage.

As I understand it the position now is:

1. The Society is the author of its own misfortunes (IR2 correspondence p12 para 10.)
2. Even so, the election to create undeclared inequalities of benefit and guarantee in an already over-distributed fund committed to intergenerational transfer following the dispersal of its estate, plus historical over-bonusing to the same favoured policyholders, may be classed as a routine business decision.(p17 para 36)
3. The Society would have resisted regulatory intervention such that any changes in its behaviour and character would have been minor (p12 para 14).
4. Head A loss (opportunity to invest elsewhere) requires a contemporary competitor basket comparator (p14 para 21).
5. As a consequence of 3, Head B loss (already invested and at risk of maladministration) requires a comparator with the bare minimum necessary change to the Society that would have been required had maladministration not occurred, or which reflects its performance (p13 para 15).

As a result the Head A and B categorisation of loss, which I think you originally introduced to ensure that the compensation net was cast appropriately widely, has been used to make the case for two separate comparators. This is a *non sequitur* in that it is based on fundamentally flawed assumptions. Moreover the situation may have been made unintentionally worse by a former policyholder (AFP), who has pointed out to you that the ex-ELAS Prudential policies are more reflective of original ELAS ones than the Prudential's own, such that they can be run on in a comparator for relative loss purposes (IR2 correspondence para 34). Given the IR3 proposition for a separate Head B comparator, that lays the with-profits annuitants (WPAs) open to the risk of being carried onwards indefinitely in a fund similar to an unreformed ELAS, or indeed those other offices which were causing the regulators serious contemporary concern! One must observe that this will have the effect of reducing relative loss compensation due to them by a very considerable amount. (All this apart, EMAG's sub-categorisation and page 12 table of loss heads make it clear that some policies will qualify on both heads at different times, such that using both comparators may prove unwieldy or downright impractical.)

Not only is this absurd, but it is fundamentally wrongful. Moreover the PO wishes maladministration to be considered cumulatively. In this regard AFP has submitted that absent maladministration, and particularly that which is both serial and cumulative, the ELAS with-profits fund would have been radically different in character (para 11). I wholeheartedly endorse this conclusion, and so reject proposition 3.

Every reasonable person should also object to proposition 2. Its wider implications are so morally jejune as to suggest that the activities of the Mafia or other forms of organised crime are merely matters of ordinary business. Since the Treasury has itself introduced such a highly important causal matter prior to PO's terms of reference in support of its position, then the whole area is now fair game for discussion with regard to compensation. *Irrespective of whether the decision was fraudulent, it demands an immediate contrary assertion that the failure of the regulators to tackle this problem at the outset (or following concerns expressed by the actuarial discussants of the resulting WPWM business mode and even earlier by George Newton of the Government Actuary's Department [GAD]) was the originating and pivotally catastrophic one.*

This too is, I submit, an essential part of the correct approach to proposition 1. Given all the facile misunderstanding and mischief which has stemmed from it I have attempted to deal with the problem once and for all in Appendix I. Separately from that, however, are all the consequences of the so-called proposition 2 "business decision". *It was so unwholesomely unacceptable in itself that it could only be carried forward by a consistently sustained series of misrepresentations and deceits, to the misfortune of a million or so newcomers to the w-p fund.* So now the Treasury has finished opening Pandora's Fraud Box, which you unlocked earlier when making Conduct of Business (CoB) assertions based on the Penrose Report in connection with policyholders' proper understanding of "full and fair distribution". Thus far it has led to Peter Scawen explaining how this and smoothing were repeatedly misrepresented by the Society (ELTA IR2 correspondence Appendix A), and my further explaining that in fact it was inequitable and selective over-distribution (MN IR2 correspondence Appendix I). Of course this is all integral to demolishing Treasury proposition 2, to which we should also add EMAG having at last publicly adopted the position that the Treasury's so-called "business decision" let alone the misrepresentations that necessarily followed from it was fraudulent (EMAG IR2 main submission page 42). Though EMAG's firmer stance on this issue is most welcome, EMAG is neither the first nor the only person or organisation to have made this commonsense observation.

With Pandora's Box at last fully open, it must be plain to all how grotesque the current situation is in continuing absence of any acknowledgement that, in order for the consequences of this to develop as far as they have*, there must have been a pivotally catastrophic failure of both CoB and prudential regulation prior to the PO's reference period, the effects of which have continued into it. And that is also why absent serial and cumulative maladministration The Society would indeed have been radically different.* It is also why the Treasury's proposals for their kind of separate Type B loss comparator are illogical, inherently biased and fundamentally unfair. Given the revelations about events at the prudential/CoB regulatory interface in the PO's Chronology to which I have previously referred in our correspondence, I must reiterate that it is outrageous to go further, and discount any compensation for reasons that the authorities have not only chosen to ignore or deny, but more actively to conceal.

You might think this situation is already unhappy enough. But to advance it at all you have had to ignore the Parliamentary Ombudsman's well supported if *post hoc* observations that a) the effects of her maladministration findings should be viewed as cumulative, and b) that absent maladministration no sensible person would have invested in ELAS throughout her reference period. Consistently with this and despite the impression one might gain from various tabular presentations I understand you to have considered the effects of maladministrations 2, 4 and 5 individually and separately rather than collectively or cumulatively, and that your advisors have largely regarded manipulation of the Society's RMM, valuation rate of interest, resilience reserve hypothecation, Section 68 implicit items and permissible bonus additions as separate and unrelated matters. But in fact they are all individual parameters which are dependent upon the same thing, namely chronic over-allocation with its resulting asset/smoothing deficiency and earnings shortfall. Squeeze any one of these five fat toes to make it smaller and the blood merely moves over into the other four. Try as one may, the whole ugly foot is not going to fit into Cinderella's slipper. And that is before we have considered all the unreserved items that in accordance with concertedly sustained misrepresentation, PRE and custom have now to be fitted into the other slipper, within which the financial loss from fraudulent misrepresentation for the most part actually fell. *It all points up the fundamental absurdity of attempting to define loss solely in terms of a deliberately restricted "prudential" approach to consolidated benefits when the majority of loss was knowingly arranged to be levered off the unconsolidated ones.*

In this context one should also note that, in effect, the Treasury's stance has led you to abandon the flexible approach and revert to a more narrowly Report based one. Indeed one might deduce that you have gone yet further in this direction by separating early from later maladministration, and having conflated the latter with the post 1999 FSA/FOS "GAR-related" and "late joiner" categories in order to predetermine those who might suffer from "disproportionate impact". This seems arbitrary and premature. *From the official standpoint, however, it is admirably consistent.*

Unfortunately it is also originally dependent on one of those exploded official myths, namely that the GAR was the only problem the Society faced. All this accepted we stand badly in need of a properly understanding and flexible approach.

Though I stand to be corrected, I believe that the combined effect of these developments could have a very detrimental effect on the remaining 350-400,000 ELAS policyholders and 60,000 WPAs. With regard to the latter, there is a further important observation to be made. If the WPAs' original expectation was of being members of a properly functioning mutual Society with-profits fund, they are now a critically disadvantaged non-estate participating sub-group of a public office fund. That is itself an injustice, the adverse effects of which were foreseen at the time. Hence I reserved a public position on behalf of the WPAs in the event of circumstances like these at the time of WPA transfer to the Prudential. For your convenience the resulting correspondence is attached to this letter as Appendix II. Under the current circumstances it is entirely self-explanatory.

It would thus be unjust to penalise the WPAs further for a wrong they have already suffered by carrying them yet further forward in an already inappropriate and unfair Head B loss comparator. It is more disturbing still to recall that the actuary who scrutinised the Prudential transfer, the terms of which have now come back to haunt the WPAs, is a senior partner in the Watson Wyatt part of Towers Watson. It further appears that Towers Watson has appointed its own referees, one of whom is an AXA actuary who has been employed there long before and after the controversial AXA estate "reattribution". *On first principles the traditional AXA stance must be considered inimical to correct understanding of the Equitable problem in the context of chronic UK pan-regulatory failure,* so please allow me to enter an objection to this appointment, and to Towers Watson having been permitted to chose its own scrutineers. Despite earlier objections you endorsed Towers Perrin prior to the Watson Wyatt merger, but these further developments oblige me to repeat that one can have no primary confidence in your advisors, their approach or their process. *Since other jurisdictions and the international policyholders might reasonably be expected to take a very dim view of all this, it might be wise to invite them to have their say now.*

Summary: The Treasury's latest attempt to re-write history and its proposals for a Head B loss comparator based on it are inherently biased and unfair. Carrying this comparator as far forwards as possible would compound the injustice. As long ago foreseen and explained this now bears particularly hard on WPAs transferred to the Prudential. In fact your own actuarial advisors are responsible for some of this; moreover the remaining ELAS policyholders and many of the internationals also risk being affected.

This apart, the Treasury position requires you to ignore the PO's later observations and revert to something more like a Report based than a flexible approach. The Treasury has also introduced events preceding the PO's reference period which have rebounded on it, and now complicate the Report based approach even further. Hence it seems likely that there will be an early and wholesale rejection of your new proposals by policyholder advocates, combined with increased political pressure for the establishment of a genuinely independent forum in which to adjudicate on entitlement and payments. Other jurisdictions may now require a say in all this.

Policyholder advocates stand in need your early reassurance on several issues to forestall such an outcome.

1. Two comparators or one?
2. How to remove or change the current unfair Head B comparator.
3. Adverse effects on ELAS policyholders, WPAs and the rights of international policyholders.
4. Implications of new matters introduced by the Treasury.
5. How to resume a flexible and fair approach in the light of these developments.
6. Ongoing concerns about your advisors and their self-selected peer review.

Meanwhile it is my sincere belief that, unless the situation described above can be improved promptly enough to reassure policyholder advocates before your final report is issued, the entire process risks being abandoned. I would accordingly be much obliged if you could make reply in time for everyone to consider it in their final submissions to you.

Yours very sincerely,

Dr Michael Nassim.

E-mail copies: Peter Scawen (ELTA); Michael Josephs; Nicholas Oglethorpe; Dr Andrew Goudie; Margaret Felgate; John MacLeod; Ann Abraham; Iain Ogilvie; Dr John London; Liz Kwantes (ELM); Paul Weir (EMAG/ELCAG); Alex Henney (EMAG); Nicolas Bellord (EMAG); John Newman (EMAG); Christopher Carnaghan (EMAG); Colin Slater (Burgess Hodgson & EMAG); Paul Braithwaite (EMAG); Markus Weyer (DAGEV); Diane Wallis MEP; Mairead McGuiness MEP; Tony Wright MP (PASC); Andrew Tyrie MP; Vince Cable MP; Alan Duncan MP.

APPENDIX I
An Examination of Lord Penrose's statement that the Society was the author of its own misfortunes.

In order to reach a correct appreciation of this statement and what may reasonably inferred from it one must first observe that "Society" is not a person but a collective noun, which invites the question as to what its relationship to individual constituent members both past and present should be for our present purposes.

A useful analogy is that of being a citizen of a country. In the 20th century Germany could similarly be considered as having been twice "the author of its own misfortunes". During that time it successively underwent Imperial, post-Imperial and interwar, National Socialist, post war disunited and reunited phases. Successive generations of German citizens were born, lived and died during and across the ends of the 20th century. Some of these emigrated or became distressed refugees. In like manner successive generations of Equitable policyholders have joined, contributed, and died. Some surrendered their policies and left or transferred out of the Society of their own free will, whereas latterly many have judged that they had to make distressed exits from it.

What responsible relationships do ordinary citizens bear to successive Governments, and what responsible powers over its citizens should any Government properly employ? Though the analogy is not precise there is a very similar relationship of the rank and file of ordinary members of a mutual society to their managers and directors. Managers and executive directors are somewhat akin to civil servants and Ministers, with the Chairman and non-executives as Premier and Cabinet.

How then should the man in the street be held responsible for the any misdemeanours of his present Government, or even past ones including those which existed before he was born? Are current policyholders any more responsible for past management decisions of which they know nothing, or for those of the Presidents and directors who then authorised them? More traditionally the sins of the father are said to be visited on the second and third generations, but does that also mean that children and grandchildren should be held *jointly and severally responsible* for a father's crimes? To that the straight answer must be: *not if they did not knowingly collude in and profit by them.*

How many of the Society's current members had a hand in giving away the Society's traditional assets to a favoured minority prior to 1982, or dreamed up the false promise of an uninterrupted bonus series as part of the original fraudulent transition from the GAR to the non-GAR era? How many of them are listed as authors of their own "With Profits Without Mystery" misfortunes? Did they concoct the whole series of false statements about smoothing, which concealed the fact that it was their own unconsolidated capital or "asset share" that covered the negative assets and earnings/policy values fluctuations, rather than proper earnings in contrast to their own premiums supplement by the cushion of genuinely free assets in a traditional and separate policyholder estate? How many of them consciously wished to attract an even greater number of innocents to share in their own misfortune? **It all amounts to an extraordinary and wholly unacceptable *reductio ad absurdum* that the great majority of policyholders willingly and knowingly defrauded not only themselves, but also those who followed them. From these abominations competent regulation should have delivered us.**

APPENDIX II
Reserved position on transfer of ELAS WPAs to the Prudential Assurance Company in 2007.

Vanni Treves & Charles Thompson,
Chairman & Chief Executive,
The Equitable Life Assurance Society,
Warwick Court,
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London EC4M 7DX.

The Croft,
10, Chapel Lane,
Old Dalby,
Leics LE14 3LA.
Oct 25th 2007.

REGISTERED MAIL (Re-send Oct 31st).

Dear Sirs,

Re: The proposed transfer of Equitable Life with-profits annuitants to the Prudential Assurance Company.

For the record allow me please to make some observations on this offer. My ulterior motive in so doing is to maintain appropriate lines of evidence into and across the deal, such that later liabilities and transparently appropriate compensation (if any or ever in an unreformed UK regulatory environment) can be determined. The unsatisfactory performance of the FOS and FSA is, however, a complicating factor, such that it has proved necessary to address it separately. So please find enclosed a late and hitherto unpublished fourth paper that was submitted to the EQUI secretariat, MEPs Mairead McGuinness and Diane Wallis, the Parliamentary Ombudsman's Office, the FOS; action group members and Clarke Willmott among others. It is dated March 31st 2007 and entitled: "The UK Government and Financial Ombudsman Service: their Equitable Life stance in current context".

I have regretfully to state that this paper also recapitulates the evidence for three separate *scienter* and liability trails relating to the Society's original fraudulent transition in the 1980s, the roles of the senior management team and Old Board, and the New Board in the run up to the Compromise or beyond. Inevitably it also deals with the willful aspects of complete regulatory failure, including:

- misrepresentations of interpolicy/intergenerational transfers, inequitable guarantees (GAR and GIR), and inequitable dispersal of free reserves,
- *de facto* regulatory-approved insolvency of the Society in July 2001.
- the true cost of the GAR, GIR and overbonusing/insolvency for both the Compromise Scheme and compensation,

One must presume that these matters pertain both to the excluded liabilities under the deal which will remain attached to the rump of the Society and New Board, but which could also attach to the Prudential if they accepted any of them, especially if knowingly. So let me first state my concern for the Society's rump of remaining policyholders and the Prudential- do they properly understand their liabilities?

Equitable end-gamers know from long experience that they cannot rely on the FSA to look after any policyholders' interests as any sort of locum trustee in these or other matters. Once again the FSA is not going to advise until after policyholders have voted and the deal Court Hearing is over. It is to say the least incongruous, given the reasonable presumption that they have had not inconsiderable involvement behind the scenes already. So who apart from the Society itself is acting as trustee for any of the policyholder subgroups? The deal prospectus implicitly invites policyholders to think of the Independent Expert as some sort of Good Shepherd, but that impression vanishes on more detailed consideration. Take for example his irresponsibly dismissive closing statement on the deal making later compensation more difficult.

Your Help Desk advises me that the Society is the grantee for my FSAVC WP policy, and so once again I cannot vote. Given my free choice of The Equitable for my FSAVC I fail to see why the Society should ever have been the grantee. How many other policyholders are not going to be able to vote, and who are their subgroup trustees? *I must presume that Mr. Treves in his conflicting roles of Chairman, grantee, proposer and trustee will have cast my vote in favour of the deal, so let me enter a strong objection to this.* Yet again on past experience one must doubt that the FSA or Court will pay any attention to such “trivia”. Not, of course, that independent trustees will have been queuing up to represent policyholder subgroups- they are waking up to their liabilities these days, and we have behind us the ignominious behaviour of Law Debenture Pensions Trust plc. on behalf of the with-profits annuitants in the Compromise. So please consider Law Debenture blackballed this time round. The situation is rendered the more urgent because the transfer is being brokered by the same team that gave us the Compromise and the highly dubious Ms. E compensation formula, namely The Equitable, BWD, Lovells and presumably the FSA. *Forgive me for saying so, but this team is not generally considered to have clean hands.* The whole trustee thing is a minefield, but still it must be crossed.

Disenfranchisement, no independent trustees, conflicts of interest, obscurities in compensation and difficulties in obtaining redress make linked matters such as duties of care, equity and transparency all the more important. *Knowing one’s asset share is an essential underpinning of transparent equity, as is appropriate accounting and actuarial certification that the aggregate sum of asset shares bears some direct and definable relationship to those assets that are transferred, as well for those remaining. All policyholders also need to know what their asset shares are at the time of the deal in order to keep track of compensation and liability issues, whether these be individual or joint.* It is worrying both that ELAS and BWD have not provided accounts in a form sufficient to demonstrate an equitable split, and that the Independent Expert has overlooked it. And though there are practical difficulties in giving indicative asset shares before the deal, they could reasonably be claimed to have an influence on how policyholders might vote. Indeed you furnished such information prior to the Compromise, albeit not to the annuitants for cogent reasons which became apparent later. And since the Prudential will be assigning individual asset shares to transferred annuitant policies after the deal, may we please have the final values? Policyholders remaining are similarly entitled to know their individual positions after the deal. That way, everyone gets an official milestone figure which shows how much they have gained or lost up to this point.

Of course you already must have accurate asset share information in order to determine various charges, such as the 1% per annum charge on asset share value for administration and the 0.5% to maintain reserves for various regulatory requirements and to fund unspecified “guarantees” now that the consequences of not maintaining a proper estate have come home to roost. We have also to look out for what portend to be 0.5% per annum reductions in non-guaranteed income as mortality adjustments, as well as 0.5% reductions in bonus rate until 2011 to fund the residue of the GAR liability, whereas we had previously been told that this was all paid for by withholding 7 months bonus in the year 2000. *On the one hand, therefore, there can be no practical reason why we should not all have our asset shares at transfer, whereas on the other we must all keep tabs on what loss of reasonable expectations we had of the advantages of mutuality, low administration costs before the sale and lease back of administration from HBOS, or that the unequal benefits of the various guarantee classes would have been charged for in and cleared by our premiums.* Now we have what is basically an estate tracker fund with baseline charges appropriate to a more expensive unit trust, a lower smoothing limit of 0% per annum underwritten by the Prudential main WP fund in exchange for skimming the returns above an upper limit of 11%, and with “pay as you go” insurance for unhedgeable risks like mortality and “guarantees” added on. There is also an up front 1% cull of asset shares to fund expected deferments in mortality. None of this was in our original contracts let alone our expectations, and one suspects that Prudential’s own with-profits policyholders are significantly better off, given that they enjoy the real advantages of an estate and assuming that their charges are limited to 10% of returns annually. The Independent Expert has not commented on any of this, nor may he have gauged its unanticipated combined below-the-line effects on annuitants’ anticipated bonus rates to maintain level annuities. Since the new charges variously affect asset share, un-guaranteed income or overall return, and because there should be some adjustable run-off of asset share to support annuity levels before annuitants die, there cannot be a precise correlation of individual policyholders’ annuity levels with their asset shares. Nevertheless it is not unreasonable to assume that asset share deductions and bonus reductions will feed through as broadly similar increases in the bonus rate necessary to maintain level annuities. With this in mind, you might additionally be worried that one or more of your Prudential Deal Help Desk staff think that all the charges are funded out of returns rather than asset share, the which you can confirm from my recorded conversation this Wednesday afternoon. *Pray let us therefore ask you, the FSA and the Court whether this amounts to a breach of the terms of any or all* *our contracts, and whether this deal is being used to legitimize the new charges as faits accompli.* We need our horse firmly before rather than after the cart on this important issue.

A more inquisitive Independent Expert might also have tracked the origins of these difficulties back to the two presentations by Ranson and Headdon of "With Profits Without Mystery" back in 1989/90, and the main thrusts of the published expert discussion. Among other things it was repeatedly observed that some form of free reserves were likely to be necessary, that dispersion of the estate and intergenerational transfer were intrinsically wrong, and in effect that the way to deal with the inequities posed by different classes of guarantee should be avoided by proper initial explanations and differential charges at the time of sale. These problems may not bother the Expert or indeed you any more than they did Ranson or Headdon, who proceeded to ignore them, but still they haunt us policyholders. And if residual charges for the GAR were not bad enough at this stage, we have still to contend with the inequities posed by the GIR. If you have forgotten our previous correspondence on this subject you will find it published in Annexe III of my update paper on "Anatomy of a Fraud", which is EQUI written evidence number 33. Had you addressed the matter or alerted the Independent Expert to it, he might have done more than merely recite the charging formula in Section 4.30c of his report. To judge its inequity, though, you can now consult the ELTA website and see the tables computed by Peter Scawen in his Oct 17th description of the proposed transfer. The figures in red indicate the percentage declines in annuity for GIR and non-GIR policies for different Anticipated Bonus Rates (ABRs) and actual returns. It is readily apparent how disadvantaged the GIRs are. What these figures do <u>not</u> allow for are the new below-the-line charges referred to previously. Although as previously explained there are difficulties in assessing their combined effects, it may be that the red tide of losses in Peter's tables rises between 3 and 4 rows for both GIRs and non-GIRs. *So please note that an average GIR policyholder with a 5.5-6.0% ABR would then barely maintain a level annuity even at the upper bonus "smoothing" cap of 11%. In other words, Mr. Average GIR is a no-hoper after the transfer.* This should concern a truly independent trustee for GIR annuitants and the Court. How the Prudential might handle the resulting windfall is not clear from the prospectus. I must respectfully insist that you now refer this whole matter to the FSA and the Court transfer hearing for further consideration.

One could also question the unequal split in "excess realistic" assets and transfer costs on the grounds that the deal is not all that hot for the annuitants generally or GIRs in particular, and that all must have contributed *pro rata* to the "excess" up to now. But in the end it all boils down to the following:

1. There are grave interlinked issues of equity, good faith, reputation, duties of care, transparency, franchise and independent trusteeship.
2. The deal may in effect crystallize unadvertised losses of historic contractual rights and reasonable expectations as *faits accompli*.
3. There is a dominant residual inequity caused by the continuing un-ratified GIR Differential Terminal Bonus Charge in the Prudential group, which is likely to be compounded by all the new charges under the deal.
4. There are outstanding issues of liability, compensation and litigation.
5. ***Hence one must urgently assert all Equitable policyholders' rights and needs for a milestone asset share/ benefits determination at the point of split.***
6. The accounts should be in a suitable and responsibly attested form that trails and demonstrates the equitably accurate split.

Yours truly and sincerely,

Dr Michael Nassim.

<u>References:</u> Late submission; EQUI Written Evidence Item 33 Annexe III; Peter Scawen Oct 17th 2007 transfer analysis: www.elta.org.uk
<u>Mail copies:</u> Sir Callum McCarthy (FSA); Nick Prettejohn (CEO Prudential).
<u>Enclosures:</u> EQUI late submission as described; covering letter to FSA/Prudential.
<u>E-mail copies for information:</u> Mairead McGuinness MEP; Diane Wallis MEP; Alan Duncan MP; Ann Abraham & Iain Ogilvie (PO's Office); Sir Christopher Kelly & Walter Merricks (FOS); Peter Scawen (ELTA); Michael Josephs (Investors Association); John Newman, Paul Braithwaite, Colin Slater and Nicolas Bellord (EMAG); Paul Weir (ELCAG); Liz Kwantes (ELM); Peter Butler (GAR Rectification Group); Robert Morfee (Clarke Willmott); Nicholas Oglethorpe; Neil Britten; Prof. John Bonn; Geoff Roberts; Martin Young; Brian Chase Grey; Jeremy Watts-Russell; Thelma Haile.

Sir Callum McCarthy,
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The Croft,
10, Chapel Lane,
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Oct 25th 2007

Nick Prettejohn
Chief Executive Officer, Prudential Assurance Company,
Registered Office,
Laurence Pountney Hill
London EC4R 0HH.

Dear Sirs,

Re: The proposed transfer of Equitable Life with-profits annuitants to the Prudential Assurance Company.

Please find enclosed copies of a letter dated this day to the Chairman and Chief Executive of the Equitable concerning the proposed transfer, and a late paper dated March 31st 2007 which was submitted to EQUI and others. They inform and explain my summary concerns about this transfer as expressed in conclusion, which are:

7. There are grave interlinked issues of equity, good faith, reputation, duties of care, transparency, franchise and independent trusteeship.
8. The deal may in effect crystallize unadvertised losses of historic contractual rights and reasonable expectations as *faits accompli*.
9. There is a dominant residual inequity caused by the continuing un-ratified GIR Differential Terminal Bonus Charge in the Prudential group, which is likely to be compounded by all the new charges under the deal.
10. There are outstanding issues of liability, compensation and litigation.
11. ***Hence one must urgently assert all Equitable policyholders' rights and needs for a milestone asset share/ benefits determination at the point of split.***
12. The accounts should be in a suitable and responsibly attested form that trails and demonstrates the equitably accurate split.

When one considers how matters have come to this pass, one has to conclude that both the Equitable and the UK regulators have been at fault. Thus far no fault or blame has been transferred to the Prudential, but I think some might be if the Prudential accepted them in any sense knowingly, or if in so doing it should obscure or even compromise any later transparently fair and just compensation. Had these matters been dealt with before the transfer, as in a less dysfunctional regulatory environment they might have, then we would not all now be in this quandary.

Meanwhile some of us are obliged to keep track of the joint consequences of an original complex fraud at the Equitable, overlaid by a sustained pattern of maladministration by the regulators which has already led to gross injustice. Had the Parliamentary Ombudsman been able to complete her report before EQUI reported, European Parliamentary censure of the UK regulators would surely have been more penetrating, but even so it has already seen enough to recommend full UK Government compensation by an overwhelming majority. And had that compensation been forthcoming earlier, we might have contemplated the equivalent of a closed mutual fund with asset shares restored and a "virtual estate" provided by Government, which would have obviated the necessity for most if not all the new charges and our loss of mutual advantage. Since virtual estate backing would be withdrawn progressively as policyholders died off and any Tontine residues would have been the Government's rather than the Prudential's, this could have been relatively cheap and simple. Such a comparison with the present deal may help us all decide just how far we have descended, and hence help us see what losses of contractual and reasonable expectation we have variously suffered.

It is therefore ironic that Government obduracy not only exacerbates and complicates all the injustices, but also makes the later compensation it must eventually provide the more expensive and difficult. Since the FSA has figured prominently in this sad story I cannot expect Sir Callum to be enthusiastic about anything I have said, but still I must ask him to make sure that the FSA behaves as a justly competent regulator now should.

And so, if on honest reflection you think the points here raised need deeper consideration by your advisers, or indeed that any should be put before the Court Transfer Hearing in November, I hope you will arrange it. I also hope that this conclusion fulfils my valedictory duty of information to you both.

Yours sincerely,

Dr Michael Nassim.

Circulation and enclosure as in letter to Mssrs. Treves and Thomson.

<u>Delivery log added on 31-10-07:</u>

NP: Recorded delivery item ZV 5011 3160 7GB confirmed delivered from E. London on 29-10-07;
C McC: Ditto ZV 5011 3161 5GB confirmed delivered from Poplar on 29-10-07.
VT/CT copy with own main letter and enclosures: ZV 5011 3159 8GB not yet recorded as having been delivered- to be sent again on 31-10-07.

N.B: Word electronic format does not permit full length Adobe scans of the ELAS and FSA replies to be included here. Hence they have been provided in separate attachment to e-mail versions of this letter.