

From: The Right Honourable Sir John Chadwick

Dr Michael Nassim
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14 April 2010

Dear Dr Nassim

Equitable Life ex gratia payment scheme

Thank you for your letter of 7 April 2010.

The purpose of this letter is to provide a focus for further discussion at our meeting on Thursday 15 April. It is not intended as a detailed response (in advance of that meeting) to the matters on which you have made representations. Nor is it intended to preclude discussion at that meeting of any other matters that you would like to raise.

1. Scope of my terms of reference

I have to say that my present view is that points 1 to 6 (at pages 1 to 7 of your letter) must be seen as an attempt to persuade me to address, and advise in relation to, matters which go some way beyond my Terms of Reference. It is necessary for me to keep in mind that the Government has sought my advice in relation only to those losses which resulted from the accepted cases of maladministration leading to injustice. I would find it helpful, therefore, if you would take the opportunity, at our meeting, to explain why you consider that, consistently with my Terms of Reference, I am required, or entitled, to address those matters in my advice to the Government.

2. What would have occurred if there had been no maladministration?

I accept that, at points 7 to 10 of your letter, you raise issues which I do need to address under my Terms of Reference: in particular, issues as to what would have occurred if accepted maladministration had not occurred. I would find it helpful if

you were able to develop, in more detail, the basis for the views you have expressed under those points. In particular:

- (i) Why do you consider that, absent accepted maladministration, Equitable's bonus rates would have had to be reduced to a degree that would have amounted to "commercial suicide"? And when do you suggest this reduction would have taken place?
- (ii) Why do you consider that, absent accepted maladministration, Equitable would have been prevented from employing "quasi-zillmerisation" in calculating its mathematical reserves during the relevant period?
- (iii) Why do you consider that, absent accepted maladministration, Equitable would have been prevented from relying on the Section 68 orders which were made in its favour at the time and from time to time? I can identify no finding in the Ombudsman's Report to that effect.
- (iv) Why do you consider that accepted maladministration can be said to be responsible for the Society's lack of free assets: as distinct from being responsible for prospective investors' ignorance of the Society's financial position?

3. *Relevance of the European Union*

I would be assisted by an explanation of the relevance of your points 11 to 15 to the matters on which I have been asked to advise the Government. The Ombudsman gave careful consideration to the extent to which the various entities that she investigated were subject to principles of EU law. But it is not clear to me why you take the view that those principles should affect the particular, and limited, matters upon which my advice has been sought.

4. *Apportionment*

At point 17.2, you state that I have suggested that the fact that Lord Penrose regarded the Society as "principally the author of its own misfortunes" constitutes a basis for reducing payments to policyholders. I do not recognise that as a fair reading of anything in my Third Interim Report; and it does not reflect my views. What I have suggested is that it is important to distinguish, so far as possible, between losses resulting from accepted maladministration and losses which would have occurred, absent administration, from the commercial objectives of the Society. If you disagree with that view, it would be helpful to know why you do so,

5. *Actuarial advice*

If you wish to develop your point 20.1, you need to appreciate that I selected the members of the Panel from a list of senior actuaries with relevant experience and expertise. It was at my request that Towers Watson appointed those whom I had selected.

Yours sincerely