

ELTA – Post Penrose

I thought it was about time I brought you all up to date with ELTA news and action plans. As you might have imagined we have been waiting for the Penrose report, though the committee and I have been working hard in the background.

Membership News

As of today, Monday, 22 March 2004, we have 913 With-Profits Annuitants (WPAs) registered in our records. The majority of members have e-mail ids and those of you who have not given us your full postal address details so, once again, may I ask you to drop me an email so that I can complete this part of the registration process. There are more than 250 members who do not have access to the Internet and we communicate with them with snail-mail though the unstinting efforts of Tim Balkwill, who is also coordinating the collection of the questionnaire for ELTA.

We have a long way to go to reach all 50,000 annuitants but our numbers are increasing rapidly as a result of a greater awareness of ELTA and a realisation by WPAs that we have been suckered by the Society.

Questionnaire.

As I said above Tim has been sending out questionnaires and entering the responses into his PC. This data is then forwarded to me and in due course I will produce a report setting out the results of the survey. It is very important that as many of you as possible complete the questionnaire as it gives us a more complete picture of your situation and in some respects the basis of any claim you may wish to make against the Society. (See Litigation below)

We have had responses from 442 annuitants with details on 788 annuities so far. Tim manages to process about 100 forms per week so I am expecting this number to increase over the next few weeks.

The questionnaire can be found on the ELTA web site and can be downloaded from there, completed and either posted or emailed to Tim. If you cannot download the questionnaire, either contact Tim at TBalkwill5310448@aol.com or contact me at elta@aol.com. The other contact email ids on the ELTA web site, info@elta.org.uk and enquiries@elta.org.uk end up on my PC.

If you do not have access to the Internet, then you can write to Tim requesting a copy at the address shown at the end of this document.

Tim is off on a long break at the end of March and if you want or need to discuss any issues raised here during that period please call Nicholas Ogletthorpe, who has agreed to deal with phone calls from WPAs, on 01603 454 210 between the hours of 4pm and 6 pm up to and until 25th April.

Thereafter you can write to Tim Balkwill again, though whilst Tim is away, he will not be able to send out any questionnaires by post but will respond on his return.

The Penrose Report

Michael Nassim has written an excellent summary of Lord Penrose's report and that can be found on the ELTA web site under REPORTS titled "**The Penrose Report - An Analysis by Michael Nassim**".

You will also find some other reports by him, Dr Michael Josephs and myself about the Society and the With-Profits Annuities, which I would strongly encourage you to read.

From my perspective, the Penrose Report really added very little to our understanding of the issues we are facing, though given his status he has put his legal weight behind the conclusions and assumptions that we had already reached and that will aid us in our campaign for compensation for the With-Profits Annuitants, that is the members of ELTA.

The report roundly blames everyone involved, the Government, perhaps not surprisingly, has tried to shift the blame elsewhere, but it is us who are carrying the cost and it is up to us to do something about it.

Future Reductions in our Annuities

As many of you know, I completed an extensive arithmetic and modelling exercise on the Society's With-Profits Annuities and the method used by the Society to compute our payments make reductions. This started after the first round of reductions where what the Society had led me to expect did not in fact correspond to what actually happened.

At the end of the research I produced a report, which resulted in the creation of ELTA, the only group dedicated to the interests of With-Profits Annuitants. I discovered that our annuities are broken down into 4 parts which all change in different ways depending on your chosen Anticipated Bonus Rate (ABR), the Society's Declared Bonus Rate (DBR) and the Society's Overall Rate of Return (ORR). I do not wish to repeat my report here but there are a number of points about the future that we should all understand. This is best illustrated by the following example based approximately on my annuity. Your annuities will vary slightly in relation to mine but not by very much but the basic relationships between the various parts of our annuities will be more or less the same as shown below. It is not a pretty picture nor does it show a happy future for us!

	2002	2004	2010	2015	2020
TOTAL GUARANTEED ANNUITY	£9,367	£8,182	£5,452	£3,887	£2,771
FINAL BONUS ANNUITY	£2,849	£0.00	£1,250	£1,788	£2,034
TOTAL GROSS ANNUITY	£12,216	£8,182	£6,702	£5,675	£4,805

First you will notice the steady decline in the annuity throughout the future years AFTER this year's so called "10%" reduction. This is because the Society has already said that our annuities will decline continuously as a result of its investments in securities that pay approx 5% per annum, so that after expenses that means the Society can only expect to offer the WPA's a 3.5% ORR and a 0.0% DBR. Thus by 2015, when I will be 75, I anticipate that my annuity with the Society will be £5,675 per annum or approximately **£3,885** at today's values assuming a 3.5% rate of inflation per annum. That compares to **£12,216** in 2002!

That is bad enough but you also should notice that one of the consequences of the way the Society computes annuity payments, is that between now and 2015 the Final Bonus Annuity will increase from zero in 2004 £1,788. It is the Final Bonus Annuity that is NOT GUARANTEED and is the part of your annuity that has been removed by the Society in the last 2 years. Thus in 2015, if the Society needs more cash than it has, then it can reduce my annuity again by the unguaranteed part so that my annuity would not be £5,675 but **£3,887** and that is **BEFORE** I make allowance for the effect of inflation in the interim period.

The precise figures of each WPA will, of course, be different but broadly speaking if you take your current annuity and make the same relative reductions you will be able to get a reasonable forecast of your future income.

Why might the Society do this? Well, let us suppose those members of the Society who have fixed level annuities live longer than the actuaries have computed, then the Society will have a fiscal shortfall and the WPAs will be the ONLY source of funds to meet those obligations. Do **I KNOW** that this will happen? Of course **not** but as it has happened once already I can think of no reason why it could not happen again and I think I need to make sure that we protect ourselves now and not start complaining in 5, 10 or 15 years time again when it will be too late to initiate legal action against the Society.

So:

1. We signed up to the Compromise Deal in the belief that it would bring us some financial stability.
2. Then, a few months later we were told that we had to accept up to 30% reductions to "bring us into line with others". These reductions turned out to be on much higher than that is perhaps typical of the current board's attitude to the WPAs
3. Then, this year Mr Thomson announces that our annuities will go on reducing for the foreseeable future.
4. And then...?

We all want financial stability so that we can plan our future but this constant erosion of our annuities, not because of some catastrophe in the financial markets, but simply to meet the Society's obligations to other members, is not only not acceptable but apparently might continue indefinitely.

So if you thought the worst was over, well I am sorry to report it is not. If anything the future might be arguably worse. Whether that is necessary or inevitable is of course another issue.

Why we must act!

There are those who believe that the Government will eventually bow to public opinion, the pressure groups and decency and provide compensation to the members of Equitable Life. This would be the best solution for us and everyone else.

This is obviously a possibility that should not be discounted but you are all aware of

1. The £40 billion hole with Endowment mortgages.
2. The many people losing out as Final Salary schemes are wound up
3. The many people losing out as their companies go belly up and they lose all of their pension contributions.

In other words, even if the Government was minded to offer us compensation, I do not believe that the Government could afford to take the risk of compensating ELAS members without opening a very large can of worms for itself at a time when the public sector has enough pressures on its budget.

I am not sure that Ruth Kelly does not regard the WPAs as part of her 'constituency' and if she is making threats, it is only to ensure that we understand clearly that the Government not only will not pay, it may not be able to pay at all, given the size of the amounts due as described above.

It is clear that we must keep up pressure on the Government any way we can by working with the other pressure groups, our MPs, MEPs, the media. Litigation is one way but in my opinion and no matter what we wish and hope for, and by all means lets keep on kicking down doors, we really are on our own and compensation is just NOT going to come our way.

The problem with pressure is that one does not know **when** it will be effective let alone if it will be effective and as it happens, we, that is the WPAs, do not have the luxury of time. We must put our writ into court before the end of July as if we fail to do that then we run the risk of being Time Barred.

Why we must act now!

We are all aware that there are many actions taking place today. Some include plans by EMAG to raise funds and take the Government to the European Court. There are rumours of compensation plans being discussed by the Treasury. The Society itself is in the process of taking the former directors and auditors to court. So why not wait and see what happens, after all they may be successful and we will benefit? There is no question that the above is correct but there is a problem.

There is a problem with time that we cannot avoid. According to the advice we are being given by Clarke Willmott, the solicitors that we are consulting, ELTA must issue a writ on the Society by July 16th 2004 and serve within 4 months or we may be time barred from taking any action against the Society for compensation. The issue of time barring is complex and not only beyond the scope of this report but also beyond my knowledge so for the moment I think it prudent to assume that the advice we are being given is correct.

In other words, unless we act now then we may be prevented from taking any action in the future to recover our losses from the Society as a result of its action or inactions. It may be that the other course being pursued by EMAG or the Society will result in the WPAs being awarded compensation but it is clear to me at least that we cannot take the risk of them failing since by the time we know that it will be too late!

It follows that we must act now.

Might the Society go into liquidation, receivership or administration?

There is a possibility that if the Society was faced by claims for compensation from all the WPAs, then it has been argued that the easiest path for the Society to take would be to declare insolvency. In that circumstance then the Financial Services Compensation Scheme would be implemented which is supposed to ensure that we would continue to receive 90% of our guaranteed annuity. What that means to the WPAs of Equitable Life is not entirely clear since it might mean 90% of the current annuity or 90% of the future (and declining) annuity. I doubt that anyone knows. However, the effect on the finance industry and the government plans for future pensions would be disastrous. So one thing is certain the Society would not be permitted to take this action without the express permission of the Treasury and with the acceptance of that decision by the finance industry.

Further, there is no need for the Society to reach that point. I can think of several options that the Society might offer the WPAs to avoid a catastrophic collapse if it wished and which I believe WPAs would not only find acceptable but that the Society could easily afford.

It is a possibility, but we should be clear that if the Society chooses insolvency then it will not be because of our actions but because that is what it, the Government and the industry have already decided and we, and our actions, will be the excuse.

ELTA's Structure

We are an association of like-minded people with broadly a common interest in obtaining compensation for our losses as a result of our buying a With-Profits Annuity from Equitable Life. That is the stated purpose of ELTA as set out in the draft Mission Statement (yet to be finished and my apologies but litigation is my priority at present.)

In order for this to work, I set up ELTA with a lot of help from a small group of like-minded colleagues who eventually coalesced into a **Working Committee** and in turn three of us became the sub-committee for legal action. This sub-committee, **the Legal Action Group**, comprises myself, Peter Scawen, a retired businessman and Nicholas Oglethorpe and Nicolas Bellord, both retired solicitors.

There are other members of the committee as follows:

1. Tim Balkwill, who is coordinating the campaign to collect more information about the WPAs through our questionnaire.
2. Ann Berry, who is our spokesperson and whom you will have seen many times on Television.
3. Michael Nassim, who has written several excellent reports about the With-Profits Annuity and Equitable Life
4. Thelma Haile, who constantly writes to the Society, MPs and the media demanding action and expressing our outrage at the treatment we have received.
5. Bill Davies, who is focussed on making complaints through the FOS and keeping them on their toes.
6. Liz Kwantes who coordinates our work with the other pressure groups, collectively known as E7 and maintain our web site for us.

So we work together, mostly remotely through the Internet. In fact with one or two exceptions we have never met personally and in all probability we never will.

The Litigation process

One of our concerns will be the potential cost of litigation. We are still working out the precise budget for the litigation and that will be set out in the proposal that will be produced by Clarke Willmott of Bristol but the process will be approximately as follows:

We will be working on a Conditional Fee Arrangement (CFA) or in our terms NoWin-NoFee. The legal action sub committee are working with Clarke Willmott to ensure that the CFA meets our requirements. Clarke Willmott therefore will only receive payment for their costs if we win our case and will have to absorb its costs if we lose. It follows that Clarke Willmott would not be adopting this approach if they thought there was a serious risk of our losing the litigation.

Each WPA that decides to join in the Group action in the litigation against the Society for compensation will pay a fixed fee and that will cover the costs of insurance plus payments to 3rd parties by CW during the litigation. The fixed fee will be a function of the total 3rd party costs divided by the number of WPAs that join in the litigation. I do not think it will ever be less than £500 and I do not believe it will be above £1,000 but, as I say, this number is yet to be finalised.

If we lose the case then this fee is the **ONLY** cost you will incur and of course if we win this payment will be returned to you plus whatever compensation the court decides is appropriate.

I have referred to 3rd party costs. These are costs that are incurred by other companies or individuals that are not party to the CFA and will expect payment as the case proceeds. For example, barristers, accountants, actuaries and administrative staff are not included, nor are any of the office costs, phones, stationery, postage, phone calls, etc. All of the Working Committee have incurred costs already out of their own pockets and at some time I think it only correct that these are repaid, though I must emphasize that we have not and will not receive any payment for our time and any expenses claimed will be fully detailed in the accountants report on our affairs once this action is finished. However, the major single cost is that for insurance to meet the Society's legal costs if we lose our case. Again it is worth emphasising that we would not get insurance cover if the insurer thought that we would lose the case

We will probably set up a single purpose company, limited by liability, that will be managed by the legal action committee plus perhaps 3 more WPAs and we will instruct CW on what we want done on behalf of the members. The members who join the company will have to agree to accept our decisions and agree not to initiate legal action against us if they do not like the results or our actions. The reason for this approach is that as a limited company we will only carry liability to the limit of our shares, £1.00 each. This is thus another barrier to minimize our exposure to unknown costs.

So to summarise:

1. We have also made absolutely clear to Clarke Willmott that we will NOT proceed unless they present us with a budget, which will be divided between all of those WPAS who wish to participate and that CW understand and accept that there will NO opportunity to come back for more.
2. If we win then the Society pays all of the costs and any money paid by WPAs in advance will eventually be repaid with whatever compensation the court awards.
3. If we lose then the Insurance pays the Society's costs and our contribution will have covered the 3rd party costs. CW must eat its own fees and any 3rd party costs in excess of the total contribution. (less insurance costs of course)

Our risks as I see it are as follows:

1. The Society makes an offer to settle, which I think is a highly probable event. Then and against the advice of Clarke Willmott, we do not accept and continue to litigate. If we then lose, we are then liable for the costs. So if the Society makes an offer we do not like but Clarke Willmott regard as being acceptable, we will have to accept the offer, as we cannot afford the risk of being hit with costs.
2. The Society goes into receivership during the litigation, then in theory there is nobody from whom Clarke Willmott can recover its costs from and the Legal Action Committee might be held liable for the costs unless we ensure that Clarke Willmott the CFA protects us from that risk.
3. We get over taken by events and the Government makes a firm commitment for compensation that the majority of the members of ELTA and the Legal Action Group find acceptable. The same situation with respect to costs applies here as in 2) above.

Clarke Willmott have very kindly made the following comments on this section:

“Scenario 1 envisages you are offered a settlement which you do not accept and continue to litigate against our advice. You would be entitled to do this, of course, but the CFA we enter into would enable us to end the agreement in the event that you go against our advice. Obviously we could not risk our fees on an enterprise we do not advise. You will find that we are not soft, though, and will not advise you to take any offer unless we think it satisfactory. Other solicitors might exert pressure to settle low.

You may have similar difficulties with the insurers. They will want to be notified of offers, and may turn out to be softer than we are. They may say, “No more cover unless you take the deal”. We did not have this difficulty with the first seven cases (of which I think only five were insured), but it does happen.

Scenario 2 envisages a receivership. This will not destroy the claim, including the claim for costs. Penrose says it is virtually impossible for the society to become insolvent, and so even if wound up or in receivership, there will still be funds. There may not, in this disaster scenario, be enough to pay 100p in the £, but it would not be far out. You would be creditors, and ahead of with profits policyholders in the pecking order. In this event, of course, you might be able to establish, or have established, a contractual right to annuities at a certain level. Your position vis a vis the FSCS might be stronger in that event.

Scenario 3 envisages compensation from the Government, which you find acceptable. In those circumstances we would still want to be paid. In discussions with the Government, a liability to us for costs would have to be factored in. I cannot imagine that the Government would expect you to have no fees, and compensation paid will take that into account.

I am sorry to trouble you with these details, but you won't want to mislead the ELTA community. If someone else, be it us or an insurer, carries all or part of the risk of a case, they are not going to surrender the same control as they would if you were the only party taking the risk.

The real issue is likely to turn out to be NOT whether the Society (or the Government) pays, but how much. Keeping the group together will be the major task of Clarke Willmott and the Legal Action Group. With our previous claims some clients settled too early and against our advice to carry on, but in no case did we impose a settlement on our clients.

Ethical and Moral Issues

Many WPAs have stated that it is wrong to sue the Society as we are in effect suing ourselves so I want to address my perception of the moral and ethical issues surrounding the litigation that is being envisaged.

There are two perspectives, one essentially wide and one more closely prescribed

1) The Wider Issues that transcend our specific rights.

A) There are members of the Society who are in effect taking our money now in order that they have a better life whilst we slip gently and inexorably into poverty. For example, and at present, our money is being used to meet the Society's commitments to the large number of members with fixed annuities which if they live longer than the Society has computed then we are the ONLY source by which the Society can meet its obligations to them. Equally any GARs that remain with the Society are receiving a "guaranteed" growth which is allegedly higher than the Society is earning (approximately 5%) on its' investments. Who do you think is paying for the difference today and will be paying in the future?

And as I pointed out above, that will continue and maybe even our remaining annuity, as the "un-guaranteed part" increases relative to the total, might be taken away again in addition to the money that will disappear each year in order to top up the Society's cash situation.

I do not regard myself as being bound by some ethical or moral set of values that says it is OK for me to be poor and get poorer whilst the Society uses my savings to permit others to become richer. Indeed I think it is moral cowardice not to confront this issue and do all that we are able to protect ourselves, our families and those that we love.

B) There are others better qualified than I to make this point but the English Law assumes that we the citizens will act against any organization that infringes our rights as the Society clearly has done. It follows that it is our moral duty to take the Society to court and obtain judgment against it so that other potential lawbreakers clearly understand that they are not immune to the law and cannot ride roughshod over our rights.

C) It is argued that we are only suing ourselves. No, we are suing the Society, which is already using our money for its purposes, see above, and has in any event set aside money already for our claim amongst others it faces. The money it has set aside is no longer available to pay our annuities, it is a pot to be taken, is being taken now and will be taken in the future by somebody or other. You have to explain to me why it is moral for this money to be used for others but not moral for us.

Further, suppose your PC blows up in your face as you read this report and you are badly hurt in the explosion and it turns out the accident was a result of bad decisions made by the management of the company that produced it. You would obviously make a claim for damages. But it turns out you are also a shareholder of this company and therefore a joint owner with other shareholders (members). Would you then stop your litigation on the grounds that you would be suing yourself? The answer is surely "No!". As members of the Society we have the same relationship to it as we have as shareholders to any other company organisation. It is the management's responsibility to insure it provides products fit for purpose and to carry insurance for unexpected liabilities and claims.

D) We do not live in a world where ethical values and moral behaviour is at a premium.

a) If the Society paid us compensation without being confronted with litigation, the directors would be in breach of their statutory duty of care to the members. They are legally required not to give into demands for compensation unless on the point of a court order. The only way to get anything out of the Society is to sue - nothing will be or indeed should be given without the maximum struggle. After all as members that is what we would demand of the directors if they were defending our rights! The Society is not and cannot be moved by ethics and moral values much as we might wish that it did but ONLY by the law.

b) The same argument applies to Governments and as Harold Wilson once said "A week is a long time in politics!" Already Penrose is off the media horizon, the next news story will make the headlines, sadly last week the outrage in Madrid, this weekend protests over the Iraq war, but the Government knows that by next month it will all be forgotten and the election is two years away. The same argument and logic applies to Governments as they also are not moved by ethical and moral values but they do understand the force of the law.

c) By July we run the risk of being time barred and the Society is off the hook. Given the average age of the WPAs is about 70 then in 10 years time we will all be dead (Only actuarially of course!) and the Government will really be off the hook!

2) The narrower more specific issues that affect the WPAs

A) It has been argued that it is wrong for a small group of WPAs to act potentially to the detriment of the larger group of WPAs who have not yet joined ELTA'.

Before we initiate any legal action, we will endeavour to announce our actions through the national media to as wide audience as possible but I have no expectation that we will ever have anything other than a minority of WPAs participating in this litigation. In fact this is perfectly "normal". There is always a small group of activists, who start a project. A larger group who, sharing the same values and beliefs or needs, in turn joins them and then there is the largest group who do not become involved for whatever reason that makes sense for them. In our case of course, there is also the fact that many WPAs are very old and who cannot face the emotional trauma of litigation and prefer to soldier on with support from their families and just accept the situation.

So what are the possible moral issues?

i) If we lose, then we have only cost ourselves some money.

ii) If we win, then there are two possible scenarios:

a) The Society makes a deal for all WPAs that is a definite win for everybody.

b) The Society pay us and we have set a precedent for anyone else who wishes to sue. But what happens if the Society demands that the settlement be kept secret. Well, the Society can demand that the terms are secret but cannot demand that a "deal has been done" be kept secret. And even if it could, it would not succeed as these things are never secret for long and in any event CW would contact another WPA and say "We know how to beat the Society why not get an action group together?" In fact, pretty much what they did to ELTA.

B) We are faced with a very real and short time limit beyond which we cannot act. As I have said CW believes this to be July of this year, 2004. If we do nothing, that means the Society has got away with what some of you have described from time to time as fraud; 'The biggest financial scandal this century!', I think is how it was once described by one active member of EMAG. Is that moral or ethical? How could we go to our graves, in poverty I might add, and say to ourselves, "We did our best for ourselves and society"?

C) OK suppose with a bit of huff and puff it seems like the Government or Society might be thinking about giving us some money, July comes and then it is obvious nothing will happen in the short term. Do you want to go back to the other WPAs or your families who may be supporting you now or in the future and say "Sorry, we/ you have lost forever our/ your right to sue for compensation because we felt that our moral integrity was more important to us than our/your ever increasing penury!"

We do not have the moral right to make that decision for anyone. We have a clear moral duty to ensure that the as many WPAs as is possible understand the full picture, the choices and the risks. Each WPA then can make their own choice based on their own set of moral and ethical values.

In summary:

1. We have a clear moral obligation to ourselves.
2. We have a clear moral obligation to those WPAs who cannot act for themselves for whatever reason.
3. We have a clear moral obligation to society at large to redress the injustices.

To do nothing is the abnegation of our moral responsibility. Believe me I am entirely happy for anyone to live in increasing poverty if that is your choice, but it isn't mine!

What happens next?

This report is to bring you all up to date with the current situation and the choices we may have to make and actions that might follow.

We are waiting on Clarke Willmott to complete their Proposal, which will be put on the ELTA web site and to agree the terms of the CFA. This will contain amongst other things, the background to the proposed litigation, their assessment of

the grounds for a claim for compensation, the possible amount of compensation and the final costs of the litigation for each participant.

After that, members who wish to join in the litigation process will be invited to write to Clarke Willmott with their personal details and information that Clarke Willmott will need plus a cheque for £100, which is not recoverable, made payable to the Clarke Willmott client account.

Clarke Willmott will review the documentation and will determine if each WPA has the basis of a claim or not.

Assuming you are accepted into the litigation process, then you will be asked to pay the balance of the contribution, become a shareholder in the company set up for the purpose and complete any other administrative tasks to complete the registration process.

Summary

I have tried to set out the current situation as best that I am able but if you have any questions, then please e-mail me at the addresses set out below.

The case for litigation is I think clear and the responsibility rests entirely with us, the With-Profits Annuitants of Equitable Life. ELTA (Equitable Life Trapped Annuitants) has an entirely appropriate name and set of objectives. If we do not act then we must all accept the consequences that I have tried so clearly to point out to you.

The choice is ours, but being trapped is one thing, being milked is another.

Contacts

Peter Scawen

E-mail contacts: info@elta.org.uk or elta@aol.com both of which will reach me. Many of you will be familiar with pscawen@aol.com but I would prefer if you used the email ids set aside for ELTA work and leave my personal email id for my personal use.

Tim Balkwill

If you do not have access to the Internet then please write to Tim Balkwill at:
Mid Comp Farm
Comp Lane
Sevenoaks
TN15 8QT

However, once Tim leaves on holiday, he will not be able to respond to any letters until his return in early May, so may I ask you to be patient but you will be included in the ELTA community records and participate in the litigation if you so choose.

If you have an urgent problem and require advice then you can contact Nicholas Oglethorpe on:
01 603 454 210

Last Words

Neither any members of the Working Committee or I are lawyers, accountants, actuaries or IFA's. We are all pensioners and annuitants just like you. We are not therefore professionally qualified to give you any advice so if you decide to join with us, you should obtain professional advice first. Clarke Willmott can do this for you or you may prefer to take advice from someone or an organisation that you already know.

The Working Committee and I look forward to receiving your comments and feedback.

Peter Scawen
Monday, 22 March 2004