

From: The Right Honourable Sir John Chadwick

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

30 October 2009

Dear Mr Josephs

**Equitable Life ex gratia payment scheme**

Thank you for your letter of 12th October 2009. To the extent that my Terms of Reference permit me to do so, I shall take your comments into consideration when reaching a final determination as to the comparator against which relative losses must be measured. I am, however, bound to say that at this stage I consider there to be a number of difficulties with the approach that you have proposed. I would draw your attention to two of those difficulties.

First, my Terms of Reference expressly require me to consider “relative losses”. It seems clear that this means losses measured by reference to the position in which policyholders could have expected to be if they had invested elsewhere than in Equitable Life. I have in mind, in particular, paragraphs 1/14/29-42 (pages 381-382) of the Ombudsman’s Report. It seems to me that the effect of these paragraphs is to rule out an approach based on absolute loss, however that might be measured.

Second, I do not find self-evident the point you make at page 2: to the effect that measuring loss against a basket of comparators

“is not robust, being inherently contentious and depending too much on the opinions of [my] Actuarial Advisors”.

Rather, as it seems to me, an approach which sought to replicate the manner in which Equitable Life “should” have managed its business might be seen to be at least as, if not more, open to debate and dependent on the judgment of my actuarial advisers. But that does not, of course, rule it out.

The approach that you have proposed would require decisions as to how Equitable Life should have distributed its assets as between different classes and different

generations of policyholders. This must be purely a question of actuarial judgment. I doubt if policyholders would find it easy to understand the basis on which any such decisions were made. I therefore disagree with your statement at the bottom of page 3, that your proposed approach would:

“provide clear and succinct explanations to each policyholder as to how their losses and gains have been determined, and therefore why so many of them must perforce be excluded from any payment scheme.”

By contrast, an approach based on market comparators is, at least, easy to comprehend. It may be that some policyholders will disagree with whatever determination is made in relation to the appropriate comparator. However, it will at all stages be clear what decisions are being made; and policyholders will have had the opportunity to make representations in relation to a scheme that is as comprehensible as possible.

Yours sincerely