



Complaints Commissioner

Mr Crispin Poyser
Clerk of the Committee
Treasury Committee
House of Commons Committee Office
7 Millbank
London SW1P 3JA

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Dear Mr Poyser

EQUITABLE LIFE

I write in response to your letter of 25 November 2002 to the Financial Services Authority (FSA) in which you asked the FSA for a note in respect of complaints against Equitable Life or against a regulator of Equitable Life.

2 As you doubtless know, the arrangements set up under the Financial Services and Markets Act 2000 require the FSA to have in place arrangements for the independent investigation of complaints against themselves. It is my role as Complaints Commissioner to conduct such impartial investigations into complaints that are referred to me. I thought the Committee would wish to have information about Equitable Life-related complaints that have been referred to me and, because I am required to be completely independent of the FSA, I felt it appropriate to write to you separately.

3 Below in this letter, therefore, I describe briefly, by way of background, the complaints arrangements and my role in them, both generally and in relation to Equitable Life matters, before going on to summarise the Equitable Life-related complaints received by my Office and the procedure adopted in dealing with them. I also comment on the matter of financial redress, about which you have asked specifically. Before doing this, however, I start with some general observations about Equitable Life-related complaints that I hope may be helpful to the Committee.

Equitable Life-related complaints: general observations

4 Complaints about Equitable Life-related matters may be wide-ranging or highly specific. They may be focused on the actions of the firm or its regulators or both, and they may relate to matters that have their origin a number of years ago or are relatively recent. This in turn has implications for who has the responsibility to investigate them, and how, not least because the passage into law of the Financial Services and Markets Act 2000 (FSMA) resulted in important changes to the way in which the financial services industry is regulated and complaints investigated, which I touch on further below in this letter. The result, seen from the viewpoint of an 'Equitable Life complainant', is something of a patchwork of different arrangements,

and it is not always clear to them where they should be directing their complaint and/or who should be helping them.

5 Furthermore, although much emphasis has, quite rightly, been placed on Lord Penrose's Inquiry, which is extremely wide-ranging, the timetable for its completion is lengthy. Additionally, there is the issue of "later complaints", by which I mean those relating to the actions or inactions of Equitable Life and/or its regulators **after** the period covered by Lord Penrose's Inquiry. This is now also coming to the fore, and has, I think, thus far received little attention. I return to this point also below in this letter; however, at this juncture I would observe that the complexity of the arrangements for dealing with complaints, together with these issues of timescales, can of themselves increase consumers' dissatisfaction with their losses and build up frustration with the responses they receive from public authorities.

The Complaints Arrangements

6 In order to explain my role with regard to Equitable Life-related complaints, it may be helpful to the Committee if I first summarise the FSA's Complaints Scheme and my own role within it. Annex A to this letter provides further detail.

7 There are two FSA Complaints Schemes: a Main Scheme and a Transitional Scheme, both of which became effective on 3 September 2000.

- The **Main Scheme** deals with complaints about the way in which the FSA has carried out, or failed to carry out, its role under the Financial Services and Markets Act.
- The **Transitional Scheme** deals with the investigation of complaints about the FSA, Personal Investment Authority Limited (PIA), Investment Management Regulatory Organisation Limited (IMRO), and the Securities and Futures Authority Limited (SFA) under previous legislation.

8 The Schemes cover, with certain exclusions, complaints about the way the FSA has carried out, or failed to carry out, its role. This includes complaints about mistakes or lack of care, unreasonable delay, unprofessional behaviour, bias and lack of integrity. The provisions of both Schemes are very similar, the main difference being that the Complaints Commissioner does not have powers to recommend money compensation under the Transitional Scheme. This is a material point as far as Equitable Life-related complaints are concerned; potential complainants are, in many cases, not able to look to the Commissioner for compensation, which very probably provides part at least of the explanation of the relatively small number of such complaints coming forward to me (see below).

9 Certain matters are excluded from the Scheme; details of these exclusions are set out in Annex A. Some of these exclusions, as I explain below, are potentially relevant to Equitable Life complaints.

10 My role as independent Complaints Commissioner is to investigate complaints about the FSA which fall within the scope of the Complaints Scheme and which the FSA has not been able to resolve to the complainant's satisfaction. The Scheme envisages that complaints will generally be first investigated by the FSA (known as the Stage 1 investigation) and I may become involved where the FSA, having conducted a Stage 1 investigation, has not been able to satisfy the complainant. I have no general power to investigate complaints other than under the

terms of the Scheme. In cases where I do become involved, my investigation is known as the Stage 2 investigation.

The Complaints Commissioner's role in relation to Equitable Life-related complaints

11 Because my role is defined by the Complaints Schemes, my ability to investigate Equitable Life-related complaints is quite restricted in scope. I may not, for example, investigate complaints about Equitable Life itself. Where a regulated firm is unable itself to satisfy complainants, the arrangements for the financial services industry envisage that complainants may turn to the Financial Ombudsman Service (FOS).

12 My role is also restricted in relation to complaints about the way in which Equitable Life was, and is, regulated. Many complaints have focused on the failure of those responsible for regulating Equitable Life, and in particular those responsible as supervisors of Equitable Life's "prudential" obligations: broadly speaking, the sufficiency of its assets and reserves as an insurance company. Here there was a change in responsibilities over the relevant period. Prior to 1 January 1999 it was the responsibility of HM Treasury. From 1 January 1999 to 1 December 2001 the FSA undertook the role, but it did so not as statutory regulator but acting on behalf of HM Treasury, the actual regulator. Since 1 December 2001, when the FSA assumed its full powers under FSMA, the FSA has been the regulator. This has, I think, been the source of quite a lot of public confusion; essentially, it means that complaints about the prudential supervision of Equitable Life before 1 December 2001, because they are effectively complaints about HM Treasury, are a matter for the Parliamentary Ombudsman, who is conducting his own investigation into them.

13 Turning from what I cannot investigate to what I may investigate, under the Transitional Scheme I may in principle become involved in complaints of action or inaction by the FSA (and/or PIA) at the time of the following events: the emergence into public knowledge of Equitable Life's difficulties; the various stages of the Court case culminating in the House of Lords judgement by July 2000; and Equitable Life's closure to new business on 8 December 2000. In these cases I might investigate but could not recommend money compensation. Complaints about the FSA's action or inaction since 1 December 2001 would fall within the Main Scheme. These could include complaints about the presentation of the Compromise Scheme to the members, and approval by the Court. Some members believe that their losses under the Compromise Scheme could have been prevented or at least reduced by the FSA. There may also be those who believe that the FSA should have taken action in relation to Equitable Life's imposition of market value adjustments since that date.

14 It should also be noted that the FSA Handbook, in describing the complaints arrangements, states that the FSA will not investigate a complaint which it reasonably considers amounts to no more than dissatisfaction with the FSA's general policies or with the exercise of discretion where no unreasonable, unprofessional or other misconduct is alleged. My own powers allow me to investigate complaints that the FSA has itself decided not to investigate, but under the terms of the Scheme I am unlikely to investigate complaints about the FSA's regulatory policy and judgement unless there is an allegation by the complainant of misconduct. Depending on the exact formulation of the complaint, this could be relevant to complaints about the FSA's actions in relation to Equitable Life after 1 December 2001.

15 Generally, although my Office is and must remain fully independent of the FSA, it is helpful from the viewpoint of complainants if my staff and those in the FSA responsible for administering the Complaints Scheme adopt a co-ordinated approach to Equitable Life-related complaints. To this end, I am in dialogue with the FSA Company Secretariat about how best to deal with complaints alleging failure on the part of the FSA adequately to regulate Equitable Life.

Equitable Life-related complaints received by the Complaints Commissioner

16 An analysis of the complaints received by my Office relating to Equitable Life is given in Annex B.

17 From the date of my appointment in September 2001 until 31 December 2002, I received a total of 157 complaints and enquiries, of which only 12 related to Equitable Life. Of these 12, one was clearly directed towards the Ombudsman and not within my remit, and two were insufficiently specific for me to determine where within the complaints arrangements they might best be directed.

18 Two complaints related only incidentally to Equitable Life, with the main focus of the complaint being an alleged procedural or administrative failure on the part of the FSA: delay; and failure to answer a technical question.

19 The majority of complaints relating to Equitable Life, however, have comprised a series of expressions of dissatisfaction with the FSA's supervisory actions or lack of intervention, and the failure of any authority to protect the complainant as a consumer. Complainants have included allegations of lack of communication, misleading information, inadequate advice, failure to carry out risk assessment, lack of accountability, deficiencies in the arrangements for the Compromise Scheme, and concerns about the potential insolvency of Equitable Life.

Procedure for dealing with Equitable Life-related complaints

20 Each complaint I receive is considered on its merits. There can be no standard procedure applicable to all Equitable Life complaints; many complaints contain several different elements.

21 On receipt of a complaint, my first task is to review carefully each element and my first decision is whether or not the complaint, or any part of it, falls within my jurisdiction under the Scheme.

22 In cases where the complaint is clearly about the actions of an organisation other than the FSA, for example the Ombudsman, and there is no reference to the FSA, it is relatively straightforward to refer the complaint elsewhere. In other cases, I have similarly been able to decide quite quickly that the complaint is not within my remit because it relates to matters concerning the prudential regulation of Equitable Life within the period covered by the Parliamentary Ombudsman's review.

23 In cases in which Equitable Life is only incidental, and which focus on matters of procedure or administration, I proceed as I would with any other complaint. This means that I make a decision about jurisdiction and, if necessary, proceed with an investigation immediately. I have one such complaint that has already been the subject of a Stage 1 investigation by the FSA and I am now considering the scope of a Stage 2 investigation.

24 In cases where the complaint is not specific, my current practice is to offer the complainant a full explanation of the complaints arrangements, so giving them the opportunity to make a more specific complaint, to me or to others, if they choose.

25 For the multi-faceted complaints, however, where there are grounds for supposing that some elements fall within my jurisdiction, I have tended to take the view that it would be in the interests of the complainant to defer both a final decision on jurisdiction and a Stage 2 investigation until after the reports of the Parliamentary Ombudsman and of Lord Penrose's Inquiry are published. This is because these inquiries are wide-ranging and access to their findings would permit a more detailed and comprehensive Stage 2 investigation to be undertaken, which would be to the complainant's advantage. The extended timescales of the inquiries, however, is now an additional factor that needs to be taken into account.

26 The extended timescales also have another implication that the Committee may like to consider, and that is the matter of "later complaints", by which I mean complaints about the FSA's action or inaction in relation to Equitable Life in the period after that covered by Lord Penrose's Inquiry. Lord Penrose's Inquiry covers the period up to the date when Equitable Life closed its doors to new business. Complainants are already starting to raise issues about alleged failures on the part of the FSA since that date. There are difficult issues here that will need to be addressed; these include issues of interpretation (is the complaint indeed "later" or does it rather have its roots in earlier events). It may also be complex to determine whether the action complained of includes an allegation of misconduct as well as a complaint about regulatory action involving judgement or discretion. And in such cases there will, again, be a need for judgements as to whether or not it would be in the complainant's interest to continue to wait until Lord Penrose's report and recommendations are available because these might be relevant even if the specific matter complained of occurred at a later date. All of these issues may, potentially, result in increased frustration for complainants who want a speedy remedy for their complaint.

Financial Redress

27 You ask specifically about avenues of financial redress or compensation potentially open to policyholders and the timescales involved.

28 To summarise my observations above in this letter, I am myself only able to recommend money compensation to a very restricted category of complainants. Only complaints that fall within the Main Scheme can be considered for money compensation.

29 I would also be concerned that any monetary compensation that might be offered should be equable. In view of the complexity of the complaints arrangements, it has to be recognised that one individual may bring a complaint to me whilst another, in identical circumstances, might not do so. It would, in my view be inappropriate to offer compensation only to complainants who happen to have selected a particular avenue of complaint.

Conclusion

30 I hope that the information contained in this letter and its Annexes will be helpful to the Committee. I stand ready to provide any additional information or explanations that the Committee may require.

Yours sincerely

Rosemary Radcliffe
Complaints Commissioner

ANNEX A

Complaints are referred to the Complaints Commissioner when:

- the complainant is dissatisfied with the outcome of the FSA's internal investigation, or with the way in which the investigation has been handled; or
- the FSA decides not to investigate, in which case the FSA has to inform the complainant and the Commissioner, and the Commissioner then decides whether or not the complaint falls within her jurisdiction and should be investigated; or
- the complainant is dissatisfied with the time taken by the FSA to investigate the complaint.

In general, the Commissioner does not investigate:

- complaints by customers about a regulated firm; such a complaint should be directed in the first instance to the firm itself; if customers remain dissatisfied they may then take their dispute to the Financial Ombudsman Service;
- complaints about the Financial Ombudsman Service; these may be directed to the Financial Ombudsman Service's Independent Assessor;
- complaints about the Financial Services Compensation Scheme; these may be directed to the Financial Services Compensation Scheme's Independent Investigator;
- complaints about the FSA's legislative functions, defined as the making of rules and the issuing of codes, statements, directions and guidance;
- complaints which are more appropriately dealt with in another way, for example by reference to the Tribunal;
- complaints which have already been investigated under previous complaints arrangements;
- complaints about the way in which a complaint about a firm regulated by one of the former self-regulating organisations was handled by the PIA Ombudsman Bureau, the Office of the Investment Ombudsman, or the SFA Complaints Bureau; such complaints may be directed to the Financial Ombudsman Service;
- complaints about the FSA's relationship with its employees, or connected with a contractual or commercial dispute with the FSA;
- complaints under the Transitional Scheme about the FSA's role from 1 January 1999 until 1 December 2001 as prudential supervisor of insurance companies, building societies and friendly societies; these complaints are the province of the Parliamentary Ombudsman.

ANNEX B

Analysis of Complaints Received by the Complaints Commissioner

Complaints Received by the Complaints Commissioner to 31.12.02	
Total	157
Complaints relating to Equitable Life	12
Of which*:	
Complaints against the Ombudsman	1
Complaints about, or containing an element about, the FSA's administrative or procedural failures	2
General enquiry or non-specific complaint	2
Complaints about the FSA's actions or inactions other than administrative or procedural failures.	8
<i>*some complaints contain several elements, thus the sum of the categories is greater than the total number of complaints.</i>	

Actions taken by the Complaints Commissioner on Equitable Life-related complaints	
Complainant advised that Complaints Commissioner has postponed further investigation pending outcome of other Inquiries	4
Complainant referred to the Parliamentary Ombudsman, and advised that Complaints Commissioner has postponed further investigation pending outcome of other Inquiries.	3
Complainant given an explanation. No further action unless more specific complaint received.	2
Stage 2 investigation scope being considered	1
Complaint outside the Commissioner's remit	4
Complainant withdrawn	1
<i>*some complaints contain several elements, thus the sum of the categories is greater than the total number of complaints.</i>	

Examples of Complaints Received

Mr A transferred his pension out of Equitable Life in 2001 incurring penalties and other losses. His complaint focuses on misleading communications from Equitable Life during the first half of 2000, and what he sees as the FSA's failure to intervene, or carry out a proper risk assessment prior to the House of Lords decision. He alleges a lack of care by the FSA in warning and protecting consumers. He seeks redress for his losses. The Complaints Commissioner referred him to the Parliamentary Ombudsman, and has postponed further investigation.

Mr B makes wide-ranging allegations, couched in aggressive terms, against the FSA and the government and demands action to protect consumers. The Complaints Commissioner has offered a detailed explanation of the arrangements in place for handling Equitable Life-related issues and will take no further action unless a more specific complaint is received.

Mr C is a pensioner who transferred several funds into a longstanding Equitable Life policy in the early 1990s. He also had a fixed-term bond maturing in 2001 and alleges losses of £12-13,000. He demands that the FSA senior management should

be held financially responsible for Equitable Life contributors' losses, and complains that FSA did not regulate effectively to protect consumers. The Complaints Commissioner has postponed further investigation until Lord Penrose has reported.

Mr and Mrs D complained via their MP, prompted by the announcement in November 2002 by Equitable Life that with profits annuity rates were to be cut. They invested £60,000 four years ago and are due to retire in 2003. Their complaint is wide-ranging and covers allegations of a lack of and misleading information communicated by the firm and the FSA. Some elements of their complaint appear to relate to the second half of 2002. They are concerned that Equitable Life will become insolvent. They object to the use of the term "guaranteed", and allege a lack of accountability. The Complaints Commissioner has offered a detailed explanation, and invited them to consider whether they wish to consider a more focused complaint.

Mr E complained via his MP about the FSA. He asserts that the FSA should have insisted that Equitable Life withdraw sales of Guaranteed Annuities. He claims that his choice of annuity was influenced by the FSA's supervisory failures. The complaints Commissioner has referred him to the Parliamentary Ombudsman and postponed further investigation.

Mrs F bought five Equitable Life pension policies between 1997 and 2000. She makes detailed and cogently argued complaints against the FSA's supervision of Equitable Life. The Complaints Commissioner has postponed further investigation of her complaint until Lord Penrose has reported.

Mr G is a GAR policy-holder nearing retirement, who estimates his losses at £25,000. He made complaints against the FSA in four broad areas. The Complaints Commissioner has decided that two of these areas of complaint fall outside her jurisdiction. Mr G has withdrawn the part of his complaint relating to FSA administration. The Complaints Commissioner has postponed further investigation of the fourth, and most serious, part of his complaint until Lord Penrose has reported; however the complainant is becoming increasingly concerned about the time the Penrose Inquiry is taking. .

Mr H has complained about the FSA's failure to answer his letters, about delays, and about the FSA's failure to answer a technical question about his Equitable Life policy terms, which in his view may mean that there are mis-representations in the Compromise Scheme documentation. Mr H's complaint has been the subject of a Stage 1 investigation by the FSA and the Complaints Commissioner is considering the scope of a possible Stage 2 investigation.

Mr I complained, on behalf of his very elderly mother, that the Financial Ombudsman Service has failed to expedite her case against Equitable Life. The Complaints Commissioner was unable to help.