



## DEBATE PACK

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# Compensation for Equitable Life policyholders

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## Summary

The Equitable Life 'scandal' as an issue has very long historical roots and millions of pounds have been spent on legal action, professional regulatory proceedings, enquiries and reports into what happened, what have people lost as a result, who did what and, crucially, who is to blame. Despite all the elusive efforts to produce one, there does not exist an unchallenged, clear, unique, unambiguous, simple narrative called 'truth' acceptable to all parties.

This Paper deals with the route to compensation and not with the causes of Equitable Life's failures which are dealt with in other Library documents.

The Coalition Government legislation enacted the [Equitable Life \(Payments\) Act 2010](#) to establish a scheme to pay compensation to qualifying EL members. At a time of extreme financial public sector stringency, £1.5 billion was pledged to compensate them, further sums were added to this later and some welfare benefits for EL claimants were improved on. The compensation scheme ended in December 2105.

The group representing policyholders, EMAG, has consistently claimed that this was insufficient and as at February 2016 it is calling for another £2.7billion of compensation. The most recent [Commons debate](#) was on 11 February 2016.

The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

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# 1. Equitable Life (EL)

## 1.1 Introduction

Before the 2010 Election the main EL policyholders' action group – EMAG – lobbied MPs to seek support for compensation for their members. Possibly as a result, the 2010 Conservative Manifesto included the brief comment that:

We must not let the mis-selling of financial products put people off saving. We will implement the Ombudsman's recommendation to make fair and transparent payments to Equitable Life policy holders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure.<sup>1</sup>

The Liberal Democrat Manifesto promised:

Meeting the government's obligations towards Equitable Life policyholders who have suffered loss. We will set up a swift, simple, transparent and fair payment scheme.<sup>2</sup>

EMAG is a very well supported group within the House. Its website states that "211 backbench MP are now members of our Equitable Life APPG"; "it has a "dozen paid administrators working with us right across the country" and "is seeking to make our voice heard by those finalising Party Election Manifestos".<sup>3</sup> A Backbench Business debate on 26 February 2015 reflected a determination to make EL compensation a feature of the 2015 campaign too. The motion:

Calls on the Government to make a commitment to provide full compensation during the lifetime of the next Parliament as the economy and public finances continue to recover.

The current website noted in the lead up to the 2015 General Election that:

EMAG's view is that the level of compensation depends heavily upon the degree of political pressure that policyholders exert upon their MP's and contending candidates.<sup>4</sup>

It is proposed by Members from the Conservative, Labour and Liberal Democrat parties so one might take the term 'government' to mean a government composed of one or more of the three main parties after the forthcoming general election. At issue appears to be whether the Coalition Government, by its actions so far, met the expectations of the Ombudsman in her recommendation for compensation.

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<sup>1</sup> Conservative 2010 General Election Manifesto

<sup>2</sup> Liberal Democrat 2010 General Election Manifesto.

<sup>3</sup> [EMAG website](#) as at 16 February 2015

<sup>4</sup> [EMAG website](#) as at 5 February 2016

## 2. Recent Parliamentary activity

A debate in the campaign for further compensation of £2.7 billion was held on [11 February 2016](#). Responding to the debate the then Minister, Damien Hinds, made the following points which are pertinent to the current debate:

There have been many representations regarding the group of policyholders known as the pre-92 annuitants. Although they were not included in the payment scheme for well-established reasons that have been debated in this House, the Government recognised that they were not receiving the income they expected from their annuities. Although that is not due to Government maladministration, in late 2013, those policyholders received a payment of £5,000, or £10,000 for those in receipt of pension credit.

The Government have also received representations about the fact that, as the economy improves, further funding should be made available to the payment scheme. The improvements our economy has made since 2010 are greatly to be welcomed and show that the Government's long-term economic plan is working, but the plan is not complete and we have some way to go to fully restore the public finances. Based on latest outturn data, the deficit was £89.1 billion last year. That is why we have no plans to reopen the payment scheme after more than four years of operation. So apart from the ongoing payments to annuitants, which will continue for many years to come, our focus now is to complete the orderly wind-down of the scheme by summer this year.

[...]

A number of hon. Members have raised the issue of general confidence in financial institutions and encouragement to save. That is very important to the Government, who have helped more than 5 million people to save for retirement for the first time, or to save more, through automatic enrolment. Individuals now also have the freedom to access their pension from the age of 55 if they wish.

The Government have also acted strongly on reforming financial regulation to ensure that it is fit for purpose in future. The Financial Services Act 2012 dismantled the failed tripartite system and created a new architecture and approach for financial regulation. I am confident that our actions have provided a robust framework for the authorities to work within.

[...]

I appreciate that many policyholders are not receiving the income they expected, but by paying more than £1 billion to more than 900,000 policyholders, we have taken action to resolve the Government's part in the Equitable Life issue. We have been able to pay in full the losses of the most trapped policyholders and to double the payments to vulnerable non-annuitant policyholders, as well as providing a one-off payment to the pre-1992 annuitants, who, though unaffected by the **maladministration**, were recognised by the Government to be suffering as a result of their declining annuity income. In doing that, we have balanced the needs of policyholders against the need to reduce the deficit and repair the public finances.

The next time the scheme was discussed in the chamber was during [Treasury questions on 1<sup>st</sup> March 2016](#).

Mr Laurence Robertson (Tewkesbury) (Con)

If he will reopen the compensation scheme for Equitable Life policyholders. [903823]

The Economic Secretary to the Treasury (Harriett Baldwin)

The Equitable Life payment scheme has now successfully traced and paid 90% of eligible policyholders. Payments to with-profits annuitants will continue for the life of these annuities. The scheme is now closed to new claims.

Mr Robertson

I thank the Minister for that response, but given that many policyholders lost out because of a failure of regulation, which should be overseen by not just this Government but any Government, is it not fair that those policyholders should receive compensation? If they do not, how can any investor have any confidence in the regulatory system that is put in place?

Harriett Baldwin

The Chancellor has done more than anyone else to tackle the regulatory failure of the 1990s with regard to Equitable Life. For example, with-profits annuitants will receive full compensation for the life of the annuity, pre-1992 annuitants have received ex gratia payments of up to £10,000, and £775 million has been paid out tax-free to others, despite the constrained public finances. Those on pension credit got a doubling of their payment just before Christmas.

John Pugh (Southport) (LD)

Will the Minister clarify how much of the £1.5 billion promised by the Government has been delivered and handed over?

Harriett Baldwin

I regularly update Parliament on the precise figures. So far, we are at almost £1 billion. Of course, the payments for the annuitants will continue for the rest of their lives.

A substantial update came in a [written statement on 18 November 2016](#) by Simon Kirby, Economic Secretary to the Treasury, on [Equitable Life Payment Scheme: progress report](#).

The Equitable Life Payment Scheme (“the Scheme”) started to make payments in 2011 and was due to close in 2014. The then Chancellor extended the Scheme in 2014 to maximise the number of payments that could be made. He subsequently announced in

the Summer Budget 2015 that the Scheme would close to new claims on 31 December 2015. From the beginning of 2016, the Scheme began the process of winding down and completing all remaining claims. As the majority of these claims have now been paid, the Scheme has today published its final progress report, which can be found at [www.gov.uk/equitable-life-payment-scheme](http://www.gov.uk/equitable-life-payment-scheme).

[The final report can be found here.](#)

Since then, any written questions have generally shown a willingness on the part of ministers to meet with stakeholders, but with little else to add regarding continuing the scheme. In the Christmas adjournment debate on 20<sup>th</sup> December 2016, in a broader context of aid to other deserving groups, Bob Blackman reiterated the core demands of the Equitable campaign made many times before:

May I also place on the record my concern and that of more than 216 Members of Parliament about the plight of Equitable Life policyholders? It is a long-running scandal. Although the Government have now closed the compensation scheme to new applicants, the issue is far from over. The Government rightly provided £1.5 billion in compensation to people who suffered from the scam, but the former Chancellor, my right hon. Friend the Member for Tatton (Mr Osborne), made it clear that the total sum owed to those people—as a result of saving their money, as was their right, for a reasonable retirement—was £4.3 billion. More than 1 million people have received only 22% of the compensation they are due. A great deal of money still needs to be found to compensate those applicants. That is without dealing with the most frail and vulnerable—those with pre-'92 trapped annuities, who deserve help on compassionate grounds. I am glad that the new Economic Secretary has agreed to meet a cross-party delegation in the New Year to discuss the next steps.<sup>5</sup>

The remainder of this Paper is a description of the underlying Equitable Life story and government responses to it.

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<sup>5</sup> [HC Deb 20 December 2016 c1360](#)

### 3. Equitable Life (EL) failure

EL as an issue has very long historical roots and millions of pounds have been spent on legal action, professional regulatory proceedings, enquiries and reports into what happened, what have people lost as a result, who did what and, crucially, who is to blame. Despite all the elusive efforts to produce one, there does not exist an unchallenged, clear, unique, unambiguous, simple narrative called ‘truth’ acceptable to all parties.

At its most basic level the calculation of loss and even what is, involves not just arithmetic but almost philosophical consideration too.

The Coalition Government legislation enacted the *Equitable Life (Payments) Act 2010*<sup>6</sup> to establish a scheme to pay compensation to qualifying EL members. At a time of extreme financial public sector stringency, £1.5 billion was pledged to compensate them, further sums of £50 million<sup>7</sup> were paid and some welfare benefits for EL claimants have been doubled. EMAG has consistently claimed that this was insufficient and as at February 2016 it is calling for:

The cost to put this right is £2.6 billion plus another estimated £115 million for the pre-92 WPAs.<sup>8</sup>

That Act was the (almost) final part of a series of steps which had led to that point. The rest of this paper charts the route to that point.

#### 3.1 First Ombudsman’s Report into EL (2001-2003)

This Report began in October 2001 with terms of reference focusing on the Financial Services Authority (FSA) actions from 1 January 1999 to 8 December 2000. It was argued by some that the terms of reference were unduly narrow. The Ombudsman has no jurisdiction over ‘conduct of business’ regulation - that is controls on the sale and marketing of long-term insurance. While conduct of business regulation was the responsibility of the FSA and its predecessor bodies, that type of regulation was not delegated from a Government department and so could not form the subject of a complaint to the Parliamentary Ombudsman. The Report concluded:

While, with the benefit of hindsight, I have identified in my report several occasions when FSA in their role as prudential regulator might have done things differently, I have not found that on those occasions the action that they did take was in itself unreasonable (nor indeed that those actions influenced the overall course of events). I am therefore satisfied that the FSA, acting as prudential regulator on the Treasury’s behalf, cannot be said to have acted maladministratively and to have

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<sup>6</sup> The Library briefing on the Bill can be found [here](#).

<sup>7</sup> [Budget 2013](#)

<sup>8</sup> [EMAG website](#) as at 5 February 2016

caused the injustice which the complainant alleges. It follows that I do not uphold the complaint.<sup>9</sup>

EL policyholders attributed the finding of no maladministration to the fact that the main pre-FSA regulator – the Government Actuaries Department (GAD) - had been excluded by the Treasury from the scope of the investigation. There followed considerable political pressure for this restriction to be lifted and thus let the Ombudsman conduct a broader investigation going over the similar sort of ground that another Report into EL – by Lord Penrose - was by now covering. In November 2004 this extension was granted and the second Ombudsman investigation began.

### 3.2 Publication of the Penrose Report (2004).

This review was set up by the Labour Government on 31 August 2003. Its terms of reference were:

To enquire into the circumstances leading to the current situation of the Equitable Life Assurance Society, taking account of relevant life market background; to identify any lessons to be learnt for the conduct, administration and regulation of life assurance business; and to give a report thereon to Treasury Ministers.<sup>10</sup>

When it reported, the most often quoted line from all its 800 pages was "Principally, the Society was the author of its own misfortunes."

The (Labour) government statement upon publication emphasised the multitude of criticisms Penrose had of EL. This response, it was argued, reflected Labour's general lack of sympathy to the call for compensation.<sup>11</sup> However, the main conclusions of the Report (as identified by Penrose himself) included serious criticism of the regulatory system and those, both institutionally and personally, responsible for administering it. Blame was shared amongst the company, the regulators and the professions (accounting and actuarial).

Labour's response to the Report was to announce reviews into most of the areas where Penrose had disclosed poor practice or behaviour -

a review of the governance of mutual life offices, to be led by Paul Myners"

Sir Derek Morris will lead a review of the actuarial profession [and] I have asked the independent Accounting Standards Board to initiate a study into the accounting for with-profits business by life insurers.

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<sup>9</sup> Ibid, para 25

<sup>10</sup> Lord Penrose, *Report of the Equitable Life Enquiry*, HC 290 2003/4

<sup>11</sup> For example, the full terms of reference for the enquiry make no mention of compensation

It is now for the Serious Fraud Office and the companies' adjudication branch of the DTI to decide whether a prosecution should follow.<sup>12</sup>

Amidst all this activity the one thing on which EL members were hoping for – admission of government responsibility – and hence the hope of compensation - there was only silence. The leader from the Daily Telegraph the following day noted:

Despite Ms Kelly's careful version of the report, it holds out precious little hope of compensation to policyholders. The regulators, she said, failed to spot anything amiss because their "light regulation" was the will of Parliament (i.e. the lot opposite), and look at the wonderful things we've done since. She didn't call it heavy regulation, of course.<sup>13</sup>

### 3.3 The Second Ombudsman Report part I (2008)

Just before Penrose reported in July 2004 the then Ombudsman (now a new person) Ann Abraham announced that she would look again at EL. Because of a change in attitude or opinion by the Treasury she could now look at GAD and had all the Penrose evidence to work with. It was not published until July 2008.

EL policyholders did not have to continue far into the Report to find its general conclusion: the Report was called *Equitable Life: a decade of Regulatory failure*.<sup>14</sup> The multi volume Report recommended:

that the Government should establish and fund a compensation scheme, with a view to assessing the individual cases of those who have been affected by the events covered in this report and providing appropriate compensation.

And:

The central story of this report is that this robust system of [financial] regulation was not, in respect of the Society, implemented appropriately – that is, consistently, fairly, and with proper regard to the interests of those directly affected – by the prudential regulators and those providing assistance and advice to those regulators.<sup>15</sup>

### 3.4 Compensation & loss

Since all parties accepted the Ombudsman's Second Report, the case for compensation is now accepted. The question is how much? This has proved to be a complicated issue, not least because the nature of 'loss' in this case is far from simple.

<sup>12</sup> HC Deb 8 March 2004 cc 1253 -1261

<sup>13</sup> Daily Telegraph 9 March 2004

<sup>14</sup> Office of Parliamentary Ombudsman, [\*Equitable Life: a decade of Regulatory failure\*](#), pp9.27; 16 July HC 815 2007/8

<sup>15</sup> Office of Parliamentary Ombudsman, [\*Equitable Life: a decade of Regulatory failure\*](#), Conclusion pp32; HC 815 2007/8

In the [Remedy and Recommendations](#) chapter of her Report the Ombudsman set out what the EL policyholders group (EMAG) suggested was the way forward:

The approach EMAG suggests ... is as follows:

Take the areas where [I have] found maladministration leading to injustice and make a broad brush estimate of the total loss arising to policyholders at 16 July 2001.

Add an estimate of the 'removal costs' in respect of those that have subsequently moved their funds elsewhere. This would include Market Value Adjustments, other penalties and re-investment charges.

Apply a series of appropriate discounts for things like the proportion who were not influenced by published data and those who would not have invested elsewhere and apply those percentages to the total to arrive at a compensation sub-total as at that date.

Add something for outrage and interest to the resulting sum to arrive at a current compensation 'pot', which the Treasury should pay immediately to an appropriate independent scheme administrator.

Distribute that compensation 'pot' upon a policy by policy basis in accordance with a sliding scale based upon values immediately before the big cut of 16 July 2001.<sup>16</sup>

Note, at this stage EMAG left it to the Ombudsman to determine a 'broad brush' estimate of the compensation due. This broad brush number would be adjusted for factors that are difficult to be specific about – 'removal costs', 'appropriate discounts' and 'add something for outrage and interest'. However, during the course of the enquiry EMAG had told the Ombudsman:

"that they had calculated the 'losses incurred by policyholders investing after 1990 at £3.2bn if they would have remained with Equitable or £4.6bn if they would have invested elsewhere'.<sup>17</sup>

The Ombudsman then made the point, perhaps obvious, but which was to become controversial later, that:

Before I would make a recommendation for financial compensation in any individual case, I would need to be satisfied that those who had complained to me, and those who had been affected in the same way by the same

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<sup>16</sup> Office of Parliamentary Ombudsman, [Equitable Life: a decade of Regulatory failure](#), Conclusion pp17

<sup>17</sup> Office of Parliamentary Ombudsman, [Equitable Life: a decade of Regulatory failure](#), Conclusion pp19

maladministration, had sustained injustice in the form of financial loss **as a result of that maladministration**.<sup>18</sup>

The Ombudsman then noted that not everyone had done badly from EL:

As for absolute loss, I am very far from concluding that everyone who has complained to me about the prudential regulation of the Society has suffered a financial loss. Still less do I conclude that everyone who has saved with, or invested in, the Society during the period covered by this report has suffered financial loss.

It seems to me that it is a natural and unavoidable consequence of one of the basic premises of the complaints that have been made about the events covered in this report – namely, that distribution took place of the resources of the Society in what is said to be an imprudent manner which it could not afford – that some people have gained from saving and investing with the Society more than they would have done had any such distribution not occurred.<sup>19</sup>

She pointed out later that a number of policyholders had been able to go to the Financial Ombudsman for relief. Of these about three quarters had suffered what was to become the standard measure of loss – relative loss.

Much of the subsequent argument concerning EL and the debate over compensation is much more easily understood if some of the technical definitions and descriptions and arguments over what compensation is are grasped. The text box below, in a very simple way, briefly glimpses some of the hardest and most complex legal/philosophical/economic concepts in the whole story and which resulted in some of the most impenetrable EL related prose. The issue is ‘what is loss’.

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<sup>18</sup> Office of Parliamentary Ombudsman, [Equitable Life: a decade of Regulatory failure](#), Conclusion pp23

<sup>19</sup> Office of Parliamentary Ombudsman, [Equitable Life: a decade of Regulatory failure](#), Conclusion pp29-30

### 3.5 The Second Ombudsman's Report: part II

Having set out earlier what EMAG wanted, the Ombudsman also set out what 'public bodies' (government) argued against paying compensation.

... in any consideration of a possible recommendation of a remedy involving compensation being paid by any of the bodies under investigation, they contend that there are compelling reasons of policy as to why it is contrary to the public interest or otherwise inappropriate to recommend financial redress to "remedy" any maladministration. Amongst these reasons are those that have led the English courts to shy away from imposing a duty of care on regulators.

It is important to note that, even now, Equitable has not failed. Essentially, the complainants in this investigation seek redress not for the collapse of Equitable, but to compensate for the fact that, following the events that were brought about by the decision of the House of Lords in the Hyman litigation, the non-guaranteed element of their policy values has fallen relative to what they were expecting.<sup>20</sup>

The evidence included the public finance aspect of potentially huge compensation claims against the narrower interests of those compensated:

Any acceptance of a recommendation to make financial compensation would potentially expose the public purse to liability to an unlimited number of claimants comprising existing depositors or investors and potential depositors or investors.

[...] This leads to the related point that any acceptance of a recommendation to pay compensation from the public purse as a result of defective regulation would inevitably result in the diversion of scarce public resources provided by the taxpayer away from important social programmes such as education or health.<sup>21</sup>

The Ombudsman rejected the 'blanket' principle that she could not recommend compensation for the failure of regulators. Each case was taken on its merits and there was no indication that Parliament, which had given her this role, intended it to be disappplied to certain bodies. If that was so, the legislation establishing the Ombudsman's office did not reflect this. She concluded therefore that recommendations as to compensation were part of her office's function and was the principal purpose of her review if it found due cause (maladministration). Having

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<sup>20</sup> Office of Parliamentary Ombudsman, [\*Equitable Life: a decade of Regulatory failure\*](#), Conclusion pp55-56

<sup>21</sup> Office of Parliamentary Ombudsman, [\*Equitable Life: a decade of Regulatory failure\*](#), Conclusion pp55-56

said that the following comments have since proved critical to the ongoing political debate:

I also accept that, when doing so, **it would be appropriate to consider the potential impact on the public purse of any payment of compensation in this case.** That one group of taxpayers might have to underwrite the payment of compensation to another group is something that cannot be left out of all account.

To that extent, I accept the submissions of the public bodies. **I agree that the diversion of scarce public resources is a relevant consideration which should be taken into account and weighed in the balance along with other relevant considerations.**<sup>22</sup>

The Ombudsman's final conclusions include the following passage which both sides drew comfort from:

My second – and central – recommendation is **that the Government should establish and fund a compensation scheme** with a view to assessing the individual cases of those who have been affected by the events covered in this report and providing appropriate compensation.

**The aim of such a scheme should be to put those people who have suffered a relative loss back into the position that they would have been in had maladministration not occurred.**

Addressing relative loss in this way would remedy any financial loss that has occurred and also the loss of opportunities to invest elsewhere than the Society. It is thus the most appropriate remedy for the injustice that I have found resulted from maladministration.

[...]

I also recognise that how such compensation should be calculated will need to be carefully considered, not just in terms of how best to design any scheme but **also in the context of the principles of regularity, propriety, and accountability for the use of public money that are set out in Managing Public Money**<sup>16], 23</sup>

### 3.6 The Chadwick Report (July 2010)

EMAG members may now have had victory in their sights. They had the long-awaited for recognition of regulatory failure and an authoritative recommendation for compensation. They now had to wait for the deliberations of a Judge, Sir John Chadwick, who was asked by the

<sup>22</sup> Office of Parliamentary Ombudsman, [Equitable Life: a decade of Regulatory failure](#), Conclusion pp113-114

<sup>23</sup> Office of Parliamentary Ombudsman, [Equitable Life: a decade of Regulatory failure](#), Conclusion pp138-141 & 145

Coalition Government to devise the principles on which loss should be determined and how it might be translated into compensation.

The successive Chadwick reports illustrated the alarming complexity of the task given him. In summary though, Chadwick came to a far more narrow view of what could be included for compensation than the Ombudsman.

Chadwick questioned the Ombudsman's view as to whether 'cuts' to discretionary payments, i.e. terminal bonuses, could be cuts at all. If they were discretionary, and hence could be zero, where was the 'cut'?

He also came to a different conclusion from the Ombudsman as to whether compensation is due to investors for *potential* losses as the Ombudsman had suggested. Sir John concluded that "relative loss is suffered (and suffered only) by those who have suffered financial loss".<sup>24</sup>

Chadwick pointed out, with regards to the cuts in policy values in 2001 that the Ombudsman recognised that these losses were only partly due to maladministration. The backdrop to these cuts was a sharp fall in world stock markets that all life companies were forced to respond to.<sup>25</sup> He continued:

Any payment of public funds to fulfil a disappointed expectation of gain, rather than to redress a loss, would, in my view, require a strong justification". Thus compensation for the failure of 'reasonable expectations (a significant part of the argument for compensation by policyholders' representatives) should be restricted to "policyholders' expectations not to have policy values cut beyond such level as was appropriate in light of market conditions."<sup>26</sup>

The greatest blow to EMAG members came in his assessment of the amount of loss due to maladministration. The 'cost of maladministration' – as opposed to the size of investor losses – was calculated by actuaries Towers Perrin as part of advice given to the Chadwick enquiry. In a complicated exercise which tried to estimate what the impact of a 'reconstructed' Equitable Life company would have done had it been properly regulated, Towers Perrin found that the cost of maladministration was in the region of **£500 million** (subsequently revised down to £340 million).<sup>27</sup> The main reasoning behind this figure was that if the Society been regulated properly:

- It would not have been allowed to make such generous dividend and bonus payments;

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<sup>24</sup> [Advice to Government in relation to the proposed Equitable Life payment scheme](#), the Office of Sir John Chadwick, July 2010, p116

<sup>25</sup> [Advice to Government in relation to the proposed Equitable Life payment scheme](#) p120

<sup>26</sup> [Advice to Government in relation to the proposed Equitable Life payment scheme](#) p120

<sup>27</sup> [Equitable Life Payment Scheme Actuarial Advice to Sir John Chadwick](#), Towers Watson, see part 4 p69

- It would have had to react to emerging problems more quickly; and
- It would not have been allowed to assume for so long that it could rely on winning the House of Lords case to solve its GAR problems

Put simply, the implication of these findings is, that if the regulators had acted more vigorously it would have been the same policyholders that would have borne the brunt of that regulatory vigilance.

### 3.7 The Government Response (October 2010)

The Government was now in the position of having a broadly agreed way forward (a claims mechanism had been agreed and the compensation scheme was being set up by legislation) but with a substantial distance between the £4 - £5 billion claimed by EMAG (and declared to be credible by the Ombudsman) and Chadwick's (£500 million) estimate. In a letter to MP's the Ombudsman wrote that "the Chadwick proposals seem to me to be an unsafe and unsound basis on which to proceed"<sup>28</sup> however, the Government could hardly just dismiss the findings of the body it had set up to advise it.

The wait to discover what compensation would be due ended when, as part of the 2010 Comprehensive Spending Review, the Government announced that a compensation package of £1.5 billion would be payable to EL policyholders. The payments would be free of tax.<sup>29</sup> The Government made much of the fact that it had come up with a settlement which had eluded the previous administration and that the settlement was made at a time of the most extreme public finance pressure since the War.

Since then, EMAG has argued, first that the original exemption for pre 1992 annuitants was unjust (an argument it won and which resulted in a further £50 million compensation announced in the 2103 Budget) and that policyholders should have been given far more compensation. It is not entirely clear at that stage, how much more EMAG wanted.

The website states that "£1.5 billion of redress, only covers a tickle over 20 per cent of the losses they incurred" so on this basis the bill for full compensation is about £7.5 billion. With £1.5 billion agreed already, this suggests that the future government in the Motion needs to find another £6 billion. On another part of its website however, EMAG seems to put the figure outstanding at £2.8billion.<sup>30</sup>

EMAG now argue that because the "UK economy is said to be recovering" arguments about not paying the full amount because of

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<sup>28</sup> Letter of the Ombudsman to Members of Parliament 26 July 2010

<sup>29</sup> HC Deb 20 October 2010 c54WS

<sup>30</sup> [EMAG website](#)

public fairness no longer apply and that the greater national wealth should be used to pay the full compensation amount.<sup>31</sup>

During the course of the debate on 11 February 2016, the Member sponsoring the debate, Bob Blackman, said

The Government allocated £1.5 billion of compensation to policyholders who had lost money. Some £45 million was then promised and delivered to the pre-1992 trapped annuitants. The Chancellor accepted at the Dispatch Box in November 2010 that the total loss was some £4.1 billion, so the shortfall in compensation is £2.6 billion.<sup>32</sup>

It should be noted that it is not clear what the reference to the Chancellor refers to. The main estimate for the £4 billion was arrived at by EMAG's advisers (see above). It was originally calculated at £4.3 billion and later reduced to £4.1 billion a figure which, the Treasury say, government accepts.<sup>33</sup> However, the value of compensation is rather higher because the payments are tax free<sup>34</sup>, whereas pensions would be taxable. Further, the pension credit payments mean that recipients receive over 40% of their loss.<sup>35</sup> Neither of these factors appear to be present in the £4.1 minus £1.5 calculation.

A Ministerial Statement in November 2015, as the Scheme drew to a close, (December 2015) outlined what had been achieved and recent improvements for ex policyholders:

As at 30 September 2015, the Equitable Life Payment Scheme has now issued payments of nearly £1.08 billion to 915,453 policyholders. This means the Scheme has now paid 88% of eligible policyholders, and 92.9% of the money due. The Scheme will today be publishing a further progress report, which can be found at .

The Scheme has made major efforts to trace policyholders, including extensive electronic tracing methods, writing to policyholders' last known addresses, a national advertising campaign, working with other government departments and liaising with group scheme trustees. As announced at the Summer Budget, a final attempt to trace policyholders has been made through the Department for Work and Pensions (DWP) by the DWP sending letters to all untraced policyholders due £50 or more for whom the Scheme holds a National Insurance number and other data such as their name. These letters have now been sent. Despite this there remain approximately 125,000 policyholders whom the Scheme has been unable to pay.

As the Chancellor announced in the Summer Budget on 8 July, the Scheme will be closing to new claims on 31 December 2015. Any policyholders who still believe themselves to be eligible are encouraged to call the Scheme on 0300 0200 150

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<sup>31</sup> [EMAG website](#)

<sup>32</sup> HC Deb [11 February 2016](#) c1792

<sup>33</sup> HM Treasury; [Equitable Life Payment Scheme design](#)

<sup>34</sup> [Including income, CGT and inheritance taxes](#)

<sup>35</sup> Treasury [press release 1 July 2014](#)

before 31st December 2015. The Scheme can verify the identity of most policyholders on the telephone, which means any payment due can usually be received within 2 weeks. This will not affect the yearly payments made by the Scheme to With-Profits Annuitants, which will continue for the duration of those annuities. The Scheme has written to all With-Profits Annuitants to make them aware of this.

In the Summer Budget, the Chancellor also announced that payments to non-With Profit Annuitant policyholders who receive Pension Credit will be doubled. Any policyholders who have made a claim from the Scheme by the time it closes on 31 December and are receiving Pension Credit on that date will receive this second payment without having to take any action. Policyholders can check their eligibility for Pension Credit using the Government's Pension Credit calculator at <https://www.gov.uk/pension-credit-calculator>.<sup>36</sup>

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<sup>36</sup> Written Statement 3 November 2015 [HLWS280](#)

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