

Section 2

Key documents related to the investigation process

Excerpts from *A Further Investigation of the Prudential Regulation of Equitable Life?* (19 July 2004 – HC 910)

Assessing whether I can and should investigate

12. When considering whether I should investigate a complaint referred to me by a Member of Parliament, I make four assessments.
13. First, I determine whether the body (or bodies) complained about are **within my jurisdiction** and, if so, whether the actions that form the subject of the complaint are ones within my remit. While I understand why a perception might have arisen that I have jurisdiction over anything done by any government or other public body, that is not the case. I may only investigate the administrative actions of those bodies listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (the 1967 Act) – or those acting on behalf of such a body, if those actions are taken in the exercise of the listed body's administrative functions. Furthermore, I may not consider complaints about the actions of bodies within my jurisdiction where such actions are of a type specifically excluded from my remit, principally by Schedule 3 to the 1967 Act. Neither can I consider complaints where I believe that an alternative remedy is available to the complainant through the courts or a statutory tribunal, unless I am satisfied that in the particular circumstances it is not reasonable to expect the complainant to resort or have resorted to that alternative remedy.
14. Secondly, assuming that both the bodies and matters complained about are ones that I have the legal power to investigate, I then assess whether I have been shown any **prima facie evidence of maladministration** by the relevant body or bodies. Many people come to my Office with a profound sense of outrage at the content of government policy or by the effects on them of the relevant legislative framework. However, I am not empowered to question the merits of legislation or of government policy formulated without maladministration or to question the merits of a decision taken without maladministration by a government department or other body in the exercise of a discretion vested in that department or body.
15. Thirdly, if it appears to me that there is evidence pointing to administrative fault on the part of the body or bodies complained about, I consider whether it appears that any such maladministration, if established, may have **caused an unremedied injustice** to the person making the complaint. However strongly felt a sense of outrage or injustice may be as a result of what appears to be administrative error, if other factors have caused the injustice complained about, then it is not for me to investigate such complaints.
16. Finally, I consider whether an investigation by my Office may produce a **worthwhile outcome** to the complainant. This might be achieved by the production of a suitable remedy, which can comprise an apology, improvements to administrative systems, or financial redress, or by the provision of an authoritative explanation of past events or the resolution of outstanding issues.
17. There are three important principles underpinning the work of my Office should I decide, on the basis of the tests described above, that a statutory investigation of a complaint, or of part of a complaint, is appropriate.

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18. I consider that it is particularly important on this occasion for me to set these principles out as clearly as possible:

- first, my Office is **impartial** between the parties to a complaint: I am neither advocate for the complainant nor apologist for those under investigation. I always seek to conduct a rigorous and independent scrutiny of the relevant events in the light of all of the available evidence. If injustice caused by maladministration is found, I consider it the role of my Office to pursue appropriate redress vigorously;
- secondly, my approach to any investigation **cannot benefit from the use of hindsight** or be influenced by my personal opinion – or that of my staff – on what should have been the relevant statutory or policy frameworks. I cannot substitute my view as to what would have been an appropriate policy or consider the merits of a decision taken without maladministration. Instead, I assess whether the relevant public body did what it ought to have done; whether it did anything that it should not have done; and whether it otherwise acted without maladministration; and
- thirdly, a decision to conduct an investigation does **not mean that I have prejudged the outcome** of that investigation. My initial assessment is based on the often limited material available when the complaint is put to me and on whether such material discloses indications that maladministration might have occurred. A decision that a complaint is worthy of investigation does not mean that a finding

of maladministration causing injustice will follow. The outcome of a detailed investigation by my Office may be that I do not uphold the complaint.

Decision

19. In the light of the evidence before me and, having applied the tests described above to that evidence, **I have decided, subject to what I say in paragraph 20 below, to conduct a statutory investigation of the prudential regulation of Equitable Life in the period prior to 2 December 2001.**
20. That investigation will focus on the actions (including failures to act) of the government departments responsible under the relevant legislation for the prudential regulation of Equitable Life. My investigation will, subject to approval of a request I have made of the Government (Annex C), also include the actions of GAD, for reasons that I explain below. **However, should approval of my request not be forthcoming, I will, in the absence of the ability to consider the actions of GAD, review my decision to investigate.**
21. The rest of this report deals with the scope of my decision – the bodies whose actions I propose to investigate and the time period to be covered by my investigation – and the reasons for my decision. The report will also outline the next steps that I propose to take.

Scope of my decision

Jurisdiction

22. It is evident to me – from the substance of many of the complaints about Equitable Life

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referred to me, from many of the representations I received during the consultation process and from press and public comment – that my jurisdiction in relation to the events at Equitable Life is not understood by many people.

23. Many of the complaints and representations I have received concern the actions of Equitable Life itself, the actions of its salesforce and directors, or are about the Society's auditors or accountants. I must make it very clear again that I have no role in considering complaints about mis-selling of policies or about the conduct of the Society. Neither do I have the power to investigate the actions of the FSA, except where it acted on behalf of the Treasury from 1 January 1999 to 2 December 2001, as it is not listed in Schedule 2 to the 1967 Act (paragraph 13). Nor are the actions and judgment of the House of Lords, which I have been asked by some people to 'review', within my remit.
24. My staff will, over the coming weeks, identify those complaints on file and those representations made in the consultation process which raise issues outside my jurisdiction. We will then write to those individuals to ensure that they are aware of the extent of my remit and, where appropriate, we will identify which other bodies might assist them.
25. I will now outline my current jurisdiction in relation to the regulators of Equitable Life and the reasons why I have asked the Government to empower me to investigate the actions of GAD in relation to the prudential regulation of Equitable Life. I will also deal with the request that has been made to me that I should

consider asking that the conduct of business regulators – that is, those responsible for overseeing the sale of policies to individuals and for sales communications between Equitable Life and its potential and existing policyholders – are brought within my jurisdiction.

The prudential regulator

26. I have jurisdiction to investigate the administrative actions of those government departments – the Department of Trade and Industry and the Treasury and their Ministers – responsible in law for the prudential regulation of life assurance companies before 2 December 2001. Both of these bodies were at all the relevant times listed in Schedule 2 to the 1967 Act. The focus of my further investigation will include the actions of those Departments.

The Government Actuary's Department

27. I consider, and am advised, that GAD is not within my jurisdiction. It is not listed in Schedule 2 to the 1967 Act and, indeed, the Notes on Clauses on the Act, prepared at the time of its passage through Parliament, clearly demonstrate an intention to put GAD outside my jurisdiction.
28. That said, it has been put to me in some of the key representations I have received that any future investigation by my Office should include the actions of GAD. Indeed, EMAG put it to me in their written submission (Annex B) that 'any further investigation would be meaningless without such jurisdiction'.
29. My decision to ask for the inclusion of GAD within my jurisdiction has been informed by the assessments of the role and performance of

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GAD, made with the benefit of hindsight, in the Penrose report. These assessments may or may not be correct but they provide material that makes it arguable that there was maladministration by GAD. Examples include:

- the ‘key finding’ of Lord Penrose that ‘there was a general failure on behalf of the regulators and the GAD to follow up issues that arose in the course of their regulation of the Society’ (paragraph 240 (11) of chapter 19); and
- Lord Penrose’s specific assessment that ‘although GAD brought in a more detailed style of scrutiny in the early 1990s, the standards of scrutiny still impress me as complacent, lacking challenge and hesitant in criticism and in following up on any criticism made. This was, indirectly, reflected in a lack of robustness in the regulatory process’ (paragraph 160 of chapter 19).

30. These observations by Lord Penrose seem to me to indicate that the advice provided by GAD, and the actions it took in support of that advice, may have been important to the way in which the prudential regulator undertook its functions. In addition, Lord Penrose’s criticisms of GAD might indicate that GAD was, at least arguably, maladministrative in performing its functions.

31. I recognise – as does Lord Penrose himself – that Lord Penrose was applying different tests in relation to GAD to the ones that I must apply, and that his approach was informed by hindsight. I also recognise that the role of GAD has changed substantially since 26 April 2001, when its role in relation to advising the

regulators of the insurance industry was transferred to the FSA. I am also aware that some of the current work of GAD is not of the type normally subject to my scrutiny.

32. However, I consider that there is sufficient initial evidence to suggest that the actions of GAD are key to an assessment of whether maladministration by the prudential regulator caused an unremedied injustice to complainants. I believe therefore that GAD’s actions must be brought within my jurisdiction if my investigation is to be meaningful.
33. I consider that the recent change in GAD’s responsibilities does not constitute an insurmountable problem. As explained in my letter requesting the addition of GAD to my jurisdiction (Annex C), if it is considered that such an addition by Order in Council would be undesirable in relation to GAD’s current responsibilities, the relevant entry in Schedule 2 to the 1967 Act could be accompanied by a Note to that Schedule. This Note could limit my jurisdiction to GAD’s actions before 26 April 2001.

Conduct of business regulation

34. It has been put to me – not least by EMAG – that I should also consider whether my jurisdiction should be extended to include those bodies responsible prior to December 2001 for the regulation of the conduct of life insurance companies’ business.
35. I understand why this is considered important. Many of the representations I received during the consultation exercise – and the referred complaints we hold on file – focus on conduct of business issues. Such complaints particularly

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concern alleged mis-selling, alleged failures to provide clear information to existing and prospective policyholders, and the performance of the regulatory bodies in exercising their responsibility to oversee such matters.

36. However, I am advised that the relevant regulatory bodies – the Designated Agency to which the Secretary of State transferred his responsibilities, the Securities and Investments Board (SIB – now renamed the FSA), and the self-regulatory organisations (particularly the Personal Investment Authority) – are not bodies which can be brought within my jurisdiction by Order in Council.

37. Section 4(3) of the 1967 Act provides that only public bodies that meet certain criteria can be added to my jurisdiction by Order in Council. Bodies not meeting these criteria – which include the SIB-FSA and the nowdefunct self-regulatory bodies – could only be added to my jurisdiction by primary legislation.

38. While the Government has said that it will consider a request from me for the addition of GAD to my jurisdiction, it has made no such statement in relation to the conduct of business regulators. Moreover, I do not think that it would be in the public interest – or in the interest of policyholders – to delay my investigation with the aim of bringing the conduct of business regulators within my jurisdiction.

39. Furthermore, while many people have suggested that it would be desirable for me to have jurisdiction over those bodies historically responsible for regulating conduct of business

matters, it does not appear to be a widely-held view that the absence of such powers would render worthless any investigation conducted by me.

40. In any case, my powers to obtain evidence, under sections 8 and 9 of the 1967 Act, are wide. I would use those powers to interview witnesses and examine documents related to conduct of business matters should I consider that that would assist my investigation.

Timeframe of investigation

41. Respondents to the consultation suggested a number of timeframes for any future investigation:

- most Members of Parliament and many policyholders suggested that any further investigation by me should cover the same period as that covered by the Penrose report;
- the action group representing with-profits annuitants suggested that any investigation should start ‘at least from 1973’ as this was the time they allege that ‘Equitable’s estate began to be dispersed’;
- EMAG suggested ‘at least from 1987’; and
- some MPs and individual policyholders suggested that ‘no artificial limits’ should be placed on the timeframe for any investigation.

42. I recognise that all of the timeframes outlined above are based on an assessment of when Lord Penrose suggests that Equitable Life’s problems originated. I am minded to focus on events

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relevant to the closure of Equitable Life to new business. I propose to invite further representations on this point. In the interests of fairness I shall keep in the forefront of my mind the impairment of recollection – which is the inevitable consequence of the passage of time since the material events – and the extent of the availability of material documentation.

43. That said, I have no jurisdiction over the actions of the prudential regulators on or after 2 December 2001 and therefore my investigation must conclude at the latest with that date. I will revisit the findings of my first report in the light of the inclusion of GAD within my jurisdiction, should approval of my request be forthcoming, and in the light of the evidence disclosed by my proposed second investigation.

Prima facie evidence of maladministration

44. As explained in paragraphs 1 and 2 of Part I of my first report to Parliament, The Prudential Regulation of Equitable Life, many of the complaints about Equitable Life referred to me or my predecessor by Members of Parliament were about matters that were not within my jurisdiction.
45. In addition, many complaints, understandably, disclosed more information about the perceived injustice suffered by complainants than about any alleged maladministration, by bodies in my jurisdiction, which may have caused this injustice.
46. When seeking to identify whether there is sufficient material before me to indicate that there may have been maladministration on the part of the prudential regulator and GAD, I have sought to focus my attention on two principal

sources: the Penrose report and the representations made to me in the consultation exercise.

Penrose

47. I do not intend to repeat here all of the criticisms of the regulators contained in the Penrose report – or begin to assess whether these were directed at the adequacy of the regulatory system or towards operational failures by regulators. I will consider all of the relevant material in that report as part of my investigation.
48. However, I consider that the general criticisms of prudential regulation made by Penrose (in addition to those mentioned above at paragraph 29), which can be viewed as prima facie evidence of maladministration, include:
- **that the regulators were not adequately resourced to fulfil their obligations:** the ‘DTI insurance division was ill-equipped to participate in the regulatory process. It had inadequate staff, and those involved at the supervisor level in particular were not qualified to make any significant contribution to the process... were not individually equipped with specific relevant skills or experience to assess independently the Society’s position’ (paragraph 158 of chapter 19);
 - **that the regulators as a result did not properly undertake their functions:** ‘it is difficult to avoid the view that regulation was falling between two stools, the major player in discussions having no regulatory power and the empowered regulator having little part in the processes that would have

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instructed regulatory action’ (paragraph 252 of chapter 16);

- **that on several specific occasions information that might have led to regulatory action was ignored or not actioned by the regulators or GAD** (examples throughout the report);
- **that the regulators and GAD allowed the chief executive of Equitable Life also to hold the post of appointed actuary:** ‘regulation was based on an overreliance on the appointed actuary who... was also the chief executive over the critical period from 1991 to 1997, despite a recognition for the potential for conflict of interest inherent in this position’ (paragraph 240 (7) of chapter 19);
- **that the regulators and GAD did not keep pace with developments in the industry** and that thus ‘regulatory solvency became an increasingly irrelevant measure of the realistic financial position of the Society’;
- **that the regulators and GAD did not properly assess the impact and adequacy of measures being used to improve Equitable Life’s solvency position:** ‘the regulators... failed to give sufficient consideration to the fact that a number of the various measures used to bolster the Society’s solvency position were predicated on the emergence of future surplus’ (paragraph 240 (10) of chapter 19); and
- **that the regulators and GAD failed to assess the reasonable expectations of policyholders in terms of the effect of**

these on Equitable Life’s ability to meet its liabilities or to assess properly the impact of the House of Lords’ judgment: ‘there was... no consistent or persistent attempt to establish how [Policyholders’ Reasonable Expectations] should affect the acknowledged liabilities of the Society’ (paragraph 240 (9) of chapter 19) and ‘it appears that the regulators proceeded on the assumption that, if anyone were disadvantaged by the [Court’s] decision, compensation would be available’ (paragraph 115 of chapter 18).

Other criticisms

49. EMAG, in their formal submission and in the template letters prepared for their members and supporters, also made the following specific criticisms of the regulators and GAD:

- ‘Equitable were permitted by the various Government regulators to publish financial results and projections that were grossly misleading to its members and to prospective new customers’;
- that the regulators were aware of the true, weak financial position of the Society – for example, it is alleged that GAD knew about the ‘practices of dubious actuarial merit’ employed by the Society as far back as 1990 – and ‘did nothing about it and by their silence connived in the Equitable Board’s misleading representation of its finances’;
- that the regulators permitted over-bonusing ‘which was a contributory factor in the Society’s demise and in the losses sustained by those who held policies on 16 July 2001’

and ‘did not identify that guaranteed annuity rates would become a problem’; and

- other ‘questions raised by Lord Penrose’s report’, as set out in Part IV of EMAG’s written submission (Annex B).

50. Andrew Tyrie MP, in his submission on behalf of the Official Opposition (Annex B), concurred with much of the above, as did the Liberal Democrats in their submission. Mr Tyrie also said that the regulators ‘failed to recognise the inadequacy of the reinsurance policy negotiated to cover reversionary bonuses for [Guaranteed Annuity Rates] in late 1998 and early 1999’.

51. In my view, the criticisms contained in the Penrose report and the evidence put forward by the action groups and by opposition spokespeople constitute sufficient material to warrant an investigation into the way in which the prudential regulators and GAD discharged their responsibilities.

Unremedied injustice

52. It is very clear to me that many thousands of policyholders and former policyholders feel greatly aggrieved by events at Equitable Life. When reading the 1,603 representations from individual policyholders, I could not but be struck by the considerable distress caused by these events to many people from very diverse backgrounds, not all of whom have other sources of income.

53. The representations I received cited significant financial hardship and loss caused, in particular, by cuts in annuity rates and in the value of individual policies and pension funds. One respondent said that he had lost almost 40% of

his savings; another that more than 35% of her income had been lost as a result of the cuts progressively imposed since July 2001 on Equitable Life annuities. These individual stories are not by any means unique. The consultation process gave me a valuable opportunity to hear directly from the many people most acutely affected by the situation at Equitable Life.

54. I have received many representations, describing the situations in which individual policyholders now find themselves – whether suffering reduced current income, a likely reduction in future retirement income, or uncertainty and financial instability – and the outrage felt by many at the events that precipitated these situations. Most of these share a sense of anger that government bodies did not protect them from the unfolding events.

55. Section 5 of the 1967 Act allows me to consider complaints in cases where a member of the public claims to have suffered an injustice in consequence of maladministration by a body in my jurisdiction. It is clear to me, from the individual representations I have received, that a large number of people claim to have suffered such an injustice, which they believe has been caused by maladministration on the part of the prudential regulators and GAD.

Worthwhile outcome

56. I now turn to the arguments about whether a further investigation by my Office would be likely to provide a worthwhile outcome.

Arguments for my intervention

57. During the consultation process, there were broadly five arguments put forward in favour of my conducting a further investigation:

- first, it was suggested to me that only the Parliamentary Ombudsman has sufficient standing and expertise to adjudicate on whether maladministration by government bodies has caused an injustice to individual citizens. Therefore, a further investigation by me was necessary to resolve this question;
- secondly, it was put to me that, even were this not the case, Lord Penrose either could not, or chose not to, address questions of maladministration and of redress for any such maladministration, although he had identified instances of regulatory failure – and that, accordingly, only I could now recommend compensation from public bodies;
- thirdly, it was submitted that, although my remit might be limited to certain government bodies, there were no alternative remedies available to policyholders for regulatory failure. It was unreasonable to expect them to pursue the one potential alternative course of action – uncertain and costly litigation against the Government or the regulators;
- fourthly, it was argued that, unless finality was brought to the Equitable Life affair, public confidence in the financial services industry would continue to be eroded and younger generations would be dissuaded from investing in pension provision; and

- finally, it was put to me that a failure to act would lead to a loss of public confidence in, and respect for, my Office and that this would reflect badly more generally on the wider reputation of Parliamentary oversight of government bodies and of the protection afforded to consumers by Parliament.

Arguments against my intervention

58. Six broad arguments were put to me as reasons for not conducting a further investigation:

- first, it was suggested that to conduct a full investigation would be costly to the public purse, involve complex matters about which my Office was not best placed to make judgments, and would take many years to complete;
- secondly, it was argued that other bodies – principally the courts or the Financial Ombudsman Service (and the Financial Services Compensation Scheme) – were more appropriate channels for resolving individual claims or complaints;
- thirdly, it was put to me that my jurisdiction was so limited as to make any worthwhile outcome impossible and that I would only be raising expectations falsely were I to conduct a further investigation;
- fourthly, it was suggested that there was no evidence of operational regulatory failure but rather failure of an inadequate system established by Parliament – matters about which it was said that I could not comment, or on which I could not adjudicate;

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- fifthly, it was put to me that to conduct a further investigation would be ‘oppressive’ to the staff and former staff of regulatory bodies who would have to undergo a fourth scrutiny of the same matters (the Baird report, my first investigation, and the Penrose inquiry being the other three) and would, for the FSA in particular, be a distraction from its current core business; and
- finally, it was suggested that, by conducting a further investigation, I would be ‘opening the floodgates’ to a range of other complaints about failures in the financial services industry and allied sectors, which would divert my Office from its core business.

The Penrose report as the basis for my investigation

59. Before detailing my assessment of each of the principal arguments put to me as outlined above, I wish to deal with one related aspect of some of the representations I have received – namely, the degree to which the Penrose report provides a factual basis on which to draw upon in my investigation.
60. The choice before me is either to conduct a further statutory investigation of the relevant events or not to conduct any such investigation. Where Government Departments or officials accept findings of fact by Lord Penrose, this may shorten my process of investigation. However, I cannot, as has been suggested by some, simply take the Penrose report as ‘findings of fact’ and then apply an assessment of whether those ‘findings’ disclose

maladministration on the part of the prudential regulators and GAD.

61. Lord Penrose, when introducing his conclusions in paragraph 2 of chapter 19 of his report, said:

As throughout this report, I have not qualified my comments by reference to professional standards current at the time events occurred: that is a matter for the courts and the professional bodies exercising disciplinary functions. Further, I have the benefit of hindsight, and I have not restricted the comments made to those matters that can be shown to have been within the knowledge or contemplation of individuals or groups at material times. In seeking material from which lessons can be learnt for the future it would be impossible to restrict oneself to what individuals knew or ought to have known at any time in the past.

62. However, that is exactly what I must do: abandon hindsight and assess whether the actions of the bodies under investigation complied with the relevant statutory and regulatory provisions current at the time. In his letter to me (Annex B), Lord Penrose himself recognises this critical difference:

In carrying out your function you will, I think inevitably, have access to different evidence from the evidence I had available, and the issues you will have to consider, within the terms of your remit, will, equally inevitably, be different from those that engaged my attention as reporter. It would have been, and remains, outside the scope

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of my remit as reporter to form and express views on the issues you have to consider.

63. In addition, the representations I have received make it clear that key parties to the relevant events do not accept that Lord Penrose's narrative is correct in important respects and/or represents an undisputed understanding of events.
64. Thus, while I would have regard to all relevant evidence, including the papers of the Penrose inquiry, I have to conduct a full, statutory investigation based on the approach I have outlined in paragraph 18 above.

Assessment

65. Turning first to the arguments put forward in favour of a further investigation by my Office, as set out in paragraph 57 above, it is clear to me, with respect to the first two arguments, that the Penrose report did not – for whatever reason – deal with questions of maladministration or of redress. Given my statutory function, I find the arguments that only the Parliamentary Ombudsman can now address such complaints, and deliver a verdict on whether maladministration has occurred, highly persuasive.
66. I recognise that there are other potential remedies available to policyholders with respect to the other actors central to events at Equitable Life. For example, there is legal action by Equitable Life pending against the Society's former directors and auditors and the Financial Ombudsman Service is dealing with thousands of complaints about mis-selling by the Society's staff. I also understand that action groups are considering legal action against the Society in

relation to the position in which with-profits annuitants find themselves. However, it does not seem to me reasonable to suggest that individual policyholders, often now in straitened financial circumstances, should be expected to take uncertain and expensive legal action against the prudential regulators or GAD. My Office was created to provide access to administrative justice that is free to those seeking it and I can see no reason why the existence of courts, whether domestic or European, should preclude me from assisting citizens whose complaints are ones that I can investigate. Moreover, I am not persuaded that an alternative remedy exists in those courts to which it would have been reasonable, in these particular circumstances, to expect the complainants to resort or to have resorted. The legal advice to me, in relation to the prudential regulators, is that those with a claim to have suffered an injustice in consequence of maladministration are unlikely to have any legal remedy available to them.

67. In relation to the arguments about public confidence both in my Office and in the financial services industry and about the protection afforded to consumers by Parliament, I have some sympathy with the latter arguments. However, I do not think that it is necessary to deal with them in detail here as the other arguments I have already discussed are, in my view, sufficient in their own right. I would say two things about these arguments. First, it is a matter of speculation as to what effect any decision I might make will have on the stability of Equitable Life and of the wider financial services sector. Secondly, with respect to the standing of my Office, while I recognise the strength of feeling that underpins such

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matters, as Parliamentary Ombudsman my role is to discharge my statutory responsibilities having regard both to the circumstances of each case and to the wider public interest. It would be entirely inappropriate for me to be influenced by current or prospective press comment or indeed by any other form of external 'pressure'. Such factors have had, and will continue to have, no influence on my judgment.

68. I now turn to the arguments put forward for my not conducting a further investigation into the regulation of Equitable Life, as set out in paragraph 58 above.

69. I accept that any further investigation by my Office will have a cost to the public purse. However, administrative justice, like any other kind, has a cost. I will address issues about the costs that will inevitably be involved when asking Parliament via the Treasury to provide the resources necessary to conduct my investigation.

70. Similarly, I do not find persuasive the argument that I should not conduct a further investigation purely because the matters which would be the subject of that investigation are complex or controversial. Resolving complex and controversial complaints is at the core of the role of all Ombudsmen. I also recognise that any investigation I conduct will take some time. However, that is not in my view a compelling reason for not conducting it.

71. I have already explained in paragraph 66 above why I do not think that alternative remedies exist to which it would have been reasonable to expect complainants to resort to seek redress

for any alleged maladministration on the part of prudential regulators or GAD.

72. I am acutely aware that, among the relevant players, I have jurisdiction only over the prudential regulators and, subject to approval of my request for it to be included in my jurisdiction, over GAD. I also would not wish to raise the expectations of complainants that I will inevitably find in their favour – that is only one of a range of possible outcomes.

73. I recognise that it may be more difficult to assess questions of causality and redress, should I find maladministration, without being able to judge the actions of other key players. However, I have already explained that I consider that I should not avoid involvement in issues purely because they are complex. Furthermore, I am not persuaded by these arguments that a worthwhile outcome to a further investigation by me is impossible.

74. The question of whether there may have been regulatory system failure, as has been argued, rather than operational failure is something that I can only determine by conducting a full investigation. In my view such arguments only serve to reinforce the desirability of such an investigation.

75. I recognise that staff and former staff of regulatory bodies will not welcome another inquiry into events at Equitable Life. However, I must balance the interests of individual public servants against the wider public interest and the interests of the hundreds of thousands of people affected by the events at Equitable Life. I will take reasonable steps to mitigate the effects of any further investigation on the staff

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involved and will have regard to the passage of time since the relevant events took place. While I recognise that time will be required by FSA staff to respond to enquiries from my Office and that this will have resource implications for the FSA, I consider that such implications do not outweigh the public interest arguments underpinning my decision to conduct a further investigation.

76. Finally, I am not persuaded by the argument that, in deciding to conduct a further investigation into the regulation of Equitable Life, I would somehow be ‘opening the floodgates’ to many more similar classes of complaint. First, I have no jurisdiction over any of the bodies responsible for financial services regulation after 2 December 2001. Secondly, although I have discretion to investigate complaints put to the referring Member of Parliament more than twelve months after the complainant first had notice of the matters complained about, there need to be compelling reasons for such delay before I will exercise that discretion. It therefore does not strike me as likely in this context that I will receive considerable numbers of complaints about other financial services issues that I could be persuaded to investigate. Even were this to happen, it is not a persuasive argument that I should refrain from undertaking an investigation into one situation because I might be asked to conduct another investigation into other situations. I must treat each complaint on its merits.
77. Furthermore, it is clear to me that Equitable Life is a ‘special case’ in relation to complaints about regulatory failure – a position recognised by the Treasury when it commissioned the Penrose

inquiry to look at these significant and exceptional events. That inquiry, as I have explained, did not address questions of maladministration and redress. My investigation will address these important questions.

Next steps

78. I have explained why I consider that there is sufficient material before me to indicate that there may have been maladministration and sufficient indications of unremedied injustice to merit a further investigation of the prudential regulation of Equitable Life. I have also considered the arguments about whether such an investigation is in the public interest or is likely to produce a worthwhile outcome. In the light of that, I have decided, subject to agreement that GAD is brought within my jurisdiction, to conduct a further investigation.
79. In conducting that investigation, my aim is to be as transparent and flexible as possible, given the legislative framework within which I work. Although I am required by section 7(2) of the 1967 Act to conduct my investigations in private, I intend that, where possible, all relevant parties will be invited to produce evidence to assist me in the process of establishing the facts. I will consider the degree to which I can publish background information and other evidence in due course and will involve those submitting such evidence in that consideration.
80. In the coming weeks, as indicated above, my staff will write to those individual complainants with issues outstanding from their representations or on their current complaint file. I will also engage in discussions with Government over the extension of my jurisdiction to cover GAD and on the additional

**Excerpts from *A Further Investigation of the Prudential Regulation of Equitable Life?*
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resources I will need to support my investigation. I will also invite further representations on the timeframe to be covered by my investigation (paragraph 42).

81. I intend to establish a full, designated team of experienced investigators, supported, where appropriate, by expert actuarial, accounting, legal, regulatory and insurance advisers.
82. I will consult MPs and policyholder action groups on the selection of individual policyholders as lead complainants, representing the principal different classes of Equitable Life policyholder, and will inform all interested parties of the process for conducting the investigation, once it has been determined.
83. I cannot at this stage be specific about how long my investigation will take. While much can be done to prepare for an investigation immediately, the central question of whether GAD will be brought into my jurisdiction will undoubtedly take some time to resolve.
84. However, I hope that this investigation can be conducted within a reasonable timetable, as I am conscious that significant numbers of people – many of them elderly – are in difficult financial circumstances now.
85. To that end, I do not intend to produce a wide-ranging, academic survey of the performance of the broader regulatory system within which Equitable Life sold and managed its policies. My investigation will be focused instead on assessing the validity or otherwise of what I consider to be the key criticisms of the prudential regulators and GAD against the

evidence contained in the Penrose papers and in the other evidence submitted to me.

86. This I will do with a view to determining whether maladministration by those bodies caused policyholders and former policyholders of Equitable Life an unremedied injustice.
87. I will keep Parliament informed of progress.

**Ann Abraham
Parliamentary and Health Service Ombudsman
19 July 2004**