

VIEW	
Complainant	Mr G
Firm:	The Equitable Life Assurance Society ("Equitable Life")
Complaint reference:	
Date:	7 September 2005

complaint

Mr G has complained about advice given to him in February and March 1998 by a representative of Equitable Life to take out a personal pension plan. Mr G said in his 16 November 2002 complaint letter to Equitable Life:

"I was visited at my home address on 6 February 1998 by an Equitable Life representative... and was recommended, given my expressed wish to purchase a low risk personal pension plan, to invest in the Equitable Life 'with-profits' plan. This is summarised in the letter from [the representative] dated 23 March 1998. At no time during these discussions or subsequently was the Guaranteed Annuity Rate (GAR) issue disclosed, and the Equitable Life Assurance Society was presented as having a strong financial base. Given my expressed aversion to risk I was recommended to invest in the 'with profits fund' which I was advised would provide steady, if not spectacular, growth to policy maturity".

circumstances

Mr G telephoned Equitable Life on 26 January 1998, after seeing an advertisement, and asked for information on its Personal Pension Plan. Equitable Life replied by letter on 28 January 1998 with information on its Personal Pension Plan which referred to the options of investing in with-profits or unit-linked plans, and enclosing illustrations for gross investments of a lump sum of £5,000 plus monthly sums of £200 up until Mr G's sixty-fifth birthday. The letter said:

"I have passed your enquiry on to... one of our representatives, who will be responsible for providing you with appropriate advice and any further information you may require".

The representative completed a fact find which stated:

"Client wishes to save for retirement and take advantage of tax relief available. Looking for smooth consistent returns".

He wrote in the fact find, under "Recommendations":

"Recommend that Client establishes PPP to save for retirement and take advantage of tax relief. W/P should provide smooth consistent returns".

In an addendum to the notes, he wrote:

"Investment spectrum left with C[lient] and discussed with [the representative]".

[The representative] wrote in a report on 17 December 2002:

“At the time of sale I had no indication that the Equitable With Profits Fund was anything other than a Low/Medium investment + I am confident it matched Mr G’s risk profile based on my understanding of the Equitable With Profits Fund at the time”.

Although the wording of [the representative’s] letter of 23 March 1998 was that *“The following objectives were identified at our meeting ... 3. You would like to invest in with profits”*, I believe from the evidence as a whole that the balance of probabilities is that [the representative] advised Mr G both on whether to take out a Personal Pension Plan and also on whether it was suitable, given his wish for *“smooth consistent returns”*, for his investment to be made in the with-profits fund.

The policy was given a starting date of 4 March 1998. [The representative] sent his written statement of recommendations to Mr G on 23 March 1998, and Equitable Life sent him (as required by the PIA regulations) a notice of his right to cancel the policy within 14 days of receipt; it sent this notice on 27 March, enclosing a Key Features document for the Personal Pension Plan. The pages of this Key Features document were dated *“1.98”* except for the final page which was dated *“3.98”*.

Mr G signed a form to transfer his Personal Pension Plan from Equitable Life to Norwich Union on 8 August 2001 and the transfer was completed on 5 November 2001. This transfer was subject to the deduction of a percentage as a financial adjustment, on the ground that it was not a contractual event.

the state of knowledge of Equitable Life’s senior management

Evidence of the state of knowledge of Equitable Life at the relevant time is detailed in the Penrose Report. Chapter 9 refers in paragraph 119 to a meeting of Equitable Life’s Audit Committee on 11 March 1998 which included *“Consideration of brief reports on*

- *the Society’s approach to the management of risk*
- *the main risks faced by the Society”*, including *“discussion of the section of the report entitled “Risks and their management” and of the list of risks within that”*. Paragraph 124 says that in a letter on 30 September 1998, responding to questioning about the GAR issue, one of the Directors, Roger Bowley, *“pointed out that the risks associated with guarantees had been included in the list of risks”*.

Chapter 1 of the Penrose Report records in paragraphs 8 to 12:

“The risk of general conflict with the Society’s annuity guarantee policyholders was raised internally in a paper prepared for the product investigation team (PIT) meeting on 2 April 1998 by Chris Matthews, the assistant general manager responsible for running the actuarial projects department (APD). ...

Matthews referred to the practice that had obtained of incorporating an ‘annuity rate guarantee’ in most of the Society’s recurrent single premium with-profits pension contracts written up to July 1988. He drew attention to the fact that, in current financial circumstances, the annuity rate arising from these provisions was relatively generous and, with improving mortality, and a generally low interest rate climate, could be up to 20% higher than the Society’s current annuity rates.

Matthews reported that the Society’s stance, when challenged on its treatment of annuity guarantee policyholders, had been to state that the proceeds of the policy would comprise at least the product of the sum of the contractual guaranteed benefits and declared

reversionary bonuses accrued times the guaranteed annuity rate. Final bonus would be adjusted to take account of the cost of providing the guarantee. He pointed to two problems with that approach:

- policyholders had received annual statements showing the full fund value, subject to an explanatory note about guaranteed annuity rates; and
- past illustrations had shown the full fund value applied equally both to guaranteed and contemporary current annuity rates.

He identified a risk that the Society would come under greater pressure on the subject. He referred to media interest. He invited discussion, and proposed three approaches that the Society might take:

- continue with the existing policy and risk a case ultimately landing up in court;
- concede on a case by case basis if it were felt that the client had a strong enough case based on misinformation in the past;
- recognise that there was a problem for particular (identifiable) policy classes and have reduced bonus rates for such classes.

It is clear from Soundy [an actuary in Matthews' APD team]'s statement to the inquiry and the contemporary correspondence that by April 1998 the issue was not novel. By that date there was a developed stance to adopt in the face of challenge, and a range of possible responses had been identified. The notes of the PIT meeting recorded that it was agreed that the Society would continue to defend its approach but, as a last resort and only if approved by APD, would apply guaranteed annuity rates to the full fund value as a gesture of goodwill. So far as the PIT was concerned, the general policy line could be held, and settlements reached on an ad hoc basis. It was agreed that the wording of policyholders' annual benefits statements would be reviewed. The memoranda recording PIT meetings were circulated among senior management of the Society".

We have now inspected a copy of the original document by Mr Matthews, which is dated 27 March 1998, plus the minutes of the meeting on 2 April 1998. These confirm the above description by Lord Penrose, and appear to show that Mr Headdon took a significant part in the meeting.

Evidence available to us confirms that Equitable Life had indeed by then developed a stance to adopt in the face of challenge on this issue. In a letter to a Mrs A on 20 March 1998, concerning her policy, it wrote:

" ... would make the following comments.

I thought it would be helpful by way of background to set out the rationale behind the Society's approach to guaranteed annuity rates and fund values.

The value of the guaranteed annuity rates can be summarised by the following statement.

The amount of annuity payable will be the greater of

(A) Guaranteed Fund Value (1) x Guaranteed Annuity Rates

AND

(B) Total Fund Value x Current Annuity Rates.

(1) The Guaranteed Fund Value does not include the Non-Guaranteed Final Bonus.

Effectively what we are saying is that you can choose the Guaranteed Annuity Rates option but a lower final bonus applies if that option is chosen. The net result is that your [sic] purchases an annuity using non-guaranteed annuity rates, final bonus and current annuity rates.”

After several further paragraphs of explanation, the letter went on:

“The guarantees under the contract still have some value in that the maximum adjustment on retirement cannot be more than the final bonus element of the policy value i.e. the annuity can never be less than that calculated by applying the guaranteed annuity rate to the total fund value excluding final bonus. An attempt is made, therefore, to ensure that the benefits payable are at least as high as those which would have been payable had the Society been forced to invest in the gilt edged stocks as described in c) above. In practice, the benefits are likely to be much higher. In other words, the policyholder has benefited from the extra investment freedom available, but had the returns from equity based products been lower he would still have received the benefits of the guarantees under the contract”.

In a letter to a Mrs B on 29 July 1998, concerning her policy, it wrote in exactly the same words as those quoted above, together with other differently worded paragraphs that gave a very similar explanation.

It is therefore evident that by 20 March 1998 at the latest, Equitable Life was using a standard letter to a number of complainants in response to their queries on Equitable Life’s treatment of annuity guarantee policyholders. I request Equitable Life to supply the Financial Ombudsman Service with the date or approximate date when Equitable Life started to use such a standard letter.

findings and conclusions

By 20 March 1998, or such earlier date as Equitable Life started to use such a standard letter, I believe that Equitable Life was aware that it was definitely subject to potential challenge on the GAR issue and that the degree of Equitable Life’s culpability in not informing potential new policyholders of the GAR issue from that point onwards was not significantly different from the degree of its culpability once it actually did take legal advice in September 1998 and was advised that it had a possibility of losing. When the board did take advice on the identified issue is not decisive. If Equitable Life was aware of the risk but failed to take adequate steps to face up to it, the fact that Equitable Life in the event chose to proceed without taking legal advice until September 1998 does not excuse it from failing to disclose the risk to potential new policyholders.

If Equitable Life had taken legal advice in March 1998, I believe that that advice would have been in all significant respects identical to the advice that was actually received in September 1998, namely that Equitable Life ought to win, but there was a real risk that it would lose.

I therefore believe that by 20 March 1998 at the latest, the state of culpability of Equitable Life’s senior management was in all material respects the same as that in the lead case of Ms E. In the light of the state of knowledge of Equitable Life’s senior management, and since the Reason Why letter of 23 March 1998 and the “cooling-off” letter of 27 March 1998 were subsequent to 20 March 1998, my view is that Mr G’s complaint should be upheld and that compensation (if any) should be calculated in the same way as for the lead case of Ms E, in accordance with the decision recently issued by the chief ombudsman. Some time

ago Mr G's case was agreed as a "lead case" in respect of a "GAR-Related Claim" category. It is also my view that cases concerning with-profits investments that are materially similar to Mr G's in that they refer to a date in 1998 of 20 March 1998 or later should also be dealt with in the same way as the lead case decided by the chief ombudsman.

Please let me know no later than 7 October 2005 if you are prepared to accept my view. If you are not prepared to accept it, please let me know as soon as possible, giving your reasons and providing any additional evidence in support of your case that you would wish us to consider. If you need more time, please let me know why as soon as possible.

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Adjudicator