Media and Judicial Comments on the Blake Report on the Compromise Scheme Proposal of the Equitable Life Assurance Society

Equitable Life: A Brief History

• 1957: First pensions with guaranteed annuity rates sold, encouraged by annuity rules. • 1982: Law changed to allow pensioners the chance to shop around for an annuity. Equitable Life could have stopped offering guarantees, but continued. • 30 June 1988: Last pensions with guarantee sold as personal pensions introduced. • 1 Jan 1994: Interest rate fall enough for the guarantee to become valuable. Eq. Life stops honouring guarantees, cutting final bonuses on 'With Profits' policies to match the increase from the guarantee. • Nov. 1998: A government actuary recognises guarantees could cost the industry billions. Equitable Life sets aside £250m, with a 'worst case scenario' of £1.59bn. • 16 Jan 1999: Complains prompt Eq. Life to fund a test case. • 6 July 1999: Eq. Life argued that its approach was in line with the principles of the industry. Wins case, but loses in House of Lords. • 20 July 2000: House of Lords Rules say Eq. Life must fully fund guarantees funded by cancelling seven months bonus payments. Company put up for sale.	• 5 Dec. 2000: Talks with Pru fall through. Company closes doors to new business. Alan Nash, chief executive, resigns. Chris Headon, appointed actuary, takes over. Operations are to be sold off. • 20 Dec. 2000: John Sclater, the chairman, and non-executives say they will quit. • Feb. 2001: Eq. Life announces sale of assets to Halifax for up to £1bn. • July 2001: Eq. Life slashes value of pension fund by 16 per cent. • September 2001: Consultation starts on compromise proposal. • 11 January 2002: Deadline to vote on compromise deal. If it passes Eq. Life will seek approval in the High Court. • 28 January 2002: Massive vote by policy holders in favour of the compromise deal • 8 February 2002: High Court approves the compromise deal

Source: Financial Adviser 10.1.02

Equitable criticised for "lack of information", Alexander Jolliffe, Financial Times, 20 December 2001

AN INDEPENDENT expert has criticised Equitable Life for asking policyholders to accept cuts in their pension guarantees without giving enough information. Equitable has asked policyholders with valuable guaranteed annuity rates (GARs) to give them up in exchange for an average 17.5 per cent rise in their pension policies.

Those without GARs were offered a 2.5 per cent average increase in return for giving up the right to sue the mutual for mis-selling.

But the documents sent to policyholders by Equitable failed to give up to date information, said Professor David Blake, director of the pensions institute at Birkbeck Colleage in London.

Most of the data about the status of the mutual's with-profits fund was out of date. "Most of the information is nearly six months old. Not having complete information means you can't take an informed decision."

Equitable sent information to policyholders including accounts up to June 30. Prof Blake also criticised Equitable for failing to inform policyholders about the fund's future after the vote, and for not explaining clearly what members were being asked to give up.

He compared the mutual's with-profits fund to a pyramid scheme, in which the high returns promised to early policyholders were paid for by those who joined late.

The mutual should publish on its website information as of November 30 about the fund's value, solvency level and number of policholders, Prof Blake said.

That would enable policyholders to take informed decisions. He added that if they had the necessary information, it could be in their interests to vote for the compromise, to avoid the uncertainty that would follow if they defeated it.

His report was commissioned by the Equitable Life Members Action Group, which campaigns on behalf of policyholders.

Paul Braitwhaite, the group's chairman, criticised the mutual for its "constant reliance on June numbers when the world changed for Equitable policyolders on July 16." The mutual cut members' policy funds by 16 per cent on July 16. Vanni Treves, Equitable's chairman, has warned that policyholders face a stark future if they do not vote in favour of the compromise.

The scheme needs approval by 75 per cent of those voting, by policy value, and 50 per cent by number.

Vanni Treves, Equitable chairman, said: "Professor Blake's report . . .contains some interesting academic points on how the society got where it is but this is not the moment to debate such matters. "Right now policyholders need to focus on voting for the compromise scheme."

Members must vote by the second week of January and the results are expected at the end of next month. www.emag.org.uk

Equitable accused of leaving its voters in the dark, The Times, 20 December 2001

An independent report on Equitable Life's compromise deal with its policyholders has criticised the insurer for not providing adequate information concerning its finances. David Blake, the report's author and a financial economics professor at the University of London, said; "Not having complete and transparent information means that you are not voting with the benefit of the full facts." The Equitable Members Action Group (EMAG) commissioned the report after Equitable published the compromise deal on December 6. In his reaction to the report, Equitable chairman Vanni Treves said a 300-page document provides all necessary information on the deal, adding that "we genuinely want to be as transparent and up-to-date as we can." Policyholders need to cast their vote on the compromise deal by January 11.

'Doom and gloom' Equitable, by Ruth Sunderland, Daily Mail, 20 December 2001

A LEADING pensions expert accused troubled insurer Equitable Life of running a pyramid savings scheme and of fobbing off policyholders with 'inadequate' information on its compromise proposal.

Professor David Blake, director of the Pensions Institute of Birkbeck College, London, also criticised the Financial Services Authority and its predecessors for failing to intervene.

In a report for the Equitable Members Action Group, Blake said Equitable operated like a 'Ponzi' or pyramid-scheme. Blake criticised Equitable's new board for failing to provide up-to-date information on the solvency of its with-profits fund, on how many policyholders have left, and on what will happen to the fund after the compromise vote.

He said chairman Vanni Treves and chief executive Charles Thomson had run a 'doom and gloom' media campaign, warning of the consequences of voting against the compromise. Blake said it might still be better to vote 'yes,' but that policyholders had a right to more information.

Treves said: 'This is a distraction from the important issue of the vote. It is bizarre to call for more information when people have already received hundreds of pages of relevant facts.'

Pensions expert lays into Equitable: Policyholders are starved of information, claims professor, by Rupert Jones, The Guardian, December 20, 2001

Equitable Life came under fresh fire yesterday after a leading pensions expert accused it of not providing its 1.1m policyholders with enough information to enable them to make a proper decision on its future.

The report by David Blake, director of the Pensions Institute and professor of financial economics at Birkbeck College, London, claimed the insurer had presented policyholders with a "fait accompli" and then conducted a "doom and gloom"media campaign highlighting the dangers of voting against its rescue plan.

Mr Blake's report could lead to fresh embarrassment for the financial services authority - already criticised for its role in the debacle.

The report claims that the FSA presided over a company that had effectively ended up as a pyramid savings scheme.

His comments come two weeks after Equitable mailed out its compromise scheme to policyholders. This is aimed at drawing a line under a crisis which saw the insurer come close to collapse, and involves with-profits customers - 485,000 individual policyholders and 615,000 members of company pension schemes run by the insurer - receiving a boost to their policies in return for signing away some of their rights. There are 11 working days to go until the final deadline for postal votes to be received.

Mr Blake was commissioned by the Equitable Members Action Group to provide what it said was the first independent and objective assessment of the scheme.

He concluded that policyholders "have not been provided with adequate information" to assess whether the scheme is fair, reasonable and in the best interests of both the guaranteed annuity rate and non-GAR policyholders.

"They had not been told what will happen to the with-profits fund in the future, or been given up-to-date figures on how many policyholders were still with the company and the value of the fund."

Mr Blake challenged Equitable to provide the answers to his questions as soon as possible.

He said that the thousands of Equitable policyholders who joined between the July 2000 ruling in the House of Lords and the company's closure to new business in December that year had "an extremely strong case for getting the full amount of their money back".

Equitable criticized, Irish Independent, 20 December 2001

TROUBLED mutual Equitable Life has not given its members enough information for them to make sensible decisions on how to vote in its compromise scheme, a report claimed yesterday.

Professor David Blake, director of the Pensions Institute at the University of London, said members were being forced to make an extremely complex decision on how to vote without "complete and transparent information".

The criticisms came in a report commissioned by the Equitable Members' Action Group (EMAG) to assess the adequacy of information given.

Equitable must come clean, BUSINESS COMMENT: The Scotsman, 20th December 2001

THE Equitable Life saga rolls on, and, hard as it to believe, is getting worse. It seems that more than 400,000 members of the stricken life insurer are being asked to vote on the group’s plan to rescue itself without being given proper information.

This not entirely surprising conclusion has been drawn by University of London professor David Blake, commissioned to assess Equitable’s compromise scheme by the members’ action group EMAG.

The professor, an expert in financial economics and director of the Pensions Institute, said the financial details sent to policyholders were flawed because they were based on the life insurer’s finances in June, two weeks before Equitable cut all policyholders’ savings by 16 per cent.

Professor Blake also points out the rather obvious fact that the directors of Equitable have the correct financial information, and should give it to policyholders ahead of January’s voting deadline.

On the other hand, Equitable chairman Vanni Treves, to whom policyholders have listened for guidance for months, believes members do not want any more information, and has no intention of putting any fresh details about the society’s finances in the public domain.

Equitable needs to draw a line under its problems, but one way to do this would be to make a clean breast of its state to policyholders and put all the information about the society’s finances in their hands. Treves has a lot going for him, but maybe he should start listening a bit more and talk a little less.

Equitable members not informed enough to vote, claims new report, Leslie Kraft Burke Personal Finance Editor, The Scotsman, 20th December 2001

EQUITABLE Life policyholders do not have sufficient information to vote on the troubled assurer's survival compromise scheme, according to a report by the University of London.

The report, written by Professor David Blake, director of the university's Pensions Institute, also slammed Equitable's with-profits fund, saying it was effectively run like an illegal pyramid scheme after the society stopped selling Guaranteed Annuity Rights (GARs) policies in 1988.

The report, commissioned by policyholder action group EMAG, could further damage the chances of Equitable's compromise deal being approved.

Equitable chairman Vanni Treves said: "Blake's timing is extraordinary. This is not the time to be debating the minutiae of the compromise, it is time for policyholders to vote. Policyholders have made it clear to us that they do not want more information but a resolution to the dire situation the society is in. Only the compromise can do that."

Blake insisted GARs and non-GARs should never have een put in the same fund as the two schemes were paid different rates of returns. Effectively, non-GARs, who are not paid a fixed rate, ended up with insurers shouldering the risk of meeting the GAR liabilities.

Blake said: "Equitable needed to attract non-GARs to bail out the GARs."

He added: "It took on the characteristics of a Ponzi scheme. High returns achieved by the initial members were paid, in part, out of the contributions of those who joined late.

"Like a pyramid scheme it required an increasingly rapid inflow of members and the scheme ends when there are no more new members. Those who joined late lose most."

Blake also criticised the society for failing to provide p-to-date figures on how many policy holders had left, what the current value of the with-profits fund was and hether it remained solvent. He added that members had also been given no information about the future of the fund if the deal went through, whether it would remain a "dead" fund in run-off, or whether it would be transferred to the Halifax, which bought the society's assets earlier this year.

Although Blake said the information given was not sufficient, he added: "It may still be in the best interest of members to vote [for the compromise] as the level of uncertainty might be lower and it is better to be part of a living fund."

Equitable rounds on compromise critics, Nina Montagu-Smith, Daily Telegraph, 20 December 2001

EQUITABLE Life defended itself yesterday against criticism that it had not provided policyholders with "adequate" information to decide how to vote on its compromise scheme.

Professor David Blake, director of the Pensions Institute at the University of London, was commissioned by Equitable Members' Action Group (EMAG) two weeks ago to review information provided to policyholders.

His findings were dismissed by Vanni Treves, chairman of Equitable, who said: "The timing of this paper is extraordinary. It contains some interesting academic points about the lead up to the problems at Equitable, but this is not the moment to debate such matters."

Policyholders have just 11 working days from today to vote on the deal, which asks policyholders with guaranteed annuity rates (GARs) to give up those rights in return for average policy uplifts of 17.5pc. Non-GAR policyholders are being asked to waive their right to sue for mis-selling in return for a 2.5pc uplift.

However, Prof Blake said information including the number of policyholders who have left the fund, the current value of the fund, and the future of the fund, was missing from documentation circulated to policyholders.

"In particular, proposals involving splitting the fund between GAR and non-GAR policyholders have not been adequately considered and have not been tested in court," said Prof Blake.

He did not advise on which way policyholders should vote, however, even adding that it may still be in their interests to vote yes.

Equitable Life has told members the with-profits fund was valued at £20 billion at September 2001, and that there were 485,000 members in June 2001. However, EMAG is pressing for figures for the end of this year.

Mr Treves said: "We have provided policyholders with an enormous amount of information. Right now is the time they need to focus on the compromise scheme."

Equitable 'withheld key information', Katherine Griffiths, The Independent, 20 December 2001

Equitable Life has withheld key information that policyholders need to make balanced decisions about whether to accept the mutual life assurer's compromise scheme, an academic said yesterday.

David Blake, a professor of financial economics at University of London, said members were being forced to vote on the compromise by 11 January without "complete and transparent information".

Equitable has not told its members how many policyholders have left the society since the end of June. At that time Equitable said it had 70,000 – guaranteed annuity rate (GAR) policyholders and 415,000 non-GARs. A number of Equitable action groups think that figure has declined dramatically since then.

If true, this could have serious consequences for those remaining. If large numbers of non-GARs have left, the few remaining may have to suffer further unanticipated bonus cuts in order to pay for Equitable's £1.5bn liability. This was created when the House of Lord's ruled last year that Equitable had to raise payouts to GARs by 25 per cent.

Non-GARs have been told that if they accept the compromise they will receive a policy uplift of 2.5 per cent on average. But this increase is made up partly of a discretionary bonus, which could be removed if the society has been further destabilised.

Professor Blake, who was commissioned to examine Equitable's proposals by the Equitable Members' Action Group, indicated it was likely that a large number of non-GARs have left, because they will only be able to sue the society from outside.

One of the conditions of the compromise is that policyholders would not be allowed to pursue legal action.

Vanni Treves, the chairman of Equitable, said: "I resent the suggestion that the society has not been open and honest. We are not in any sense hiding information."

Equitable members 'not given enough vote information', Ananova, 19th December 2001

A report claims that Equitable Life hasn't given its members enough information as they prepare for a vote which will decide its future.

Professor David Blake says members are being forced to make an extremely complex decision on how to vote without "complete and transparent information".

His comments are included in a report commissioned by the Equitable Members Action Group (EMAG).

Professor Blake, director of the Pensions Institute at the University of London, criticises the society for failing to provide up-to-date figures.

He says members had also been given no information about the future of the fund if the deal went through.

Equitable members have just 11 working days left to decide how to vote in the compromise scheme which aims to rid the society of its £1.06 billion pension liability arising out of its Guaranteed Annuity Rate policies (GARs).

Under the deal GARs will be offered an increase in their policy's value of around 17.5% for giving up their right to guaranteed rates. Non-GARs will be offered 2.5% for both agreeing to the GAR uplift and not to sue the society for not being told about its liabilities.

Professor Blake says the information is insufficient for policy holders to assess whether the scheme was "fair and reasonable in the financial economic sense" and whether the compensation they were being offered was adequate for what they were being asked to give up.

He says there is no information on how many people had left the society since December last year and could sue it.

But he adds: "It may still be in the best interest of members to vote yes as the level of uncertainty might be lower and it is better to be part of a living fund."

BBC: Andrew Verity, Personal Finance Reporter, 19 December 2001

More than 400,000 members of the stricken life insurer Equitable Life are being asked to vote on the group's plan to rescue itself without being given crucial information, according to an independent assessment.

Professor David Blake, who was commissioned to conduct an assessment of Equitable's compromise scheme by the members' action group EMAG, said details of the group's finances were six months out of date.

"The life insurer has to be seen to be open and honest with its policyholders. The directors must have this information. Then policyholders can have a true picture before the deadline for voting on 11 January," he said.

"The directors do have all this information so why aren't they publishing it?"

Professor Blake, an expert in financial economics and director of the Pensions Institute, called on Equitable's directors to release details of:

- the life insurer's solvency
- the value of its main "with-profits" fund where most members' money is invested
- what would happen to the fund after the vote
- the number of policyholders who had left

Professor Blake said the financial details sent to policyholders were flawed because they were based on the life insurer's finances in June - two weeks before the life insurer cut all policyholders' savings by 16 per cent.

Stock market falls since then had also slashed the value of the investments in the main fund - and therefore the value of members' policies

There is a growing fear among Equitable's policyholders that the life insurer may be forced to cut the value of their policies even further.

Professor Blake added that if policyholders based their vote purely on their own personal financial interests, those who hold policies with guaranteed annuity rates should vote "No".

"The financial logic – the financial incentive – is for those with guarantees to vote no because they have the strongest legal claim on the society's assets and they are giving up the most."

"For those with no guaranteed annuity rate, there are two options. Vote yes, and get rid of at least some of the financial uncertainty in the fund. Or withdraw your money from the society and reserve your right to sue for compensation."

Professor Blake said Equitable in the last seven years had unintentionally turned itself into a kind of "pyramid scheme" - where those who get in on the scheme first do well and those who join late end up paying for them.

Those who joined the society most recently, after the society ran into serious financial trouble, had suffered most, he said.

Taken on trust, Alex Brummer, Daily Mail, 20 December 2001

PROFESSOR David Blake of Birkbeck College deserves high praise for his clear and hard-hitting report on the compromise plan proposed by Equitable Life.

It is hair-raising stuff and makes it clear that the non-guaranteed policyholders, especially those who joined the life fund after January 1994, received a raw deal. Certainly, the 2.25% uplift for the non-GARs under the compromise seems barely adequate, given likely underperformance in the months ahead.

Despite the stack of documents posted to policyholders, Blake makes it clear that they are being asked to make decisions on historic figures and without plain, concise information on future plans for the fund, such as what happens when the Halifax gains control.

As we have argued before, Vanni Treves and his team may be seeking to do the best for policyholders, but they are asking us all to 'trust them'. Equitable policyholders might well feel they have taken successive managements on trust for too long.

Anyone voting for the compromise must recognise that it is not a complete answer to their troubles, merely the better of two poor alternatives.

Pensions professor stirs the sputtering embers: EQUITABLE LIFE: A report commissioned by the Equitable Members Action Group has called for the mutual to publish more detail on its website, Alexander Jolliffe, Financial Times (PERSONAL FINANCE), 22 December 2001

A pensions expert this week accused Equitable Life of asking its policyholders to give up valuable pension rights without informing them properly.

Professor David Blake, director of the pensions institute at Birkbeck College in London, was commenting on the compromise scheme confirmed this month by the mutual life assurer. Equitable has asked policyholders with valuable guaranteed annuity rates (GARs) to give them up in exchange for an average 17.5 per cent rise in their pension policies. Those without GARs were offered a 2.5 per cent average increase in return for giving up the right to sue the mutual for mis-selling.

Financial advisers said Prof Blake's report was interesting and highlighted Equitable's failure to disclose up-to-date information. But the important point was that he did not advise policyholders to vote against the compromise.

"We should only worry about someone who does good analysis and says 'vote No'," says Stewart Bayliss at Annuity Direct, the financial adviser.

Prof Blake accepted that it might be in policyholders' interests to vote for the compromise, to avoid the uncertainty involved in a "no" vote and to revive the with-profits fund.

Policyholders who are unsure about how to vote should consult a financial adviser.

A yes vote would bring important benefits by freeing Equitable of its liability to GARs, Bayliss says. But he adds that people who can exercise these guaranteed annuity rates should do so urgently, even if they are still working and do not need retirement income. "They could lose a valuable asset," he says.

A 65-year old healthy male with a £100,000 pension fund could get about £12,000 per year by using Equitable's guaranteed annuity. By contrast, he would get about £8,500 on the open market with a single life, level annuity, says Peter Quinton at the Annuity Bureau, a financial adviser.

Vanni Treves, Equitable's chairman, says the report said interesting things about the mutual's past but was not relevant to policyholders now. "Professor Blake's report . . . contains some interesting academic points on how the society got where it did, but this is not the moment to debate such matters. Right now, policyholders need to focus on voting for the compromise scheme."

Prof Blake's report, which was commissioned by the Equitable Members Action Group, urged the mutual to publish on its website information to November 30 about the with-profits fund's value, solvency level and number of policyholders. The information sent by Equitable to members with its compromise scheme was "inadequate" because it did not state directly how many policyholders had left since December 8 2000 and might be in a position to claim damages, said Prof Blake. The mutual closed its doors to new business on December 8 last year after attempts to find a buyer failed.

Prof Blake also had doubts about the value to individuals of Halifax's £250m to be paid as part of the bank's acquisition of Equitable's operational assets if the compromise wins approval, because it would only be worth £300 per policy. The compromise had also failed to inform policyholders by not adequately considering a division of the fund between GARs and non-GARs, said Prof Blake. He had much criticism for the way in which previous directors of Equitable had allowed GARs and non-GARs, who had different claims on the underlying investments, to invest in the same fund.

The point of a pooled investment fund was that all members expect the same return, the report added. But at Equitable's with-profits fund, this principle was violated because some investors had guaranteed annuities while others did not. The non-GARs were effectively insuring the GARs without receiving premiums and without knowing they were doing so. Prof Blake argued that as a matter of public policy, investors should be allowed to put money in the same fund only if they could expect the same return.

His analysis contrasts with the recent statement by the Financial Services Authority, the City regulator, which said this month that it was content that the deal did not unfairly harm or help any groups of policyholders, and that GARs and non-GARs were being offered fair amounts in exchange for giving up the rights involved. Members voting by post must send their forms in by January 9, and the results are expected by the end of next month.

Britain's Equitable Life "Withheld Data," Inquiry Finds, Richard Dyson, Daily Mail, 23 December 2001

Equitable Life's management has come under renewed attack after it was claimed that it withheld vital information from policyholders who are on the brink of voting on the society's rescue scheme.

An independent inquiry by economist Professor David Blake into Equitable's compromise deal has concluded that the proposal "smacks of concealment".

The information, he claims, is out of date and incomplete, making it "unreasonable" to expect policyholders to be able to decide which way to vote.

Blake says the key missing information is up-to-date figures on withdrawals from the fund and how these alter the balance between guaranteed annuity rate (GAR) policyholders and non-GAR policyholders.

This extra information could influence voting decisions if it revealed a situation in which non-GAR policyholders believed they would be better off trying to sue the company, rather than voting for the scheme and waiving their rights to legal action.

But Blake says that the potential benefits of a successful compromise, such as a reduction in uncertainty and the possibility of new business coming into the fund, could mean it would be in the policyholders" interests to support it.

The report was commissioned and funded by the Equitable Members' Action Group.

"As far as policyholders are concerned, this is a huge decision of self-sacrifice we are being asked to make," says the group's Paul Braithwaite.

"Equitable has bombarded policyholders with information -- the problem is that it hasn't been appropriate or inclusive."

Equitable says: "Policyholders have told us they have more than enough information with which to make a decision on how to vote."

Equitable Life rebuffs unflattering report, Leslie Kraft Burke, Personal Finance Editor, The Scotsman, 26th December 2001

EQUITABLE Life officials hit back at a report by a leading pensions expert that said the company has not given policyholders adequate information to decide how to vote on its survival compromise scheme.

Equitable chief executive Charles Thomson insisted that Equitable had placed in the public domain "nearly 300 pages of information including an interim financial report which contained financial information on the society up to the end of September".

The report, by University of London Professor, David Blake, contended that the last financial information provided by the society predated its July decision to cut bonuses by 16 per cent.

Thomson said: "It is a pity that Professor Blake failed to read this letter when drafting his report." He added: "We started listening to policyholders with a series of policyholder meetings in March and have been actively seeking their views since then. This intensified after we sent compromise proposals to all our policyholders in September. We attended 18 meetings around the country, at which we met over 4,000 policyholders."

He added: "The compromise scheme, developed following this massive consultation process, was sent to policyholders earlier this month. We made great efforts to ensure policyholders were thoroughly informed."

In his inquiry into Equitable's compromise deal, Blake concluded that the society's proposal "smacks of concealment".

He claimed the information Equitable supplied is out of date and incomplete, making it 'unreasonable' to expect policyholders to be able to decide which way to vote.

Blake says the key missing information is up-to-date figures on withdrawals from the fund and how these alter the balance between guaranteed annuity rate policyholders and non-GAR policyholders. In Blake's report - which was funded by the Equitable Members' Action Group - Blake contends the extra information could influence voting decisions if it revealed a situation in which non-GAR policyholders believed they would be better off trying to sue the company, rather than voting for the scheme and waiving their rights to legal action.

EMAG chairman Paul Braithwaite said: "As far as policyholders are concerned, this is a huge decision of self-sacrifice we are being asked to make. Equitable has bombarded policyholders with information the problem is that it hasn't been appropriate or inclusive."

Essential information not yet available, LETTERS TO THE EDITOR, Financial Times, 3 January 2002

From Prof David Blake.

Sir, In my report of December 19, commissioned by the Equitable Members Action Group, on the adequacy and objectivity of the information provided by the board of Equitable Life in connection with the Compromise Scheme Proposal (discussed by Alexander Jolliffe in your editions of December 20 and 22), I urged the board to publish the following additional information on the Equitable Life website:

- the number of policyholders still in the fund
- the current value of the fund
- the current solvency level of the fund
- the role of the Halifax in the future of the fund and whether the fund will remain a closed fund
- what will happen if the £50m set aside for future potential claims is inadequate.

So far this information, which is so essential for deciding which way policyholders should vote, has not been provided by the board.

Unless it is published before the vote on January 11, policyholders will be entitled to conclude that the information is being deliberately withheld.

David Blake, Professor of Financial Economics and Director of the Pensions Institute, Birkbeck College, University of London, London W1T 1LL

Equitable accused of refusing to release vital data, Alexander Jolliffe, Financial Times, 3 January 2002

A pensions expert has accused Equitable Life of refusing to release essential information about the compromise being offered to policyholders.

Professor David Blake says in a letter in today's Financial Times that, unless the mutual life assurer releases the data, "policyholders will be entitled to conclude that the information is being deliberately withheld".

Equitable has asked policyholders with valuable guaranteed annuity rates to give them up in return for an average 17.5 per cent rise in their pension policies. Those without GARs were offered a 2.5 per cent increase in exchange for giving up the right to sue the life assurer for mis-selling.

Prof Blake, director of the pensions institute at Birkbeck College, London, urged Equitable last month to publish information on its website, arguing that policyholders were being asked to surrender valuable pension rights without up-to-date information. He called on the life assurer to inform policyholders about the number of policyholders, solvency, and value of its with-profits fund.

Equitable counter-attacked yesterday, arguing that some data were irrelevant and that it had published more up-to-date information where it was relevant. It said the number of policyholders was not relevant because some people had more than one policy, increasing the life assurer's liabilities. Prof Blake had not cited in his report a more up-to-date letter to policyholders that informed them about the fund's value and solvency level, the life assurer said.

Prof Blake's report contrasts with a statement last month by the Financial Services Authority, the City regulator, which said GARs and non-GARs were being offered fair amounts in exchange for the amounts involved.

* Hargreaves Lansdown, the financial adviser, said Equitable was "highly likely" to raise penalties paid by policyholders who left the fund, whether the compromise was approved or not. The life assurer would increase these so-called market value adjusters because many members planned to leave after getting their policy increases, destabilising the fund. Equitable said the MVA was under review but there were no plans to change it. Letters, Page 16 www.emag.org.uk

Ill-timed intervention over Equitable ballot, LETTERS TO THE EDITOR, Financial Times, 4 January 2002

From Mr Charles Thomson.

Sir, Prof David Blake's late intervention in the Equitable Life compromise scheme ballot is at best ill-timed and at worst irresponsible (Letters, January 3).

It is ill-timed, as policyholders received the compromise proposal on December 6 2001 and have been voting by post ever since. There are only a few days left as postal votes must be received by Wednesday January 9. The formal casting of votes is at the policyholder class meetings on Friday January 11 but the overwhelming majority of policyholders will have voted before then. Second, policyholders received enormous amounts of information during the consultation process and all the essential information in the final compromise scheme pack. Background information available on our website deals with Prof Blake's questions on the agreement made by the previous board with Halifax and the differing legal views on claims, if any, of former policyholders.

It is irresponsible, as Prof Blake acknowledges that he has not read all of the information contained in the pack. The main comment from our policyholders is that, if anything, there is too much information, not too little. Our policyholders want resolution, not more information. Second, the compromise scheme has been independently scrutinised by PwC on financial matters, by Mike Arnold, the independent actuary, for actuarial fairness and by our regulator, the Financial Services Authority. Our timetable is tight. We must receive policyholders' endorsement and approval in the High Court by March 1 2002 to achieve the £250m Halifax money. Delays in producing and verifying yet more information make this timetable impossible, at great cost to our policyholders.

As a new board with no connection with the past, problematic decisions at Equitable, our only concern is a fair, reasonable and positive way forward for our policyholders and the society. The compromise scheme is that way forward. We urge our policyholders to vote, to vote now and to vote "yes".

Charles Thomson, Chief Executive, Equitable Life Assurance Society

Members forced to vote in climate of fear, LETTERS TO THE EDITOR, Financial Times, 4 January 2002

From Mr Paul Braithwaite.

Sir, Prof David Blake (Letters, January 3) suggested that the board of Equitable Life appeared to be deliberately withholding information. Any Section 425 Scheme of Arrangement, which is what is utilised here, is predicated upon the disclosure of up-to-date finances in a Statement of Affairs.

The interim accounts to June 30 pre-date seismic changes at Equitable, after devaluation of policyholder funds in mid-July. Given that every policyholder is being asked to forgo hugely valuable rights, these six-month-old accounts are inadequate to the purpose. Members have been forced to exercise their votes in an intimidating climate of fear, yet as Prof Blake has pointed out, the information he requested must have been readily to hand.

The Society's response to Prof Blake's requests in his report of December 19 was a "smoke and mirrors" claim that it had already provided more recent information in a letter to policyholders. But Prof Blake had seen that letter, dated December 1. All it communicated was that the society remained solvent, plus just four modest new items covering the three months to September 30. These were that £1.7bn had left the fund; investments in the stock market had reduced from 48 per cent to 35 per cent; the fund value had fallen £2.7bn to £20.1bn; and the fund for future appropriation had fallen to £300m.

The board of Equitable is itself prejudicing the compromise by having withheld rudimentary information. The Equitable Members' Action Group reiterates Prof Blake's call for full up-to-date disclosure. Regrettably, this board, like those before it, has an all-too-consistent record for repressing information and a lack of transparency to the owners of the society.

It was EMAG that commissioned Professor Blake's truly independent evaluation of the compromise proposal and published it for the benefit of all policyholders, at no cost to the society. Hundreds have already expressed their appreciation for his concise review from a fresh perspective. It is available free at www.emag.org.uk

Paul Braithwaite, Chairman, EMAG

Equitable accused of 'smoke and mirrors' response: Pensions compromise action group claims mutual has misled policyholders, Alexander Jolliffe, Financial Times, 5 January 2002

A row has erupted just days before the deadline for Equitable Life's poll about its pension compromise, with the mutual life assurer facing accusations of a "smoke and mirrors" reply to a call for important information.

The row is the latest stage in a dispute between the mutual and the Equitable Members Action Group, which represents policyholders. Last month, the group commissioned a report from Professor David Blake, an independent expert, which accused Equitable of asking policyholders to give up pension rights without informing them properly about the value and solvency of the mutual's with-profits fund.

In a letter to today's Financial Times, the group accuses Equitable of a misleading claim that it had provided more information, in a letter to policyholders, than Prof Blake allowed for. The letter contained only modest details about Equitable's finances, said Paul Braithwaite, the group's chairman. "Equitable's board is prejudicing the compromise by having withheld rudimentary information."

Mr Braithwaite accused Equitable of forcing policyholders to vote on the compromise "in an intimidating climate of fear". He said that Vanni Treves, the mutual's chairman, had implied: "If you don't vote Yes, there'll be Armageddon." That might make policyholders think the position was worse than it really was.

Charles Thomson, Equitable's chief executive, dismissed Prof Blake's most recent comment - a letter in Thursday's FT - as "at best ill-timed and, at worst, irresponsible". There were only a few days before Wednesday's deadline for policyholders to vote.

The pension compromise had been examined by an independent actuary and the Financial Services Authority, the City regulator, said Mr Thomson. The FSA has said that the compromise is a fair offer and the increases to policy values are reasonable in exchange for the rights being given up.

Equitable hopes to cap its liability to holders of guaranteed annuity rates, estimated at £1.1bn. It has offered to raise the policy values of people with guarantees by 17.5 per cent on average, if they agree to give up their GARs. Those without GARs are offered a 2.5 per cent average rise in return for giving up rights to sue Equitable for mis-selling. Letters, Page 10 www.ft.com/equitable

Euro-court threat to FSA immunity, by Steve Sampson, FT Adviser, 3 January 2002

EQUITABLE Life policyholders could seek redress from the FSA – by going to the European Court.

The move would neutralise the financial watchdog's statutory immunity in Britain.

The news came with just days remaining to the long-awaited deadline for the vote on the compromise deal for policyholders that could eradicate Equitable's £1.6bn guaranteed annuity liabilities.

It also followed firefighting by Equitable chiefs after a pensions expert at the University of London claimed policyholders had been underinformed and that, in its final days, the Equitable fund had been run as a pyramid sales scheme.

The Euro-action, to be launched by Class Law, the London-based law firm, would bypass the City regulator's immunity, alleging negligence in its supervision of Britain's oldest mutual.

Under UK law any legal challenge to the FSA would have to show "bad faith" on the part of the regulator – simple negligence is insufficient. Legal experts claim this restriction has no force under the European Insurance Directive.

Class Law said it would first champion the use of European law to win redress for employees and policyholders of the general insurance giant Independent Insurance, which also foundered last year, but would then pursue Equitable.

Stephen Alexander, a partner in the law firm, said that while the Independent case would be launched first, the basis of the action was "identical for both cases".

He said the firm had received counsel that under the European directive, insurance was a product and not a service and the FSA's immunity would not apply.

An FSA spokesman said it would defend any challenge vigorously.

Professor David Blake, director of the Pensions Institute at the University of London, said members were being forced to make a complex decision without "complete and transparent information".

He said the information was insufficient for policyholders to assess whether the scheme was "fair and reasonable in the financial economic sense" and whether the compensation offered was adequate for what is being forfeited.

But Vanni Treves, chairman of Equitable, dismissed the claims. He said: "The timing of this paper is extraordinary. We have provided policyholders with an enormous amount of information."

The deadline for votes is 11 January and the result is expected by the end of the month.

Give with-profits some credit, Jonathan Davis, Independent, 5 January 2002

With only days to go before the deadline for votes to be cast on the Equitable Life compromise scheme, there is a fair deal of nail-biting going on among those who have been most directly affected by this long and unhappy saga. I have no inside track on how the vote will go. It seems obvious that a majority of policyholders will vote for the scheme, as it is the obvious common sense thing for them to do, but whether the majorities are big enough to meet the required thresholds for the yes vote to be carried is much harder to call. One can only hope so, since the future for the with-profits fund if the guaranteed annuity rate liability cannot be capped is highly unpalatable for nearly all concerned.

This is not the time to rehash all the rights and wrongs of the present situation, though I can highly commend the lucid independent analysis of how we arrived at this unholy mess prepared for the Equitable Members Action Group by Professor David Blake of Birkbeck College. His description of how the with-profits fund was turned after 1988 into a giant "Ponzi scheme" and then legitimised by the bizarre House of Lords ruling is as accurate as it is devastating. I only wish that their Lordships had commissioned such a report themselves before coming to their decision, which was well-intentioned in a narrow sense, but showed an almost total lack of understanding of how the consequences would be so detrimental to the interests of the majority of the policyholders in the fund. Most policyholders after all had bought their way into the with-profits fund, believing not only that it was a suitably dull and conservatively invested pension fund vehicle, but also that as a member of a mutual society they would be treated equally and have some say over what happened to their own money.

Instead, they unwittingly found themselves, as Prof Blake explains, being asked to place vast uncovered bets on the future direction of interest rates from which they could not possibly gain themselves (as any potential benefit went to the minority of guaranteed annuity rate holders) and then having their power to do anything about it removed from them first by the old board's refusal to disclose what it was doing and then by a legal process that effectively denied them a proper hearing and prevented the board from using its discretion to square the competing interests of its policyholders.

One of the ironies of the whole process is that the Equitable saga has done a huge amount of damage to the whole concept of a with-profits fund, which is nothing like as bad a product as so many people now seem to claim. The idea of a fund that is invested broadly and conservatively is certainly what many investors seem to want, which is doubtless one reason why they have continued to put their money into funds or insurance company bonds of the with-profits type, despite the columns of bad publicity in recent years.

Several things have worked against the with-profits idea, some of which (such as the lack of transparency and high surrender values) are clearly the fault of fat and complacent providers, but others of which are more to do with the changing investment climate, and not a fault of the product itself.

In particular, the long bull market in equities and the associated secular decline in interest rates and inflation we have witnessed over the past 20 years have tended to show the performance of with-profits funds in a poor light. When shares are churning out double digit returns year after year, a more conservatively invested with-profits fund is always going to look tame by comparison. For actuarial reasons, falling interest rates make it inevitable that annual (reversionary) bonuses will also fall, and that terminal bonuses will therefore account for an increasing proportion of the value of a fund.

It is easy to forget however, as many have done in the last few years, that the only rationale for a with-profits fund is that it is long-term and relatively low-risk, an investment tortoise rather than a hare. In the long run, its day can still come. The irony is that the past two to three years should have been an ideal climate for the with-profits concept: volatile and overvalued equity markets are precisely the conditions when a fund that churns out a predictable and steady positive real return year after year should most come into its own.

I made the prediction a couple of years ago that, because of the exceptional performance of equities over the previous 15 years, with-profits might well outperform equities in the first few years of the new century, and I notice from the latest performance statistics that this is already proving to be the case. A £10,000 investment five years ago in a typical with-profits pension fund would today be worth more than an equivalent global equities fund, though it would still not be worth as much as a gilts and corporate bond fund.

Over 10 years, it is true that equities still have the edge, despite the recent market falls, but even there the gap has narrowed. The current comparative annual compounded returns on the different types of fund are as follows: UK equities 10.7 per cent per annum, global equities 9.7 per cent, UK fixed-interest 9.6 per cent, with-profits 8.0 per cent, global fixed-interest 7.0 per cent, inflation 2.5 per cent.

Given the extra risk of the alternatives, most people I am sure would gladly have settled ten years ago for a 5.5 per cent real return per annum from a with-profits fund, especially as it came with the apparent ironclad claim that you could rest easy in your bed, sure in the knowledge that you only had to read the statements once a year and nothing untoward would happen to put your money at risk.

The Equitable saga has, among other things, dealt a severe blow to that comfortable illusion. The truth though is that the Equitable with-profits fund is now no longer a with-profits fund. It ceased to be that when the old board failed to insure or ring-fence the fund against its reckless interest rate exposure on guaranteed annuity rates. The Equitable experience is, thank goodness, a one-off that ought by rights to have only limited relevance to the future of the with-profits concept.

My own view is that most investors still like the concept of a relatively low-risk diversified fund that smoothes out market fluctuations. The biggest threat to the whole with-profits idea is simply that, thanks to modern financial technology, most people can quite easily create their own diversified pension fund of equities, bonds and property themselves. In theory, it is also possible to use derivatives to replicate the smoothing process, but that part of the equation is probably still too expensive and complicated to be a realistic option for the average investor. So I wouldn't write with-profits off just yet.

Board should know actuarial spin misrepresents fairness, LETTERS TO THE EDITOR, Financial Times, 9 January 2002

From Prof Gordon Gemmill.

Sir, Prof David Blake criticised the board of Equitable Life for not giving up-to-date information about the state of the fund (Letters, January 3).

Another criticism he might have made relates to the actuarial calculations, which place a 20 per cent value on having a guaranteed annuity rate.

The value of the guarantee to someone retiring immediately is an uplift of at least 40 per cent. Surprisingly, this 40 per cent extra value also applies to guarantees for policies maturing many years from now. (Both the Equitable documents and my own put-option valuation agree that the uplift is the same, regardless of maturity.)

How can the independent actuary find that a 20 per cent value is "fair", then? The answer is: by assuming that only a proportion of guarantees are exercised. By lumping all GAR policyholders together and removing any choice, the cost is reduced. The board should know that this "actuarial spin" is really a misrepresentation of "fairness". If the compromise proposal fails, let Equitable make a realistic offer to buy out the guarantees, on an individual basis.

Gordon Gemmill, Professor of Finance, City University Business School, London EC2Y 8HB

What 'compromise' implies, LETTERS TO THE EDITOR, Financial Times, 11 January 2002

From Mr Michael Arnold.

Sir, Prof Gordon Gemmill (Letters, January 9) misses the point that Equitable Life's policyholders are voting on a compromise scheme. The nature of a compromise is that each side gives up something for the greater good.

The scheme therefore uses the society's experience of the value that guaranteed annuity rate policyholders themselves place on these guarantees (ie, the extent to which these guarantees are in fact exercised), which is also the cost of the GARs to those policyholders who do not have guaranteed annuity rates.

By using this approach the compromise scheme is fair to both GAR and non-GAR policyholders.

These issues were clearly disclosed in the compromise proposals and consultation documents issued by the society and addressed in my report.

Michael Arnold, Independent Actuary to the Equitable Life Compromise Scheme, Hymans Robertson, London EC1Y 8LZ

Troubled mutual has grim future: Pensions expert holds little hope for the future, Steve Sampson, Financial Adviser, 10 January 2002

A leading pensions expert has predicted an uncertain future for Equitable Life on the eve of the deadline for its compromise deal vote.

The final vote, to be held in Wembley tomorrow (Friday), will see the defining moment for the mutual. It will herald the end to a year-long battle to rid itself of its guaranteed annuity liabilities which have reached £2.6bn and are still rising.

Under the deal, policyholders with guaranteed options will receive, on average, 17.5 per cent, non-guaranteed policyholders will get 2.5 per cent. In return, policyholders will give up their rights attached to their policies or the right to challenge the deal in court at a later date.

But Professor David Blake, a pensions expert at the Pensions Institute of Birkbeck College at the University of London, said the mutual could still see legal actions snowball from disparate groups of policyholders.

Prof. Blake said: "If it starts, it will start with the late joiners who have lost the most. I would say action on their behalf was very likely. It is a member's organisation and they had a right to the up-to-date, full information. They could have a case for a full refund of their investments".

William Clutterbuck, a spokesman for Equitable Life, said: "The late joiners made a submission to the court in November. The courts directed us to go ahead. When you are drawing up a complicated scheme you have to crystallize the information on a particular date. To offer more up-to-date information would have merely delayed the compromise deal".

In the days before Christmas, Prof. Blake delivered a damning independent report on the compromise deal claiming Equitable Life had failed to provide policyholders with an explicit profile of the firm's financial position and the current size of the fund.

It is believed up to 25 per cent of policyholders have jumped ship since 30 September last year which is the last date for which information on the firm was supplied.

Prof. Blake slammed the way in which the mutual had been run in recent years as a Ponzi or a pyramid sales scheme where new entrants to a scheme paid the high returns promised to earlier entrants.

Prof. Blake said: "The reason they have not released the information that I requested is that they are concerned the whole thing will unravel. They have tried to contain the issue with two types of policyholders when there are many more. The GARs have had their day in court, now the non-GARs must have their day. It is what natural justice demands".

The prospect of legal action could further damage the mutual as IFAs predicted policyholders would leave the mutual in droves once they had received an uplift to their policies. In his report, Prof. Blake estimated potential claims to value £625m, Equitable Life has set aside £50m.

Talking of the attitude of the board towards its members, Prof. Blake said: "The present board is showing as much respect for its members as previous boards".

Paul Braithwaite, chairman of Equitable Members' Action Group, said: "I am aware there are many late joiners that are rushing to leave the society. Many have concluded the only course of action to preserve their rights is to leave before the recommendation of a scheme".

An unfair compromise: Equitable Life's deal may not be sufficient to preserve the society's future as a mutual fund, David Blake, PERSONAL VIEW, Financial Times, 29 January 2002

Equitable Life's board pulled off a great victory yesterday with the overwhelming Yes vote in favour of the compromise scheme proposal. This will be interpreted as a victory both for common sense and for mutuality.

Certainly, the members of Equitable Life have voted to save their society, but it is not clear that the society has any real future as an independent mutual organisation. It is now very likely to be absorbed into one of the funds of (the very non-mutual) HBoS, the banking group.

A black hole of more than £1bn may have been filled by the compromise, but equity was not on the menu offered by the current board.

The first two things that victims of a catastrophe demand, whether in the case of a rail crash or a financial mismanagement, is that the full facts are revealed and that mechanisms are put in place to ensure that such situations never occur again. Only third in victims' lists of demands is compensation.

The real problem with the Equitable compromise is that the facts concerning the society's predicament were never fully revealed to policyholders and that nothing at all was said concerning a future free from the risk of the past repeating itself.

Policyholders were merely told that they were being compensated by the compromise put forward by Equitable's board on December 6 and that this compensation was fair to both the GARs (those with guaranteed annuities) and non-GARs (those who joined the Equitable with-profit fund after 1988 without the opportunity to take guaranteed annuities when they retire).

No evidence was offered to demonstrate that the compromise was indeed fair. It was merely asserted.

Yet we know that the compromise amounted to a huge transfer of wealth from non-GAR to GAR policyholders. This is because the society did not hedge its interest rate risk exposure to the GAR policyholders, and so, by default, transferred the burden of providing this insurance to the non-GAR policyholders.

The non-GARs became unwitting providers of insurance to the GARs by writing interest rate put options for them. This was done without their knowledge or consent and they received no premium for issuing these options. This violated the first principle of sound insurance: that an insurance provider should collect sufficient premiums to pay for any likely claims.

The non-GAR policyholders still have a strong case for arguing that their funds should have been separated from those of the GAR policyholders on the basis of Article 4 of the Memorandum and Articles of Association. This states that: "Every policy granted by the Society shall only be liable . . . to the extent of its assets and property from time to time existing, and that no Member of the Society shall be liable to any call or contribution for satisfying any claim or demand by any other person." But to date this has never been tested in court. It most clearly should be.

The difference in interests between GAR and non-GAR policyholders extends beyond that between an insurance provider and an insurance taker. It is also reflected in different appropriate investment policies for the with-profit fund. To meet the interests of GAR policyholders who have a bond-type product, the fund should have been heavily invested in bonds rather than equities from the very beginning.

Leaving liabilities unhedged is potentially very risky and violates the second principle of sound insurance, namely that assets should be selected to match liabilities as closely as possible. However, this asset allocation is incompatible with the interests of the non-GAR policyholders, who expect to have a high equity weighting for the fund.

The closure of the fund to new members in December 2000 turned the fund from an ongoing fund into a run-off fund. Without a regular inflow of new and younger members, who bring the joint benefits of immediate contributions but distant maturing liabilities, the investments will have to be managed principally for the purpose of delivering pension payments rather than for generating growth. This massively reduced investment flexibility last year.

Yesterday's vote in favour of the compromise opens the way for both GAR and non-GAR policyholders to become part of a living fund again, with new members and a new investment flexibility. This is probably the most important benefit to both GARs and non-GARs from the Yes vote.

Equitable? No. Mutuality? Very severely damaged. Common sense? Probably.

The writer is director of the Pensions Institute at Birkbeck College, University of London

Equitable Life compromise was deemed fair by the FSA, LETTERS TO THE EDITOR, Financial Times, 4 February 2002

From Mr Charles Thomson.

Sir, You published a personal view by David Blake on Equitable Life's compromise scheme ("An unfair compromise", January 29). David Blake's analysis of the position remains severely flawed and I should like to draw your readers' attention to two particular points.

He says "no evidence was offered to demonstrate that the compromise was indeed fair. It was merely asserted". It is difficult to understand this comment. The proposed compromise documents, the appointed actuary's report and the independent actuary's report all deal with the issue of the fairness of the scheme. The Financial Services Authority has reviewed the scheme and opined that it is fair. Prof Blake is entitled to his opinion but it does seem a difficult one to defend given the facts.

Given the huge majorities in favour of the scheme, our policyholders obviously also felt it was fair.

He also argues that non-guaranteed annuity rate (GAR) policyholders should have been separated from GAR policyholders. With hindsight, it would have been wise of Equitable Life's previous board to introduce a new bonus series for policies issued after 1988. This would have accorded with best actuarial and commercial practice at that time. Reality, however, is that that was not done. Now we must work with the situation as we find it. The law has been laid down by the House of Lords and is not open to further challenge in the UK or European courts.

Our policyholders have voted overwhelmingly to put these issues behind them and to move forwards to a more stable future. This continued sniping by minority unrepresentative groups is unsettling to our policyholders generally and is a disservice to your readers.

Charles Thomson, Chief Executive, The Equitable Life Assurance Society, City Place House, 55 Basinghall Street, London EC2V 5DR

How judge dismissed objectors' arguments: There was more short shrift than sympathy in a judgment that took over 90 minutes to deliver, by Andrew Bolger, NATIONAL NEWS, Financial Times, 9 February 2002

Mr Justice Lloyd yesterday thanked the 34 people who had registered objections to Equitable's compromise scheme, saying that they "gave me graphic examples of the worry felt by some of those concerned at the effect on their actual and prospective financial position".

However, that was as good as it got for the objectors, whose arguments were comprehensively dismissed in a long and closely argued written judgment the judge read out for more than an hour and a half.

The judge said the fact that such large numbers voted for the scheme was a big factor in his decision.

"But I am also satisfied that, neither on account of any inadequacy of information or otherwise in the procedure, nor in respect of any of the substantive points made to me, is there the slightest reason to suppose that it is not a proper scheme."

The judge said several objectors had criticised the original House of Lords judgment in the summer of 2000 that forced Equitable to recognise its guaranteed annuity rate liability, and had urged that the decision be challenged.

"All of these various suggestions fly in the face of reality. Even if it might have been possible to challenge or test the scope of the House of Lords decision, to take that course would have been lengthy, expensive and doubtful."

The judge was also dismissive of a report by Professor David Blake, an economist, which said policyholders should have been given a statement of the mutual's position as of November 30 last year.

He said the professor had not indicated how Equitable could be expected to provide such information in scheme documents that were in virtually final form on November 26, in order to meet the Halifax deadline of March 1.

"The fact is that it could not have been done, and I find it surprising that he should have said it was necessary."

The judge also gave short shrift to submissions by some "late-joining" policyholders who alleged they were victims of mis-selling and fraud by the mutual's former board, in that Equitable must have known about the GAR liability before the Lords ruling.

The judge said: "This is mere assertion. No evidence was put forward for it . . . While I understand that the combination of strength of feeling and hindsight might lead people to accuse the board of knowing, from some early date, that the position would be declared as to be as the House of Lords eventually said, it is not a proposition on which any part of my decisions can be based."

Treves attacks action group, by Jason Corcoran, Financial Adviser, 20 March 2002

Equitable Life chairman Vanni Treves has hit back at a policyholder action group for "inappropriate personal attacks" on management.

An irate Mr Treves, called on Paul Braithwaite, chairman of the Equitable Members' Action Group, to accept overwhelming support for the compromise.

Mr Treves was responding to an article written in Financial Adviser on 7 March by Mr Braithwaite. He said Mr Braithwaite's group carried a disproportionate amount of publicity compared with the views of the vast majority.

Mr Treves said: "Mr Braithwaite should heed the words of representative action groups which rejected these inappropriate attacks on the current management. He should accept that policyholders' overwhelming support for the compromise scheme carries with it a ringing endorsement for the society's management which has achieved so much over the last year in difficult circumstances."

In his article, Mr Braithwaite said the previous management had generated "an unwarranted sense of superiority and secrecy". He said Charles Thomson, chief executive, had continued in this manner.

Mr Treves defended Equitable's management and accused Mr Braithwaite of denigrating Mr Thomson. Mr Treves said the claim that Equitable had held back information did not bear scrutiny.

He said the High Court had commended the society on its communications and rejected calls for more information by Professor David Blake, director of the Pensions Institute at the University of London.

Mr Treves said: "We have repeatedly and publicly apologised to policyholders for the unacceptable level of customer service... No customer services operation could have coped with this unless it maintained an unacceptable - and expensive - amount of overstaffing."

Mr Braithwaite said: "I reject the claim that overwhelming support for the compromise scheme was a ringing endorsement for the current management. The only achievement for Mr Treves is that he has succeeded in sticking the full costs on policyholders while managing to keep the government's hands clean."

Young Ridway, a Surrey-based IFA, has launched another action group to take on Equitable Life. It claims the insurer issued misleading documents before a ballot last month in which policyholders backed the compromise deal.

Case No: 7106 of 2001

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 February 2002

B e f o r e :

THE HONOURABLE MR JUSTICE LLOYD

IN THE MATTER OF THE
EQUITABLE LIFE ASSURANCE SOCIETY

- and -

IN THE MATTER OF THE
COMPANIES ACT 1985

Gabriel Moss Q.C., David Richards Q.C., Martin Moore and Barry Isaacs instructed by Lovells for the Petitioner, the Equitable Life Assurance Society
Oral representations were made by the following:
Mr Rodney Allen, Mr Nicolas Bellord, Mr Ravindra Bountra (on behalf of the holders of four policies governed by Greek law), Mr Paul Braithwaite, Mr Michael Josephs, Mr John MacLeod, Mr Brian Millo, Mr David Stonebanks, Mr Arthur White (by Mr Charles Oke) and Mr Christopher Whitmey

Hearing dates: 4 - 6 February 2002

JUDGMENT: APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO EDITORIAL CORRECTIONS)

Mr Justice Lloyd:

Was the information given adequate?

69.A number of those who objected to the Scheme suggested that the information given was inadequate. They did not dispute that a huge amount of information was given - some said it was far too much - but these critics suggested that, for all this, it did not include all that was reasonably needed. One of the action groups sought the opinion of an economist, Professor David

Blake, who wrote a report dated 19 December 2001, which he made clear was produced against a very tight deadline, and should be regarded as preliminary. In the report he does criticise the information given with the Scheme documents in some respects. A number of those making representations against the Scheme referred to his report.

Professor Blake's report

70.Professor Blake was asked to assess whether policy-holders had been provided with adequate and objective information concerning the Scheme, and he approached this from a financial economics perspective rather than either a legal or an actuarial viewpoint, on either of which, I take it, he would not have been qualified to express a view. I can summarise his criticisms as follows:

i.The Scheme documents provided information as at 30 June 2001, "nearly 6 months old". In the interests of transparency and full disclosure additional information was needed, consisting of a statement of affairs as at 30 November providing information on:

a.number of policy-holders (GAR and Non-GAR) still in the fund;

b.value of the fund;

c.solvency level of the fund;

d.fund available for appropriations.

ii.The Scheme documents ought also to have provided information as to how the fund would be run in future if the Scheme became effective, including as to the intentions of Halifax in that event, and what would happen if the Scheme were not approved.

iii.Even if the Scheme is fair and reasonable in an actuarial sense, policy-holders did not have enough information to determine whether it is fair and reasonable in a sense of financial economics, namely whether the GAR policy-holders are being adequately compensated for the rights being given up and the Non-GAR policy-holders are being adequately compensated for their part in the Scheme.

iv.Policy-holders had not been given enough information to assess whether the Scheme is the best that can be done, and in particular whether the fund might better be split between the two groups of policy-holders.

v.The information provided by the Board was inadequate as to whether approval of the Scheme would put an end to further claims against the Society, in particular because no figure was given for those who had left since 8 December 2000 and who might have mis-selling claims.

71.Professor Blake does not indicate how the Society could be expected to provide information up to 30 November in the Scheme documents which were in virtually final form already on 26 November, the printing of which started within one or two days of that date, on a timetable which could not have been delayed consistently with keeping to the meeting date of 11 January 2002 and retaining any reasonable chance of the Scheme becoming effective (if it is to) before 1 March 2002. The fact is that it could not have been done, and I find it surprising that he should have said that it was necessary. He does not explain in his report why he was of that view.

72.As for the future of the fund, it does not seem to me that the Society could reasonably have been expected to give information to policy-holders as regards what may happen in the future in one event or the other, which necessarily they do not know.

73.As regards whether policy-holders have enough information to tell whether the Scheme is fair and reasonable in a financial economics sense, Professor Blake suggests that the Scheme omits a clear statement of what the respective classes of GAR and Non-GAR policy-holders are giving up in each other's favour. The summary of Professor Blake's point in this respect (para. 2.11) suggests that he is talking about inadequacy of information, but from the body of his report (para. 2.10) it seems that he is of the view that the Scheme is not fair and reasonable, and that the documents are defective for not expressing the comparison in financial economics terms. In my judgment the documents are expressed in entirely suitable terms to convey to policy-holders the reality of what is to be achieved by the Scheme.

74.Professor Blake then outlines a different approach which he says would recognise the fundamental difference of interests between the GAR policy-holders and the Non-GAR policy holders. He accepts that the technique involved was considered by the Board, but he does not accept the view expressed by the Board that it would not work. Moreover his approach involves having done something in 2000 which did not happen, namely that "policy values would have been reduced immediately after the House of Lords ruling in order to penalise exercise of the GAR option and transfers from the fund at above fair value". Not only did that not happen, so that it does not seem altogether useful to put forward a proposal now on the basis that it had happened, but also, if it had been attempted, it seems to me clear that it would at once have been challenged on behalf of GAR policy-holders, and rightly so, as being inconsistent with the House of Lords ruling itself. Thus, far from eliminating uncertainties and difficulties resulting from that ruling, it would have exacerbated the difficulty and led to further, possibly lengthy, litigation. I do not find this a constructive or helpful suggestion in the circumstances. A number of those who put in representations to me made points which depended on ignoring or challenging the House of Lords decision. I will deal with these later. If and insofar as these were encouraged by this particular suggestion by Professor Blake, they have been misled.

75.Professor Blake points out, rightly, that the Scheme does not provide complete stability, because it does not seek to bind those who have ceased to be policy-holders before the date on which it would become effective. As he says, this is clear from the terms of the Scheme documents. What he says is not disclosed is the full extent of the possible claims, or the best information that could have been given about this, namely the number of the Non-GAR policy holders who left after, say, 8 December 2000 and up to a date as close as possible to the finalising of the Scheme documents. The Scheme document provides this information, not by numbers of policy-holders but by value, as at the end of September 2001. Since the documents had to be in final form before the end of November, the information was, in practice, up to date to less than two months before the date on which it was to be published. I do not see that later information could reasonably have been expected, nor that it would be of any significant additional materiality.

76.I therefore reject Professor Blake's criticisms as reasons for supposing that the Scheme document was inadequate as regards the information given to those who had to decide whether, and if so how, to vote on the Scheme.

Other points about inadequate information

77.Several objectors mentioned one or more of the points made by Professor Blake about the inadequacy of the information given. One, Mr Bountra, whom I have already mentioned, mentioned an additional point, namely that policy-holders should have been told the figures, in number and value, for the GAR rights prospectively exercisable as at the date on which the Scheme would become effective. He did not explain how it would have been possible to do this in Scheme documents finalised in late November as regards a date expected to be between 12 and 15 weeks later. Even as regards a date before the settling of the Scheme documents I do not see that further information about this was needed to ensure that policy-holders had enough information on which to make up their minds about the merits or otherwise of the Scheme. Mr Oke, speaking on behalf of Mr A M White, said that the Society should have given details of the commencement dates of all subsisting with profits policies, for example in bands, year by year. I cannot see how that could fairly be regarded as necessary or even useful.

Criticisms of the House of Lords judgment

78.As I have mentioned, several of the objectors suggested that the House of Lords judgment did not have the effect which the Society has been advised that it has, or that it could be challenged or clarified, or that action could be taken which would be inconsistent with the ruling as it has been understood. I will leave for later points of this kind based on the Human Rights Act 1998.

79.Professor Blake is one who takes this standpoint, though it is not clear to me how the expression of the view mentioned at paragraph 74 above comes within the scope of his expertise. As I have mentioned in describing the events leading up to the Scheme, Mr Warren and Mr Lowe were asked specifically to advise whether there was any way in which the ruling could be re-opened or challenged from the point of view of Non-GAR policy holders. They advised that there was no such course available. It seems to me that they are right, but even without going so far, it must be clear that any attempt to reopen the question would be legally extremely difficult and doubtful of success, and would also be time-consuming. Certainly the Society could not have been advised to take any action which, on the face of it, was inconsistent with the House of Lords ruling without first seeking to establish, by some sort of application to the court, that this was legally feasible. I therefore cannot see that a suggestion such as that of Professor Blake mentioned in paragraph 74 above could ever have been practicable.

80.Mr Rodney Allen did not suggest that the Society should have gone ahead in disregard of the House of Lords ruling, but he did, in his written submissions, argue that the judgment, as regards ring-fencing, was "ex parte", could be revisited and, if it were, would be reversed. In his oral submissions to me, he withdrew somewhat from this, and suggested only that the judgment may have been right but was more limited in effect than had been assumed. It outlawed the differential final bonus practice, and ring-fencing, but did not exclude a more limited and reasonable approach to mediating between the interests of the two classes of GAR and Non-GAR policy holders. He submitted that the Society should be required to fund an action to clarify the full meaning and implications of the House of Lords ruling.

81.Mr Nicolas Bellord put forward a different approach to getting round the House of Lords ruling. He said, first, that the House of Lords were misled, not being given the full facts about the size of the problem if the differential final bonus practice and ring-fencing were disallowed, that the Society, appointed by then to represent Non-GAR policy holders, must have been acting in breach of its duty to that class by not making the House of Lords aware of the relevant facts, that the judgment was therefore obtained in consequence of abuse of the process on the part of the Society, and that the equitable remedy (namely the implication of a contractual term) granted by the court could not be enforced. Leaving aside the fact that, so far as I can see, the House of Lords did not make any declaration at all, and certainly did not grant any equitable remedy, Mr Bellord's process of reasoning is speculative as regards the facts and fanciful as regards the consequences of the facts even if true. His second point was that the ruling was unfair and unconscionable, and inconsistent with the principles of estoppel by convention discussed in Taylor's Fashions v. Liverpool Victoria Friendly Society [1982] QB 133. Clearly he resents the House of Lords decision, as no doubt do many Non-GAR policy holders. He has devoted some imagination to thinking how it might be got round. But even if (contrary to my view) there were any substance in his ideas, to test either of them, or any other, would involve a potentially long period of litigation and uncertainty, during which nothing would be being done to improve the position of the Society and its policy-holders, and the cost and continued uncertainty would be likely only to make the position worse.

82.Mr Donald Horrell, who put in a written representation, urged me to "use the law of equity to override the House of Lords judgment, and to guide the Society to a more equitable solution, where the rights of the Non-GARs are recognised", their funds being retrospectively ring-fenced and the GAR funds reduced until the Society can afford to pay GAR rates on the reduced values.

83.All of these various suggestions fly in the face of reality. Even if it might have been possible to challenge or test the scope of the House of Lords decision, to take that course would have been lengthy, expensive and doubtful. It does not seem to me that the Society can be criticised for not doing more in this respect than seeking the advice that it got from Mr Warren and Mr Lowe, and then acting on the basis of that advice.