



Guernsey Financial  
Services Commission

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Our Ref: 1003477/TJB/DC

Mr B Pomeroy CBE  
Independent Commission on Equitable Life Payments  
Eastcheap Court  
11 Philpot Lane  
London  
EC3M 8UD

1 December 2010

Dear Mr Pomeroy

**Independent Commission on Equitable Life Payments (“Independent Commission”)  
Equitable Life Assurance Society (“Equitable”)**

Thank you for your letter of 3 November 2010 advising the Guernsey Financial Services Commission (“**Commission**”) of the Independent Commission’s discussion paper “Equitable Life Payments Scheme: achieving a fair allocation and order of payments”.

It is noted that the Independent Commission is to provide advice to the UK Government on how to fairly allocate funds over the next three years to those persons found to have suffered relative losses as a result of accepted Government maladministration, excepting with-profits annuitants and their estates; and to the priority of those payments.

Within the discussion paper, paragraph 2.10 acknowledges that consideration should be given to overseas policyholders and the need to treat them fairly in relation to domestic policyholders.

We are writing to you in respect of the Guernsey branch policyholders to try to ensure that Guernsey branch policyholders are treated fairly, in line with other “domestic” policyholders, when the Independent Commission provides its advice to the Government. We hope that you will find our comments below to be of assistance.

The Commission has previously provided representations to both the Financial Ombudsman Service (“FOS”) and the Parliamentary Ombudsman (“PO”) in an effort to ensure that Guernsey branch policyholders were treated in the same way as domestic policyholders. Following our submissions, the FOS agreed in 2003 that it had jurisdiction over sales made through the Guernsey branch while the office of the PO concluded in 2005 that the PO’s investigation was “*capable of covering the position of all international policyholders who claim to have suffered injustice as a result of maladministration by the prudential regulation of Equitable Life prior to 1 December 2001*”.

For the avoidance of doubt, the Commission is concerned only in respect of those policyholders (wherever they may reside) of Guernsey branch policies (“**Guernsey policyholders**”). Policyholders falling within this category may also fall within a wider category of “international policyholders”. This wider category is not the concern of the Commission or the subject of this submission.

In summary, the Commission’s view is that the Guernsey policyholders should be treated fairly, in the same manner as the domestic policyholders, for the following reasons:

- (a) the FOS accepted jurisdiction to consider complaints by Guernsey policyholders, while the PO concluded that her investigation and conclusions would cover the position of the international policyholders claiming to have suffered injustice as a result of maladministration by the prudential regulation of Equitable prior to 1 December 2001 (to treat them as they did the domestic policyholders);
- (b) the Commission, the FSA and Equitable have all expressed the view unequivocally that the UK regulators were responsible for the prudential regulation of Equitable including the Guernsey branch;
- (c) the UK regulators were required to regulate the operations of Equitable including the Guernsey branch because:
  - (i) the Guernsey branch office of Equitable had no separate legal existence and therefore Equitable’s authorisation under the Insurance Companies Act 1982 (the “ICA”) and the consequential prudential supervision by the UK regulators has always necessarily extended to its branch in Guernsey; and
  - (ii) all of the substantive business undertaken in relation to Guernsey policies was undertaken in the UK and therefore falls within the definition of “insurance business” carried on in the UK under the ICA.

- (d) Further, policyholders who bought policies through the Guernsey branch contracted with and obtained rights against the UK registered entity including:
- (i) the funds invested by Guernsey policyholders and those relating to UK policyholders were invested in a single fund which was managed in the UK with no separate or distinct part of that fund allocated to or in any way ring-fenced in respect of the funds invested by Guernsey policyholders;
  - (ii) to the extent that the policies were "with-profits", policyholders became entitled to be members of Equitable (and not, for instance, only some part of Equitable).

In conclusion, the prudential regulation of Equitable in relation to Guernsey branch policies is a matter which came within the ambit of the UK regulators' jurisdiction. Guernsey policyholders obtained rights and/or obligations which arose or accrued in the UK. Guernsey policyholders relied upon the regulation of Equitable by the UK regulator and were entitled to do so.

In order to achieve a fair allocation and order of payments, the Commission therefore requests that the Independent Commission treat the Guernsey policyholders in the same manner as the domestic policyholders, when providing advice to the Government in respect of a proposed payments scheme.

A copy of this letter is to be published on the Commission's website, [www.gfsc.gg](http://www.gfsc.gg).

Please do not hesitate to contact me if you have any points arising from this letter.

Yours sincerely

A handwritten signature in cursive script, reading "Diane Colton".