Financial Ombudsman Service

FINAL DECISION	
Complainants:	Mr and Mrs K
Firm:	The Equitable Life Assurance Society
Date of Decision:	16 November 2006

complaint

Mr and Mrs K have complained about the sale to them in December 1996 of two with profits personal pension plans. Mr and Mrs K have complained that Equitable Life failed to disclose to them the financial problems that it was facing at the time that they took out their personal pension plans – and that had the firm done so they would have invested elsewhere.

circumstances

From December 1996 to December 2001, Mrs K paid into her plan and Mr K paid into his plan. Mr and Mrs K transferred their pension plans to another provider in December 2001.

Mr and Mrs K are within the category of policyholders who did not have any rights to a Guaranteed Annuity Rate (GAR) themselves – a category which we refer to as "non-GAR policyholders". The "GAR-related risk" in this context was thus the impact that any GAR-related claims on the with-profits fund by the GAR policyholders would have on the non-GAR policyholders (or potential non-GAR policyholders, such as Mr and Mrs K when they were receiving advice).

In December 1996, when Mr and Mrs K took out their personal pension plans, Equitable Life did not at that time disclose to new investors in its literature that, since 1994, it had operated a differential terminal bonus policy (DTBP) for policies containing a GAR. In effect, the DTBP meant that when the pension policy was used to set up an annuity, the amount of terminal bonus payable was adjusted according to whether or not the policyholder elected to exercise his right for a minimum guaranteed annuity rate to be applied to the fund value of the policy in calculating the amount of annuity to be received. The firm believed that it was entitled to apply the DTBP under Article 65(1) of its Articles of Association.

Equitable Life's operation of the DTBP was challenged in the courts in 1999 and was upheld in the first instance – but this judgment was not upheld in the Court of Appeal. In early 2000 the case was referred to the House of Lords, and in July 2000 the House of Lords ruled that Equitable Life was not entitled to adopt a DTBP and had acted in breach of Article 65(1) of its Articles of Association by doing so.

As Mr and Mrs K had removed their funds from the with-profits fund before 8 February 2002, they are not covered by the Compromise Scheme which came into effect on that date and so have therefore been able to bring their GAR-related complaint to the Financial Ombudsman Service.

our conclusions on other related matters

Mr and Mrs K's complaint is one of a large number of complaints against Equitable Life that the Financial Ombudsman Service has been considering – which are known as "GAR-related complaints". These complaints have been subject to extensive debate by the parties and careful consideration by the Financial Ombudsman Service.

In reaching a decision in this case, I have taken into account the conclusions we have reached on the other "lead cases" on GAR-related complaints made against Equitable Life. Each of these cases has been published on our website and is available at www.financial-ombudsman.org.uk/faq/equitable.htm. I will, however, set out the brief details of these cases below by way of background to this case.

a) *Ms E – a sale that took place in October 1999*

In a decision dated 22 March 2005 concerning a complainant known as Ms E, the chief ombudsman considered a similar sale that took place in October 1999. He set out in his final decision the background to this matter and the knowledge of the firm at the date the advice to Ms E was given. He noted that at the time advice was given to Ms E, Equitable Life had already been warned by its legal advisers that the courts might decide that the way it was running its with-profits fund to negate the value of GAR rights was not permissible. Equitable Life had been advised that if this happened it might make the GAR rights costly for it.

The chief ombudsman concluded that Equitable Life's representative had not drawn Ms E's attention to this risk and that he ought to have done so. Accordingly, Equitable Life had failed in its duty to advise with reasonable skill and care and to disclose to her all material risks of the course of action it recommended to her. The chief ombudsman was satisfied that if Ms E had received full and proper advice she would not have invested with Equitable Life – but would instead have invested with another firm's with-profits pension fund which was not subject to similar risks. He required the firm to compensate Ms E according to a formula that related her loss to the benefit she would have obtained from a "market average" of alternative with-profits pension investments.

b) Mr G – a sale that took place in March 1998

Subsequently, we considered the case of Mr G, who had received similar advice from Equitable Life in March 1998. We noted that at that time, Equitable Life had started to consider the GAR-related risk internally and, based on the number of complaints it was starting to receive, was (or at least should have been) aware that its stance on paying a differential terminal bonus was subject to a potential challenge.

We concluded that by 20 March 1998 the state of culpability of Equitable Life's senior management was the same as in the Ms E lead case – and that therefore the complaint

should be upheld and redress paid in accordance with the formula previously set out in the Ms E case. The complainant accepted the conclusions and Equitable Life decided not to challenge them.

c) *Mr N – a sale that took place in 1990*

In the case of Mr N, we considered the sale of a with profits policy in 1990. When the advice was given in 1990, current annuity rates (CARs) were substantially higher than GARs, and our view was that the risk posed to the firm by honouring any GARs was therefore hypothetical in nature. In fact, the GAR only exceeded the CAR for the first time in the period from October 1993 until May 1994, and thereafter from May 1995 onwards.

In Mr N's case, we found that there was no evidence to suggest that at the time of the advice and sale of Mr N's policy, Equitable Life knew (or ought to have known) that the existence of the GARs – and the potential application of the DTBP – represented anything other than a theoretical risk. In essence, we concluded from the evidence available that even if Equitable Life had disclosed this GAR-related risk, the perceived risk itself was so small as to be insignificant, and that Mr N would still have entered into the contract. Mr N did not challenge our view.

d) *Previous consideration of cases between 1990 and March 1998*

My adjudicator has set out an assessment of the issues in cases prior to March 1998 (but after 1990) in the "Mr H case" (an adjudication dated 6 April 2006). The adjudicator concluded in that case that Equitable Life did not breach any relevant law or regulatory duty when it advised Mr H, in January 1998, to invest in the firm's with-profits fund – and did not mention the presence of the GAR-related risk. Accordingly, as the with-profits fund was not unsuitable for Mr H, the adjudicator was unable to uphold the complaint in favour of Mr H.

As Equitable Life provided Mr and Mrs K with advice in the period before 20 March 1998, we referred them to a copy of our adjudication in the Mr H case – and to the conclusions and reasoning contained in it. My adjudicator suggested that the same reasoning which underpins the Mr H case should apply to their complaint – and that accordingly he was unable to uphold their complaint.

Mr and Mrs K have since provided detailed submissions in respect of the points raised in the Mr H adjudication, and they have put forward their arguments as to why they believe that Equitable Life should have disclosed the "GAR-related risk" to them, when they took their pension policies out with the firm in December 1996.

The purpose of this final decision is to consider the points raised by Mr and Mrs K – as well as the key arguments and issues raised by the responses that I have received to the Mr H adjudication from those other policyholders who have complaints about the advice received from Equitable Life in the period prior to 20 March 1998.

the "Mr H case" and relevant background material

The sale of Mr and Mrs K's personal pension plans took place in December 1996 – which falls within the period from 1990 (the period covered by the Mr N case, referred to above) and 20 March 1998 (the date referred to in the Mr G case above). This is the same period referred to in the Mr H adjudication.

In the case of Mr H, the adjudicator stated that Equitable Life had a legal duty to advise with reasonable skill and care – and was under a regulatory requirement under the Personal Investment Authority (PIA) rules on the conduct of investment business to provide suitable advice and to explain the material risks involved in relation to the advice.

In considering whether Equitable Life was in breach of this duty, or of the conduct of business rules in place at the time, the adjudicator went on to consider whether the firm ought to have disclosed the GAR-related risk to Mr H at the time advice was given. If the firm did not know – or could not reasonably be expected to know – that those risks were material, then the adjudicator said that he would not be able to conclude that the firm had breached its duty to Mr H in this regard.

The adjudicator in the Mr H case gives a helpful summary of the relevant general background here, with which I concur:

> *As a starting point for my assessment, I am satisfied on the evidence I have seen that Equitable Life's senior management, and other senior actuaries and managers in the life insurance sector, understood prior to March 1998 (the date referred to in the Mr G case above) that there was a potential issue with GARs. I have reached this conclusion based on the understanding of the sector at the time, including the fact that in January 1997 the Life Board of the Institute and Faculty of Actuaries set up an Annuity Guarantees Working Party which reported in November of that year. Its report "Reserving for Annuity Guarantees" may be seen at:*
> *www.actuaries.org.uk/files/pdf/library/annuit_report.pdf*
>
> *This report "identified a number of possible approaches for consideration" in respect of reserving for annuity guarantees, and in summary these were: (1) setting aside additional reserves based on a prudent estimate of the cost of the guarantees; (2) recognising the cost of the guarantees as effectively increasing the guaranteed sum assured and then recalculating the net premium reserves accordingly; and (3) not reserving for the guarantees but making adjustments to the terminal bonuses payable.*
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> *The report went on to state that each of these options had its own advantages and disadvantages and that "no approach is entirely satisfactory". The basis on which the reserving would take place in each of the first two approaches was questioned. On the other hand, it was noted that the approach of not reserving for guarantees "could be viewed as being unsound because no explicit provision is made for an explicit guarantee". However, in its conclusions the working party felt unable to recommend a common approach to reserving or indeed in dealing with the GAR issue.*
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> *In terms of how the GAR problem developed, the origins can be found in the combined effect of lower interest rates and lighter mortality experienced over the course of the past decade or so. Whilst companies can see changes in interest rates as they develop, lighter mortality rates are not seen on the same daily basis, and can only be seen over a longer period.*

The relevant facts in respect of the GAR problem are also mentioned in Chapter 4 of the Baird Report of 2001, the text of which may be seen at: www.hm-treasury.gov.uk/newsroom_and_speeches/press/2001/press_113_01.cfm.

In terms of recognising and dealing with this emerging problem, the report noted that in June 1998 the regulator (HM Treasury) wrote to the appointed actuaries of all life offices with a questionnaire about annuity guarantees. The context for the questionnaire was stated in the following observation contained in the covering letter sent out with it: "given the trends in recent years in both pensioner mortality and market interest rates, we are conscious that a number of these guarantees may be of increasing significance to the financial management of individual life insurers".

On the theme of the regulator's involvement, in Chapter 17 of his Report, Lord Penrose goes into detail about the extent of the dealings between the regulatory bodies and Equitable Life, as also does Baird in his Chapter 4. I will not comment further on these matters here, but only to note that the evidence contained within these Reports indicates that the regulatory bodies only took an active interest in GARs from the middle of 1998 onwards, and that HM Treasury questioned Equitable Life about its justification for the differential terminal bonus policy in September 1998.

Turning now to the extent of the firm's knowledge, the Penrose Report also refers in Chapter 1 to an internal paper dated 27 March 1998 prepared by a Mr Matthews (the assistant general manager responsible for running the actuarial projects department at Equitable Life) for an internal meeting held on 2 April 1998. One of the items for discussion in Mr Matthews' paper was Equitable Life's "stance, when challenged on its treatment of annuity guarantee policyholders".

This therefore raises the question of when Equitable Life was first seriously challenged on this stance. Evidence on this was presented at last year's court case by Equitable Life against fifteen ex-directors and Ernst & Young. These proceedings subsequently settled with no finding being made by the judge and therefore some of the evidence was not completely tested in the proceedings. It is noted, mostly from pages 203-205 of the opening submissions for Mr Wilson, one of the defendant ex-directors, that Equitable Life had received a single GAR-related complaint in each of the following months: January, February and March 1994, October 1995, June 1996 and November 1997. It is noted that these six complaints were largely resolved on an individual basis by the firm and that the PIA Ombudsman (one of the predecessor schemes to the Financial Ombudsman Service) did not receive any complaints on the GAR issue until July 1998.

The adjudicator in the Mr H case also notes that, by the time Ms E was advised to invest in the with-profits fund, we have previously concluded that Equitable Life had already been advised by its legal advisers of the GAR-related risks. By the time Mr G was advised in March 1998, it would seem that the firm had at least identified the GAR risk internally and had started to deal with the emerging issue. There was also a growing body of complaints from customers about the use of the DTBP.

Prior to March 1998, however, the adjudicator believed that the evidence was less certain. It was true to say that the firm had by that time responded to some individual queries about the matter and was engaged in some wider professional discussion on the subject of GARs. However, the adjudicator's view was that these indicators fell short of an actual knowledge

that the GAR-related risk was material (and therefore discloseable) – and could better be described as part of the growing understanding by the firm of the issue which crystallised in March 1998, when the firm was (or at least should have been) aware that its stance on GAR policies was subject to potential challenge, and would be material to the assessment of risk of potential policyholders.

findings

I have considered all the evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances. In particular, I have considered the representations made by Mr and Mrs K, including those in response to the Mr H case – as well as representations made by other Equitable Life policyholders who have made similar complaints to us and who have responded in detail to the Mr H adjudication.

My investigation has included looking at the relevant documentation that is within the public domain. One of the most important pieces of evidence in this respect is the substantial and detailed report by Lord Penrose into Equitable Life which was issued in March 2004 ("the Penrose Report"). This Report set out the findings of what was an unprecedented inquiry that went into significant depth on the history of the issues and events surrounding Equitable Life.

As part of my investigation, I have also looked at developments in the legal actions brought by Equitable Life against its former auditors and directors, in case such actions brought to light any new evidence that would have been material to my assessment of the GAR-related complaints.

More generally, I have noted the wide range of legal and other commentary relevant to Equitable Life. There is a considerable volume of such material, produced by a range of parties for a range of purposes. Thankfully, my task in this decision is not to adjudicate between the competing views surrounding the wider Equitable Life picture. In essence, my role is limited to determining whether or not the advice given by Equitable Life to Mr and Mrs K to purchase two with profits personal pension plans was appropriate at that time.

a) timing of this decision

Before turning to consider the issues in the case, I should deal with one procedural matter. Following the publication of the Mr H adjudication, I have been asked by some complainants to delay my determination of these issues – in order to wait for the outcome of other investigations and inquiries on Equitable Life. The majority of these requests particularly refer to the Parliamentary Ombudsman's investigation – but also refer to the European Parliament's Inquiry, the investigations/inquiries of the Accountants' Joint Disciplinary Scheme and the Institute of Actuaries Disciplinary Scheme. Some complainants have asserted that, although the nature of these enquiries and hearings is different to the subject matter of their complaints, in that the conduct of Equitable Life itself is not the focal point, they may provide further evidence as to the state of knowledge and actions of the firm.

I note that the Parliamentary Ombudsman has recently indicated that one of the heads of complaint that she is investigating relates to an alleged lack of liaison, in respect of Equitable Life, between the prudential regulators and those responsible for regulating the conduct of insurance companies' business. This may therefore give rise to the need to deal with conduct of business matters in passing – for example, if the Parliamentary Ombudsman were to find that proper liaison between the regulators had been lacking, then she may want to consider

whether such lack of liaison was a material shortcoming and not just some technical or irrelevant administrative failing. Whilst the Parliamentary Ombudsman has stated that her focus must be on the actions or inaction of those responsible for the prudential regulation of Equitable Life, it is possible her report may deal with matters concerning conduct of business regulation.

I am, of course, mindful of the importance of the Parliamentary Ombudsman's enquiries and the other enquiries and proceedings in respect of Equitable Life. However, I note that the Parliamentary Ombudsman is not due to publish her report until at least May 2007 and it may well be that the European Parliament will decide not to publish its report until after that date. There will also need to be periods after the publication of any reports for digesting their findings – and after the professional conduct disciplinary hearings for any potential appeals process.

In view of the above, I do not therefore believe that any greater justice can be served by waiting for the outcome of these other investigations and disciplinary proceedings. However, should new evidence come to light in the future from any of these sources, which is material to the decision that I have reached in this complaint (and the similar complaints we are presently dealing with), and which was not available to me at the time of this decision, then I would expect Equitable Life to review the complaint in the light of this material new evidence and the general approach set out in this and previous decisions. If the matter remains unresolved, I may then consider dealing with the matter as a new complaint.

b) relevant rules and our powers

The regulatory and legal background to the general issues raised in relation to the disclosure of the GAR risk is set out fully in the chief ombudsman's decision on Ms E – and so I need not repeat this here. Suffice to say, I am satisfied on the facts that the firm owed Mr and Mrs K a duty of care to give them full and proper advice as to the potential benefits and risks of entering into a personal pension with Equitable Life.

In summary, the firm had a legal duty to advise with reasonable skill and care and a regulatory requirement to provide suitable advice and explain the material risks involved in relation to the advice. In considering whether the firm breached this duty, I need to consider whether it ought to have disclosed the GAR-related risk to Mr and Mrs K at the time advice was given. If the firm did not know, or could not reasonably be expected to know, that those risks were material, I cannot conclude that it breached its duty to Mr and Mrs K in this regard.

c) Consideration of representations

Mr and Mrs K did not accept the reasoning provided in the adjudication of Mr H's case. I have therefore considered the arguments that they have put forward – together with the additional arguments raised by those other policyholders with complaints who have responded to the Mr H adjudication. I will, therefore, now deal with the points raised in response to the Mr H adjudication – and at the same time confirm the key reasons for reaching my decision in this case.

The adjudicator concluded:

> *By the time Mr G was advised in March 1998, it would seem that the firm had at least identified the GAR risk internally and had started to deal with the emerging issue and there was also a growing body of complaints from customers about the use of the DTBP.*
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> *Prior to March 1998, however, the evidence is more ambivalent. The firm had responded to some individual queries about the matter and was engaged in some wider professional discussion pre-March 1998. However it seems to me that these indicators fall short of a knowledge of material risk and might better be described as part of the growing understanding by the firm of the issue.*
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> *Overall, it seems to me that this does not prove that Equitable's senior management knew or ought to have known of the GAR related risk and its implications for non-GAR policyholders such as Mr H.*

Mr and Mrs K, and a number of other complainants, consider that this conclusion is wrong. They say that Equitable Life knew, or should have known, about the GAR-related risk at a far earlier stage – and should have highlighted it in the material made available to them when they were advised.

Some policyholders have referred to the fact that Equitable Life stopped issuing new policies with GARs in 1988, and cite this as evidence that the firm must have been aware at that time of the GAR-related risk. However, the fact that the firm did not issue any new policies with GARs from 1988 onwards does not, in itself, in my view equate to there having been knowledge of a material risk from any GAR liabilities.

There are several reasons for reaching this view – the main one being that the legislation governing pensions changed in July 1988 and retirement annuity contracts were being replaced with personal pension plans. At this time most, if not all, product providers were reviewing and re-writing their policy conditions in line with this new legislation. Furthermore, in July 1988 the current annuity rate (CAR) was still greater than the GAR rate and so this in itself would not have been reason for excluding the GAR.

In my view, the fact that Equitable Life changed its pension policy terms and no longer included the GAR option does not in itself mean that the firm was aware that the GAR-related risk was material at that time.

Moving on to consider when the GAR-related risk became material, some complainants have referred to the fact that the GAR exceeded the CAR from May 1995 onwards – and by January 1998 had done so for over two and a half years. However, this is only one aspect of the formation of the GAR-related risk and this risk becoming material.

The crux of this issue is – when did the GAR-related risk become material, such that it should have been disclosed to new investors in the with-profits fund? In this respect, the evidence presented to date has shown that Equitable Life held the view that it could legitimately apply the DTBP, in order to ensure what it considered to be the "fair" distribution of the assets within the with-profits fund – so that the GAR policyholders would not receive an unfair share of the with-profits fund at the expense of the non-GAR policyholders.

The chief ombudsman has already decided, in the Ms E case, that at the point when Equitable Life obtained legal advice – and was told that the courts might decide that the way it was using the DTBP, to negate the value of existing GAR policyholders' rights, was not permissible, and that if this happened it might prove costly for the with-profits fund (especially if ring-fencing of the GAR policies was not permitted) – then the risk became material and should have been disclosed.

This reasoning was subsequently extended in the Mr G case, where it was held that there was evidence that by March 1998 Equitable Life had started to consider the GAR-related risk internally and, based on the number of complaints it was starting to receive, was (or at least should have been) aware that its stance on paying a differential terminal bonus was subject to a potential challenge.

Turning now to the more specific issues raised by Mr and Mrs K, I note that they have raised the following points in respect of the identification of the GAR-related risk prior to March 1998:

- Mr Soundy (an actuary at Equitable Life) had raised concerns about the GAR-related risk with Mr Headdon and Mr Ranson (senior actuaries and executives at Equitable Life) in 1994;

- Equitable Life did not disclose the GAR-related risk – not because it was not material, but because of commercial considerations which would have led to the loss of new business;

- The Glick/Snowden legal opinion for the FSA agreed with the previous legal opinion written by Warren QC for Equitable Life which expressed the view that the GAR-related risk should have been disclosed from 1993 onwards.

In respect of the first point, I note that in Chapter 2 of his report, Lord Penrose at paragraph 86 set out the details of an internal note that Mr Soundy had sent to Mr Ranson on 13 January 1994. In essence, Mr Soundy expressed the view that there were two disadvantages to the DTBP: the first was the issue of integrity (*ie* the question was raised as to whether the firm would be seen to be "effectively reneging on its guarantees" to its policyholders); and the second was the more practical concern that even if the DTBP were to be applied, the amount of final bonus on a policy might not be sufficient to cover the cost of providing the guaranteed annuity under that policy.

According to the Penrose report, this note led to a debate between Soundy, Headdon and Ranson. The report records that a number of issues on the subject of the DTBP were debated, particularly on the first issue of "fairness". In this respect, it would appear from the evidence of these discussions, as noted in the Penrose report, that the outcome of this debate was that the DTBP was to continue on the basis that the executives believed it to be in the general interest of fairness for all policyholders, and particularly on the basis that there was no reason for policies without a guarantee to join in subsidising those that did.

There is therefore evidence that in 1994 the DTBP was discussed at a senior level within Equitable Life; that the issue of fairness was debated; and that the DTBP was considered to be justified as being fair. I think it is relevant to consider here what other life office actuaries were doing at the time. In this respect, in January 1997 the Institute and Faculty of Actuaries had set up an Annuity Guarantees Working Party, which subsequently published its report "Reserving for Annuity Guarantees" in November of that year. As stated earlier, this report "*identified a number of possible approaches for consideration*" in respect of reserving for annuity guarantees, which included the option (which Equitable Life had adopted) of not

reserving at all. This indicates that there was no set practice or common approach in place across the industry at the time, which would have highlighted that the approach being taken by Equitable Life (in applying the DTBP) was unreasonable.

In view of this, I am not persuaded that the firm therefore viewed the DTBP at the time as being subject to a serious challenge – or that it was a material risk which needed to be disclosed to new policyholders.
As for the legal opinions to which Mr and Mrs K refer, I have had regard to these – but they should be considered in the context that they were prepared in 2001, some years before the Lord Penrose inquiry. There have, of course, been many competing views on the legal issues surrounding Equitable Life's actions. In any event, I note the opinion concluded that it was "arguable" that the GAR-related risk should have been disclosed by Equitable Life as early as 1993 in its "key features" documents and marketing material, but only then when it became material.

I agree that an earlier date is indeed arguable. In assessing risk, a firm will need to consider a multitude of issues that might impact the fund in future, including regulatory, actuarial, legal, economic and other financial risks. However, many of these risks might best be considered as theoretical risks and possible outcomes, not clear and agreed probabilities. The element of hindsight can often provide false clarity that can tie too rapidly those early thoughts to finally formed material risk assessments. What at the time may be seen as just one amongst many potential outcomes may be seen, in hindsight, as a clear signposting of a risk that has subsequently occurred.

It is simply not possible for a firm to set out all those possibilities in its advice to its customers. Instead, it must use its professional judgement to identify those matters that it reasonably considers to be material at that time.

What makes this assessment particularly difficult here is the combination of legal and market risk inherent in the GAR-related risk and operation of the DTBP. In the circumstances of this case, I think it right to exercise particular care to guard against the risks of hindsight, in reaching a view on when matters should have been understood as material. As my finding is that the risk was not a material one until March 1998, I do not consider that my conclusions in this case are in conflict with the legal opinions referred to.

A number of complainants have also raised questions about the external advisers to Equitable Life – such as the auditors – and their role in identifying the GAR-related risk. However, my jurisdiction only covers those complaints made against Equitable Life itself and not its external advisers. In this respect, I have considered this case on the basis of Equitable Life's actions as a firm and whether the risk was material. I am not in a position to make a ruling on the competence of Equitable Life's external advisers – but I note that, in any event, there is no evidence available to me to suggest that external advisers raised with Equitable Life the materiality of the GAR-related risk.

Some complainants have also referred to the way in which the with-profits fund was managed, and have alleged that Equitable Life should have done something different, such as ring-fence the GAR policyholders' funds from the non-GAR policyholders' funds. They have also alleged that Equitable Life did not reserve adequately (or even at all) for the GAR liabilities – and questioned why it allegedly paid out more in bonuses than it should have done in view of the underlying value of its assets.

These are all issues which I believe it is not appropriate for me to consider, for the same reasons as set out in the chief ombudsman's decision in respect of why it would not be appropriate for this service to investigate any "Penrose-related complaints" (a decision he issued on 22 March 2005). Having reviewed the arguments presented, I see no reason why I should depart from the chief ombudsman's reasoning and investigate those matters now.

Finally, I must clarify a point raised by Mr and Mrs K and other complainants in relation to a press article which appeared in June 2003, referring to a "landmark" ombudsman decision in respect of Equitable Life policyholders who were given advice after September 1988. This article would appear to relate to the subsequent Ms E decision (issued in March 2005) which related to those complainants who had been given advice after September 1998 – not 1988 as stated in the article.

Furthermore, I am satisfied that the investment advice was suitable for Mr and Mrs K's needs and circumstances at the time, and that they did not enter into the contract on the basis of any misrepresentation.

conclusion

In view of the above, I conclude that Equitable Life did not breach any relevant law or regulatory duty, when it advised Mr and Mrs K in December 1996 to take out a personal pension in the firm's with-profits fund and did not mention the presence of the GAR-related risk.

Based on the evidence available to me, I do not consider that the GAR-related risk was material such that the firm was required to disclose it to new policyholders entering into the with-profits fund until March 1998. On this basis, I do not uphold this complaint and make no award.

Tony Boorman
principal ombudsman