

ADJUDICATION	
Complainant:	Mr N
Firm:	Equitable Life Assurance Society (“Equitable Life”)
Date of Adjudication:	31 July 2003

Complaint

Mr N has complained about Equitable Life’s sale to him in 1990 of a with profits personal pension plan. He has complained that:

“at no time was I advised that there existed a privileged group of with profits policyholders who, in effect, have a preferential claim on the assets of the Society i.e. Policyholders with Guaranteed Annuity Rate (GAR) benefits”.

Mr N has also complained that Equitable Life failed to pay a bonus to its with-profits policyholders for the period January to July 2000 as a result of the House of Lords’ judgment on 20 July 2000 in relation to the GAR test case.

Background

The present complaint arises as a result of the introduction by Equitable Life in 1957 of with-profits policies which included a guaranteed annuity rate (GAR). Over time, GARs began to exceed current annuity rates. As a result, Equitable Life introduced a differential bonus rate scheme between GAR policyholders who chose to exercise their guaranteed annuity option and those who did not. Some GAR policyholders believed that this was unfair and complained. As a result, Equitable Life initiated a test case in the name of Mr Hyman. In September 1999, the High Court found that Equitable Life had acted properly regarding the allocation of bonuses. However, in January 2000, the Court of Appeal overturned that ruling. Equitable Life appealed to the House of Lords and the House of Lords’ judgment was issued on 20 July 2000. In its judgment, the House of Lords held that the differential bonus rate scheme, which Equitable Life had introduced, was unlawful. Following the decision of the House of Lords, the board of directors of Equitable Life resolved to put the Society up for sale and to remove growth in policy values in respect of the first seven months of 2000. On 8 December 2000, Equitable Life closed to new business. In November 2001, Equitable Life applied to the High Court in connection with a Compromise Scheme established under Section 425 of the Companies Act 1985, which was sanctioned on 8 February 2002. Those policyholders who were covered by the Compromise Scheme do not have the right to make a “GAR-Related” complaint to the Financial Ombudsman Service because they received compensation in full and final settlement of any such claim.

Mr N transferred his personal pension plan to another company before 8 February 2002 and is not therefore compromised under the terms of the Compromise Scheme.

The complaint made by Mr N about Equitable Life has been agreed as a “lead case” in respect of a GAR related claim category. At this stage, my aim is solely to assess whether Equitable Life has liability. I have been in correspondence with Equitable Life and with Mr N about this complaint (copies enclosed). I have considered the documentation that has been submitted and the arguments made. I am now in a position to issue this adjudication to both parties.

Investigation and findings

It is not in dispute that, in 1990, Mr N was advised by Equitable Life's representative to take out a personal pension plan investing in Equitable Life's with-profits fund. In order to succeed with the GAR related aspect of his complaint, Mr N must show that had he been made aware in 1990 of the GAR risk he would have declined to take the policy offered by Equitable Life and would have started a personal pension plan with a company other than Equitable Life.

I have seen no evidence to suggest that, in 1990, Equitable Life perceived the GAR risk to be anything other than a theoretical risk. Further, I have seen no evidence to suggest that Equitable Life ought to have seen the risk in more significant terms. I have seen a graph that illustrates how current annuity rates (CARs) compared with GARs in the period 1990 to 2000 (this is derived from the Baird Report issued by the FSA and which is available in full on www.equitablelife-inquiry.org.uk/baird_report.html). I attach a copy of this graph which shows that in 1990, when Mr N took out his personal pension plan, CARs were substantially higher than GARs and historically this had been the case ever since the GAR policies have been established. Equitable Life's CARs in 1990 were typically £149 per £1,000 purchase price, whereas the GAR was typically £110 per £1,000 purchase price.

I am not satisfied on the evidence I have seen that had Equitable Life alerted Mr N to the theoretical GAR risk in 1990, Mr N would not have purchased his personal pension plan with Equitable Life, but would rather have sought to place his investment elsewhere. Because of this, I am unable to recommend that Mr N's complaint should be upheld in this regard.

I have considered whether, notwithstanding my conclusion above, Mr N may still have a valid complaint against Equitable Life in respect of its failure to pay a bonus to its with-profits policyholders for the period January-July 2000. In September 1999, the High Court had found that Equitable Life had acted properly regarding the allocation of its bonuses. On 21 January 2000, the Court of Appeal overturned that ruling and Equitable Life appealed to the House of Lords. The House of Lords' judgment against Equitable Life was issued on 20 July 2000. The relationship that Mr N had with Equitable Life was governed by the contract as set out in policy documents. In accordance with the terms set out in those policy documents, Equitable Life had a wide discretion as to the declaration of bonuses. It is my view that, in deciding not to pay any bonus to with-profits policyholders during the period January 2000 to July 2000 in the light of the House of Lords' judgement, Equitable Life cannot be said to have acted unreasonably. Rather, the steps they took, in my view, were an attempt to protect the rights of all policyholders. Therefore, I am unable to conclude that this element of the complaint made by Mr N should be upheld.

Conclusion

I am not satisfied that I have seen sufficient evidence to persuade me that Mr N would not have entered into a personal pension contract with Equitable Life had the GAR risk been disclosed to him in 1990. Further, I am not satisfied that Equitable Life acted unreasonably in the approach it adopted to the declaration of bonuses in January-July 2000. I therefore conclude that the complaint made by Mr N should not be upheld.

[Adjudicator]