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INTRODUCTION.

I am aged 66. My expertise when in Practice lay in Trust Law with especial reference to the law of Charities which bear some resemblance to 'mutuals', as I will demonstrate, in matters of legal structure and governance. I have been a member and policyholder of the Equitable Life Assurance Society (ELAS) since about 1986 having both GAR and non-GAR policies. I retired from full-time practice in 2000 and have taken a keen interest in the ELAS debacle which cost me an estimated 25% of my life savings and reduced my pension accordingly. I was the sole legally qualified objector to the Compromise in 2002 and I have watched with dismay the crass way in which this debacle has been handled by those in charge whether Government, Regulators or ELAS itself. I have studied all the relevant papers, gave evidence to the Penrose Inquiry and have made a great deal of public comment on the internet as well as preparing commentaries on various aspects. I also assisted the ELTA (Equitable Life Trapped Annuitants) in the preparatory work on the framework of their relation with their Solicitors in connection with the action they have launched against ELAS supported by some 800 claimants. My work in that respect has now come to an end. I mention all this to show I do have a profound knowledge of the debacle and the issues that have arisen.

Overall view of the recent History of ELAS.

My overall view of the ELAS's history is that it was and is a Society which is 'out of control' of any form of proper governance. Lord Penrose's Report is notable for the aspects it did not cover; those aspects being conduct of business, maladministration, misfeasance, dishonesty and fraud both civil and criminal. Nonetheless his report tells a story of megalomaniac actuaries, gambling strategies worthy of Hoyle's 'Book of Games Modernised' but which like all gambling strategies were doomed to failure, indolent and ill-equipped directors and finally a fraudulent venture which in the end was connived at by the Government Regulators contrary to section 15 of the Theft Act 1968. Despite all this HM Treasury (HMT) has orchestrated a cover-up of breathtaking audacity unparalleled in history to ensure that the policyholders and members of the Company are kept in the dark and without any control over the company to their great financial detriment and any principled or fair resolution of the problem. A senior civil servant in HMT has privately described this as shameful.

Disproportion between the Authorities and the Members

In responding to the Consultation Document (CD) I would like to point to the disproportionate resources available to the interested parties. There will no doubt be organisations such as ELAS who will have access to the best lawyers and other experts and will use the considerable funds at their disposal to argue their case. At the

other end of the scale there will be pensioners sick with fear at the future, aged, infirm, with no access to advice, computers, email, the internet and simply bamboozled by what has happened to them. The idea that has been put about by the Government is that these pensioners are 'fat cats'. I understand that the 800 claimants in the ELTA action have average annuities in the region of £6,000 per annum - hardly a fortune. Few will have bought the Penrose Report even if they can face reading 850 pages and trying to understand what has happened. Few will have heard of the CD - I only learnt about it in Mid-August and am finding it extremely difficult to make a full response by 17th September. Most pensioners have little expertise in this area, fewer resources to spend on computers, paper and expensive ink cartridges let alone the very scarce and expensive legal and other expertise on the subject. Their faith in the British Legal System, the FSA, the FOS, the Regulators and the Government has been largely destroyed. I see letters from people who are battling against ill-health, in chemo-therapy etc all made worse by worry over their dwindling incomes.

I would therefore ask you to remember this ill-balance inevitable in the submissions you will receive. The Penrose Report dealt almost entirely with the history of ELAS from the inside and prudential regulation. In not dealing with 'Conduct of Business' it barely touched upon the misfortunes, rights and views of policyholders and members.

I myself am fortunate in having reasonable health, access to computers (for which I have to pay the full cost personally) and legal training and experience. But unlike many younger people who will have cost free access to computer facilities in their workplace I have to think twice about the cost of paper, ink cartridges, ISP costs, telephone charges etc.

RESPONSE TO QUESTIONS

I will not repeat the questions but just refer to them as Q1, Q2, Q3 etc. Further it is not easy to fit some of my response into answers to these questions.

Q1.

I am afraid I have no idea what the 'Common Code' is about but I would suggest that the first question should be **WHAT IS A MUTUAL?** This question needs to be answered before one can decide how it should be governed. I am struck by the fact that both in the Penrose Report (PR) and the CD this question is no way dealt with in an adequate manner. It is a common and pernicious belief of 21st Century UK Society that all problems can be resolved by Government intervention and regulation. Any historical, religious, philosophical or ethical considerations are disregarded and replaced by this free-thinking or liberal belief in Government action coupled at most with an unethical utilitarian understanding that the end always justifies the means.

I am no historian and have not had and do not have the time or the means to do the necessary research into Mutuals. I would suggest however that there is a valuable tradition in British Society going back to the Medieval Guilds where people joined together to pursue common purposes of mutual help which often included very worthy charitable work of great social importance. One immediately thinks of the

City of London Guilds which still carry out substantial charitable works. Similarly there grew up in later centuries the Friendly Societies, Building Societies, the Co-operative movement, Trade Unions, Charitable Trusts & similar organisations. I would submit that these organisations whilst varying in aims and forms would have had a religious, philosophical and/or ethical basis where the Christian duty to love and support your neighbour was demonstrated.

Further I would submit that the Legal System treated these organisations in a special way creating a body of law to govern them which recognised that there were certain ideals implicit in them that should be upheld. This was done by applying the principles of Equity to their affairs. Briefly Equity requires very high standards of Trustees and other Governing bodies such as openness, equality and fair dealing as between the Governing bodies and their members and between the members themselves. In particular Equity has always sought out and tried to prevent fraud or dishonesty in these organisations providing remedies which had their origins in Christian concepts of the need to attenuate the harshness of Common Law. The ideals of Equity are not a dead letter; Equity is always there to create new bodies of law to govern new situations and can be seen at work in the development of commercial law in the last 200 years and of administrative law - the Hyman case is a good example.

However, latterly, there seems to be considerable confusion and ignorance about the role of Equity amongst lawyers (who should know better) and lay people, who can be excused, particularly as to the difference between Law & Equity. This difference is perhaps best illustrated by the development of Charitable Trusts. Charitable Trusts exist in many different forms at **law** often starting as unincorporated associations evolving later into Trusts with Trustees. Perhaps the next stage in their growth has been to incorporate the Trustees into a corporate body under the relevant Charities Acts and finally in the case of larger Trusts they become incorporated Companies with members where liability is limited by guarantee or even shareholder companies. These different forms merely express the different ways that they are **legal** entities. However it is quite wrong to consider them as being *merely* these **legal** entities i.e. just another Company governed by the Companies Acts. They all have their existence in **Equity** whatever their **legal** status and this existence is governed by the law of Equity, the law relating to Charities and they all come under the jurisdiction of the Charity Commission - although this last is a relatively modern innovation.

Similarly in the case of Friendly Societies (with which I am less familiar) they can exist in many different **legal** forms but their equitable side is governed by a body of law relating to Friendly Societies and they come within (or did?) the jurisdiction of the Registrar of Friendly Societies.

My access to law libraries is virtually non-existent but I have not been able to find any doctrine of law relating to Mutuels except I do wonder whether they are not unregistered and unrecognised Friendly Societies. There is thus a lacuna in the law. However just because there is an apparent lacuna it is not true that there is no such body of law. It merely requires the Courts to pronounce on such law having regard to the history of mutuels. That such law exists, in a perhaps inchoate form, is illustrated in Chapter 1 of Penrose where counsel for ELAS, Elizabeth Gloster QC considered in the Hyman case that she could make use of this law. 'Gloster was anxious to be able to found her arguments on the principle of mutuality. in her view:

“the beginning and end of it”¹. Unfortunately one of the requirements of those seeking the remedies of **Equity** is that they come to Equity with clean hands and because of the malpractices of ELAS they were unable to do so. Penrose comments 'Mutuality across the with-profits fund had clearly become problematical in view of the Society's actual practices in managing the with-profits fund and discriminating between policy groups in relation to bonus allocation. It is not immaterial, in view of some later criticism of the House of Lords' decision, that Gloster's initial intention had been to emphasise mutuality as the core issue in the case'.² Lord Penrose was himself precluded from commenting on the House of Lords' decision but one wonders whether he is not indicating at that point that whilst malfeasance undoubtedly existed in the actions of the Board it was unfortunate that the Members and Policyholders who were innocent of such evil doing were thereby denied the benefit of an equitable resolution of ELAS's problems.

Chapter 1 of PR clearly shows how the Hyman case which ended in the House of Lords was predicated on the narrowest of issues by the Board of ELAS. To have done otherwise would have required them to have admitted their wrong-doing. A further opportunity was missed in the hearing of the s.425 Compromise in 2002 when the judge refused to listen to my arguments in favour of an overall equitable solution as being fanciful or just too complicated to be litigated - once again a narrow sectional interest was promoted by a NEW Board with an agenda of its own which related little to the interests of the membership.

My submission therefore is that without a full understanding of the nature of a mutual it is not possible to define the kind of governance appropriate to it. The CD seems to be looking at the 'mutual' from a narrow **legal** viewpoint as a somewhat unusual kind of company rather than from a wider **equitable** point of view taking into account the historical, philosophical & ethical underpinning that led to the creation of mutuals. There is a danger of not taking account of 'the relationships peculiar to a mutual company' (Penrose Chap 7, para 7) quoted on page 5 para 1.3 of the CD.

In considering the comments in CD on Question 1 I am not familiar with the “comply or explain” principle of the Code. There rings in my ears the words of the outgoing Director of the Financial Services Authority (FSA) “Never Apologise, Never Explain” - this would seem to have been and to be the motto of the old and current Boards of ELAS as well as the FSA.

Q2.

Effectively one needs to elaborate as to what a mutual is before elaborating a code. Possibly it requires an Act of Parliament to set up a judicial committee of enquiry into what a Mutual is and how it shall be governed. An alternative would be to seek judicial guidance by asking for a declaration from the Courts referred directly to the Law Lords and then elaborating a code from there. Another idea is that this might be a job for the Law Commission. In the end though I believe the resulting doctrine would need to be incorporated into statute law.

1 Penrose Chapter 1, para 82, page 28.

2 Penrose Chapter 1, para 83, page 28.

Q3.

“Policyholders were effectively powerless and the Board was a self-perpetuating oligarchy” (PR Chap 20, para 51).

Life insurance is a complex subject and the history of ELAS is complex. In reading the 850 pages of PR it is easy to lose sight of the wood for the trees. This gives rise to an excuse that the debacle occurred because it was not possible to understand what was going on. Thus it might be proposed that more competent, better-educated, better-informed and more expert Directors are the ONLY answer and this can be achieved by regulation. This conveniently lets the malfeasors off the hook until next time when it will be found that the regulations were inadequate and the same lame excuses are presented. I believe this to be a convenient obfuscation adopted by those who wish to cover up the truth.

The fundamental flaws in ELAS resulted from a deep-seated problem. The original founders designed a mathematical system which they believed to be 'equitable' i.e. fair as between the members. One can see particularly in the 19th century that the then Board still imbued with the original ideals resisted changes to their system although there were calls for 'estates' or reserves to be distributed amongst the members. In the oil crisis of the early 1970s the then Directors gambled the reserves on the Stock Exchange and lost them. The original founders invented a mathematical system where it was important that the rights of members should remain constant. If new rights were to be introduced this could only be done by setting up a new fund and this could only be done with a special resolution of the members - see the Articles. However Guaranteed Annuity Rates (GARs) were introduced without seeking the authority of the membership. They were rights which effectively undermined the carefully worked out structure of the Society as they were self-evidently mathematically flawed as soon as interest rates fell. Surely any businessman could have worked that one out without requiring the assistance of experts?

Even if that was too much for them, surely overbonussing was a simple enough event as to make it inexcusable. The Directors had the “Office Valuation” which unlike the Statutory Accounts or the Regulatory Returns showed the true position at regular intervals i.e. that their liabilities invariably exceeded their assets. Having that information to go on approving bonuses over and above earnings simply to gain extra business by pretending that their results were better than they were surely must have troubled their consciences? Nobody with any business acumen could have been unaware that they were running a Ponzi or Pyramid selling scheme and that that was fraudulent. This required no unusual financial skills to detect. Faced with this information it surely required all and any Director, executive or non-executive, to delve further into what was happening and ask for explanations if he or she did not understand it. Why did this never happen? One can only conclude that none of the Directors had any moral sense or honesty. Government regulation is not going to cure that lack - prosecution and prison might but the British tradition is only to prosecute the small fraudster. The Serious Farce Office is just that - just read some of the letters they have written on the subject.

Q4 .. Q6

It is surely incumbent on any Director to try and understand the business they are running. If they do not understand it they should ask questions and get answers so that they do understand it. These Directors were paid substantial sums of money to do a job - the idea that as a Generalist any Director could excuse his lack of understanding on the grounds that it was too arcane for him to understand is absurd - if he does not understand he should resign. My experience as a lawyer is that often, one has to familiarise oneself with a client's business, to the extent of understanding technical processes so that one can give proper advice - for instance in litigation. I just do not accept that after seeking explanations one cannot get a grasp of any subject however technical. Since the debacle, in endeavouring to understand what happened, I have been able to grasp most of the actuarial concepts involved and the details of life insurance. Why cannot Directors do the same? My difficulty has been and remains that of getting basic information from the company to which as a member I should be entitled such as how the reductions in my annuity are calculated. Unfortunately such information and much more has been consistently hidden by the old Board and continues to be hidden by the new Board. It is highly significant that the current Board refused to co-operate fully with Lord Penrose in his requests for information.³ As a Director one surely has the authority to require that the information is produced. As a mere member or policyholder it seems one has no such power.

Q7.

Lord Penrose says that the members of ELAS had no power whatsoever and I trust we can take this as being common ground and I do not have to spell out the reasons for this. Arrogance and contempt for the membership has got even worse since the new Board took office. Four examples should suffice to illustrate what it feels like to be a member of ELAS:

1.Proxy voting.

The voting forms for appointment of Directors provide for voting for Directors and also for voting against their appointment. Now I think most people are happy to vote FOR a candidate but are reluctant, as a matter of common decency, to vote AGAINST candidates - whom they may not know. What they do not appreciate is that leaving the form blank at that point allows the Chairman to use their votes in any way he wishes and in the case of the new Board the Chairman has used these proxy votes to ensure that no representative of the policyholders ever gets elected. Other institutions such as the National Trust, who had a similar voting system, have seen that this is not acceptable and changed their constitutions accordingly - not so ELAS.

2.Minutes of Meetings.

At the Public Meeting held as part of the s.425 Compromise process a Mr Arthur White asked a question as to whether the Board was prepared to investigate allegations that the previous Board had behaved fraudulently. The

³ See PR Foreword para 10 page ix.

Chairman said he would not do so. Mr White asked for this exchange and his letters previously requesting the same information and being refused could be minuted. At the s.425 hearing in Court the Chairman filed a report of the meeting but no mention was made of this intervention. Mr White, in my presence, asked a representative of Lovells, solicitors for ELAS, outside the Court why there was no mention of this intervention. He was told that there were no minutes of the meeting but just a report. I subsequently wrote to a retired Lord Justice of Appeal on the Board of ELAS asking whether he considered this was acceptable behaviour. I never received the courtesy of a reply.

3.EPHAG

EPHAG is supposed to be an organisation representing certain of the members of ELAS. It has no subscription, no constitution and has never held a meeting of its members of whom it claims to have 70,000. In fact this is a phantom organisation invented by an independent IFA. Yet it has had its one-time Chairman appointed to the Board to represent the membership. No doubt sworn to secrecy he has never done anything detectable on behalf of the membership.

4.EMAG and the Special Resolution.

By contrast EMAG is a properly constituted organisation which holds elections, meetings and is supported by subscriptions but is regularly denigrated by the new Board who seem quite unable to practice humility and accept criticism. This year EMAG put forward a Special Resolution supported by the required one thousand members. It was a perfectly proper resolution whether or not one agreed with it. The Board went to great lengths to denigrate it and when it was lost, using proxy votes in the usual manner, EMAG was threatened with having to pay a supposed bill for £50,000 in respect of legal costs incurred by ELAS in vetting the resolution. This threat was subsequently withdrawn. Just what sort of message is this supposed to convey to the members? If you submit a perfectly sensible special resolution you are exposing yourself to a ruinous bill for legal costs if it is voted down? What kind of democracy is that supposed to encourage? Will any members have the courage to put a special resolution to the Board when these bullying and totally improper threats are made?

My view is that these incidents demonstrate that some of the present Directors who indulge in these contemptuous and bullying tactics might be regarded as being unfit for office as Directors of a Mutual. Quite how one prevents such people taking office I do not know.

There exists a very real problem for individual members or indeed groups of members who have genuine concerns about the conduct of a Mutual. It has been suggested that they can voice their concerns by action in the Courts. The problem with the English legal system is simply this - cost. Lawyers are so greedy these days and demand such high fees that the cost of going to law is astronomical. There seems to be no longer much concern for the individual. Litigation is always an uncertain process and is really a form of gambling in the English system. You may

have a case where you have a 95% chance of winning. However you have to remember that if you sue a large organisation such as ELAS and lose they will probably get a costs order against you that might run into millions. You might have a 95% chance of winning damages of say £20,000 as a result of a mis-representation but if you have a 5% chance of losing and having a costs order against you of £200,000 most people simply cannot afford to accept the risk of say losing their home in order to pay such costs.

I cite my own experience as a litigant in person being the only person with legal qualifications to oppose the s.425 Compromise. Now it is an accepted principle in s.425 compromise hearings that objectors should be heard and that as they assist the court no costs should be awarded against them and they should be entitled to have their reasonable costs paid. Obviously in the case of frivolous or vexatious objections such might not apply. But what happened? Well we were made to sit at the back of the court where there are no desks upon which to place our papers when addressing the Court. If we had had legal representation our Counsel and Solicitors could have occupied the places with desks in front of us. Instead the dozens of lawyers employed by ELAS overflowed into those places. For much of the time the hearing seemed to consist of a private conversation between the Judge and Counsel for ELAS. If we had to stand up once and ask the Judge to get Counsel for ELAS to speak up, so that we could hear what was going on, we had to do so at least four or five times. It is extremely intimidating for a lay litigant to have to interrupt the Judge and Counsel in order to make such requests which were granted for a short time before once again we could not hear what was going on. I had prepared my statement and evidence beforehand and served it on the Court and ELAS's solicitors. I am told they should have served their statements under the Wolfe protocols on me. They never did so, so I had no idea how they were going to conduct their case. The judge declined to look at my evidence which consisted of the Baird report of which I had purchased a copy at some expense for his use. He refused to hear me as to legal arguments as to why the compromise was inequitable. His judgment dismissed my arguments as 'fanciful' or just too complicated to litigate - a strange idea in such an important matter. Much of what I said has since been confirmed as being correct in the Penrose Report. We were denied our costs - a few pounds perhaps for train fares - whilst ELAS was plundered for some £30 million in legal and other costs of the Compromise - money that belonged to us as members. Subsequently we of course know that the Compromise awarded the non-GARs uplifts to their policy values made in mickey-mouse money which was immediately removed within months of the Court case as a result of financial considerations which, one surmises, must have been known to ELAS at the time of the hearing. Did they just not bother to tell the Court? No wonder they would not let Lord Penrose investigate fully up to the previous August.

Mrs Ruth Kelly, sometime Treasury Minister, told the House of Commons that anyone who had suffered at the hands of ELAS could claim compensation through the Courts or by going to the Financial Ombudsman Service. If you choose the Courts and write to ELAS with a letter before action you will be warned by them that costs could exceed £5 million should you lose. I have seen a letter from them to that effect. Faced with that kind of bullying, however good your case, would you sue?

As to the Financial Ombudsman Service (FOS) I could go on and on about them. There are interminable delays. Claimants are given short delays in which to reply to letters. The replies go unacknowledged for months. Waivers are granted by the FSA to ELAS to enable them to have months to reply so that they can consult the top most expensive lawyers to refute your complaints. Many people believe that the FOS has been corrupted by the FSA at the behest of HMT. The impression claimants have is that the claims will be deliberately delayed in the hope that pensioner claimants will die off or so that the Statute of Limitations will time out any claims in the courts once the FOS has turned down the claim. The decisions are extraordinary. I have a complaint in respect of Halifax Equitable that I was never sent a policy document when I took out my annuity and that the annuity is not being administered in accordance with the policy when it was at last sent to me after 18 months. Halifax Equitable were issuing the policies using the Equitable computer system which date stamps every letter and document with the time of printing down to the exact second. Yet Halifax Equitable have been unable to produce any evidence whatsoever that the policy was sent to me such as a copy of the original policy, a copy of the covering letter, evidence of posting or any computer record. Halifax Equitable say they 'would' have sent it to me. I cannot prove a negative that they did not send it to me. The FOS have ruled that it was sent to me. The same week the FSA sends a letter to all life companies saying that as a result of a survey they have found that many companies do not seem to have kept copies of original policies and are not administering them in accordance with the terms of the policy - i.e. just a big big muddle. It beggars belief.

The purpose of my saying all this is to illustrate the fact that policyholders are powerless and there is currently no way in which they can make their views known, get information or get their legitimate complaints dealt with. How can one remedy this situation? I would suggest:

1. Arrangements for the appointment of at least 2 Directors whose responsibility would be members' interests. Bloody-minded awkward individuals with plenty of Irish blood like myself would be ideal. They would have full powers to ensure that members complaints and enquiries were dealt with properly. They would also ensure that members were kept fully informed on all relevant matters and that the company conducted itself in accordance with the principles of mutuality and equity.
2. The creation of an office similar to the Registrar of Friendly Societies whose task would be to oversee the conduct of mutual societies to whom the Directors as at 1 above and members could appeal for help.
3. A procedure whereby application could be made to the Courts for declarations and relief in respect of members' problems which either the Registrar at 2 could not deal with or where an appeal from the Registrar's decision was needed. A procedure in the County Courts would seem appropriate. As in litigation over a Trust or a Will the general rule would be that all costs would be payable by the Mutual and no liability would fall on the member except where the application was ruled by the judge to be vexatious or frivolous. I believe such a procedure does or did exist for Friendly Societies.

Q8.

I believe that many members are less risk adverse. Indeed what people look for in retirement is security. They adapt their lives to the situation which they foresee. They plan what they think they can afford. You calculate the income and see what standard of living you can afford. Perhaps you move house to cheaper accommodation so that once you have paid your basic living expenses you have something left over for those things that make life enjoyable in your retirement - money for a hobby or a course, for ice-cream, presents for grand-children, a meal out, an annual holiday etc. This disposable income may represent as little as 10% or 20% of your income net of tax. Thus if you lose 10% or 20% of your income through something like the ELAS debacle you lose everything that makes retirement worthwhile. You are probably faced with the need to downsize your house again and moving house when you are old and infirm is a pretty daunting task. You no longer have the opportunity of hoping for a pay rise or a better paid job. On the whole therefore pensioners want minimum risk. They have enough excitement seeing Council Tax going up. Better off pensioners might be prepared to accept some degree of risk but even that I would put in the low risk category. They might find variations of 2% to 3% in their income to be acceptable but certainly not the 30% to which ELAS has treated their WP annuitants.

There is therefore a need to ensure that the products sold by mutuals are low risk and that any risks are fully explained to the members and policyholders. This simply did not happen with ELAS where the WP fund was supposed to be low risk with smoothing which Penrose said did not exist. There further needs to be adequate warning to potential members about what risks they are assuming when they become members. I do not think many realised that they were sharing in the commercial gains and losses of the company. The WP fund was sold as some sort of unit trust invested in equities, property and bonds without any mention of the fact that they were investing in Equitable itself. Even worse virtually no-one realised that Equitable was that totally obscure animal: An unlimited membership Company. Even now there is great argument amongst experts as to what this means in relation to the subordinated bonds and as to what would happen if ELAS went into liquidation. It would seem that members might be jointly and severally liable for considerable sums of money. If you want to understand the complexities of this situation then I suggest you read the recent consultation document issued by HMT on the proposed legislation to deal with ELAS's problems in that respect. The ability of the Treasury lawyers to obfuscate the problem, stand it on its head and get it completely wrong is truly wondrous.

Q9.

When the Treasury tells a lie they should be a bit more careful - it is Chapter 20 not 30 in which Penrose does NOT say that 'since 1997' that the FSA has been trying to correct problems. This is pure political spin of the kind peddled by Ruth Kelly to the effect that since the advent of the Labour Government in 1997 things have been improved in the FSA as opposed to the previous 'light touch' regulation. The fact of the matter is that the FSA is a creation of Parliament and has failed in its duties as laid down in the relevant statutes. The colour of the particular political party that had a Parliamentary majority at the time is of no relevance. The fact is that the FSA may be

trying to bolt the stable door now, years after the horse escaped, but from 1997 till now the horse has been running around in the paddock and could have been brought to heel. The FSA has failed to do so.

The failure of prudential regulation by the FSA has been fully documented in the Penrose Report. However the failures in regulating Conduct of Business have not been revealed. The Board of ELAS became fully aware of the black hole that the GAR problem could cost £1.5 billion by September 1998 and they would have known of the similar hole caused by overbonussing - standing at £1,358 million at the start of 1998 and increasing to £2,200 at the end of 1998⁴. Despite this, as has been revealed in the litigation by ELAS against the former directors, they were instructing their salesmen to tell existing and potential policyholders that the maximum cost was only £50 million with no mention of the 2nd hole. This was fraudulent misrepresentation which should have been prosecuted under s.15 of the Theft Act. The FSA were aware of this and after the House of Lords case in August 2000 when the £1.5 billion crystallised they actually connived at this deception by allowing ELAS to go on selling policies until December of that year when the sale collapsed. The FSA should have known full well that ELAS was unsellable and that the new policyholders were being defrauded. The FSA have made no attempt to ensure that those policyholders have been compensated. I suppose it is one thing to ensure your pals in the city are not prosecuted but it seems rather different when a Government Regulator is caught conniving at criminal fraud.

Further the FSA approved the s.425 Compromise Scheme to the detriment of members and policyholders. They knew that the non-GARs position was being unfairly compromised in both the Hyman case and in the compromise but they chose to do nothing about it. Since then a stream of waivers, in incomprehensible language, have been granted to ELAS by the FSA so that compensation for those who have suffered have been put off. The Rectification Scheme devised by the old Board and approved by independent referees (a former Law Lord and an eminent Actuary) has been scrapped by ELAS and replaced by a watered-down scheme. If it has had outside referees, as claimed by ELAS in the last week, we have not been told who they are. The bias shown by the FSA is self-evident to all observers. To take but one example the GAR mis-selling review being conducted by ELAS is patently unfair. I have written to the FSA to point this out but they have refused to do anything. I could provide copies of the correspondence if required. I will now be making a formal complaint. It is also strongly suspected that the FSA has had a role in corrupting the independence of the FOS by inserting members of their staff into FOS to ensure that complaints are handled in a manner to fit in with the strategy of HMT.

Q10.

In view of what I have said above in answer to Q9 I rather doubt it unless there is a change of personnel and policy within the FSA and a much stronger commitment to consumer protection. It is extraordinary that 'realistic accounting' for mutuals was not immediately enforced after 2000. It seems we are going to have wait until 2006 or 2007 presumably because any earlier enforcement of the idea that the accounts should be fair and true might reveal that ELAS is in fact insolvent.

⁴ See PR Chap 6, Table 6.3, Page 204.

Q11.

I do not have any useful comment on this.

Q12 & Q13.

I would refer back to the comments I made in response to Question 1. The trend that is noted reflects the modern macho idea that only commercial capitalist systems work and that the commandment 'Thou shalt not steal' is a dead letter. The kind of ideals I have mentioned are no longer thought valid in the higher reaches of British Society. It is notable however that amongst the more modest and poorer section of the population a sense of decency and fair play still exists. I noticed in the paper the other day that in a case where a company pension scheme had failed the pensioners who were receiving index-linked pensions were prepared to forego the annual increases if the money could be used to help out those who had not retired and had lost every chance of a pension. It is ironic that a Socialist Government who claim to represent the poorer sections of society seem to have rather different ideas about truth and decency often adopting the unacceptable extremes of Capitalism.

Q14 to Q13.

I have no comments on these questions.

Signed and believing in the truth of what I have said

Nicolas J. Bellord

14th September 2004