House of Commons

Public Accounts Committee

Oral evidence: Equitable Life, HC 1369

Thursday 22 April 2021

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Watch the meeting

Members present: Meg Hillier (Chair); Gareth Bacon; Shaun Bailey; Olivia Blake; Dan Carden; Sir Geoffrey Clifton-Brown; Barry Gardiner; Peter Grant; Sir Bernard Jenkin; Nick Smith.

Gareth Davies, Comptroller and Auditor General, was also in attendance.

Questions 1 - 20

Witnesses

I: Sir Tom Scholar, Permanent Secretary, Her Majesty's Treasury; and Mike Williams, Director, Business and International Tax, Her Majesty's Treasury.

Examination of witnesses

Witnesses: Sir Tom Scholar and Mike Williams.

Q1 **Chair:** Welcome to the Public Accounts Committee on Thursday 22 April 2021. We have a very busy session today, when we will be questioning officials from the Treasury and the Government Actuary on three separate but important public finance issues.

First, we will ask the Treasury about the Equitable Life scandal and what lessons have been learnt. This is partly as a response to the recent Backbench Business debate in the Commons that called on this Committee and our sister Committee, the Public Administration and Constitutional Affairs Committee, to look further into the remaining questions about Equitable Life. We thank the National Audit Office for its work in supporting us to see what it was possible for us to investigate further. We will be asking Treasury officials about that document.

Secondly, we will look at the revelations around the use of supply chain finance and the influence of Greensill Capital. We have some of the Treasury officials who were in contact with Greensill Capital, and we will ask questions about their contact.

Finally, the main session today, the long session, will look at the very important issue of public service pensions. We are looking at the four main public sector pension schemes, which cover 16% of the current active workforce, and we want to ask serious questions about the sustainability and affordability of pensions in the long term. I refer people to the excellent National Audit Office work on the issue, which we will be referring to.

First, I want to give a little bit of background on Equitable Life. We want to lead off with this because Equitable Life pensioners are a very patient group of people who have put up with a lot in what was undoubtedly one of the biggest financial regulatory failures of this generation. It has been examined quite a lot by Parliament, by previous Committees, including this one, and particularly the Public Administration and Constitutional Affairs Committee when it was chaired by Sir Bernard Jenkin in 2010. It produced an important report which the Government accepted, and they then introduced a remedy with £1.5 billion to fund support to Equitable Life pensioners.

The scheme eventually closed to new claims after December 2015, with a deadline for final complaints and queries to be submitted at the end of February 2016. The Treasury produced a final report in November 2016, nearly five years ago. One of the challenges when we were looking at this, and when we got the National Audit Office to look at it, was the issue of recordkeeping.

I want to introduce the witnesses who will be answering questions first. They are Sir Tom Scholar, the permanent secretary at the Treasury, and Mike Williams, who is the director for business and international tax. Sir Tom Scholar is in the room with us now and Mike Williams is joining us virtually via Zoom.

Sir Tom, one of the challenges when we have gone back to look at this is that there are now very few records remaining about Equitable Life. Can you tell us what the standard default is for retention of records in your Department?

Sir Tom Scholar: Certainly. Thank you, Chair, and thank you also for setting out the historical background to the compensation scheme and to the discussion this morning.

Let me first of all set out the general principles, and then my colleague Mr Williams might want to come in on some of the details. The scheme, when it was in operation, was operated by NS&I for most of the time, on behalf of the Treasury. They needed to hold information to operate the scheme, to make payments under the scheme and to deal with any queries. We also set up an appeals process, a completely independent process, independent of the Treasury and independent of NS&I. Anybody who wanted to appeal what they had been paid would go through that process.

There were a number of appeals, not really because the methodology was wrong but normally because the data inputted into the methodology was wrong as a consequence of either a lack of historical records from Equitable Life or some confusion as to precisely what the policyholder had at different times. If anybody felt that their claim had been miscalculated, they would submit their claim to the independent appeals tribunal, and they assessed it. The appeals process closed in 2016. That was the end of both the scheme and the appeals process under the scheme.

The Treasury never held records, in general, of appeals because we were not the authority carrying them out—it was, rightly, an independent authority that did that. The one exception, which comes out in the NAO note, is that, in 2014, I think, first the NAO did a Report into the scheme and then the PAC held a hearing on it.

Chair: It was 2013.

Sir Tom Scholar: In 2013; thank you. In order to assist the NAO with that, we requested some information from the appeals process on some of the summary data and information on the kinds of appeals they were hearing, so that they could provide that information to the NAO to get a good assessment of the process. Because at that time we held the information for a different purpose—not for the purposes of the appeals, which was not our responsibility, but for the purpose of assisting the NAO and responding to the PAC—we have some partial information from that period relating to that inquiry.

What we do not have, and never had, was further information beyond that time relating to the appeals process generally. When the scheme closed down and the appeals process closed down in 2016, the only data still held by the Government related to ongoing payments to annuitants that are still being made under the scheme. Obviously, we need to hold data for those purposes to make sure that the payments are correct, but for all other purposes, to the best of my knowledge, we no longer hold data.

Q2 **Chair:** You had some data that was destroyed, to be clear, at some point. You did not have all the data, as you have described.

Sir Tom Scholar: I need to ask Mr Williams to come in to get the words precisely right, but my understanding is that the data from 2014 to 2016 we never held, because it was data held by the independent appeals process. It was never held by the Treasury.

Q3 **Chair:** For clarity, Mr Williams, could you explain exactly what data was held and by whom, and when it was destroyed?

Mike Williams: Certainly, Ms Hillier. There are two points. The data that we are talking about, the 2014 to 2016 data, is data that was held by the independent review panel. That is not data that was held by the Treasury. They were responsible for the appeals, and of course they are independent. The data that was destroyed was data that was held by NS&I as the scheme operator when the scheme had finished, and NS&I ceased to be the operator.

I am not sure whether you know that at one point NS&I was responsible for the continuing payments to the with-profits annuitants, the people who get ongoing annual payments. That contract was transferred to Capita to save money and, at that point, NS&I's involvement in the scheme and its need to have data stopped.

Q4 **Chair:** NS&I must at that point have transferred some information, certainly on the ongoing annuitants to Capita. Did the Treasury have oversight of that or any concerns about how that data was transferred? We have not had particular concerns raised about ongoing annuitants. This is just for clarity.

Mike Williams: It is a very good point. We had to agree with NS&I, and we had to agree with Capita, what data would be transferred. The data that was transferred was the data appropriate for the ongoing payments. Happy to have that. I think our experience is as yours, that there have not been issues with that. On the other hand, in fairness, it is a relatively simple part of the process. You are making a single payment once a year to people whose details you have and who have a strong interest in telling you if those details change.

Q5 **Chair:** Did the Treasury have any discussions with NS&I about what it was going to do with the historical data?

Mike Williams: I recall being asked about that at the time when we moved from NS&I. The key point is that, under the data protection rules, you are not supposed to keep data if you no longer have a use for it, and we had to take that into account.

Chair: Thank you. I will ask Sir Geoffrey Clifton-Brown to come in now.

Q6 **Sir Geoffrey Clifton-Brown:** Good morning, Mr Williams. Given that HMRC requires taxpayers to keep their data for six years, why did you allow NS&I to destroy their data after only four or five years?

Mike Williams: I think, Mr Clifton-Brown, most of the payments, most of the cases—

Chair: It is Sir Geoffrey, Mr Williams.

Mike Williams: Sorry, Sir Geoffrey; I apologise. Most of the payments would have been made as early as 2014. The scheme carried on, as I am sure you recall, from 2014 through to the end of 2015.

At that point, the claims volume was small. The main reason why it was continued was to try to identify some more policyholders. After that, the scheme itself closed and the open appeals—there were some at the time it closed—finished as well, so to that extent the scheme had finished. That is rather different from income tax; in the nature of income tax, it carries on from one year to the next. Ministers had decided that the scheme should close and there was of course quite an extensive process around the closure to notify people. Then, in 2016, there was a report summing up the closure of the scheme.

Q7 **Sir Geoffrey Clifton-Brown:** Thank you. Can I come back to you, Sir Tom? Good morning.

Sir Tom Scholar: Good morning.

Sir Geoffrey Clifton-Brown: It is important to get on the record for the people who have lost money that it is only the regulatory element of their losses that will be covered by the scheme. I get the impression from a lot of my constituents that they think they will be compensated, or should have been compensated, for the total losses. Could you comment on that?

Sir Tom Scholar: I will be cautious in what I say on this because it has a very long history in successive reports going back 20 years. First of all, there was clearly a regulatory failure, but there was a debate about the extent to which the regulatory failure resulted in personal financial loss and the degree of loss that was attributable to the regulatory failure and the degree that was attributable to other things, as you said.

In 2010, the then Government, not least following reports from the ombudsman and the PACAC, set out the policy decision to establish a compensation scheme and the parameters under which it would be established.

In making that decision, the Ministers of the day were trying to balance the completely legitimate interests of policyholders who had suffered losses and the interests of the taxpayers. The Government, in announcing the scheme, set out the decision to set aside up to £1.5 billion, which is now almost completely spent; the parameters of the scheme; and how they had sought to strike that balance. That has been clear since 2011.

The length of the scheme was clear, and was made clear in advance. The deadlines for submitting claims and for the appeals process were very well signalled, all in advance. There was an extensive debate with the policyholders and their representatives in order to explain how much compensation was being paid, and the basis on which it was calculated. That is very familiar ground in this Committee. Indeed, I have written to the Committee twice in the last few years about that. The feeling of the Government was that this was—

Barry Gardiner: Meg, you may not be aware, but the video feed from the room is actually cutting out quite a bit.

Chair: Okay, maybe it is for you, Mr Gardiner. We will get the people here to check. Perhaps Sir Thomas could continue. Thank you.

Sir Tom Scholar: Certainly. Thank you, Chair.

The Government certainly recognise the very significant distress suffered by many tens of thousands of policyholders. They have sought to address that through the compensation scheme, and have sought to run that scheme as fairly, transparently and carefully as possible, but compensation schemes, at a certain point, come to an end, and this one came to an end and closed down completely five years ago. I think that is the position as the Government see it.

Q8 **Sir Geoffrey Clifton-Brown:** Part of the purpose of this hearing is to address some of the concerns of those policyholders. Given the information that you and Mr Hill have given regarding the data, you will be aware that there has been pressure from some people to reopen this whole business and have another inquiry. Given the fact that the data does not exist, would that indeed be possible, even if it was desirable?

Sir Tom Scholar: It is quite hard to see what such an inquiry could achieve. There are different representations that are made. One set of representations is to request the Government to reopen the terms of the compensation scheme—in other words, to make the scheme more generous, to increase the total amount of compensation being paid. Those are representations that have been made to Ministers many times in the last 10 years, including recently in the debate that the Chair referred to at the beginning, in January. The Government have considered this many times and concluded that they do not want to reopen and will not reopen the scheme. As to the question of appeals for payments made under the terms of the scheme, as set out, all appeals that had been received up to the deadline for receiving appeals were resolved before the scheme closed.

Chair: It is all laid out, for anyone following this, in the very helpful NAO memorandum.

Sir Tom Scholar: I thank the NAO for their excellent Report, which is very clear on all of these issues.

If the purpose is simply to go back over previous appeals, we have found no evidence to suggest that there was anything wrong with the methodology. Indeed every time the methodology has been looked at, and it has been looked at many times, including by the actuary acting for the policyholders group, it has been found to have worked appropriately.

As I said earlier, the basis for a number of the appeals was incomplete records on behalf of the policyholders themselves, often because Equitable Life itself, in some cases in records going back 30 years, did not have completely full records, and policyholders in some cases were able to show that important parts of their entitlement had not been covered by the data submitted by Equitable Life. Where they were able to do that, up until the deadline set out in the scheme, that was all fully resolved.

I am not sure what could be achieved now, five years after the event, by reopening it, because I do not think the basis would be there to reach any different conclusion.

Q9 **Sir Geoffrey Clifton-Brown:** Could I examine part of that answer? The Equitable Life Members Action Group, so-called EMAG, says that its actuary examined a number of claims and had to reverse engineer what the methodology was because neither the Treasury nor NS&I would tell them what the methodology was. Is there any particular reason why they should not be told what the methodology was?

Sir Tom Scholar: I do not think that we would recognise the suggestion that there was anything other than transparency about the methodology. Let me say a bit about it, and Mr Williams might want to pick it up too.

The methodology that was originally chosen in 2010, I think I am right in saying, was the methodology adopted by John Penrose in the report that he had produced a few years previously, in the run-up to that time. The reason for using that methodology was to speed up as fast as possible the payments process, for very obvious reasons. We adopted an already prepared methodology. The calculation was inevitably inherently complicated. We published the methodology. We had a number of extensive meetings both with the action group, EMAG, that you referred to and the actuary they employed to help them assess it.

I have set all of this out, and I think it is set out in the letter I wrote to the Committee in 2018. We employed our own actuaries to work with them to go through the details of how the methodology worked, in order to satisfy them that, even where it was difficult because of the complication of the scheme to do the calculations yourself, nevertheless you could have a high degree of confidence in the results of applying the methodology, provided that—the critical point—the input data was correct.

I think most of the claims, certainly nearly all of the claims that were upheld, resulted not from any assessment that the methodology was flawed—the methodology has never found to be flawed; we have published it in full and explained it as fully as possible—but from incorrect input data in, I think, nearly every case, resulting from incomplete records held at the time by Equitable Life that the policyholder was subsequently able to correct. I do not know if Mr Williams wants to add anything to what I have said.

Q10 **Chair:** Mr Williams, is there anything you want to add? That was quite a detailed answer from Sir Tom.

Mike Williams: Very briefly. I think the origins of this are in the point that Sir Geoffrey made right at the start of his questions. It is very complicated, in that some people perceive they had losses, but they are not regulatory losses as he described it because they do not derive from maladministration, as found by the ombudsman. In the nature of things, they feel that there was a loss they should have been compensated for but were not, and then maybe are inclined to think it was the methodology. I think Sir Tom is right: the methodology has been endlessly scrutinised and not found wanting.

Perhaps I could comment further on the data point, because it is very important and is at the heart of what the NAO refers to as recalculations in its helpful memorandum. The data came from the Equitable Life Assurance Society, inevitably because it had the data on its policyholders. By the time it came to be used for the compensation scheme, it was old data. Much of it was accurate, but, equally, there were known inaccuracies and there were some gaps.

To address that, the key thing that we did was that, when policyholders were told what compensation they were due, they were given what was called a core data report. In effect, that data told them what had been fed into the computer to apply the methodology, and they had the opportunity to check whether it was the right data.

In some circumstances, there would have been gaps and the computer would have had to reconstitute data; I think we called it at the time "repairing the record". They then had the opportunity to say, "You have assumed that I paid in £1,000 during this period. Actually, my records show that I paid in £3,000." That would lead to a re-computation. It was not the methodology that was wrong in those instances. It was the fact that the data that had been fed into the computer to apply the methodology was incorrect.

Q11 **Sir Geoffrey Clifton-Brown:** That was a very helpful clarification, Mr Williams. Sorry; I may have referred to you as Mr Hill. I am sorry if I referred to you by the wrong name.

Sir Tom, one of the other things that the EMAG group has commented on is the small surplus that you have. It is a relatively small surplus, but it is still a significant amount of money. I believe it is £150 million. Is that correct?

Sir Tom Scholar: I think it is £25 million. There is a separate reserve available as a buffer for the payments to annuitants. Obviously, the amount set aside for annuitants was based on actuarial assessments of the likely payments over the remaining lifetime of the policyholders.

In the happy case that policyholders live longer than the actuarial figures would suggest they might, the costs might be higher, so there is a buffer of £100 million set aside specifically for that purpose. In terms of the £1.5 billion, I think the figures are that there is approximately £25 million.

Q12 **Sir Geoffrey Clifton-Brown:** Can you tell us what will happen to that £25 million?

Sir Tom Scholar: Mr Williams may want to add to this. When the compensation scheme was set out—the terms of it were set out in 2010—it was up to £1.5 billion. The £1.5 billion was an assessment of what the cost of that scheme would be. It was estimated to be about £1.5 billion, with up to £1.5 billion made available for it.

The terms of the scheme ultimately all have statutory backing, and the Government have authority to make payments under the scheme, taking account of the terms of the scheme announced. It is not that there is a pot of money with some surplus left. We do not know yet; it could turn out that the scheme ends up costing fractionally less than first expected, but, broadly speaking, the amount paid out is what was expected to be paid out.

Q13 **Sir Geoffrey Clifton-Brown:** Last question from me. To be very clear for the record, the Government have no intention of reopening this matter, and they have no intention of putting any more money into it.

Sir Tom Scholar: That is correct.

Sir Geoffrey Clifton-Brown: Thank you.

Q14 **Sir Bernard Jenkin:** It is important for us to emphasise that this was a shattering blow to the individuals concerned, and pretty bad for public confidence in the regulation of the financial services sector, which was meant to be safer than it proved to be. For that reason, the destruction of the data does not seem to strengthen public confidence when there seems to be, certainly in the minds of many, unfinished business. Who did the data actually belong to? It did not belong to NS&I, did it? It belonged to the Government, presumably.

Sir Tom Scholar: NS&I is a Government Department. My understanding—

Q15 **Sir Bernard Jenkin:** Yes, but it is a separate legal personality, isn’t it? Did the data belong to the Treasury or NS&I?

Sir Tom Scholar: That is a rather precise legal question. I do not know what the completely correct legal answer is. In a sense, it is a Government Department. The data was held, as Mr Williams said earlier, for the purposes of operating the payments scheme. The data for the appeals process was separately held. The data held by NS&I was held for the purposes of operating the scheme. Once the scheme was closed, there was no reason for the Government to continue to hold that data.

Q16 **Sir Bernard Jenkin:** Are you clear in your own mind about who actually took that decision? I am not looking to prosecute someone now. Who actually took the decision that the data could be destroyed?

Sir Tom Scholar: I do not know the answer to that question. We can go away and look into that and write to the Committee.

Q17 **Sir Bernard Jenkin:** In an ideal world, that data would still exist. That would have strengthened public confidence that things were not being brushed away for convenience. I am not suggesting they were.

When we read about the destruction of contaminated blood records or the destruction of BSE records, when people go back to look at these things and find that all the papers and records have been destroyed, it does not strengthen public confidence. In retrospect, it would have been better to keep this data. Can we agree on that? That is one of the lessons we should learn.

Sir Tom Scholar: It is a fair question. If I may, I would like to go back and check who took the decisions at the time and the precise reasons, because, as Mr Williams says, there are also general principles, including legal responsibilities, relating to data protection that govern the circumstances under which a public authority can and cannot hold data. I think there could be issues that we ought to check before reaching a conclusion.

Q18 **Sir Bernard Jenkin:** I hear that point, but it sounds more like a pretext than a reason, because there could have been plenty of good reasons to come up with to keep the data. I appreciate that keeping data means that somebody has to look after that data and therefore it is easier, but we know that there are masses of records destroyed. The PACAC did an inquiry into recordkeeping in Government Departments.

Chair: To be clear, that is the Public Administration and Constitutional Affairs Committee.

Q19 **Sir Bernard Jenkin:** The Public Administration and Constitutional Affairs Committee, when I was Chairman. We found that, because so much data and paper is produced, there is far more destruction of records than there used to be, and a lot of the corporate memory of Departments is lost as a consequence. Who is responsible in your Department, or do you have an individual responsible in your Department who is accountable to you, for deciding what data is kept and what data is destroyed?

Sir Tom Scholar: We do. Mostly, we do not hold personal data because it is not the nature of our business. Most of the information we hold is public records relating to the conduct of Government. We have a team of people who are responsible both for the policy on that and for implementing that policy.

Q20 **Sir Bernard Jenkin:** Have you reviewed how these decisions were made in this case?

Sir Tom Scholar: For this particular case, as I say, I have not reviewed, but I am very happy to go and do that and then write to the Committee with the conclusions.

Sir Bernard Jenkin: I think that would be a really good idea. I think my former Committee is interested in this topic. The Chairman could not be here today to take part in this session. We will probably write to that Committee to suggest that he follows this up.

Chair: Thank you, Sir Bernard. I think that is absolutely right. There are clearly issues. The length of time that has elapsed since 2016 has made it very difficult to go back and look at any of the questions that have been asked.

I have been liaising with the Chair of our sister Committee, the Public Administration and Constitutional Affairs Committee. We can formally ask them as a Committee to look into this issue of recordkeeping and see if there are recommendations that can be made—not just about these regulatory failures, but maybe more widely. Our particular concern about the issue is that financial regulatory failures way back are still causing people upset today.

I put on the record our thanks to the Equitable Life group, who have been very helpful in providing information to us today and for their forbearance in continuing to push on this issue. We will pass that over to our sister Committee, and I am sure, Sir Tom, they will be in touch if necessary. Thank you very much.