

# Editorial

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### PCA and Barlow Clowes

On December 18, Trade and Industry Secretary, Nicholas Ridley, donning the ill-fitting robes of Santa Claus, gave seasonal good cheer to the 18,000 aggrieved investors whose savings had evaporated in the collapse of the Barlow Clowes empire. Responding to a long-awaited, and for the Government predictably embarrassing, report by the Parliamentary Commissioner (HC 76, 1989-90) on the DTI's administration of its licensing responsibilities under the now defunct Prevention of Fraud (Investments) Act 1958, Mr Ridley told the House of Commons that claimants would be offered compensation on a sliding scale - 90 percent for those with up to £50,000 invested, 60 percent for investments over £100,000 - in return for relinquishing any claims to assets recovered by the liquidators, including amounts recovered through litigation against parties legally responsible for the financial collapse. A spate of legal actions by the Government against financial intermediaries, to offset the £150m burden on the taxpayer arising from the compensation scheme, is anticipated.

All this is good news, albeit qualified by some worrying caveats. In his closely argued and illuminatingly detailed report, running to 170 pages, the PCA identifies five areas of significant maladministration by the DTI. The Government's response is to offer *ex gratia* compensation without admission of fault: "the Government do not accept the Parliamentary Commissioner's main findings, nor are the Government legally responsible". It notes in its published observations on the PCA Report that "the trend of Parliamentary and judicial policy in recent years has . . . been in the direction of excluding regulators from liability. At the same time, however, the trend of decisions by the PCA seems to have been moving in a different direction". The Government is perfectly entitled to defend itself against adverse findings by the PCA (there is some validity in the distinction it draws between insight and hindsight), particularly when such findings have potentially adverse implications for public funds. But one is left with a distinct feeling in this instance that a

blanket refusal to accept any finding of fault amounts effectively to a damaging snub to the PCA.

The essence of the Government's position is that regulation should operate at arms length, with the lightest of touch, and with no enforceable redress available for those who suffer loss through defaults of the regulator. The award of compensation in this case is a consequence of political muscle - a triumph for the persistence of the Barlow Clowes Investors' Group, who played a significant part in mobilising so much media and Parliamentary concern. The Government's handling of this episode underlines its continuing commitment to a minimalist regulatory framework (now, of course, operating on the basis of the Financial Services Act) - which is surely a welcome seasonal message to all shady and careless financiers.