ombudsman
news

from the **investment** division

Financial Ombudsman Service

November 2001

Financial Ombudsman Service

Aimed at financial firms and professional advisers – and at consumer advice agencies – we focus each month on news from one of our three case-handling divisions: banking and loans, insurance – and this month – investment.

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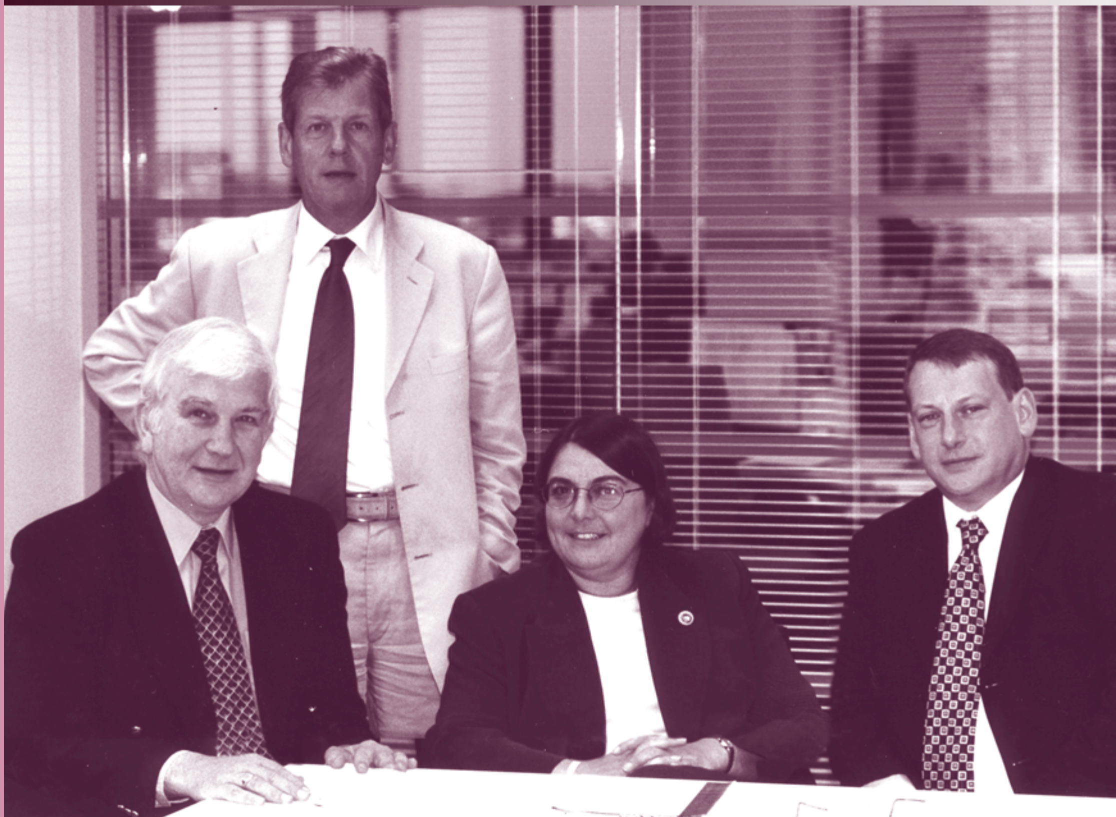

Walter Merricks (back), chief ombudsman, with the three principal ombudsmen. From left to right, **David Thomas**, banking and loans, **Jane Whittles**, investment, and **Tony Boorman**, insurance.

about this issue of *ombudsman news*

by **Jane Whittles**
principal ombudsman
investment division

N2 – the date when the Financial Services and Markets Act came into effect – has arrived. Our intention was always to make the transition as seamless as possible so if – for most of you – it is pretty much 'business as usual' then we consider things have very much gone to plan. However, new rules ***are*** now in place and in the next investment edition of ***ombudsman news,*** we plan to report on the effect they appear to be having on the disputes referred to us.

Produced by the communications team at the Financial Ombudsman Service

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Reference number 135/06.12.01

1 the Taber test case and windfalls

Since the last investment issue of ***ombudsman news***, the PIA issued Regulatory Update 94 (RU94), dealing with the outcome of the *Needler Financial Services v Taber* case. Details are on the FSA website – (www.fsa.gov.uk). The regulator proposes to consult on its draft guidance on the treatment of windfall benefits, with a view to issuing formal guidance. Although that guidance is unlikely to come into force before May 2002, RU94 provides the basis for moving forward. We stated in the August issue of ***ombudsman news*** that we would be reviewing matters after 17 September, and we are now able to confirm our current position.

windfalls in pensions and FSAVC (Free-Standing Additional Voluntary Contributions) review cases

The PIA Ombudsman Bureau's terms of reference required it to follow the PIA's standards for the review of pension transactions. Regulatory Update 89 (RU89) allowed firms dealing with cases where the investor had received a windfall in cash or shares to suspend progress, if they wished, at the point where the windfall became a relevant issues (for the calculating of loss). Any of these suspended cases will now be decided in accordance with RU94. Exceptionally, for cases where the policy has been enhanced by a windfall benefit, we will wait until the publication of the revised regulatory guidance before making a final decision. As RU94 follows our understanding of the Court's view, all investment division cases are now worked on this basis.

windfalls in mortgage endowment complaints

There is no regulatory guidance for the handling of these complaints and we reach decisions based on the facts and circumstances of each individual case. Where these cases involve windfalls, the High Court decision in the Taber case now provides additional judicial guidance on the relevant principles when we calculate compensation.

This judgment makes clear that:

- any benefits received from a demutualisation were not received as a result of the firm's negligence; (in the Taber case, benefits were taken in the form of shares, but referred to in the judgment as potentially being taken in the form of cash or additional bonuses);

  and therefore

- the value of the benefits received does not need to be taken into account to reduce the amount of any compensation payable to a policyholder.

We will continue to look at the particular facts and circumstances of each individual case. Where customers received a windfall benefit, in whatever form, we will generally disregard the value of this benefit when we decide the amount of compensation they should receive.

RU94 prohibits firms from making offers of compensation that deduct the value of any windfall benefits, in whatever form these benefits are received – whether as shares, cash, additional bonuses or other enhancements to the policy.

Case law has determined the appropriate treatment for complaints of this type, so in the absence of any regulatory guidance, we will continue to make our decisions in accordance with the law, taking into account the particular facts and circumstances of each case.

The Taber judgment did not specifically refer to windfall benefits received, in whole or in part, in the form of policy enhancements. We will not issue final decisions on cases involving this type of windfall benefit until after the regulator has published its guidance. This will only affect a small number of cases.

RU94 does not prohibit firms from making offers that exclude all benefits, and we would not seek to disturb offers made to policyholders on this basis. However, we will defer making a final decision in any of these cases where the firm and the policyholder cannot reach agreement on the suitability of an offer.

...where customers received a windfall benefit, in whatever form, we will generally disregard the value of this benefit when we decide the amount of compensation they should receive.

case studies – windfalls

These cases illustrate the response of firms to windfalls, the Taber case and the publication of Regulatory Update 94.

■ **11/01**

Mr and Mrs B complained that their adviser never told them their mortgage endowment policy might not produce enough to pay off their mortgage. We issued a provisional decision upholding the complaint and suggesting the firm should calculate compensation in accordance with RU89. This showed that the couple had made a loss of £262.03.

Mr and Mrs B had received windfall benefits and the firm wanted to deduct them from the compensation. If it had done so, this would have cancelled out Mr and Mrs B's loss. However, following the result of the Taber court case, the firm accepted that it should pay the full amount of compensation.

■ **11/02**

In January 2001, Mr and Mrs A discovered that their mortgage endowment policy was likely to produce £6,650 less than they needed to pay off their mortgage. They complained that the firm had mis-sold the policy. It had not discussed any alternative types of mortgage with them, and disregarded the fact that they did not want to take any risk.

The firm was unable to produce much documentation from the time of the sale. However, the information we obtained from Mr and Mrs A by means of the mortgage endowment questionnaire indicated they were cautious investors, for whom an endowment policy was unsuitable.

We upheld the complaint and awarded compensation calculated in accordance with RU89, plus £200 for distress and inconvenience. The couple then converted their mortgage to a repayment-only basis.

It was important to ensure that rectifying the mortgage endowment mis-selling did not result in the couple being penalised for the deterioration in health they had both suffered. Mrs A's health had already been poor at the time they took out the endowment mortgage policy; her husband was subsequently diagnosed with a serious illness. Taking out a life assurance policy to cover the repayment mortgage would now be very expensive for them. We therefore decided that the firm should compensate them for this. We awarded a sum representing the difference between the cost of a decreasing term assurance policy now, compared to its cost when they first took out the mortgage.

Mr and Mrs A had received demutualisation benefits from the product provider that supplied their endowment policy. The firm wanted to deduct the value of these benefits from the amount of compensation it paid. However, in view of the outcome of the Taber case, we ruled that it could not do this.

- **11/03**

Mr and Mrs D complained when they discovered that their mortgage endowment policy was not guaranteed to repay their mortgage and did not mature until Mr D was 67.

The firm accepted our view that it should carry out calculations, in accordance with RU89, to establish whether the couple had suffered a loss as a result of having the mortgage endowment policy rather than a repayment mortgage taken out over 18 years (to end at Mr D's normal retirement age).

The firm did not accept that it should ***not*** deduct from any compensation:

- the value of windfall shares the couple received from the policy provider's demutualisation; and
- the notional 'savings' the couple made as a result of paying less, to date, under the existing endowment arrangements than they would have paid for an 18-year repayment mortgage.

Eventually, after further correspondence with us and after the appeal period in the Taber case had expired, the firm agreed not to make any deduction for the notional 'savings'. But it said that 'as a gesture of goodwill' it would deduct only 50% of the current value of the couple's windfall shares.

The comments of one of the High Court judges in the *Needler Financial Services v Taber* case were relevant here. He said that windfall shares should not be taken into account if they were received as a result of the decision to demutualise, rather than as a consequence of advice from the person who sold the policy that gave rise to the entitlement to the 'windfall' benefit. We therefore ordered the firm not to deduct the value of the windfall shares from the compensation.

... we ordered the firm not to deduct the value of the windfall shares from the compensation.

2 mortgage endowment complaints alleging guaranteed investment performance

The *mortgage endowment complaints assessment guide*, available on our website (www.financial-ombudsman.org.uk), illustrates our current approach to complaints where it is alleged that a firm guaranteed an investment would perform in a certain way – even though the policy did not include any contractual guarantee.

The legal issues that can arise in such disputes were given careful consideration when we drew up this guide, which we hope will prove a helpful indication of our general approach. We would stress, however, that it is not intended as an authoritative statement of the law, or as a substitute for legal advice on individual cases.

In our experience, when customers have been told something inaccurate about an investment policy before they enter into the contract, they generally react in one of the following ways when they discover the true position. They may:

- take the view that they never really believed what they were told, accepting it was just sales talk;
- consider that the product provider should honour whatever the adviser said; or
- consider that while what was said was too uncertain to amount to a promise, it was nevertheless misleading; and that if they had known the true position, they would not have entered into the contract.

Our guide deals with the circumstances of two potentially successful forms of claim involving alleged guarantees. These are:

- where customers are, in effect, claiming they were given a guarantee about investment performance; and
- where customers claim that, while what the financial adviser said was too uncertain to amount to a promise, it was nevertheless misleading; and that if they had known the true position, they would not have entered into the contract.

If this first type of complaint is sucessful, this may well mean that the appropriate redress is for the firm to be required to pay the amount 'guaranteed' when the policy matures, providing all payments are kept up to date.

If the second type of complaint is successful, the outcome is achieved on the basis that the advisor's statement constitutes a misrepresentation in the legal sense. The legal remedy for misrepresentation is *either* the voiding of the contract (leading to the return of premiums paid with interest) *or* damages.

As our *mortgage endowment complaints assessment guide* sets out, although voiding the contract is a possible remedy, in many cases we may consider it more appropriate to award damages. In any event, voiding the contract is not an option where the misrepresentation was made by an IFA, since the IFA is not party to the investment contract.

Damages for misrepresentation are calculated to return customers to the position they would have been in if the misrepresentation had not been made, ***not*** the position they would be in if the false statement had been true.

case studies – mortgage endowment complaints alleging guaranteed investment performance

■ **11/04**

Mr S and Miss K complained that the endowment mortgage policy sold to them in October 1989 was inappropriate for their circumstances and that the adviser had not discussed any other options with them. They also alleged that the adviser had told them the policy would provide a lump sum over and above the amount they needed to repay their mortgage.

We rejected the complaint. The firm had provided sufficient documentation from the point of sale to make it clear that it had not guaranteed the amount the policy would produce. In addition, the endowment mortgage questionnaire that we asked the couple to complete confirmed that their attitude to risk at the time of the sale was compatible with the degree of risk the policy presented.

■ **11/05**

When Mr and Mrs G were sold a mortgage endowment policy in 1986, the adviser gave them a handwritten 'quotation', setting out the amount they would receive when the policy matured.

They were therefore very suprised when they recently received a letter from the firm saying the policy might not enable them to pay off their mortgage in full. The couple said they expected the firm to honour the amount on the 'quotation'. The 'quotation' was on company headed paper and said

Further to your request for policy maturity figures, here are the terminal and reversionary bonuses, together with the basic endowment figure.

	£
Endowment	*7,875*
Reversionary Bonus	*12,624*
Terminal Bonus	*17,625*
Total	*38,124*
Less balance of mortgage	*17,500*
Cash back at maturity	*20,624*

The figures were based on the value of similar policies maturing in 1986 and there was no evidence that the adviser had provided any disclaimers to suggest there was any doubt about the figures quoted.

The firm did not consider that it had provided a guarantee. There was little documentation available from the time of the sale. There was also no evidence to suggest Mr and Mrs G could reasonably have been expected to question the validity of the information they were given, or to know that the firm did not give guarantees for endowments.

The 'quotation' was clearly expressed and there was no evidence that it was not part of the contract terms. We ordered the firm to guarantee that, provided the couple continued paying the premiums to the end of the policy term, they would receive £38,124.

3 fund management complaints

The new FSA rules require any expression of dissatisfaction about performance management issues to be dealt with as a complaint. In view of this, some firms have asked how the new rules will affect the way we treat fund management complaints. There has been concern that such cases would have to be reported to the FSA and complainants given referral rights to the Financial Ombudsman Service, thus raising an expectation that we can investigate complaints which, in fact, are likely to be outside our jurisdiction.

This concern also arose in relation to complaints made to our predecessor ombudsman schemes. The position remains that straightforward complaints about investment performance are outside our jurisdiction. Further, the procedural requirements of the new rules – that firms must provide the consumer with rights of referral to the ombudsman service – do not apply when a 'complaint' can be resolved by close of business the next day. In many cases, firms should be able to deal fairly easily with a client's expression of concern purely about investment performance using, no doubt, a standard reply.

Some firms claim they have no discretion to exercise their judgement about how to handle an 'expression of concern' from a customer where it may not be appropriate to use the complaints procedures. However, the rules were drafted in a way that gives firms as much discretion as possible.

A firm must have appropriate and effective complaints-handling procedures, but the 'scene setting' Rule (DISP 1.2.1) refers to 'expression of dissatisfaction........about that firm's provision of, or failure to provide, a financial services activity'. It is a matter of judgement as to whether clients' concerns about investment performance fall within that definition.

Clearly, in situations where there is no doubt about the basis of the complaint and no question of the matter being one that falls within our jurisdiction, providing referral rights would only raise customers' expectations unnecessarily.

However, many 'performance complaints' include other elements – such as the suitability or otherwise of an investment or allegations of negligent advice. Firms should take care to consider whether the wording a complainant uses to express concern over investment performance is actually an expression of dissatisfaction with the suitability of the investment.

Furthermore, complaints that may appear to be simply about investment performance are likely to be within our jurisdiction if they arise as a result of concerns being raised about charges:

- not being properly explained;
- being applied at a higher level than permitted under the contract;
- being unusual and/or onerous;
- representing a penalty;
- being unfair; or
- being so high that the policy cannot perform as required.

It is not in anyone's interest for consumers to be referred to us when their complaints are not within our jurisdiction. However, the FSA rules require firms to ensure investors are not prevented from having their complaints dealt with properly when those complaints are not purely about performance. We should all be guided by the FSA's overall objective that firms should treat their customers fairly, in accordance with the Principles for Business.

The following case studies demonstrate how we judge whether complaints about investment performance fall within our jurisdiction – and how difficult it can be to make that judgement.

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case studies – performance complaints

■ 11/06

Mr T claimed he was promised a high rate of return on his portfolio, which included a PEP investment, and which was transferred to a regulated firm as fund manager. However, the portfolio's performance fund fell substantially below his expectations.

It was appropriate to treat the matter as a formal complaint. This was because the substance of Mr T's dissatisfaction was not simply that his investment had not performed as well as he had hoped; he believed he had been promised a certain level of performance.

However, our investigation revealed no evidence that Mr T had been given any promise about the rate of return he could expect, so we did not uphold his complaint.

■ 11/07

Mr L was concerned about the poor performance of his investment bond, which he had been given to understand would be linked to the FTSE 100 Index.

The product literature explained how the investment return on the bond was determined by reference to the percentage of the rise or fall declared in each quarter on the FTSE100 Index. The literature also stated that on each fixed quarter date, the firm would declare the proportion of the growth in the FTSE100 Index for the next quarter. However, Mr L's adviser had told him that the full rise in the FTSE100 Index would be added to the

value of the bond. We took the view that the adviser had not explained the workings of the contract adequately.

It was clear, therefore, that although the investment returns had been correctly calculated, they fell short of what Mr L had been led to believe he would receive. The firm agreed to our proposal that it should return Mr L's original investment, together with interest calculated at our normal rates.

■ **11/08**

Ms J transferred a total of £163,000 in funds and assets for discretionary portfolio management. Most of the transfer took place in 1994, although £8,750 of the total was transferred in March 1996. Her funds and assets were invested in two portfolios: an investment trust growth and income portfolio (the 'income' portfolio), and a unit trust capital growth portfolio (the 'capital growth' portfolio).

By August 1999, the combined value of the two portfolios was £177,000. Ms J complained to the firm that the funds had not increased sufficiently in value. She also complained of over-weighting towards Far Eastern markets. She claimed minimum compensation of £26,863 – a figure she arrived at by assuming the funds invested achieved a rate of return of 6% per annum.

After we became involved, the firm made an open offer of settlement on the basis that the capital growth portfolio was not suitable for Ms J's needs. It offered to refund fees amounting to £9,000 on the capital growth portfolio and to pay compensation for the fall in value, then amounting to £548. When Ms J protested that the degree of risk had been explicit, and that she wanted low-risk investments, the firm offered to refund the fees charged on the income portfolio as well. Ms J accepted the revised offer of £16,296.

■ **11/09**

Mr O complained about poor performance and alleged mismanagement. He had entered into a discretionary investment management agreement with a firm in January 2000. The firm began managing his £50,000 fund with the stated goal of improving on the 2.9% return that the money had been earning before then.

It was not until Mr O returned from abroad, in August 2000, that he was able to review the contract notes and other information the firm had sent him. He discovered there had been a significant fall in the value of his investment. He contacted the firm immediately to discuss his concerns, especially the inclusion of speculative stocks and shares.

The firm decided that, while it was investigating the matter, it would lower Mr O's risk profile and invest in some managed funds. However, the investment continued to fall in value.

The firm accepted that there had been a misunderstanding from the outset about Mr O's risk profile and that it had not known he regarded the fund as a 'pension fund/nest egg'.

We upheld Mr O's complaint. We took the view that the firm had failed to keep sufficient written records and had not taken reasonable steps to enable Mr O to understand the nature of the risks involved. We considered the firm had been negligent and had not adopted an investment strategy which properly reflected their client's intentions. We required the firm to compensate Mr O for financial loss and for the distress and inconvenience that he had suffered.

11/10

Mr and Mrs A both held single-company PEPs from the same product provider. The value of Mrs A's PEP had consistently fallen since the date of her investment. Her husband's PEP was invested in a different company and although initially the shares had almost trebled in value, they had since fallen again.

The couple complained that no 'stop loss' system appeared to have operated on Mrs A's PEP and that the profit was not taken on Mr A's PEP when it was available. They stressed that their complaint did not relate to investment performance as such, but to 'profit not realised through indifferent and negligent management'. They also claimed that the PEPs had not been reviewed regularly, despite promises in the product literature. The documentation the couple had received made it clear that:

- the objective was long-term total investment return; and
- single company PEPs carry a higher risk than investment in a product where the money is spread across a range of shares.

The firm responded to the complaint by explaining that since single-company PEPs are a longer-term investment, it did not consider that active management – of the sort that Mr and Mrs W appeared to expect – was appropriate: the costs incurred with each sale and purchase could negate any gains made.

The firm believed that the shares in its single-company PEPs had the potential to deliver long-term returns and it had not seen any need to make changes. It noted that it reviewed the holdings in the single-company PEPs with the same frequency and on the same basis as any other holding in its main UK portfolio.

Not every investment manager would agree with the firm's decision to hold on to the existing shares. However, we did not believe this could be construed as a failure to exercise reasonable care. There are many different ways of managing investments but the one thing they have in common is that there is no guarantee of success. We did not uphold the complaint.

■ **11/11**

In January 2001, Mr C asked the firm that managed his single-company PEP to send him a valuation of his portfolio. He was 'astonished and annoyed' to discover that the firm had switched out of some shares and into others and that the valuation, at £2,503.31, was £5,096 lower than it would have been if the investment had remained unchanged.

The firm had performed the switch on 26 July 2000 but it subsequently issued a statement, dated 31 July 2000, indicating that the original shares were still in the portfolio. The firm said the statement was correct at the time of printing because the deal was not settled until 2 August.

Mr C claimed that the investment switch showed a complete lack of judgement and expertise on the part of the firm. He said he had been disadvantaged by the difference between the current value of the PEP and the value it would have had if the switch had not been made. He also claimed that by failing to notify him or his adviser of the switch, the firm denied him the opportunity to monitor the change or take action.

The PEP Terms and Conditions gave the firm complete discretion to choose or switch the shares held in the PEP. The firm was under no obligation to advise Mr C immediately of any switches. Under the regulator's rules, Single Company PEP managers are not required to advise clients of any changes at the time of the switch – although they must give details in the periodic statement. There had been no breach of rules surrounding the fact that the transaction did not appear on the 31 July statement. Since there was no evidence of the firm's negligence, we did not uphold Mr C's complaint.

■ **11/12**

In May 1988, Mr P invested in a with-profits savings plan. He was disappointed with the return he received and noticed from his statements that the annual bonuses declared by the company were decreasing, compared to previous years. He concluded that the company must therefore have mis-managed his investment.

We were unable to investigate his complaint about the level of bonuses declared by the company, since this was a straightforward complaint about performance and therefore outside our jurisdiction. However, we considered the suitability of the investment and established that it met Mr P's stated requirements at the time of sale, and that the adviser had fully documented these requirements and the reasons for recommending the plan. There was no evidence that Mr P had been given any guarantees about the plan's performance. We did not uphold the complaint.

4 a selection of recent cases – *illustrating the wide range of complaints dealt with by the investment division*

- **11/13**

After reviewing Mr J's pension mis-selling complaint, the firm accepted that he had lost out as a result of its advice to transfer from an occupational pension scheme. It was only after Mr J had accepted the firm's offer of redress that the firm realised it had made an error in its calculations. It had offered significantly more than the amount it was required to provide.

The firm then sent Mr J a revised offer for a much lower amount, which was correctly calculated in accordance with the regulator's guidance. Mr J brought the matter to us.

We upheld his complaint, referring the firm to the regulator's guidance which said that once a customer has accepted an offer, even if the firm's incorrect calculation resulted in the offer being larger than it should have been, no alteration should be made. The firm accepted the position and honoured its original offer.

- **11/14**

Mrs E complained about pension mis-selling. The firm accepted that her complaint was justified and proceeded to calculate redress. However, it was unable to obtain full information about her occupational pension scheme. It therefore had to base its calculations on certain assumptions, as laid down by the guidance. Mrs E rejected the offer and referred the complaint to us.

It is rare in such cases that we are able to obtain missing information, but we did so in this instance. We were therefore able to obtain a re-calculation of redress using the details of Mrs E's occupational pension scheme. This showed that the redress required was significantly lower than that calculated using the assumptions.

We could not order the firm to honour its original offer since Mrs E had rejected it. The second, more specific loss assessment had been conducted in accordance with the pension review guidance, so it met the regulatory requirements. Mrs E was left with the choice of accepting the lower amount of redress or taking legal action against the firm.

- **11/15**

The firm accepted that it had mis-sold a personal pension to Mrs H and proceeded to put things right, in accordance with the guidance. However, when it was arranging to reinstate her into her occupational scheme, the firm found she had paid a lower level of contributions to her personal pension than she would have paid into her occupational scheme over the same period. It therefore required her to make up the difference, so that she could be fully reinstated into her old scheme.

Mrs H considered this unfair and referred the complaint to us. We rejected the complaint. The firm had correctly followed the guidance, which allowed it to take into account the saving Mrs H had made when it assessed her loss. Moreover, our Terms of Reference prevent us from making any alternative award unless we consider that the guidance does not address the circumstances of a particular case.

11/16

Mr and Mrs E bought their house in 1992 as part of a shared ownership scheme. They took out a mortgage endowment policy with the aim of repaying the mortgage and providing some capital to help them buy the remaining share of the property.

In 2000, the couple received a 're-projection' letter stating that the policy was likely to produce a shortfall and asking them to increase their premiums by 46% to get the policy back on track. They decided not to increase their premiums and the firm told them that the policy could no longer be certain to provide sufficient funds to repay the mortgage.

Mr and Mrs E considered this to be a breach of contract. They complained, initially to the firm and then to us, about the unsuitability of the policy. They considered that the firm had taken away the policy's 'guarantee'. They also held the firm liable for the fact that, when they were deciding whether they could afford to pay the increased premium, they had cancelled a critical illness policy costing £40.00 per month. The deterioration in Mr E's health since he took out the original policy meant that he would not be able to obtain further critical illness cover.

There was no record of the discussion that took place with Mr and Mrs E at the time of the sale. The literature they were given did not imply that the policy benefits were guaranteed, but we upheld their complaint on the basis that the policy was not compatible with the couple's attitude to risk.

As we upheld the complaint and the firm accepted that the policy was unsuitable, there was no need for us to investigate the complaint about the removal of the plan 'guarantee'. We did not accept that there was any liability on the part of the firm for the couple's cancellation of the existing critical illness policy.

When looking at the question of redress, we found that if Mr and Mrs E had taken out a repayment mortgage, they would have repaid £5,180 at the date of our calculation. The current surrender value of the policy was £617 higher than this figure, so they had made a gain of £617. However, the endowment mortgage was £4,375 more expensive than the repayment mortgage over the same period. The total compensation was therefore £3,758. The firm also agreed to pay the administration fee charged by Mr and Mrs E's lender to convert the mortgage to a repayment basis.

■ **11/17**

Mr and Mrs M's complaint concerned the whole of life policy they took out in 1991. They felt their adviser was guilty of misrepresentation. Their understanding had been that they were taking out an endowment, not a whole of life policy.

We found no evidence of misrepresentation. All available documentation and brochures clearly described the whole of life policy and stated that its main purpose was family protection.

The firm had cited the fact that one of the couple's priorities, as noted on the 'fact find' at the time of sale, was family protection. Mr and Mrs M sent us a copy of the 'fact find', which referred to investing a lump sum and family protection but did not mention whole of life protection. However, the firm's copy of the 'fact find' included a reference to the whole of life plan.

The firm agreed with us that the differences between the two copies of the 'fact find' cast doubt over the sale. It agreed to rescind the contract, return the premiums, with interest, and pay £200 for the distress and inconvenience caused.

■ **11/18**

In March 2000 a first time investor, Mrs G, paid £4000 into an Individual Savings Account (ISA). She did not receive any advice before making this investment. Her money was invested in the firm's technology and European unit trusts.

A month later, after the technology investments experienced an unusually high level of volatility, the firm sent investors a 'Market Update' letter, with a question and answer sheet. In October of the same year, Mrs G decided to cash in her investment and suffered a loss of approximately £1,400. She then made a complaint to the firm, which was eventually referred to us.

Mrs G asserted that the firm's 'Market Update' letter had encouraged her to hold on this investment against her better judgement and she claimed that the letter's contents amounted to investment advice. In our view, the letter sought to remind investors of the volatility and long-term nature of investments of this kind. It referred positively to the long-term outlook for technology investments in general and for this fund in particular. The letter did not give Mrs G any recommendation to increase, reduce or hold on to her investment and did not constitute investment advice. We did not uphold the complaint.

■ **11/19**

While she was clearing out some papers after her mother's death, Mrs C found a policy document for a life assurance policy her mother had taken out in 1965 for a premium of 10 pence (pre-decimal) per week. Mrs C made a claim on the policy for £37-4s-0d.

The firm refused to pay out, claiming that the policy had lapsed in 1983 with arrears of £1.40. The policy did not appear on the firm 's live records, indicating that it had no current value. However, as a gesture of goodwill, the firm offered Mrs C £10. She rejected this sum and referred the complaint to us. After we told her that the offer was reasonable in the circumstances, since she had no proof that the premiums had been paid to date, she accepted it.

We have recently established an assessment team to deal with complaints where we think there is a good chance of achieving a swift resolution by means of mediation rather than by a full investigation. The next two case studies were among those resolved by the assessment team.

■ **11/20**

Mrs I complained to the firm after receiving its letter telling her that her mortgage endowment policy was likely to produce less than she needed to pay off her mortgage. She claimed the adviser had not warned her that the policy involved any risk.

The firm upheld her complaint. At this stage, the regulatory guidance – RU89 – had not been issued and the firm offered Mrs I the higher of a refund of the premiums she had paid, plus interest, or the sum she would have repaid on a repayment mortgage. Mrs I rejected the firm's offer on the grounds that it was not enough to address the shortfall. She wanted compensation equal to the shortfall, or for the firm to pay the increase in premiums necessary to place the policy back on target.

By the time the case had been referred to us, the regulator had issued RU89. We examined the firm's offer to check whether it was significantly different to any potential redress that might have been available under the regulator's guidelines. We concluded that there was no significant difference and, having confirmed that the offer was still available, we telephoned Mrs I.

A lengthy and difficult conversation ensued. We explained all aspects of the case in detail, including the fact that the policy documentation made it clear that there was no guarantee as to the amount the policy would produce at the end of its term. However, Mrs I refused to accept that the firm's offer was fair and reasonable and she insisted that the firm should guarantee to repay her mortgage.

Unable to conclude the call satisfactorily, we finally suggested that we would send Mrs I written confirmation of the points we had discussed with her, together with our view on why we could not uphold her complaint.

Mrs I subsequently decided to accept the firm's offer and agreed settlement with the firm direct. The firm then asked us to refund their case fee on the grounds that we had 'not investigated the complaint'.

We pointed out to the firm that it had no grounds for requesting a refund. Once the case had been referred to our assessment team, it was assessed, mediation took place and a mutually acceptable outcome was reached, all within 10 working days.

11/21

In June 1995, Mr T was advised to take out a mortgage endowment policy. After becoming aware recently that the plan was predicted to produce a shortfall, acting on his own initiative Mr T converted his mortgage to a repayment basis and surrendered his endowment policy. Only then did he complain to the firm.

The firm offered to pay him a refund of all the premiums he had paid to the endowment policy, plus interest, less the surrender value he received when he cashed in the policy. Mr T felt that the company should provide a higher amount of compensation because he had to take out the repayment mortgage over 25 years, with higher costs.

When the complaint was referred to us, we found the endowment policy had been suitable for Mr T in terms of his attitude to risk. However, the policy had been mis-sold because it had not been set up to provide a large enough sum assured to repay the mortgage loan in the event of Mr T's death.

Mr T had already surrendered the policy and converted his mortgage to a repayment basis. Reconstructing the mortgage in this way is normally the most favoured form of redress, but it was clearly not relevant here. We therefore concluded that a suitable form of redress would be to refund Mr T's premiums, plus interest, less the surrender value – the form of redress that the firm had already offered.

Mr T rejected this. We telephoned him to explain the issues involved and talk through his concerns. Eventually, he accepted the firm's offer of redress was a fair and reasonable one and equalled the maximum an Ombudsman was likely to award, if he decided to reject our initial assessment of the case and ask for it to be passed on to an Ombudsman.

... thanks to our mediation, a swift and mutually acceptable outcome had been achieved.