ombudsman news

issue 29 July2003

essential reading for financial firms and consumer advisers

Financial Ombudsman Service

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edited and designed by the publications team at the Financial Ombudsman Service

about this issue

In this issue of *ombudsman news* we highlight some practical matters that could affect firms – and us – as a result of the Proceeds of Crime Act 2002.

We focus, too, on some of the complaints we have received involving the '*voluntary concessions*' that firms sometimes make for their banking and mortgage customers. And we take a look at some of the travel insurance disputes that reach us, highlighting in particular:

- the circumstances in which insurers provide cover if a holiday is cancelled or curtailed; *and*
- the situation where insurers provide no cover for illnesses that arise from a medical condition the traveller has suffered from in the past.

We provide the usual wide-ranging round-up of recent investment-related complaints, and clarify the differences between '*guaranteed income bonds*' and '*guaranteed capital bonds*'.

On page 19, we include details of the special events we are running at venues around the country, specifically for mortgage and insurance intermediaries. And finally, in ask ombudsman news on the back cover we answer some recent queries from our readers.

services for firms and consumer advisers

our technical advice desk can:

- explain how the ombudsman service works
- give general advice on how the ombudsman might view specific issues
- help with technical queries.

phone technical advice on
020 7964 1400

email
technical.advice@financial-ombudsman.org.uk

our external liaison team can:

- provide training for complaints-handlers
- organise and speak at seminars, workshops and conferences
- arrange visits – you to us, or us to you.

phone external liaison on
020 7964 0132

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1 the Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 ('the Act') extends provisions about money laundering and crime proceeds in a way that could, in a few cases, create practical issues for regulated financial firms and for the Financial Ombudsman Service.

assistance: under the Act, it is a criminal offence for anyone to be involved in arrangements that they suspect facilitate (in any way) someone else in acquiring, retaining, using or controlling the proceeds of crime.

reporting: under the Act, it is a criminal offence for anyone who works in a regulated financial firm not to report any dealing that they suspect, or ought to suspect, involves the proceeds of crime. The report should be made to the firm's money laundering reporting officer, who must report appropriate cases to the National Criminal Intelligence Service (NCIS).

In most cases this will be *after* the transaction has taken place. Where the firm has advance notice of the transaction, it is protected against an allegation of 'assistance' if it gets consent, or 'deemed' consent, from NCIS before it carries out the transaction.

NCIS is deemed to have consented if the transaction is reported to it, and NCIS:

- does not refuse consent within seven working days of the report; *or*
- does refuse consent within seven working days of the report, but does not obtain a 'restraint order' within 31 days of refusing consent.

A law enforcement agency that receives information from NCIS can apply for a restraint order without giving notice to the person affected, who will be notified when a restraint order has been made.

'tipping-off': it is a criminal offence for anyone to do or say anything that might 'tip-off' someone else that they are under suspicion of acquiring, retaining, using or controlling proceeds of crime. That applies whether or not any report has been made to NCIS.

The fact that the transaction was notified to NCIS, but the NCIS did not refuse consent within seven working days, or did not obtain a restraint order, does not alter the position so far as 'tipping-off' is concerned.

This means that a financial firm, and the Financial Ombudsman Service:

- cannot, at the time, tell a customer that a transaction is being delayed because a report has been made under the Proceeds of Crime Act; *and*
- cannot later – unless NCIS agrees – tell a customer that a transaction was delayed because a report had been made under the Proceeds of Crime Act.

... the firm should contact a member of our legal department immediately ...

if a firm receives a complaint: if a firm receives a complaint in these circumstances, it may be unable to explain its reasons to the customer – who may then bring the complaint to the Financial Ombudsman Service.

If a firm receives a communication from one of our casehandlers about such a case, the firm should contact a member of our legal department immediately, preferably:

Louise Reilly: direct line 020 7964 0480
louise.reilly@financial-ombudsman.org.uk
or
Georgina Surry: direct line 020 7964 0596
georgina.surry@financial-ombudsman.org.uk

NCIS has confirmed that, in such cases, a financial firm can tell our legal department about a report to NCIS and the outcome, on the basis that we will keep the information confidential (which we must do, to avoid any 'tipping off').

Our legal department will then oversee the case, to ensure that it is handled appropriately in these difficult circumstances – liaising as necessary with NCIS. But our communications with the customer will still be in the name of a casehandler/ombudsman, so that the customer is not alerted.

2 travelling again? travel insurance disputes

Travel insurance disputes continue to represent a significant proportion of our general insurance complaint casework. Our insurance case studies this month illustrate the wide range of travel-related matters that are referred to us. But in this article we focus on the two issues that stand out as major causes of dissatisfaction and dispute:

- whether or not a travel policy covers particular events; *and*
- the impact of exclusion clauses for 'pre-existing conditions'.

is it covered?

Many holidaymakers appear to assume that by taking out a travel insurance policy, they have insured themselves against any unforeseen event that might lead to their cancelling or curtailing their holiday. Earthquakes, disease and terrorist attacks are all – from a policyholder's perspective – the type of unforeseen event that might mean they have to cut their holiday short or even cancel it altogether.

Recently, for example, many travellers have had their plans disrupted by outbreaks of Severe Acute Respiratory Syndrome (SARS) and by threats of terrorist attacks. We have also seen cases where the policyholder was travelling on medical advice specifically for the purpose of recuperation, without realising they were not covered for any claims that related to a 'flare-up' of the condition from which they were hoping to recover.

But in almost all travel insurance policies, cancellation and curtailment cover is narrowly defined. Typically, the policy document will list the circumstances in which policyholders can claim. These might include, for example, illness of the policyholder or of a close family member, or a summons for jury service. But earthquakes, terrorist attacks and epidemics are not generally included, so no cover is provided if any of these events occur.

It is for insurers themselves – not the ombudsman service – to determine what cover should be made available. But our caseload suggests widespread misunderstanding about just what insurance for *'cancellation'* and *'curtailment'* actually offers.

Insurers have an obligation to explain the limitations of their policies, not just the benefits. If they do not provide policyholders with clear information, especially where the cover available is limited, then they may find it difficult to justify their position if a policyholder subsequently brings a complaint to us.

... earthquakes, terrorist attacks and epidemics are not generally included, so no cover is provided if any of these events occur.

'pre-existing conditions' and best practice

The single most significant cause of the travel-related disputes referred to us is the insurer's exclusion of cover for *'pre-existing conditions'*. This is where the insurer excludes from cover any illnesses that arise from conditions that travellers were suffering from when they took out the insurance – or had suffered from previously. Our position on this is well-established. This exclusion is a potentially onerous one. Its impact is potentially far-reaching and may have serious consequences for customers, so it must be drawn very clearly to the attention of anyone buying a policy.

Very distinct approaches to this issue seem to be emerging within the industry. Best practice is evolving. Clear policy documentation and straightforward guidance can be found. And some firms operate well-publicised helplines that (before or shortly after the policy is taken out) can deal effectively with questions about – for example – any limitations on medical cover. They also record calls and ensure that any policy alterations are clearly explained and well documented.

Sadly, however, in too many of the cases we see, firms have fallen well short of best practice. Some continue to hide the 'pre-existing condition' exclusion in long-winded and complex policies, offering little or no advice about how it might impact on a traveller's holiday plans.

... insurers have an obligation to explain the limitations of their policies, not just the benefits.

At the claims stage, the distinctions between poor service and best practice can be even more marked. Firms that follow best practice recognise the need to treat medical-based claims with sensitivity and efficiency. They put the seriously-ill traveller at the centre of their arrangements. Other firms, however, can sometimes give policyholders the impression that they are obsessed with finding any possible indication of a pre-existing condition, so they can refuse to meet the claim.

Our casework gives us a good overview of how firms differ in how they explain what their policies offer, and handle any subsequent claims. But customers cannot readily compare competing policies on this basis, and often do not know – until it is too late – whether or not the firm concerned follows best practice. There might well be a role here for the industry – to set out clear statements of best practice – and for firms – to assure customers that they will follow these standards.

case studies – travel insurance disputes

■ 29/1

curtailment claim – firm rejects on basis of policy's general exclusion clause about claims arising directly or indirectly from alcohol

Mrs D had to curtail her holiday and fly home when she got news that her father had been unexpectedly admitted to hospital. He was suffering from liver disease – the result of years of alcohol abuse.

She put in a claim under her travel policy for the cost of return flights and unused accommodation. However, the firm rejected her claim on the basis of the following general exclusion clause:

'*[We will not pay for] claims arising from the influence of intoxicating liquor or of a drug or drugs unless prescribed by a registered medical practitioner.*'

The firm said this clause excluded all alcohol-related claims, however they were caused. It said it tookthe view that it would be unreasonable to expect insurers to cover any claims arising directly or indirectly from the effect of alcohol or drugs, whether their use was long- or short-term.

Dissatisfied with this, Mrs D brought her complaint to us. She said it was unfair of the firm to apply the exclusion clause in this case, since her father had not been drinking (and was not drunk) when he was admitted to hospital.

complaint upheld
We did not think there was anything inherently unreasonable or unfair about the exclusion clause. But we decided that the firm had been unfair to apply it in these particular circumstances.

The clause was intended to remove cover where a named individual, covered by the policy, bore some culpability for the loss or damage for which they were claiming. We interpreted the phrase '*influence of intoxicating liquor*' as indicating a state of drunkenness and/or lack of control over one's actions. It was designed to exclude claims that arose from the insured person being drunk, not from the mere consumption of alcohol.

It appeared that the firm had only cited this clause because its policy made no adequate provision for excluding claims that arose from a pre-existing medical condition (which is what had really led to the curtailment in this case).

We considered that if the firm's interpretation of the clause in question were upheld, the exclusion would be unreasonably wide and would exclude all sorts of situations for which most people would expect to be covered. For example, it would exclude a claim where a drunken driver injured a holidaymaker.

We concluded that the firm could not have intended to exclude claims where policyholders were merely innocent victims of chance events beyond their control. So it should not apply the exclusion clause in cases such as this, where claims arose because individuals other than the insured person were '*under the influence of intoxicating liquor*'.

... the firm had behaved unfairly in applying the exclusion clause in these circumstances.

■ 29/2
cancellation claim – policyholder's father-in-law committed suicide – whether claim should be excluded

Mr G cancelled his holiday just a week before it was due to begin, when his father-in-law committed suicide. The firm rejected his claim for the cost of the holiday. It said that the policy contained a general exclusion clause relating to claims that arose from suicide or attempted suicide.

Unhappy with the firm's decision, Mr G came to us.

complaint upheld
We thought the firm had behaved unfairly in applying the exclusion clause in these circumstances. Mr G's father-in-law was not one of the named individuals covered by the policy and his suicide was an unexpected event beyond Mr G's control.

In our view, it was unreasonable of the firm to interpret the exclusion clause as applying to uninsured individuals, including those whose death or serious illness might give rise to a legitimate claim, such as close relatives, business associates, travelling companions, *etc*.

We were also satisfied that the suicide was a wholly unexpected event so far as Mr G was concerned, and that his late father-in-law had not been suffering from any pre-existing condition. The firm agreed to pay the claim.

... he said the illness had not been caused by alcohol or drugs but by a prawn curry he had eaten.

■ 29/3

medical emergency and repatriation – firm rejected claim – exclusion clause related to alcohol – medical evidence indicated history of alcohol abuse and causal link with claim

Mr T had to be repatriated to the UK after he collapsed and was taken to hospital as an emergency case while he was on holiday in Tenerife.

The firm rejected his claim for medical and associated expenses. It cited an exclusion clause in the policy that said it would not meet '*any claim resulting from being under the influence of or in connection with the use of alcohol or drugs*'.

Mr T said the illness had not been caused by alcohol or drugs but by a prawn curry he had eaten. He said he had suffered a severe stomach upset and breathing difficulties before finally collapsing.

complaint rejected

The medical evidence from the doctors who had treated Mr T in Tenerife indicated that his illness had been caused by his severe and chronic alcoholism, and by the fact that he had been bingeing on whisky for five days while on holiday. This had led to acute alcoholic pancreatitis. We were satisfied that there was a direct causal link between Mr T's abuse of alcohol and his claim. We rejected his complaint.

■ 29/4

accidental bodily injury claim – whether deep vein thrombosis constituted 'bodily injury' under the terms of a travel policy

Mrs W's husband collapsed and died shortly after their plane arrived at Heathrow airport, on their return from a trip to Australia. The cause of death was determined as *'deep vein thrombosis'* (DVT).

Mrs W made a claim under her travel policy, which included cover for '*Accidental Bodily Injury*'. The firm rejected the claim on the basis that Mr W's death had been '*caused by a naturally occurring condition and was not accidental'*. The policy stated that bodily injury '*does not include sickness and disease unless resulting from a mishap, pregnancy or childbirth or other naturally occurring condition*'.

Mrs W insisted that her late husband had been in good health before the trip. She said his death must therefore have been caused by external factors, such as the cramped conditions on the aircraft.

complaint rejected

We acknowledged that, despite the medical debate that continues to cloud this issue, there is widely thought to be a link between long-haul air travel in cramped conditions and some instances of DVT. But many people who have not flown recently, or who have flown in business or first class, where the conditions are less cramped, also suffer DVT. And each year large numbers of people make long-haul flights in economy class without developing the condition.

We concluded that Mr W could not be said to have died as a result of '*accidental bodily injury*', rather than from sickness, disease or some other naturally occurring condition. We also had regard to a recent court ruling (in *re Deep Vein Thrombosis and Air Travel Group Litigation*, TLR 17/01/03) in which it was decided that DVT was not an '*accident for the purposes of article 17 of the Warsaw Convention*'. In other words, DVT was not an unexpected or unusual event or happening external to the passenger. We therefore rejected the complaint.

■ 29/5

cancellation claim – firm rejected due to pre-existing medical condition and/or exclusion clause relating to anxiety, depression or psychiatric disorder – whether firm's decision infringed the policyholder's human rights

Mr B cancelled his holiday just a couple of days before 15 May – the date it was scheduled to begin. He said that he had become too unwell to travel. The firm rejected Mr B's cancellation claim, citing two clauses in the policy. These were:

- an exclusion clause relating to claims where the insured person was aware of any existing medical condition or set of circumstances that might reasonably be expected to give rise to a claim; *and*
- an exclusion clause relating to claims arising from anxiety or depression, or from any previously-diagnosed psychiatric disorder.

Mr B's GP had certified that the condition that had given rise to the claim was '*acute stress reaction with anxiety*' and that this condition had started on 13 April. Mr B had not booked the holiday until the end of April.

When the firm rejected Mr B's complaint and told him that it would report him to the police for his '*threatening behaviour*' towards its staff, he said the firm had infringed his human rights and he brought his complaint to us.

complaint rejected

We noted a discrepancy between the original medical certificate that the firm had asked for when it was considering the claim and the copy that Mr B subsequently sent to us. The original clearly showed that Mr B's medical condition pre-dated the booking of his holiday and the start of the policy. The copy had been altered to show that the illness began at a later date.

We decided the firm had been correct in excluding the claim on the grounds that Mr B had a previously-diagnosed psychiatric disorder. And since we were satisfied that Mr B had been aware of his illness before he took out the insurance, we agreed with the firm's rejection of the claim on these grounds too.

We did not consider that there had been any infringement of Mr B's human rights, not least because the firm was not a '*public authority*' within the meaning of the Human Rights Act 1998. The firm was a private limited company and therefore not bound by the Act.

■ 29/6

medical emergency claim – whether policyholders were using travel policy as private medical expenses insurance

Mr and Mrs M were a retired couple who owned a villa in Spain. They had purchased an annual multi-trip travel policy that provided cover for up to 31 days per trip from the start of each trip.

On 1 March, Mr and Mrs M travelled out to their villa using cheap one-way airline tickets. On 24 March, Mr M fell ill and was admitted to hospital as an emergency case. When the couple subsequently returned home, they made a claim under their travel policy for Mr M's emergency medical expenses.

The firm rejected the claim. It noted that Mr M had become ill towards the end of the 31-day period of cover and that, at that stage, the couple had still not booked their return flights. It therefore concluded that the couple had intended staying for a longer period, incorrectly using their travel policy as a medical expenses policy.

Mr and Mrs M denied this. They said that although they had still not bought their return flights at the time Mr M was taken ill, they had been intending to do so around that date. They said they had always planned to return to their home in the UK before the end of the month, when the 31-day limit on their travel insurance policy expired.

complaint upheld

It was possible that Mr and Mrs M *had* effectively been treating their travel policy as a medical expenses policy. However, Mr M's illness had arisen within the period of valid cover and there was no evidence to suggest that the couple were not planning to return to the UK before the policy expired.

Cheap flights are widely available these days and people like Mr and Mrs M, who can be relatively flexible about dates, sometimes prefer to travel out on a one-way ticket, only buying the ticket for their return shortly before they fly home.

We pointed out to Mr and Mrs M that their complaint would not have succeeded if Mr M's illness had occurred after 31 March (the expiry for the 31-day period of insurance) and they had still been in Spain at the time. However, in the circumstances we felt that the fair and reasonable solution was for the firm to pay this claim.

■ 29/7

cancellation claim – whether illness of pets is covered – whether pets are 'family members'

When four of Mr and Mrs C's eight dogs fell ill, shortly before the couple were due to go abroad on holiday, Mr and Mrs C cancelled the trip. They put in a claim under their travel policy but the firm rejected it, saying the policy did not cover them for cancellation in these circumstances. The couple then brought their complaint to us.

... we did not consider that a pet could reasonably be considered a 'relative' of its owner.

complaint rejected
The policy provided cover for up to £5,000 in relation to the unrecoverable cost of unused accommodation and travel expenses (plus up to £250 for unused kennel or cattery fees). But it only did this if the cancellation was caused by, among other things, the '*serious illness of a relative*'.

The policy did not define the term '*relative*' and the couple argued that their pets were *'family members'* so should be covered. The couple noted, too, that although the policy expressly excluded cancellation claims arising from the death of a '*pet or other animal*', it did not expressly exclude claims that arose from a pet's illness.

We did not uphold the complaint. Although Mr and Mrs C felt their dogs were *'family members'*, the policy did not refer to '*family members*' at all – only to '*relatives*'. And we did not consider that a pet could reasonably be considered a '*relative*' of its owner or owners. Although the term '*relative*' was not defined in the policy, in our view it could only properly mean other human beings.

The policy did not provide cover for cancellation caused by the illness of a pet or other animal. The fact that the policy did not specifically *exclude* this occurrence did not imply that it would be covered. Insurance policies only cover those '*perils*' that are expressly set out in the policy and that are not subject to any specific restrictions or exclusions (also stated in the policy).

3 not all bonds are 'investments'

guaranteed income bonds

We have received a significant number of complaints about so-called *'guaranteed income bonds'*, which some commentators have called *'precipice bonds'*.

Typically, the income is guaranteed for the life of the bond – but may be paid out of capital if the value of the shares that the bond is invested in, or the index to which the bonds are linked, falls substantially (as has happened recently). If there is a fall, the capital invested will not be returned in full.

These bonds are technically 'structured products – capital at risk'. They are investment products, and the normal rules about investments and investment advice apply.

guaranteed capital bonds

We are also starting to receive complaints about so-called *'guaranteed capital bonds'* or *'equity bonds'*. These are a quite different product.

Typically, customers are guaranteed to get their capital back when the bond matures – but the income is based on the rise in the value of the shares that the bond is invested in, or in the index to which the bonds are linked. If there is a fall in these values (as has happened recently) then there is no income. Although called *'bonds'*, they are really fancy deposit accounts – technically *'structured deposits – income at risk'*.

These fancy deposit accounts are *banking* products, not investment products. The same rules apply as for any deposit account. The firm is not required to complete a 'fact find' or to volunteer advice – although it is liable for any advice it does give. The firm may be liable to pay compensation if it gave misleading information or negligent advice, or if it set up the account in a way that did not coincide with its customer's instructions.

In the case of both '*guaranteed income bonds' and 'guaranteed capital bonds*', we will be looking particularly closely at complaints where a firm canvassed an existing customer (who was not looking to move their money) and persuaded them to move, on promises of a better return.

...these fancy deposit accounts are banking products, not investment products.

4 banking and mortgages: 'voluntary concessions'

Broadly, the rights and duties of the firm and its customer are laid down in the contract between them. For example, a mortgage contract will say how much a mortgage customer must pay the firm each month. And the terms of a current account contract may say that customers must wait for the cheques they pay in to clear, before they can withdraw the money.

But sometimes the firm makes a '*voluntary concession*' – treating the customer more favourably than the terms of the contract require. A customer in financial difficulties, for example, may ask the firm for more leeway than the contract terms provide. Or a customer may ask the firm to conduct the account in a way that is more convenient for the customer than the contract terms provide. If the firm agrees to such requests, is it then obliged to stick with the *'voluntary concession'* or can it decide to go back to the original contract terms?

When we look at complaints involving '*voluntary concessions*', we have to take account of legal rules before we decide on fair and reasonable outcomes.

... the customer has no legal right to prolong the concession.

How does the law treat situations like this? Broadly:

- The contract would only be treated as *'varied'* where the customer has provided the firm with a payment or other benefit in return. Where this was the case, the customer can insist that the firm sticks to the variation.

- But the more usual situation is that customers simply take advantage of the '*voluntary concession*' and organise their affairs as if it will go on indefinitely.

- Even then, the firm can go back to the terms of the original contract if it gives the customer notice that it intends to do this. And the customer has no legal right to prolong the concession.

- But the firm cannot undo any advantage the customer has had from the concession – assuming the customer has actively relied on the concession. It can only insist again on its normal legal rights for the period after it has given notice.

The following case studies illustrate how this works in practice.

case studies – banking and mortgages: 'voluntary concessions'

■ 29/8

concession – business customer could withdraw against 'uncleared effects'

H Ltd had a current account with the firm. As normal with current accounts, the terms said that H Ltd could only make withdrawals against cleared funds. So in the case of cheques, for example, H Ltd had to wait six working days after paying in a cheque before it could treat the funds as 'cleared'.

Not surprisingly, it suited H Ltd's cash flow better to be able to treat the cheques as 'cleared' as soon as they were paid in. As a concession, the firm allowed this. However, it withdrew the concession when a large cheque 'bounced'. H Ltd complained about this, and about the fact that the firm had not said that it would withdraw the concession. H Ltd only found out about it after the firm had returned one of H Ltd's own cheques unpaid. This had caused H Ltd some embarrassment, as it had sent the cheque to one of its regular suppliers.

complaint upheld

In allowing H Ltd to make withdrawals against uncleared funds, the firm had granted a concession. H Ltd had no contractual right to enjoy this concession indefinitely and the firm was entitled to withdraw it, legitimately exercising its commercial judgement.

... the firm withdrew the concession when a large cheque 'bounced'.

The firm had also been within its rights to return H Ltd's cheque unpaid, even if H Ltd had written the cheque before learning that the firm had withdrawn the concession. This was because:

- the concession could not be expected to apply to cheques that bounced *before* H Ltd had made a withdrawal against them; *and*
- the available balance on the account, including other uncleared cheques whose fate was not yet known, did not cover H Ltd's cheque.

But the firm should still have informed H Ltd as soon as it withdrew the concession. H Ltd needed to know, for obvious reasons, that it could no longer withdraw against uncleared cheques, and it suffered some inconvenience through only belatedly discovering this. We awarded £100 compensation for that inconvenience.

■ 29/9

concession – lower mortgage payments

Mr T became unable to afford the full monthly mortgage payment for his house and he fell into arrears. The firm agreed not to seek repossession for the time being if he paid it at least 75% of the full monthly (interest only) payment.

When it made this concession, the firm did not expressly state how it would treat the 25% balance. In fact, the firm added it to the mortgage account as 'unpaid arrears' while the concession continued. This became apparent in due time on Mr T's annual mortgage statement.

After around two years, when Mr T's situation had improved, the firm withdrew the concession, asking Mr T to start meeting full monthly payments again. Mr T had no problem with this. However, he strongly disagreed with the firm's actions in adding the 25% that remained unpaid during the period of the concession. He said that the firm's earlier 'silence' on this matter meant that it could not now decide to do this.

complaint rejected

We agreed with Mr T that it would have been better if the firm had spelt out from the start how it intended to treat the 25% balance. But although it had not done this, the acid test was whether it would now be unfair to require Mr T to pay this (within a reasonable time scale).

In agreeing to make a concession, the firm had stipulated that Mr T should make payments of *'at least 75%'* to forestall repossession. We could see no good reason why Mr T should have supposed that the firm was forgoing the balance forever. And, by his own account, Mr T could not have afforded to pay more than 75% for a certain period.

Taking all this into account, we decided not to uphold the complaint.

5 investment case round-up

a selection of some of the investment-related complaints we have dealt with recently

■ 29/10

firm wrongly informs investors that investment proceeds were paid into bank account – investors claim compensation for money withdrawn on the strength of this information

Mr and Mrs E said that when they met their bank's investment adviser in May 2002, he told them that £28,000 – the proceeds of an investment they had made some years before – had recently been paid into their bank account.

The couple said that on the strength of this information they had withdrawn £4,000 from their account and bought a car. But shortly after this, the bank contacted Mr and Mrs E to say that its information had been incorrect. Although the couple *had* received £28,000 from an investment, this had been two years earlier and the money had been paid to them at the time.

Mr and Mrs E then said the bank should compensate them. They claimed they were now £4,000 out of pocket because it had misinformed them about the £28,000. The bank offered them a modest sum for distress and inconvenience. Dissatisfied with this, Mr and Mrs E then referred their complaint to us.

complaint rejected

The bank noted that two days before the meeting with the adviser, Mr and Mrs E had paid a cheque for £4,000 into their bank account. So it appeared that the couple had already been planning to buy a car, and had the money to do so, before they were told incorrectly about the £28,000.

The bank produced evidence that it had paid Mr and Mrs E £28,000 in November 2000. As far as it was aware, the couple had no reason to expect any further payments of this size. We therefore wrote to the couple, asking for more information about why they had paid in the cheque for £4,000, and why they thought this second payment of £28,000 was theirs. Mr and Mrs E did not respond.

■ 29/11

transfer of personal pension from one provider to another – delay caused by administrative errors

Ms J wished to transfer her pension to a new provider (firm B). Firm B told her she would need to instruct the firm that was currently providing her pension (firm A) to arrange this. Firm A responded reasonably quickly, telling her it had contacted firm B with details of her request.

However, five months later Ms J had still heard nothing more. When she contacted firm B to ask what was happening, it said it had no record of ever receiving any information from firm A.

Ms J then complained to firm A. It told her it believed the delay was mostly the responsibility of firm B. However, it accepted that its own part in the process had taken longer than usual and it offered her £100 compensation for the inconvenience she had been caused.

Dissatisfied with this, she brought her complaint to us.

complaint upheld in part

We were unable to establish that the transfer details had reached firm B, even though firm A claimed to have sent them. But it transpired that the transfer value of Ms J's pension had increased over the period. So regardless of where responsibility lay for not processing the transfer, she had not suffered any financial loss.

Since we found that firm A had been responsible for a number of administrative errors, it agreed to offer Ms J an additional £100 for inconvenience, which she accepted.

... the firm issued four different replacement contracts before it got the details right.

■ 29/12

contract for bond reissued several times because of repeated errors in personal data – start date of 'cooling-off' period not affected

Mr and Mrs C invested a sizeable sum of money in a bond. But when they received the contract for their bond, they found that Mrs C's date of birth had been stated wrongly and there were several other errors.

After they complained to the firm, it sent them a new contract. Unfortunately, this new contract was also incorrect. Again the couple complained and again the firm issued a replacement contract. The firm issued four different replacement contracts before it got the details right.

At this stage, the couple told the firm that they had changed their minds and wanted to cancel the bond, in accordance with the 'cooling-off' regulations.

The firm went ahead and cancelled the bond. However, it treated the cancellation in the same way as a 'surrender'. This meant that instead of giving the couple back all the money they had put in, the firm gave them back the bond's market value, as calculated on the day it received the request. A considerable period of time had elapsed since the couple had first applied for the bond, and investment markets had fallen. In addition, the firm had deducted an 'early encashment' penalty.

Very disappointed with the sum they received, Mr and Mrs C complained again to the firm. It agreed to reimburse them for the 'early encashment' penalty. It also agreed to pay them £600 for distress and inconvenience. However, Mr and Mrs C thought the firm should return their original investment in full.

complaint rejected

We did not uphold the complaint. Mr and Mrs C said they wanted to cancel because they had not been aware of how the bond was treated for tax purposes. They said that they had not read all of the information the firm sent them (including tax information) until they received the correct version of the contract.

We noted that although the firm had repeatedly entered some of the couple's details incorrectly, the standard information that it had sent them, including the information about tax, had been correct. So Mr and Mrs C had the opportunity to check this when they received the first contract.

The firm had included a fresh copy of the 'cooling-off' regulations each time it sent a replacement contract. But this did not affect the date on which the cooling-off period began (the bond's commencement date). This had remained the same on each version of the contract. So by the time the couple finally received a correct version, and had told the firm that they no longer wanted the policy, the cooling-off period had expired.

... in certain circumstances, the ombudsman service can decline to consider some types of complaint.

Information that the firm had sent the couple made it clear that it would not be liable for any fall in the bond's market value if an investor cancelled the plan after the cooling-off period. We concluded that the firm had acted fairly and that the £600 it had already offered Mr and Mrs C as compensation for distress and inconvenience had been appropriate.

■ 29/13

customer complains that firm's practice of 'rounding' figures led to loss of one third of a penny – ombudsman service declines to deal with the complaint

Under our rules, in certain circumstances the ombudsman service can decline to consider some types of complaint. The following case illustrates a situation where we decided to dismiss a case without considering its merits.

Mr K complained to us about the firm that provided his personal pension. He said he was unhappy about the firm's practice of rounding figures to four decimal points (for prices) and to three decimal points (for units) when it provided information about its pension fund.

When the firm refused to uphold his complaint, Mr K came to us. He said he had carried out his own calculations and considered that, as a result of the firm's 'rounding', he had lost approximately one third of a penny on a transfer from one fund to another. Mr K acknowledged that this was a petty sum, but he pointed out that, over time, his loss would grow.

We told Mr K that it would not be appropriate or proportionate for us to lookinto his complaint, in view of the tiny sum of money in dispute.

■ 29/14

firm discovers client owns fewer shares than she has instructed them to sell – it buys additional shares on client's behalf in order to fulfil contract – client queries firm's actions

Mrs L decided to sell some of her shares in ABC Ltd. She contacted a share-dealing firm and asked it to sell £10,000-worth of these shares. She confirmed that she had a share certificate for 5,555 shares and the firm agreed to sell 4,185 of them to raise the sum of money she wanted.

However, when Mrs L sent the firm her share certificate, it discovered that she owned only 277 shares. The firm had already entered into a contract to sell £10,000-worth of shares and Mrs L's instructions were legally binding.

So the firm bought further shares in order to fulfil its contract with the buyer. The firm then deducted the cost of buying these additional shares from the amount it owed Mrs L.

Mrs L complained to the firm. She felt that it should have checked exactly how many shares she had before it made a binding agreement to sell them. She thought that the firm should *either* give her back her 277 shares or give her the full value of the sale of these shares, without any deduction for the cost of the additional shares it had bought.

complaint rejected

In our view, the firm had no obligation to check how many shares Mrs L had. Its responsibility was to agree a deal with her and carry it through correctly. The firm had accepted her instructions in good faith. And it had acted in accordance with its published terms and conditions when it bought additional shares in order to fulfil the contract and charged Mrs L for them.

... as a result of the firm's 'rounding', he had lost approximately one third of a penny.

the financial ombudsman service and you

an invitation for insurance and mortgage intermediaries

voluntary jurisdiction

Insurance and mortgage intermediaries will be regulated by the Financial Services Authority from late 2004/early 2005, when they will also be covered by law by the Financial Ombudsman Service. But we have *already* opened our doors to those intermediaries who want to join our scheme *voluntarily*.

To give insurance and mortgage intermediaries the opportunity to find out more about the benefits of doing this, we are hosting a series of free events around the country. You are very welcome to drop in and see us at the venue most convenient for you – at any time from **11.00am** to **2.30pm** (brief presentation at **11.30pm**).

To find out more:

- call us on 020 7964 1400, or
- email technical.advice@financial-ombudsman.org.uk

events details

Drop in any time from 11.00am to 2.30pm (brief presentation at 11.30am).

date	area	venue
21 Jul	Nottingham	Welbeck Hotel, Stanley House, Talbot Street, Nottingham NG1 5GU
28 Jul	Bristol	Holiday Inn, Victoria Street, Bristol BS1 6HY
5 Aug	Manchester	Thistle Manchester, Portland Street, Piccadilly Gardens, Manchester M1 6DP
18 Aug	Norwich	Ramada Jarvis, 121-131, Boundary Road, Norwich NR3 2BA
21 Aug	Birmingham	Novotel, 70 Broad Street, Birmingham B1 2HT
26 Aug	York	Novotel, Fishergate, York YO10 4AD
28 Aug	Glasgow	Ramada Jarvis, 201 Ingram Street, Glasgow G1 1DQ
25 Sep	Southampton	Novotel, 1 West Quay Road, Southampton SO15 1RA
29 Sep	Newcastle	Jury Inn, St James Gate, Scotswood Road, Newcastle-Upon-Tyne NE4 7JH
2 Oct	Cardiff	Thistle Cardiff, Park Place, Cardiff CF10 3UD

ask ombudsman news

your questions answered

will my firm be covered by the ombudsman scheme when we become FSA-regulated?

Q My firm is engaged in mortgage broking. Am I right in thinking we will eventually be covered by the ombudsman service after we become regulated by the Financial Services Authority? If so, how will this affect us?

I can't recall receiving any complaints in the time I've worked here. Will we have to make any special arrangements if we get any in future?

A Mortgage intermediaries will become regulated by the Financial Services Authority (FSA) from October 2004 (and insurance intermediaries from January 2005). They will then join what is known as our 'compulsory jurisdiction' and be covered by our scheme – for all mortgage and general insurance complaints.

But we have already opened our doors to mortgage and insurance intermediaries who want to join us on a *voluntary* basis. Firms that take the opportunity to join us at this stage gain valuable experience in what being in an ombudsman scheme entails. They will face less change when they become fully regulated. And their customers have the confidence of knowing they have access to the ombudsman service, should the need arise.

If you check out our website at www.financial-ombudsman.org.uk/news/vj.htm you will find out what's involved in joining the ombudsman service voluntarily.

And whether you'd like to consider joining voluntarily – or you simply want to know what will be involved when you join us on a compulsory basis, you'll be very welcome to attend one of our forthcoming events for mortgage and insurance intermediaries. Details of these free events are on page 19 of this issue.

statistically speaking

Q I always find ombudsman news helpful. In particular it shows firms how cases should be handled. But you don't seem to publish any statistics. How can I find out about the numbers of different types of complaints you deal with?

A You will find these statistics in our annual review, in the chapter, key facts and figures. The latest annual review covers the financial year from April 2002 to March 2003 and is available on our website, www.financial-ombudsman.org.uk

We also publish a range of statistics in our annual plan and budget, published each January and also available on our website.