ombudsman news

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essential reading for financial firms and consumer advisers

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about this issue

Can policyholders claim under the 'buildings' section of their home insurance for damaged laminate wood flooring – or is it covered as part of their 'contents'? And what about a flat-packed conservatory – stored in boxes in the garage until the owner finds time to assemble it? Is it 'contents' or 'buildings'? We explore these and other home insurance posers in this month's issue which, as ever, illustrates the surprisingly broad range of disputes handled by the ombudsman service.

On page 8 we take a look at the 'safe custody' service offered by banking firms. This enables customers to store jewellery, documents and other valuable items on the bank's premises. The service does not give rise to large numbers of complaints, but those that do arise can be among the most tricky we have to deal with. We outline how we go about establishing the facts and resolving such disputes. We also set out some practical hints to help firms try and minimise the type of 'safe custody' problems that can lead to disputes.

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Mortgage endowment complaints continue to dominate the investment-related disputes referred to us. Our investment case studies this month include an unusual case where we decided that the wording of a firm's letter constituted an unequivocal guarantee that the customers' mortgage endowment policy would repay the mortgage. In another case, an adviser's hand-written note on a compliment slip incorrectly led a couple to believe that the life cover of £20,000 linked to their mortgage endowment policy, remained in force even though the couple had made the policy 'paid-up'.

... we outline how we go about establishing the facts.

1 home insurance – 'buildings' or 'contents'?

People often use the terms 'home insurance' or 'household insurance' in a general way to refer to insurance that covers any aspect of their home and belongings. However, these policies are usually split into separate sections – 'buildings' and 'contents' – and not all policyholders will be covered under both sections. It is also possible to buy a 'contents-only' or a 'buildings-only' policy.

While many homeowners buy both types of cover, some have only one. There may be a very good reason for this. Typically, for example, people who live in blocks of flats will only need to buy a policy to cover their contents. This is because the landlord will be responsible for arranging buildings insurance to cover the entire block. And some policyholders obtain contents insurance from one insurer and buildings insurance from another, because this may work out cheaper than insuring both contents and buildings together.

Even if a policyholder has both contents and buildings insurance, the scope of cover may vary so that, for example, an accidental damage claim might succeed under one section but not under the other. It is confusion about the nature and scope of cover that leads to disputes. The onus is on firms to ensure that the cover they sell is suitable for the needs and resources of their policyholders and that the policyholders understand what they are buying.

buildings insurance covers the structure of the building, plus permanent 'fixtures and fittings' such as baths, fitted kitchens *etc*. The test is – can it reasonably be removed and taken to another home? If it can, then it is part of the 'contents' and it will not generally be covered by a buildings policy. Buildings policies usually include outbuildings – garages, garden sheds *etc*.

contents insurance covers your possessions – your television set, furniture, clothes *etc*. In other words, just about everything you would take with you if you moved.

While it is generally easy to determine whether an item is part of the buildings or part of the contents, we see plenty of cases where this is not immediately apparent. The way in which a firm categorises certain items can sometimes appear to the policyholder to be illogical or, at worst, a cynical attempt to avoid paying legitimate claims.

... confusion about the nature and scope of cover leads to disputes.

... why should a television aerial, fixed permanently to the roof, be defined as part of the contents?

For example, a television set is clearly part of the household contents and is covered under the contents policy – as is a portable aerial that sits on top of the set or close to it. But why should a television aerial that is fixed permanently to the roof of the house also be defined as part of the contents? Very few householders would ever think of climbing on to the roof and dismantling the aerial in order to take it with them when they move house. And claims for these aerials are most likely to be made when the roof has been damaged by an *'external insured event'* (such as storm or lightning) that is covered by the *buildings* insurance.

Our general approach in the disputes that are referred to us is to regard those items that are fixed and have essentially become part of the fabric of the property as 'buildings', while the rest are 'contents'. So, for example, we would normally consider fitted wardrobes, fitted kitchens and built-in appliances to be covered under a buildings policy, whereas the contents policy would cover items of furniture and appliances that are free-standing or (if screwed to a wall) easily removable.

We obviously have regard to the policy definitions and exclusions. However, where we consider that a firm's policy definition of an item as 'contents' or 'buildings' was unreasonable, and has led to a perverse and unfair result, we may require the firm to pay the claim.

Like the courts, we follow the industry convention of treating carpets as 'contents', even though they are often fitted. Although most people would probably leave their fitted carpets behind when moving home, the fact remains that fitted carpets can be taken up relatively quickly and easily and re-laid to an acceptable standard. It is their transportable quality that properly makes them part of the contents.

But what about laminate wooden flooring? Its increasing popularity over the last couple of years has led to a number of disputes about whether it is covered by the buildings or the contents policy. In a typical case, the policyholder only has contents cover. When the flooring is accidentally damaged, the firm refuses to meet the claim, insisting that laminate flooring is part of the building.

We take the view that most laminate wooden flooring (where the individual planks are glued together and fixed under a skirting board or beading) is a 'fixture and fitting', not 'contents'. Unlike a carpet, it is difficult to remove intact and has, essentially, become part of the building. However, in some instances we may regard re-useable click-together laminate wooden flooring as 'contents'. This type of flooring is no more 'fixed' to a room than a fitted carpet is. Indeed we are aware that some of the more expensive products are specifically marketed as being 'easily transportable'.

Disputes sometimes arise over items that would normally fall clearly into the category of 'buildings' rather than 'contents', but have been temporarily removed. If such items are then lost or damaged while they are being stored, can the policyholder make a claim under a contents policy – or are the items still only covered as 'buildings'?

Similar disputes can arise where policyholders have bought items, such as flat-pack kitchen units or laminate flooring, which are then damaged or stolen before they have been fitted. Our approach will depend on the circumstances of each case. But in most instances we would consider that the buildings insurer should cover parts of the building that have been only temporarily removed. New items, which have not yet been fitted, should be treated as 'contents', on the basis that they are the policyholder's personal possessions.

In our view, if a policyholder has both buildings and contents cover, and the item claimed for is not specifically excluded by one or other of the policies, then the insurers themselves ought normally to be able to settle any disputes about who should deal with the claim. It does nothing to promote the industry's reputation if policyholders are forced to bring disputes to us simply to obtain payment for a legitimate claim. Where there is real ambiguity about which insurer is responsible for covering the item, then it would seem sensible for each of them to meet 50% of the customer's loss.

case studies – home insurance – 'buildings' or 'contents'?

■ 30/1

contents cover only – fire – whether council tenant liable to pay own cost of internal redecoration

A fire damaged some of the contents of Mr J's flat, together with the wallpaper and paintwork. He assumed that the council from which he rented the flat would be responsible for redecorating it after the fire. However, the council said this was *his* responsibility, so he did the work himself and added the cost of the materials to his claim for the damaged contents.

The firm dealt with part of Mr J's claim – for the damaged contents. However, it said that his contents-only policy did not cover the flat's internal decorations.

complaint upheld

We pointed out to the firm that its policy defined 'contents' in such a way as to include the internal decorations for which Mr J was liable as tenant. We therefore asked it to reimburse the money Mr J had spent on redecorating the flat.

... we take the view that most laminate wooden flooring is a 'fixture and fitting'.

... the kitchen units, though fitted, could fairly be regarded as her personal possessions.

■ 30/2

buildings cover only – storm damage – whether TV aerial insured as 'buildings' or 'contents'

Mr W had buildings insurance but had not taken out a policy to cover his household contents. After a storm damaged the roof of his house, he put in a claim under his buildings policy.

The firm agreed to repair the roof, but told him the policy did not cover his television aerial, which was fixed to the roof and had been damaged during the same storm. The firm said that aerials were only covered under its 'contents' policy, which Mr W had not bought.

complaint upheld

We concluded that it was neither fair nor reasonable to treat a permanently fixed aerial, such as this one, as 'contents', even though (in keeping with widespread industry practice) the policy wording clearly stated that aerials were 'contents'. Most people would regard such an aerial to be part of the building, because it is permanently fixed and not readily removable. Moreover, an external aerial is far more likely to be damaged by the type of 'insured event' that affects the structure of the building, such as lightning or a storm, than by the type of event that might damage contents. We therefore required the firm to meet the claim.

.....

■ 30/3

council tenant – contents policy only – escape of water– whether kitchen units were 'fixtures and fittings' or personal possessions

Mrs C, a council tenant, bought some new kitchen units and had them fitted at her own expense. When the units were damaged by an escape of water, she put in a claim to the firm under her 'contents-only' policy. However, the firm told her it could not meet the claim. It said the damaged units were not 'contents' but 'fixtures and fittings', so they would only be covered under a buildings policy.

Mrs C complained that this was unfair, since the units were her personal possessions, not part of the property. When the firm rejected her complaint, she came to us.

complaint upheld

We agreed with Mrs C that the kitchen units, though fitted, could fairly be regarded as her personal possessions. They belonged to her, not to the council. The units could easily be removed without substantially affecting the fabric of the building. And Mrs C said that if she ever moved house, she would remove the units and take them with her. This seemed entirely feasible and we therefore asked the firm to meet the claim.

.....

■ 30/4

laminate wooden floor accidentally damaged – whether floor covering was 'buildings' or 'contents'

After Mr K's shower leaked, damaging his laminate wooden flooring, he put in a claim to the firm. Mr K had both buildings and contents cover with the firm, but it said it was

unable to meet his claim. It told him the damage would only be covered under the buildings section of his policy if he had taken out 'extended accidental damage cover'. Mr K only had this for the contents part of his policy. When the firm refused his request that it should meet the claim under the contents part of the policy instead, Mr K came to us.

complaint rejected
We agreed with the firm that Mr K's laminate flooring could not properly be described as part of the 'contents'. It was glued together and fixed under beading to the skirting board. It would be very difficult to lift and relocate the flooring without substantially damaging it. In our view, the flooring had effectivelybecome part of the fabric of the building. Mr K did not have accidental damage cover in the buildings section of the policy, so the firm was not liable to pay the claim.

However, we suggested that Mr K might have a valid claim under the buildings section for damage caused by 'escape of water'. The firm acknowledged this and subsequently settled the claim.

■ 30/5
buildings policy only – fire – carpets purchased with property – whether carpets 'contents' or 'buildings'

Mr F had buildings insurance, but no cover for the contents of his property. So when a fire damaged his carpets, the firm rejected his claim on the basis that carpets were 'contents'. Mr F insisted that the carpets were not 'contents', but 'fixtures and fittings' and that they should therefore be covered under his buildings policy. The reason he gave was that the carpets were fitted and had been in place (and included in the purchase price), when he bought the property.

complaint rejected
We referred to the Court of Appeal's judgment in *Botham v TSB Ltd*, which stated that it was doubtful that carpets could ever be regarded as 'fixtures'. So we concluded that the firm had correctly rejected Mr F's claim. He had not bought contents insurance, so the carpets were not covered. We did not agree with Mr F that his having '*paid stamp duty in respect of the carpets*' was relevant to the outcome of his complaint.

■ 30/6
contents policy only – storm damage to garage – whether flat-packed conservatory 'household goods'

Mr and Mrs D put in a claim under their 'contents-only' policy after their garage roof collapsed in a storm and damaged a number of items that had been kept in the garage. The firm agreed to pay for all the damaged items except for a flat-packed conservatory, which the couple had recently bought but not yet assembled. The firm insisted that the conservatory was a 'building' and was therefore only covered by its buildings policy, which the couple did not have.

complaint upheld
In our view, the unassembled conservatory could properly be said to be part of the couple's 'household contents'. It had not yet been erected and comprised a collection of separate components, stored in boxes. We therefore required the firm to pay the claim.

2 banking – ‘safe deposit’ boxes

Some banking firms offer their customers a ‘safe custody’ service at certain branches. For a quarterly or annual fee, customers can arrange to store a box containing their valuables and important papers (such as jewellery, house deeds or investment certificates) in the firm’s ‘strong room’ or other secure area. Customers do not have to give the firm a key to the box, or declare what items they have stored. They can get access to their valuables, by arrangement, during banking hours and they can remove or replace items as they wish.

Most of the time the service operates without difficulty. But disputes sometimes arise – generally about whether some of the contents of a box have gone missing while in the firm’s care. Safe custody is ‘an ancillary banking service’ so we are able to look into these complaints, which can be among the most difficult we deal with. This is because the customer is often unable to provide any firm evidence of what was in their safe deposit box. The customer’s own recollection is not normally enough. And it may not be accurate, particularly if items have regularly been removed or replaced.

When we investigate, the first thing we look at is the firm’s record for the box. This will show the dates when the customer visited the branch to get access to the box. It should also show when the customer removed or replaced their box. We generally find these records are accurate, although occasionally they are not as complete as they should be.

We obtain statements from any members of the firm’s staff who were involved, for example, in updating the records or in moving the box in question for any reason.

We also question the customer. We askabout the box itself, what was in it and how often the customer visited the branch to get access to the box. And we will ask if the customer ever used any other safe deposit service, since it is not unknown for missing items to come to light in another location. Customers may sometimes think our questions are intrusive, particularly as we will want to know exactly what items they stored, added or removed (information that the customers are not required to tell the firm). However, in order to reach a decision on the case, it is important that we have as full an understanding of the situation as possible.

Although firms do not have information about the *contents* of boxes, it is extremely important that they keep a record of the actual boxes they have in safe custody. This will need updating if a customer removes or replaces a box or deposits an additional one. It is also essential that firms keep an accurate and complete record of each visit a customer makes to get access to their box.

... customers may sometimes think our questions are intrusive.

The bank has a duty to keep customers' boxes safe and it should store them in a secure area. If a problem occurs and any boxes are affected (for example, if there is a fire or a flood), then the firm should tell the customers concerned straight away and invite them to come in and check for any loss or damage.

Some firms give their 'safe custody' customers a few practical suggestions to help them make the most of the service. Some of these suggestions may seem obvious points of common sense, but they are points that have often been overlooked in the disputes that come to us. For instance, although customers are not required to tell firms what they have stored, it is a good idea for firms to advise customers to keep their own list of the items they deposit, and to update this whenever there are any changes. If customers store important papers in the box, then it makes sense for them to keep photocopies at home in case the originals are lost or damaged. And customers may sometimes find it helpful to take photographs of the items they deposit, particularly if there are any rare or antique objects. Where possible, customers should also save the purchase receipts for items they subsequently place in safe custody.

Customers do not always appreciate that the valuables they keep in safe custody should be properly insured for their full value. Keeping valuables in safe custody should not be seen as an alternative to insuring them, but rather as a way of keeping insurance premiums as low as possible. Where relevant, from time-to-time customers should arrange professional valuations of any jewellery and other valuable objects kept in safe custody.

... it is essential that firms keep an accurate and complete record

Of course, accidents can happen – and valuables stored in safe custody boxes can be damaged. But this is less likely if the valuables are properly stored. We have noticed in many of the cases referred to us that the customers have simply kept their jewellery loose inside the box. This makes it more vulnerable to loss or damage if the box is moved or dropped. Jewellers recommend storing jewellery (particularly pearls and gemstones) in fabric rolls, to keep it secure and prevent individual items from knocking against one another or becoming tangled.

And in some of the disputes we see, the customers' boxes have not really been adequate for the task. So firms may find it helpful to point out to customers the importance of ensuring their storage boxes are well-maintained and can be properly secured. In one case we saw, the customer had known for some time that her box had a faulty fastening. Rather than get it repaired, she secured the box with a rubber band. The rubber band eventuallyperished and broke, leading to a dispute over whether the contents had been tampered with. In another case, a customer had sealed his box with sticky tape. This had dried and shrunk over time, giving the false impression that someone had tried to open the box.

The following case studies summarise two disputes we dealt with recently involving safe custody boxes.

banking case studies – safe deposit boxes

■ 30/7

safe custody – no loss, but incorrect records

Mrs H said that when she went to remove some of the contents of her locked safe-deposit box, she found some items of jewellery missing. A member of the firm's staff checked the log book in which the firm entered details when anyone had access to a box in safe custody. This showed that Mrs H had last had access to the box the previous year. However, when Mrs H was shown the entry, she said that the signature was not hers. She denied having visited the branch the previous year and she said that an unauthorised person must have opened the box and taken the jewellery.

complaint partly upheld

During our investigation, Mrs H recalled that she had, after all, visited the firm's premises and looked at the box the previous year, on the date shown in the log book.

We concluded from the evidence that, having failed to obtain Mrs H's signature at the time, a member of the firm's staff had forged it. But we also concluded that the safe deposit box had not been interfered with.

It would have needed the co-operation of three members of staff to get access to the area where the box was kept, and only Mrs H had a key to the box itself. The box was undamaged and there were no signs that anyone had tried to prise it open.

Our investigations were not helped by the fact that Mrs H was very uncertain about the exact contents of her safe-deposit box. She provided several conflicting lists of the items she said were in the box. And she subsequently found at home some of the jewellery she had previously told us she always kept in safe custody. We therefore concluded that her recollection of the contents was unreliable.

There was nothing to back up her allegation that an item of jewellery had been stolen while in the firm's care. However, the member of the firm's staff should not have forged her signature in the log book. We awarded Mrs H £250 for the confusion and inconvenience this had caused.

... the member of the firm's staff should not have forged her signature in the log book.

3 investment case round-up

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

■ 30/8

safe custody – locked box could not be found

Mr B deposited a locked box in safe custody at one of the firm's branches. A year or so later, that branch closed and Mr B was told his box had been transferred to a branch in a different part of town. But when he subsequently visited that branch, the staff were unable to find his box. They said they had no record of it and that he must have removed it some time earlier and forgotten that he had done this.

complaint settled

When we looked into the case, we found Mr B's recollection of events was a little confused. After insisting that he had never been told about the change of branch, he later told us that the firm had written to let him know about it.

However, as we pointed out to the firm, if Mr B had withdrawn his box, this should have been noted in the firm's records. As the firm was unable to produce any record of the box, it seemed likely that it had been lost in the transfer from one branch to another. The firm acknowledged this was a strong possibility and it offered Mr B £500, which he accepted.

... the firm said ... he must have removed the box some time earlier and forgotten he had done this.

■ 30/9

mortgage endowment policy – firm gives customers written guarantee that policy would pay off mortgage

When a flat in the block where Mr and Mrs L already owned a property came on the market, the couple applied to the firm for a mortgage. The firm advised them to take out a unit-linked mortgage endowment policy.

Four years later, the firm wrote to the couple to say that their policy might not produce enough, when it matured, to pay off the mortgage. Shocked by this news, the couple immediately contacted the firm. In their view, the firm had given a specific assurance that the policy would pay off their mortgage in full. The firm denied this. It said it had pointed out at the time of the sale that mortgage endowment policies do not include a guarantee, and that their performance is largely dependent on the stock market. Unhappy with this response, Mr and Mrs L brought their complaint to us.

... the firm had given a specific assurance that the policy would pay off their mortgage.

complaint upheld
The firm's representative had completed the 'fact find' correctly and the couple confirmed that, at their meeting, he had had given them a brochure setting out the risks associated with mortgage endowment policies. However, when we looked at the letter he had sent them a couple of days after the meeting, giving details of the policy, we found that he had he also noted:

*'You will appreciate that the forecast tax-free surplus of £18,288 cannot, of course, be guaranteed. What **is** guaranteed is that the mortgage itself will be redeemed after the period, which is unique to us and cannot be matched by any other insurance company at the present time with their own endowment policies'.*

It is very uncommon for a complaint claiming an alleged 'guarantee' to succeed, as the terms and conditions of the policy usually over-ride anything the adviser has said, or any written statements. However, in this case we considered the firm's letter constituted an unequivocal guarantee that the policy would produce enough to repay the mortgage.

We therefore required the firm to provide redress, in line with the regulatory guidance for circumstances where the firm has given a guarantee.

■ 30/10
mortgage endowment policy 'paid up' – adviser wrongly told clients that their death benefit remained in force

Mr and Mrs E took out a mortgage endowment policy as a means of paying their £20,000 interest-only mortgage. The policy included death benefit of £20,000, to cover the cost of the mortgage if either spouse died before the policy matured.

When, some years later, the couple inherited some money, they decided to pay off their mortgage early. After meeting the firm's adviser, they agreed to follow his recommendation to make the endowment policy 'paid up' – in other words, to stop making any further contributions, but to wait until the policy had reached its maturity date before they cashed it in.

Mr E died three years later and Mrs E claimed the death benefit she thought she was entitled to under the endowment policy. She was shocked when the firm said that because the couple had made the policy 'paid up', the death benefit no longer applied. The firm told her that if she wished to cash in the policy, she could do so – its current value was £7,600.

When the firm refused to uphold her complaint, Mrs E came to us.

complaint upheld
The firm sent us a copy of the original policy document that it had given Mr and Mrs E when they took out the policy.

This stated that: '*in the event of the policy being paid up, the Guaranteed Minimum Sum Assured, (in this instance £20,000), will no longer apply and the surrender value, death benefit and maturity benefit will be equal to the value of the units remaining allocated to the policy*'.

However, Mrs E claimed that when the adviser had recommended making the policy 'paid up', she and her husband had specifically asked whether this would affect the death benefit of £20,000. She said they were told the benefit would remain in force. She sent us a letter and an attached compliment slip that the adviser had sent them after the meeting. The letter confirmed that the policy had been made paid up, but made no reference to the death benefit. However, the adviser had written on the compliment slip: '*Life cover in force forthe remainder of term - original as requested*'.

We thought that, in the circumstances, it was reasonable of the couple to have believed the £20,000 death benefit remained in place after the policy was made 'paid-up'. We upheld the complaint.

... she was shocked when the firm said ... the death benefit no longer applied.

■ 30/11

endowment policy – delay in proceeds of policy being paid – whether delay the firm's fault

In early November, a couple of days before Mrs T's ten-year endowment policy was due to mature, she wrote to the firm to say that she had moved to Saudi Arabia.

She had assumed that the firm would pay the proceeds of her policy straight into her UK bank account. But a couple of days after the policy's maturity date she contacted her bank and found that the money had not been paid in. She then wrote to the firm to ask what had happened.

The firm said it had not yet released the money. It was waiting for Mrs T to sign and return the 'discharge documents' it had sent her some weeks earlier. Mrs T said she had never received these documents. So to help speed things up, the firm said it would send her a declaration form to sign instead. It told her it would then pay the money into her account as soon as it received the signed copy.

The firm faxed the form to Mrs T in Saudi Arabia on 7 December. Mrs T signed it and posted it back, but it did not reach the firm until 23 December. The firm paid the proceeds into Mrs T's account on 3 January.

Mrs T then sent a letter of complaint to the firm, blaming it for the delay of over a month before she had access to the money. She said the firm's actions had prevented her from re-investing the money at the end of November, as she had planned to do.

complaint rejected

We did not think the firm was responsible for the delay. In keeping with its normal practice, six weeks before the policy was due to mature, it had written to Mrs T explaining what she had to do before it could release the proceeds. It also enclosed documents for her to sign and return, authorising its payment of the money.

The firm had sent this letter to Mrs T's UK address, since at the time it was unaware that she had moved. It was not the firm's fault that the letter never reached her. Mrs T had asked her son, who was still living at her UK address, not to forward any mail to her as there had been a number of anthrax scares, especially with mail going to or from the Middle East.

When the firm became aware that Mrs T had not seen the letter and the discharge documents, it had agreed to release the proceeds as soon as she signed and returned the declaration form that it had faxed to her. Since the firm did not receive the form back until 23 December, some delay was then inevitable because of office and bank closures over the Christmas/New Year period. However, we considered that the firm had processed the release of the money as quickly as it could. We rejected the complaint.

■ 30/12

individual savings accounts – suitability of firm's advice to switch funds

Mr and Mrs C each had an individual savings account (ISA) invested in a UK equity fund. Disappointed with the performance of these investments, they decided to consult a firm of independent financial advisers. They thought that if the adviser agreed it was a sensible move, they would invest instead in a European fund, as a friend had told them this would be more profitable. The adviser recommended a transfer into new ISAs invested in a European fund, and arranged this for the couple.

However, 18 months later Mr and Mrs C were concerned to find that the value of their new ISAs had gone down substantially. When they raised this with the firm, it said they had no grounds for complaint, as the recommendation had been *'suitable for their circumstances'*. Unhappy with this response, Mr and Mrs C came to us.

complaint upheld

The firm justified its rejection of the complaint on the grounds that the European fund was a suitable choice, as Mr and Mrs C were *'medium risk investors'*. It also said that as its adviser had provided the couple with a 'key features' document and other product literature, it had done all it could to help Mr and Mrs C make *'an informed decision'*.

The European fund presented more risks than the couple's former investments because of currency fluctuations and the fact that a large proportion of the fund was invested in technology shares. But we found no evidence that the adviser had discussed risk with Mr and Mrs C. In fact, he later admitted that he had told them there was very little difference between the two types of fund.

We therefore upheld the complaint.

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ask ombudsman news
your questions answered

dealing with debt

Q As an adviser in an inner city debt support unit, I see many clients whose circumstances have led to them getting into difficulties with their bank. I know that industry codes, such as the Banking Code and the Mortgage Code, require banks and lenders to deal 'sympathetically and positively' with customers in financial difficulty.

But many of the clients I see don't feel they have been dealt with at all sympathetically or positively. And when they come to me, they are not only anxious about mounting debts but also very frustrated with the apparent lack of understanding on the part of their bank or lender. If they feel unhappy about the way they were treated, can they come to you? If they can, how do you look at these sorts of complaints?

A Yes, if customers have already made a complaint to the financial firm about the way they feel they were treated, but remain dissatisfied, then they can come to us.

We look at the individual circumstances of the case, including what the firm is alleged to have done wrong and the effect this has had on the customer, (such as whether there has been any financial loss or whether the customer suffered distress and/or inconvenience). We apply what we call a 'fair and reasonable' basis for our decisions. In deciding what is 'fair and reasonable' we will take into account:

- the relevant law and regulations
- regulators' rules and guidance and standards;
- relevant codes of practice; *and, where appropriate,*
- what we consider to have been good industry practice at the relevant time.

Where codes of practice are relevant to the complaint, we will come to a view on whether the firm acted in line with the letter and spirit of these codes. So in the types of case you mention, we would expect the firm to act 'sympathetically and positively'. This does not mean that we expect the firm to write off the debt. Broadly it should:

- Contact the customer to discuss the difficulties.
- Make straightforward information available, written in plain English, about how the firm deals with customers in financial difficulty.
- Discuss and agree with the customer a plan of action for resolving the difficulties, and give the customer a written copy of the plan.
- Refer customers who require specialist assistance to a specialist team within the firm.
- *Not* subject customers to undue pressure or harassment when discussing their problems.

We would, of course, also expect a customer to be open and cooperative with the firm.

These and other points are covered by the *Guidance on the Banking Code* (March 2003 Edition), available at: http://www.bankingcode.org.uk/pdfdocs/bankcodeguidemarch03.pdf

The Office of Fair Trading has recently published further guidance on debt recovery procedures. It is available at http://www.oft.gov.uk/news/press+releases/2003/pn+97-03.htm