ombudsman news

from the **investment** divi

August 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: insurance, banking & loans – and this month – investment

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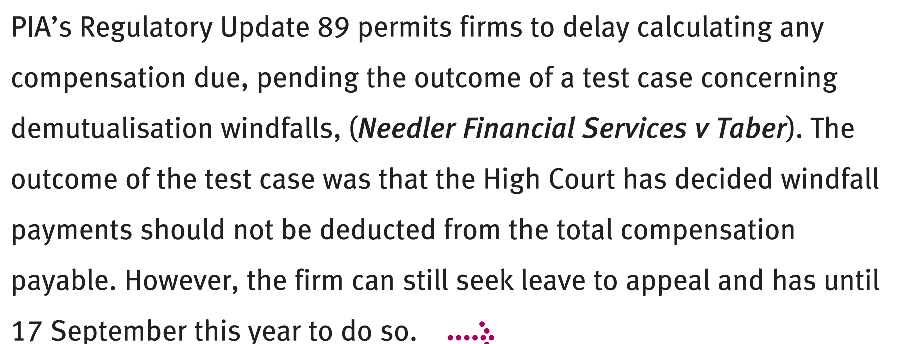
about this issue of ombudsman news

by **Jane Whittles**
principal ombudsman
investment division

Much of this edition is devoted to mortgage endowment complaints, which continue to account for around 60% of all new complaints received by the investment division. At the end of May, the Personal Investment Authority (PIA) issued its guidance on the calculation of compensation for mis-sold mortgage endowment policies. Since then, firms have been reviewing their internal procedures and setting up systems to enable them to compare individual mortgage endowment policies with equivalent repayment mortgages. Many of the cases settled since 29 May have been in accordance with offers that firms made before this guidance, but increasingly we are seeing offers being made in accordance with the guidance. This edition includes a number of mortgage endowment cases studies, illustrating both the determination of liability and the calculation of compensation.



PIA's Regulatory Update 89 permits firms to delay calculating any compensation due, pending the outcome of a test case concerning demutualisation windfalls, (*Needler Financial Services v Taber*). The outcome of the test case was that the High Court has decided windfall payments should not be deducted from the total compensation payable. However, the firm can still seek leave to appeal and has until 17 September this year to do so.

Notwithstanding the PIA guidance, not all firms wished to delay making final offers. Some are reconsidering their position in the light of the decision, but others are continuing to make final offers without any deduction for windfall payments. The Financial Services Authority (FSA) is considering the question of windfalls in relation to the calculation of compensation for mis-sold mortgage endowment policies and we are discussing the position with them. Until we have reviewed the situation after 17 September, we will not issue any ombudsman's decisions in these cases, other than to endorse offers firms have made which exclude windfalls. On page 9 we discuss the test case in more detail.

Many of you find our case studies particularly helpful and, in addition to the mortgage endowment cases, we feature a broad selection of case studies on other topics, including personal equity plans. We also provide an update for firms regulated by IMRO and by the SFA on some of the changes they may notice in our case-handling process, as we prepare for when we receive our full powers on 1 December this year.

...mortgage endowment policies continue to account for around 60% of all new complaints received by the investment division.

1 case studies – mortgage endowments

illustrating the range of complaints about mortgage endowment policies that we have dealt with in recent months

n 08/01

Mr and Mrs A complained when they discovered that their mortgage endowment policy did not mature until four years after they retired, and might not produce the amount they needed to repay the mortgage.

The firm was unable to provide a copy of the 'fact find' completed at the time of the sale. It was therefore unable to demonstrate that the representative had established Mr and Mrs A's attitude to risk, or discussed with them whether they would still be able to afford the policy after they retired.

We concluded that it was unlikely Mr and Mrs A would have accepted the degree of risk associated with the endowment policy, if it had been made clear to them. We also concluded that they would have been able to afford a mortgage with a shorter term than the one sold to them. We therefore suggested that compensation should be calculated on the basis that they should have been sold a repayment mortgage over 21 rather than 25 years. Both parties agreed to this proposal.

n 08/02

Miss W complained about the endowment policy she had been sold in 1993. She claimed she had been told it was guaranteed to repay her mortgage loan and said that if she had been aware that there was any risk, she would have arranged her mortgage on a repayment basis.

The firm rejected her complaint on the basis that, when she took out the policy, she would have been given the standard documentation and an illustration showing that the maturity value of the policy could not be guaranteed.

However, the firm was unable to provide any documentation from the time the policy was sold and could not establish that its representative had made the risks clear to Miss W. We therefore awarded redress according to the guidelines set out in the FSA's Regulatory Update 89.

n 08/03

Mr and Mrs T claimed that when they applied for a 20-year repayment mortgage, the mortgage lender they approached turned down their application because of their ages. The adviser suggested instead that they should take out an endowment mortgage over 25 years. This would reach the end of its term five years after Mr T

retired. Mr and Mrs T said they were never told the investment might not reach the sum assured of £39,950 and they said they had felt pressured into taking out this type of mortgage.

At the time of the sale, Mr and Mrs T had no investment experience and their previous mortgages had all been on a repayment basis. Neither they nor the firm were able to produce any documents containing warnings that the policy was ***not*** guaranteed to repay the mortgage when it matured, apart from the post-sale schedule.

There was no evidence that the representative had discussed with them whether they would be able to afford the policy after Mr T had retired. Moreover, it was clear from the information the couple provided about their salaries and outgoings that they would have been able to afford a repayment mortgage over 20 years.

We therefore asked the firm to calculate redress in accordance with the FSA's Regulatory Update 89. Because of the reduced term, deduction of notional savings was at issue. The firm was unable to provide any justification for deducting these savings and ultimately decided not to do so.

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n 08/04

Miss O had a number of concerns about her endowment policy. She alleged that:

- her adviser had not made it clear that he was a 'tied' adviser, only able to recommend one firm's products;
- he had not discussed with her any alternative means of repaying her mortgage;
- a repayment mortgage could have reduced the term; and
- she was sold life cover even though she did not need this and it was not a requirement of the loan.

The firm denied all these matters except for the life cover issue. It offered to add units back to the policy to increase the surrender value, should Miss O decide to cancel.

We concluded that the policy was unsuitable for Miss O. The adviser had not established her attitude to risk and had ignored the fact that she had an existing life insurance policy, even though she had provided information about it.

We asked the firm to calculate loss in accordance with the FSA's Regulatory Update 89. The cost of life cover, usually included to cover the repayment mortgage, was left out, as an acknowledgment that this was not required. Miss O accepted the offer.

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n 08/05

Mr and Mrs G complained about two policies they had been sold in 1992 and 1999. They said the risk associated with the endowments had not been made clear to them on either occasion and that, if it had been, they would have settled for a different approach.

In terms of the 1992 sale, we found in the couple's favour, based on information we obtained from the endowment mortgage questionnaire, since the firm was unable to provide any documentation from the time. The firm challenged this, claiming that, as a result of its subsequent dealings with Mr and Mrs G, it had a full picture of their investment attitudes and of decisions they had made over the years. The firm also raised this evidence with a view to establishing that the 1999 recommendation was suitable.

We examined these investment records in depth and concluded that most of the transactions related to cautious investments involving capital guarantees, consistent with a cautious attitude to risk.

We upheld the complaint because we felt the policies constituted too high a risk for Mr and Mrs G. The firm agreed to accept our calculation of redress, in accordance with the FSA's Regulatory Update 89.

n 08/06

Mr and Mrs H had a number of complaints about the endowment policy sold to them in April 1992, the main problem being that they considered the sale unsuitable because they did not wish to take any risk.

Following investigation, we upheld their complaint. The firm had been unable to produce any documentation from the time of the sale. We therefore used the endowment mortgage questionnaire and established that the policy was too high-risk for Mr and Mrs H. They described themselves as 'cautious' people, who had no previous experience of mortgage endowments. They had no other investments and there was nothing to support the firm's view that the couple had been prepared to accept the risk associated with endowments.

The firm accepted our suggestion that it should make redress in accordance with the FSA's Regulatory Update 89. However, it was unable to calculate the redress because it had not yet installed the appropriate software. We therefore calculated the figures and issued them to both parties for comment. Mr and Mrs H were concerned that the calculation did not take into consideration the fixed-rate mortgage interest they had enjoyed at various times, a matter that they had not previously mentioned. After they provided details, we recalculated the figures and compensation rose from £2263 to £2940.

n 08/07

When they received a re-projection letter, making it clear that their endowment policy was not likely to repay their mortgage 'based on current rates of projection', Mr and Mrs M complained to the firm. They said that if this risk had been made plain to them, they would have taken a different type of mortgage. The firm's investigations revealed little to support the suitability of the sale and established that this was Mr and Mrs M's first endowment mortgage and that they had no existing investments.

The firm did not, at that time, have the facility to perform detailed calculations in line with the FSA's Regulatory Update 89. It therefore made an offer of redress based on the greater of a refund of the endowment premiums, plus interest, or the amount of capital the couple would have repaid if they had taken a repayment mortgage. Mr and Mrs M did not trust the firm by this stage, and referred the matter to us.

Having established that the firm was still prepared to honour its offer, we ensured that it was willing to meet the additional life cover costs and the charges associated with switching to a repayment mortgage. Using the details gathered from the endowment mortgage questionnaire, we obtained a calculation and mediated with Mr and Mrs M on the basis that the firm's offer was likely to exceed any award we would be able to make in line with Regulatory Update 89. They accepted the offer.

n 08/08

Mr and Mrs L complained about the low-cost, with-profits endowment policy they were sold. The policy was intended to repay the £9,177 mortgage they took out in order to buy their council house under the 'right to buy' scheme.

When we looked into the complaint, it was clear that the endowment policy was unsuitable for them; they did not wish to take any risks. The firm accepted our view and carried out a loss assessment in accordance with the FSA guidance. The firm did not wish to take the notional 'savings' into account.

Even though the policy was unsuitable for Mr and Mrs L, the calculation showed that they had not actually suffered a financial loss, so no compensation was payable in that respect. However, since the firm should not have recommended an endowment policy, it agreed to pay the couple's costs if they wished to switch their mortgage to a repayment loan. It also agreed to provide a replacement life policy, if they chose to surrender the endowment policy.

The calculation, in accordance with Regulatory Update 89, was as follows:

capital comparison		
endowment surrender value	£2,187.00	
the capital that would have been repaid under an equivalent repayment mortgage	£2,057.25	
surrender value less capital repaid		£129.75
outgoings to date		
cost of an equivalent repayment mortgage (capital+interest+life cover)	£9,387.93	
endowment mortgage (endowment premium+interest)	£9,209.76	
notional 'savings'		£178.17

n 08/09

We upheld Mr and Mrs D's complaint about their mortgage endowment policy, which represented too high a risk for them. They said they would have taken a repayment mortgage had they been made aware of the risks. The firm that sold them the endowment agreed to calculate redress based on the FSA guidance.

Mr and Mrs D were happy with this form of redress and provided a manual calculation of their mortgage repayments from the mortgage lender, a different firm from the one that sold the endowment. Unfortunately, the manual calculation was inaccurate, as the mortgage lender had not taken into account an additional capital reduction that Mr and Mrs D had made to their loan. The complaint was finally resolved when we obtained an accurate loss calculation from the mortgage lender's head office. Mr and Mrs D made it clear that they would only accept calculations provided by the mortgage lender, as they had lost faith in the firm that sold the endowment. Mr & Mrs D received compensation of £7,122.27.

The calculation, in accordance with Regulatory Update 89, was as follows:

capital comparison		
endowment surrender value	£16,851.00	
capital that would have been repaid under an equivalent repayment mortgage	£22,603.41	
surrender value less capital repaid (loss)		(£5,752.41)
outgoings to date		
cost of an equivalent repayment mortgage (capital + interest + life cover)	£92,431.84	
endowment mortgage (endowment premium + interest)	£93,751.70	
additional costs (loss)		(£1,319.86)
cost of conversion to a repayment mortgage		(£50.00)
total loss		**£7,122.27**

n 08/10

Ms W was sold an endowment policy with a term of 25 years. This meant she would have been 10 years into her retirement before she made the final payment. We established that, at the time she was sold the endowment, she could have afforded a mortgage and endowment over 15 years, to end on the date she retired. We also established that the endowment policy constituted too high a risk for her.

The firm accepted our view and agreed to calculate compensation in accordance with the FSA guidance. As Ms W was single, with no dependants, life cover costs were not included in the cost of the 15-year repayment mortgage, used for the calculation.

The calculation showed that Ms W had made a 'loss' of £20,932.64 as a result of having taken out an endowment mortgage over a 25-year period, rather than a repayment mortgage over a shorter term. As the firm decided not to take any notional savings into account, Ms W was compensated for the full amount of the loss identified.

... she would have been 10 years into her retirement before she made the final payment.

The calculation, in accordance with Regulatory Update 89, was as follows:

capital comparison		
endowment surrender value	£11,970.11	
capital that would have been repaid under a 15-year repayment mortgage	£32,902.75	
difference between the two (loss)		(£20,932.64)
outgoings to date		
cost of an equivalent repayment mortgage (capital+interest)	£72,229.63	
cost of the endowment mortgage (endowment premium +interest)	£60,811.15	
notional 'savings' (not taken into account by the firm)		£11,418.48

2 the Taber test case and windfalls

In recent issues of ***ombudsman news*** we have referred to the test case on windfalls and the pensions review that was pending in the High Court. The case was brought by Collegiate, the professional indemnity insurers of an independent financial adviser, Needler Financial Services. They brought the case to obtain a decision on whether, in cases settled in accordance with the review guidelines for pensions and free-standing additional voluntary contributions (FSAVCs), windfall payments should be taken into account when calculating what compensation was due to individual investors.

Collegiate contended that if a consumer took a pensions transfer case to court instead of going through the pensions review process, the court would take any windfall benefit into account and reduce any compensation due to the consumer accordingly. If this interpretation of the law was correct, it could result in no compensation being payable at all in cases where the value of the windfall was greater than any compensation that would otherwise have been due. In Collegiate's view, PIA was not justified in issuing guidance that was at variance with the remedy available at law in the courts.

the test case

The case was based on the facts of an individual complaint made to the PIA Ombudsman Bureau by a Mr Taber against Needler Financial Services.

The presiding judge was the Vice Chancellor, Sir Andrew Morritt, who is, effectively, the chief judge of the High Court's Chancery Division. He took the view that he should treat the case as if Mr Taber were suing Needler Financial Services over the pension transfer, instead of going through the pensions review, and that he should pass his judgment on the law accordingly.

For the sake of this case, Collegiate/Needler conceded liability, so the only issue the court had to decide was whether account should be taken of the windfall when calculating the compensation due to Mr Taber.

the result

Judgment was handed down in the case on 31st July. Sir Andrew Morritt found in favour of Mr Taber and, on the facts of his case, stated that under common law there would be no need for the value of any benefit he received by way of a windfall payment to be deducted from his compensation payment. Here is a brief quotation from the judgement:

'***First the relevant question is whether the negligence which caused the loss also caused the profit in the sense that the latter was part of a continuous transaction of which the former was the inception. Second, that question is primarily one of fact.***'

Put very simply, this means that an adviser could only deduct a benefit received by an investor if it could be said that the advice, even if negligent in other respects, had been the cause of the investor receiving that benefit.

In the Vice Chancellor's judgment, the link between the negligent advice and the receipt of the windfall was broken by all the actions the society's directors took during the 1990s, with the court's approval, in order to bring about the firm's demutualisation. The cause of Mr Taber's receiving the windfall was not the negligent advice but the directors' decisions. All the advice had done was to give rise to the opportunity for Mr Taber to benefit from the directors' actions.

what happens next?

Collegiate/Needler have until 17 September 2001 to seek leave to appeal against this decision.

In Regulatory Update 89, the PIA allowed regulated firms to suspend a pension review in order to await the outcome of the test case, where:

- the case has progressed to the point where the windfall has become a relevant consideration in calculating loss;
- an offer has been made and has not been accepted.

We will therefore continue the policy outlined in the May 20001 edition of *ombudsman news*.

pension and FSAVC review

This case appears to lend support to the legal underpinning of the guidance on this issue in Regulatory Update 33.

While we wait for the judgment to become final, after we have concluded that there has been initial negligence or a compliance failure in an individual complaint, the firm should proceed to gather the information necessary in order to calculate loss in accordance with the Review Guidelines.

mortgage endowment complaints

The FSA has announced that it will be considering the issue of windfalls in relation to the calculation of compensation for mis-sold mortgage endowment policies.

Notwithstanding the guidance in Regulatory Update 89, not all firms decided that they wished to delay making final offers to await the outcome of this case. Some firms are reconsidering their position in the light of the decision but others are continuing to make offers without any deduction for windfall payments.

Until we have reviewed the position after 17 September, we will not be issuing any ombudsman's decisions in pensions review cases, other than to endorse offers firms have made which do not seek to take windfalls into account.

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

n 08/11

A schoolteacher, Mr B, attended a meeting about pensions held at the school where he worked. A representative of a life company spoke at the meeting and recommended that Mr B should start investing in a free-standing additional voluntary contribution (FSAVC) policy.

Four years later, Mr B took early retirement due to stress. He claimed that the representative had been negligent in not recommending a policy such as critical illness cover that would pay him a lump sum if he had to retire early. Mr B's bank manager had told him of someone in a similar situation who had received a £20,000 payout from such a policy. Mr B therefore claimed this sum as compensation from the life company.

We considered that the loss claimed had not been foreseeable at the time Mr B met the representative. The firm said that, in any event, it did not sell any policies that would have paid out a lump sum if the policyholder took ill-health retirement due to stress. The evidence indicated that the meeting had not been a comprehensive review of all Mr B's financial needs, purely a discussion about pension planning. However, it did seem that the FSAVC had been mis-sold.

The firm agreed to provide Mr B with an annuity equal to that which he would have obtained if he had paid into his employer's AVC instead of the FSAVC. It also agreed to pay him £500 for distress and inconvenience. However, Mr B would not accept this offer in full and final settlement of his claim. He felt that as the firm accepted that it did not give 'best advice', then his whole complaint should succeed. In his view, the representative should have followed up the initial advice by providing a review of all of his needs, and if necessary, should have referred him to another provider.

We pointed out that there was no regulatory requirement in such circumstances for a firm automatically to carry out follow-up reviews. Mr B had not raised any concerns with the representative about any other financial needs. However, he considered that it was self-evident that, since he was a teacher, he was likely to retire early through ill health. We did not agree that this was something that the representative could reasonably have foreseen.

We did not uphold Mr B's claim for £20,000 and he accepted our recommendation that he should accept the firm's offer in full and final settlement of the complaint.

n 08/12

A young married couple, Mr and Mrs J, aged 23 and 24, were advised by a firm's representative to each start making regular payments into their own personal pension plans. At the time of the advice, the couple had been running their own business for nine months.

Mr and Mrs J paid the monthly premiums into their respective policies for less than a year before deciding they could no longer afford to keep up the payments. Their new business took all their available capital and they had been forced to borrow money from relatives to keep the business running.

They complained that the pension plans had been mis-sold, since they were unaffordable from the outset. The 'fact find' completed by the adviser confirmed that the couple's business had only been running for a short period. It also stated that their net relevant earnings from their business were £7,500 pa each. The adviser had recommended monthly premiums that represented 12% of each individual's yearly income. After the dispute had been brought to us, Mr and Mrs J's accountants confirmed that the couple's actual earnings were significantly lower than those recorded on the 'fact find'.

Our initial assessment was that the adviser had not obtained sufficient information about the couple's business to be confident they could afford the proposed level of contributions. The firm rejected this assessment, so the case was passed to one of our investment ombudsmen for a final decision.

This decision upheld the view expressed in the assessment. The ombudsman pointed out that it would have been prudent for the adviser to have considered whether Mr and Mrs J could afford the premiums in the medium to long term. He noted that since the adviser had not obtained any documentary evidence about the financial performance of the couple's business, the adviser was not in a position to state that the policies were affordable. The award made was to refund the premiums paid, with interest, together with a payment of £250 for distress and inconvenience, in view of the couple's difficulties in attempting to fund the premiums.

n 08/13

Mr N complained of negligence on the part of the firm that provided a personal pension policy to his late wife. He claimed that the firm had failed to process, before the end of the tax year, his wife's application to make an additional pension contribution. Mrs N had been terminally ill at the time and her husband claimed that the firm did not act as speedily as it should have done, given the obvious urgency of the situation.

The firm's representative said that it had only been in the week of Mrs N's death, and after the application form had been completed, that he became aware of her terminal illness. With this newly acquired knowledge, and with only seven days before the end of the tax year, he checked whether the application could still proceed. The firm confirmed that it could. However, it considered it should point out that the early payment of benefits under the policy, on Mrs N's death, could mean that the charges the firm levied on this contribution would not be recovered. The pension fund could also have dipped in value, thereby further reducing the value of this contribution to the pension plan.

The representative did not contact Mr N until Friday 31 March. Mr N then confirmed he was happy to accept the potential losses in view of the tax relief to be received on payment of the contribution. However, Mrs N died on Sunday 2 April 2000, before the firm's head office received the application.

In our view, once the matter of Mrs N's illness came to light, the firm was entitled to check whether it had any effect on her ability to make further contributions. Even if the firm had delivered the application form to its head office by hand on Friday 31 March, there is no certainty that the application would have been processed on the same day. There was no evidence that the firm had promised to process it before the weekend. The purpose of the application was, it seemed, to mitigate liability to tax. We concluded that, given the circumstances, the firm did not act in breach of duty and we did not uphold the complaint.

n 08/14

Mrs G, a New Zealand citizen living and working in the UK, complained that she was mis-sold a personal pension. She said that the firm had not told her that she would not be able to transfer the personal pension plan into her New Zealand pension fund when she eventually returned home. She claimed that she would have increased the contributions to her New Zealand pension plan instead, had she known the position.

We established that her UK personal pension fund was contracted out of SERPS, so rebates from the Department of Social Security were paid into it, as well as Mrs G's regular monthly contributions. UK government restrictions mean that any SERPS or contracted-out benefits can only be payable in the UK, so this element of her personal pension could not be transferred into her New Zealand pension. This restriction did not apply to her own contributions.

We considered that the representative should have discussed the issue of transferability with Mrs G, given her intentions to return to New Zealand. The firm was unable to provide any evidence that such a discussion had taken place.

We asked Mrs G to provide information from her New Zealand pension provider to support her claim for financial loss. This would need to show that the pension she would receive from the UK firm would be less than the one she would have received if she had made the same contributions into the New Zealand plan. Mrs G was unable to produce this information. She was only able to show that the demutalisation benefits she obtained from the New Zealand company would have been greater had she continued contributing into their plan.

As the advice was given in 1991 and the company did not demutualise until 1997, we did not consider that this loss could reasonably have been foreseen. We rejected the complaint as Mrs G was unable to prove she had suffered any financial loss.

- 08/15

The firm that advised Mrs K to opt-out of her occupational pension accepted she had suffered a loss as a result, and arranged to reinstate her into her former scheme. But she had been paying a lower level of contributions into her personal pension than she would have been required to contribute to her occupational pension scheme. The pension firm therefore required her to make up the difference, so that she could be fully reinstated into the scheme.

Mrs H considered this unfair and referred the complaint to us. We rejected the complaint because the firm's actions were entirely in accordance with the pension review guidance.

4 personal equity plans

Personal Equity Plans (PEPs) first became available in January 1987. They effectively came to an end on 5 April 1999, since no new subscriptions could be made after that date, although PEPs in existence on that date were allowed to continue. Since their introduction, PEPs have consistently been the source of a number of complaints to both the Investment Ombudsman and to the SFA Complaints Bureau.

The following case studies illustrate aspects of one of the most common causes for complaint – a change in the underlying investments in the PEP. Where such changes occur, if the new investments are not 'qualifying' investments (the types of investments permitted by the relevant regulations to be held in a PEP), then managers must either:

- sell them within 30 calendar days of the date they became non-qualifying investments, in which case the proceeds can remain in the PEP; or
- transfer them to the investor, who can keep them outside the PEP.

... we were unable to find anything in the PEP terms and conditions that gave the PEP manager the authority to take this decision.

case studies – personal equity plans

n 08/16

Mrs S held qualifying shares from company A within her PEP until the company was taken over. Investors then received non-qualifying shares in place of their previous holdings. Mrs S complained about the actions of the plan manager (regulated by IMRO – the Investment Management Regulatory Organisation), because he took the decision to sell these non-qualifying shares on behalf of PEP holders.

We were unable to find anything in the PEP terms and conditions that gave the PEP manager the authority to take this decision. The terms and conditions stated that the PEP manager would advise clients of the options available to them should there be a takeover, rights issue or other important event. Where new shares were not qualifying investments, the terms specified that investors could choose whether to:

- sell the shares within 30 days of issue and reinvest the proceeds into qualifying investments *or*
- to keep the shares, outside of the PEP.

Bearing this in mind, we considered it fair and reasonable to assume that, given the choice, Mrs S would have asked for the shares to be sold on the most advantageous date during the 30-day period. We therefore asked the firm to compensate her for her resulting financial loss.

n 08/17

Mr and Mrs V complained that at the time they purchased investment trust shares within their self-select PEP, the plan manager (regulated by SFA – the Securities and Futures Association) did not inform them that the company in which they were investing was due to be reconstructed. The result of the reconstruction was that the shares would no longer constitute qualifying investments for a PEP.

In response to the complaint, we sought the advice of the Inland Revenue, which confirmed that the PEP regulations did not oblige the plan manager to give an investor advance notification of an investment ceasing to qualify for inclusion in a PEP. This was a matter which might be included in the terms of the written agreement between the investor and the manager. There was, however, an implicit requirement for plan managers to monitor plans to ensure they continued to satisfy the qualifying criteria for PEPs.

In this particular case, while the firm accepted the Inland Revenue's views, we were still unable to achieve conciliation. We therefore advised Mr and Mrs V of their right to apply to the SFA's Consumer Arbitration Scheme.

5 preparing for the future – changes for IMRO-regulated firms

As part of our preparation for N2 (1 December 2001, the date when the Financial Ombudsman Service receives its powers under the Financial Services and Markets Act 2000), we are modifying the processes of the constituent schemes and, at the same time, introducing a computerised case-handling system.

This has resulted in some detailed changes to practice and terminology and we set out below the significant changes for IMRO-regulated firms. The investment division began work under the new procedures and processes on Friday 5 July 2001 and, initially, IMRO-regulated firms will have seen only a change in terminology. However, increasingly, they will notice we have begun passing on to firms the details of people who complain direct to us without first having been through the firms' complaint procedure.

overall approach

Until 30 November 2001, our objective remains as set out in ***The Ombudsman Memorandum*** (published by IMRO in May 1999). This is to investigate the facts and seek to establish the relevant issues, in order to recommend a settlement that the Ombudsman considers fair and reasonable.

Our new procedures are designed to be flexible, and we will want to maintain an active dialogue with both the firm and the customer in our handling of cases.

specific changes

- Customers' first contacts to the Financial Ombudsman Service will be to the ***customer contact division.***
- We have re-designed the complaint form and can produce a personalised form for customers, entering the information they provide when they telephone us.
- From August 2001, if at the time of the customer's initial contact with us, we conclude that the firm has not had an adequate opportunity to respond to the complaint, we will write to the firm, setting out the concerns the customer has raised with us. We will ask the firm to resolve the matter, and will tell the customer we have passed on this information to the firm.

We hope that firms are reviewing their own arrangements for handling complaints, in anticipation of the new rules. For example, they will have only eight weeks to reach their decision and it will be important to ensure that formal decision letters include reference to the ombudsman as a potential avenue for the customer wherever the matter might be within our jurisdiction.

further information

We are happy to provide firms with information at any stage of the complaints process, and to advise on the next steps in any particular case. Please contact:

Andrea Johnson, casework manager
020 7964 0288
andrea.johnson@financial-ombudsman.org.uk

or, in her absence,

Dominic Fielding, assistant casework manager
020 7964 0188
dominic.fielding@financial-ombudsman.org.uk

liaison and training

If you have more general issues that you would like to discuss, please contact our liaison manager, Caroline Wells, who can also organise training and visits.

Caroline Wells 020 7964 0648
caroline.wells@financial-ombudsman.org.uk

... we will want to maintain an active dialogue with both the firm and the customer in our handling of cases.

6 preparing for the future – changes for SFA firms

For SFA-regulated firms, the move from a conciliation and arbitration service to an ombudsman scheme will require some procedural changes. We hope that SFA-regulated firms are starting to review their arrangements for handling complaints in anticipation of the new rules.

One of the most significant changes concerns the arbitration service. The transitional provisions in this area allow for arbitration cases that are in progress at 30 November 2001 to continue through to determination with arbitration. However, responsibility for that process will transfer from SFA to the Financial Ombudsman Service on 1 December 2001.

Disputes that are in conciliation at 30 November 2001, and that would have been eligible to have gone to arbitration if conciliation had failed, will be determined on a similar basis as arbitration, but by an ombudsman in the Financial Ombudsman Service.

This means that from 1 June this year, where we have been unable to satisfactorily resolve a dispute, investors have until 30 November 2001 to refer their case to arbitration, and not six months as previously.

Our new procedures are designed to be flexible and we will want to maintain an active dialogue with both the firm and the customer in our handling of cases.

At all stages of the process we will be able to provide firms with information and to advise on the next steps. Please contact:

Andrea Johnson, casework manager
020 7964 0288 or
andrea.johnson@financial-ombudsman.org.uk

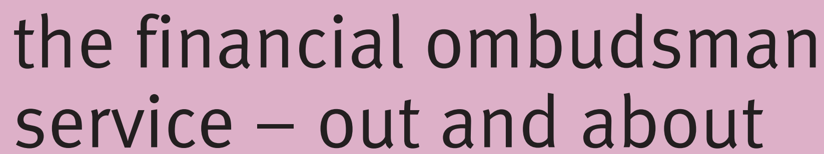
or

Dominic Fielding, assistant case work manager
020 7964 0188 or
dominic.fielding@financial-ombudsman.org.uk

liaison and training

If you have more general issues that you would like to discuss, please contact our liaison manager, Caroline Wells, who can also organise training and visits.

Caroline Wells
020 7964 0648 or
caroline.wells@financial-ombudsman.org.uk

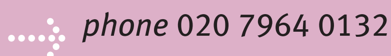


the financial ombudsman service – out and about

Explaining our role and how we operate is an important part of our work. Our aim is to be as open and accessible as possible and we organise roadshows, workshops and other events across the United Kingdom to help get our message across.

If you would like us to arrange a workshop, training day or other event for your firm or organisation, just contact

graham.cox@financial-ombudsman.org.uk



phone 020 7964 0132

telling your customers about the Financial Ombudsman Service

A number of firms have asked us about wording on their stationery to show their relationship to the Financial Ombudsman Service, when the new complaints-handling rules come into force from 1 December 2001 (N2).

We do not have the power to prescribe specific wording, but you may find the following suggestion helpful:

> Complaints we cannot settle may be referred to the Financial Ombudsman Service

Alternatively, bearing in mind that your published complaints procedure will give full details, you may wish to include just our logo on your stationery. Our view is that the logo has more immediate visual impact than text

If you would like a copy of our briefing note, *telling your customers about the Financial Ombudsman Service* (which also covers the requirement for some firms to continue complying with relevant existing rules until N2) please phone us on 020 7964 0092 (or *email* publications@financial-ombudsman.org.uk).

We are happy to make our logo available to all firms on request and can provide it in various formats. Please contact Nicola Gaughan, our graphic designer, for details *email* nicola.gaughan@financial-ombudsman.org.uk.

services for professional complaints-handlers and consumer advisers

our technical advice desk

- provides general guidance on how the ombudsman is likely to view specific issues
- explains how the ombudsman service works
- answers technical queries
- explains how the new ombudsman rules will affect your firm

phone 020 7964 1400
email technical.advice@financial-ombudsman.org.uk

our external liaison team can

- visit you to discuss issues relating to the ombudsman service
- arrange for your staff to visit us
- organise or speak at seminars, workshops and conferences

phone 020 7964 0132
email graham.cox@financial-ombudsman.org.uk

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183 Marsh Wall
London E14 9SR

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