ombudsman news

May 2002 Financial Ombudsman Service

essential reading for financial firms and consumer advisers

bringing you news from the Financial Ombudsman Service and focusing each month on complaints about investment, insurance or banking & loans

in this issue

about this investment issue of *ombudsman news*

There has been extensive coverage in the press recently about split capital investment trusts ('splits') and the Financial Services Authority issued an update on this subject on 16 May 2002, outlining areas it is considering further. To date, we have received few complaints about these complex products, but we believe they could impact on our work over the coming months.

As we note on page 3, although some aspects of these investments do not fall within our jurisdiction, there should certainly be areas where we will be able to help investors, particularly if they were not properly informed about the degree of risk involved.

In this issue of ***ombudsman news*** we also provide updates on:

- whether consumers can claim reimbursement for the cost of employing third parties, such as legal advisers or complaint-handling firms, to help them with their complaints;
- changes to the time limit for cases that would formerly have been dealt with by the PIA Ombudsman Bureau, following a House of Lords' decision; and
- the revised memorandum of understanding established between the Pensions Ombudsman and ourselves.

Edited and designed by the communications team at the Financial Ombudsman Service

Finally, as well as providing a general round-up of some of the investment cases we have dealt with in recent months, we focus on the types of complaint dealt with by the caseworkers in our assessment team. We explain how, by cooperating fully with these caseworkers, firms can help us bring a significant number of complaints to a speedy conclusion.

As always, we very much welcome feedback from our readers. Do please let us have your comments and any suggestions for future issues.

Jane Whittles
principal ombudsman
investment division

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1 split capital investment trusts

These forms of investment, issued and promoted by investment trust companies, have underlying portfolios with differing levels of risk and return and varying objectives. The objective of zero dividend preference shares ('zeros') is to provide a low-risk return, while income shares and capital shares generally offer a higher level of return, with greater risk.

The Financial Services Authority issued an update on 16 May 2002 and outlined areas it is considering further. These include concerns that some investors may have cause for complaint, particularly if they were not properly informed about the degree of risk involved.

These products are complex and it is important to note that the regulator's powers in relation to investment trust companies are not the same as they are for other types of investment firms. This in turn limits the extent of our own jurisdiction in relation to complaints about these products. At the time of writing, we have received only a relatively small number of splits complaints, and of these – only about half have been about matters that are within our jurisdiction.

Investment trust companies are not regulated firms and their directors do not need the regulator's permission or authorisation to carry out their business.

So complaints that are purely about the way these companies carry out their day-to-day business are not within our jurisdiction.

A fall in the value of an investment does not, in itself, constitute valid grounds for complaint. And the value of many splits has fallen during the past couple of years because of the decline in the underlying stock market, rather than as a result of any unusual or inappropriate investment or financing arrangements.

... a fall in the value of an investment does not, in itself, constitute valid grounds for complaint.

We expect that many of the complaints that reach us and ***do*** fall within our jurisdiction will come from investors who sought the services of an adviser and invested in a split capital investment trust on the adviser's recommendation. Where investors did not seek advice but acted on an 'execution-only' basis when they bought their shares, their complaints will often not fall within our jurisdiction. Investment within 'collective vehicles', such as unit trusts and OEICs, is likely to be within our jurisdiction.

None of the cases we are currently investigating has yet reached the decision stage. The following example is typical of many of the complaints we have so far received where we have concluded that the matter falls outside our jurisdiction.

case study – split capital investment trusts

■ 16/01

Mr R had invested in a split capital investment trust without first taking any investment advice. He later discovered that the trust held shares in other split capital investment trusts, forming a so-called 'magic circle' of cross-holdings. Mr R disapproved of this practice and complained to us that it had not been made clear to him that his investment would be managed on this basis.

We explained to Mr R that we have no authority to investigate these cross-holdings. Investment trusts are quoted companies (PLCs). Their business is the management of investments and their share price fluctuates in line with supply and demand, rather than according to the value of the underlying investments. Cross-holdings are, effectively, a commercial decision taken by the investment trust company. Firms' commercial decisions are not within our jurisdiction.

Even if such matters ***were*** within our jurisdiction, we would not have been able to look into this particular case. This is because Mr R had not taken investment advice but had relied solely on his own judgement in deciding that the investment was suitable for him.

2 time bars

In the February 2001 issue of ***ombudsman news*** we explained the revised policy on time limits for cases referred to the PIA Ombudsman Bureau, following the cases of ***Brocklesby – v – Armitage Guest*** and ***Liverpool Roman Catholic Archdiocese Trustees – v – David Goldberg QC.*** We also mentioned that those two cases had been confirmed by the Court of Appeal in ***Cave – v – Robinson Jarvis & Rolf,*** decided in the Court of Appeal on 20 February 2001.

That Court of Appeal decision was overturned by the House of Lords on 25 April 2001, when it also over-ruled the reasoning in the ***Brocklesby*** case relating to deliberate concealment under the Limitation Act 1980.

The time limit rule for PIA Ombudsman Bureau complaints incorporated the rules relating to deliberate concealment under Section 32 of the Limitation Act. Since the interpretation of that section has now changed, the cases that the Financial Ombudsman Service is now dealing with (that would formerly have gone to the PIA Ombudsman Bureau) are affected.

Put briefly, under the former interpretation of Section 32 in the ***Brocklesby*** case, nearly all customers alleging a breach of the duty to give the most suitable advice had six years in which to make a complaint, from the time they realised there had been a breach of duty. The limitation period was suspended until the point when the customer made that realisation (or could with reasonable diligence have done so).

Now, following the House of Lords' decision in ***Cave – v – Robinson Jarvis & Rolf***, the limitation period cannot be suspended in cases involving deliberate concealment unless it can be established that:

- any fact relevant to the complaint was concealed from the customer, either by a positive act of concealment or by withholding relevant information with the intention of concealing the fact or facts in question; or

- the firm knew it was committing a breach of duty or intended to do so, in circumstances where any such breach of duty was unlikely to be discovered for some time.

This is a much narrower test than was previously the case and the difficulty now is that we are currently dealing with a number of former PIA Ombudsman Bureau complaints that would be ***outside*** our jurisdiction if we were to apply the more restrictive test. S

3 the assessment team

The PIA Ombudsman Bureau's policy was to apply the limitation defence only if the firm asked it to do so. A number of firms choose not to ask it to apply the defence. So we think it would be most unfortunate if firms were now to ask us to apply the narrower interpretation to complaints we are currently investigating that – when we began to look into them – properly fell within our jurisdiction.

We believe that we should continue dealing with these complaints if at all possible, even where – strictly speaking – firms could prevent us from doing so by pleading the revised limitation defence. So any firm that wishes to take advantage of this reinterpretation in any particular case must write and tell us this. Otherwise, we will proceed with our investigation as before.

...we believe that we should continue dealing with these complaints, if at all possible.

The March 2002 issue of ***ombudsman news*** included a feature about the assessment team in our banking and loans division. The investment division also has an assessment team, operating in a very similar way.

The caseworkers in these assessment teams explore a variety of ways to try and resolve cases at an early stage – only passing on for adjudication the cases that cannot be settled properly except by a full investigation.

how does it do this?

The caseworkers in these assessment teams don't duplicate the important investigation work done, where necessary, at a later stage. Instead, they check carefully through the case papers, focusing on whether there is scope to settle the complaint at this early stage, on the grounds of 'early termination' or 'mediation'.

early termination

The Financial Ombudsman Service has discretion to stop dealing with a complaint in certain circumstances. This is called 'early termination' and our rules specify 17 grounds for early termination – some of which are used more frequently than others. A typical example is where the firm has offered as much as we could ever see a complaint being 'worth' – assuming we were

...caseworkers act as 'go-betweens' and try to bring the two parties together.

to accept everything the customer said about what happened. There would be no real point embarking on a detailed investigation of these cases. This is because, even if we upheld the complaint, we could not award any more than is currently on offer. Where we find this is the position, a caseworker will contact the customer to recommend that they accept the firm's offer.

Some customers are reluctant to agree to this. They can, of course, always appeal to an ombudsman and very occasionally the ombudsman comes to a different view. But this doesn't happen often – largely because the caseworker has already put a lot of time and thought into considering the complaint. Where an ombudsman does, occasionally, come to a different view, it is usually only because additional information has come to light at this later stage.

mediation

We can often resolve cases by means of mediation. Typically, using their knowledge and experience of how similar cases have been settled in the past, caseworkers act as 'go-betweens' and try to bring the two parties together.

Often, the underlying issues are not in dispute – the parties are just unable to agree on how the firm can best put matters right. But if the caseworker cannot bring about agreement by means of mediation, we won't force a settlement. The caseworker may, however, negotiate quite firmly or add a fairly clear recommendation.

passing cases on for investigation

Of course, the assessment team cannot resolve all the cases it receives. Inevitably there will be some cases that can only be resolved fairly by an investigation and a formal decision. But we are finding that the percentage of investment cases that we can resolve at this early stage, without the need for a full investigation, is growing.

how can firms help?

In two main ways:

- by understanding the role of the caseworkers in the assessment team; and
- by co-operating with the caseworkers – especially when they ask for information.

Firms should react promptly when our customer contact division writes to tell them it is passing a complaint to the assessment team. That letter details the basic information that we always need for a particular type of complaint and asks the firm to provide the information.

Firms should also respond quickly if the assessment team caseworker subsequently asks them for additional details. This won't happen in every case. But sometimes a caseworker will conclude that – with just a bit more information from the firm – there will be a reasonably good chance of settling the complaint. A speedy response from firms helps everyone, because settling a case is often a question of timing – leave it too long and the will to reach agreement can quickly evaporate. Most cases handled by our assessment team are concluded within three months.

If you have any questions about the assessment process, just contact our technical advice desk:
phone 020 7964 1400 or
email technical.advice@financial-ombudsman.org.uk

... a speedy response from firms helps everyone ...

case studies – early termination

■ 16/02

Mr and Mrs M's complaint concerned their mortgage endowment policy. They said they had been assured it would provide a sufficient amount when it matured to repay their mortgage. They also claimed that their adviser had 'churned' a previous endowment policy (persuaded them to terminate the policy and take out a new one, purely so that he could get commission on the new sale).

The caseworker sent Mr and Mrs M her initial view of the complaint, explaining why, based on the evidence provided, she did not think it would succeed. The couple had sent us the document they were given when they took out the second mortgage endowment policy. This stated clearly "***the amount of cash value is not guaranteed and depends on the investment performance of the units allocated to your plan***". It also said "***the rate of growth cannot be guaranteed and the value of units can fall as well as rise***". There was no evidence of any kind that the adviser had been guilty of 'churning'.

Mr and Mrs M rejected the caseworker's view and asked for their case to be passed on for an ombudsman's decision. The ombudsman rejected the complaint for the same reasons given by the caseworker.

■ 16/03

Mr and Mrs J took out two with-profits mortgage endowment policies in 1979 and a further two policies with the same firm in 1980. They believed that some time later they had made the policies fully 'paid up' (in other words, that they had not cancelled the policies but were not paying any further premiums). Since the policies had now reached their maturity date, Mr and Mrs J wished to claim the proceeds.

However, the firm's records indicated that the couple had not made the policies 'paid up' but had surrendered them in 1989 and 1990 respectively. As the firm only keeps its full records for six years, no further details were available.

Mr and Mrs J were unable to provide any evidence to counter the firm's view of what had happened to the policies. They accepted our opinion that the very limited information available meant that there was no basis on which their claim could succeed.

■ 16/04
Ms H complained about a delay in a Personal Equity Plan (PEP) transfer that had resulted in her losing out because of a fall in the value of her investment during the period of the transfer.

She wanted to transfer her PEP from firm A to firm B. Firm B sent the transfer instructions to firm A by letter, dated 15 August 2001. However, firm A claimed not to have received the letter until 27 September 2001.

Ms H considered firm A to be responsible for the delay and wanted it to pay compensation for the fall in the PEP's value during the transfer period.

We explained that unless she was able to establish that the delay was the fault of firm A rather than – for example – the postal service, her complaint was unlikely to succeed. Ms H was not able to do this and she accepted that she could not pursue the complaint further.

case studies – mediation

■ 16/05
Mr G's complaint concerned a mortgage endowment policy he had taken out in July 1990. He said the adviser had not made him fully aware of the risks associated with this type of investment. He also claimed that if he had known about the risks, he would have chosen a repayment mortgage instead.

The firm originally upheld Mr G's complaint, although it said it had done so more as a gesture of goodwill than because it accepted any liability. Mr G was not satisfied with the offer it made him and he referred the complaint to us.

We found no evidence that, before selling the policy to Mr G, the firm had established his attitude to risk. It said Mr G's previous ownership of an endowment mortgage was evidence that he was aware of the risks attached to this type of plan.

We asked Mr G what his understanding was of how his previous endowment operated and what the risks were. He did not appear to have much understanding at all of the policy. He said his main reason for choosing it was that his parents had taken out endowment mortgage policies in the past.

There was no indication that he was aware of any risks. Mr G had bought this first policy before financial services regulation came into force, so there had been no requirement for the adviser to draw key facts about the investment to his attention, or to make any record of his requirements and attitude to risk. However, this was not the position by the time he bought the second policy.

After we discussed the situation with the firm, it agreed to offer Mr G compensation, calculated in accordance with Regulatory Update 89 (RU89).

■ 16/06

Mr C complained on behalf of his mother, who was in dispute with her bank. The bank had managed Mrs C's investment portfolio until she closed it in 1994. Then some seven years later the bank wrote to Mrs C. It said that during a routine review it had discovered it still owed her £1,185. This was a refund of part of its annual management fee for the portfolio. It apologised for its oversight and offered her an additional sum of £68 to cover interest on the amount it owed her.

The bank's letter did not demonstrate how it had calculated the interest. Mr C raised this with the bank and it told him that it had used the same rate of interest that it applied to cash held within its portfolio service. However, it told him that its letter had stated the wrong amount and that the amount it would pay Mrs C, over and above the £1,185, was £346.

Mr C did not think the bank had used an adequate rate of interest and he brought the complaint to us. In his view, the bank should have calculated the interest at 5% and added £300 for the distress and inconvenience it had caused.

When we first contacted the bank, it agreed to make an ex-gratia payment of £300, but not to re-calculate the interest at the rate Mr C suggested. Mr C declined this offer as he still felt the rate of interest used was inappropriate. Following further mediation, the bank agreed to meet Mr C's claim in full.

3 costs

We are receiving an increasing number of cases where consumers have employed third parties such as solicitors, actuaries, financial advisers and, in particular, representatives of complaint-handling businesses, to look into their complaints. These third parties often charge a significant amount for their services and some consumers assume that we will reimburse the costs when the complaints are referred to us.

Our position on the matter remains largely as set out in the PIA Ombudsman's ***News from the Ombudsman Bureau***, dated September 1997. Our service is free of charge to consumers and provides an informal alternative to going to court. Consumers should not need special expertise or the help of a paid representative to bring their case to us. We judge cases on the facts – not on the way the case is presented. Were we to require consumers to employ a representative to present their cases to us, then our informal process would become adversarial rather than inquisitorial. It would begin to replicate the court system rather than being an alternative to it.

If consumers choose to employ a professional to look into their case and present it to us, then they will almost certainly have to pay the costs themselves, even if the complaint is successful. We never reimburse such costs if a complaint is unsuccessful.

Very exceptionally, in certain successful complaints we may sometimes consider reimbursing ***part*** of the costs. But the circumstances would have to be unusual. We would also have to be convinced that:

- it was entirely reasonable for the consumer to have sought the third party's assistance, in view of the complexity of the issues involved; and
- the fees were reasonable.

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case studies – costs

The following cases illustrate our approach when consumers claim the costs of obtaining professional advice about their complaint.

■ 16/07

Mrs A submitted a claim for the fees she paid a financial adviser to help her with her pension review complaint. The adviser suggested that his involvement was warranted because of the complexity of the case, since Mrs A's employment history was not straightforward.

The firm that was the subject of the complaint noted that, at various times during the dispute, it had told both Mrs A and her adviser that Mrs A had the right to refer the complaint to us. So it did not think it appropriate that Mrs A should be claiming the adviser's costs.

We rejected Mrs A's claim for reimbursement. In our view, she could reasonably have been expected to pursue this matter herself, without the need for professional help, and she had been clearly informed of her right to refer the case direct to us.

■ 16/08

Mr J submitted a claim for fees arising from his appointing both an independent actuary and a solicitor in connection with his pension review complaint.

The firm that carried out the pension review had concluded that Mr J had not suffered any financial loss, so was not owed any redress. Mr J employed an independent actuary, who established that there ***had*** been a loss. However, the firm then disputed whether the most appropriate form of redress was to reinstate Mr J in his occupational pension scheme or to augment his personal pension arrangement.

We upheld Mr J's claim for the independent actuary's fees. The complaint was successful and the evidence provided by the actuary played an important part in its success. The actuary had demonstrated the firm's failure to calculate redress in accordance with the regulator's guidance. He had also showed that Mr J suffered a significant loss as a result of the firm's advice.

We could not have expected Mr J to be able to put forward the case made by the actuary and we considered the actuary's fees – which were set out clearly and in detail – to be fair and reasonable.

However, we rejected Mr J's claim for legal fees. He had not consulted the solicitor until after his complaint had been referred to us and the solicitor's work on the case had no effect on the complaint's success. It consisted solely of providing Mr J with copies of pages from the pension review guidance, indicating that reinstatement in the occupational pension scheme was the preferred option. The fees did – in any event – appear unreasonably high.

■ 16/09

Mr C was advised to transfer benefits from an executive pension scheme to a small self-administered scheme with a different provider. His adviser did not tell him that he would incur a penalty when he transferred. He only discovered this after he had completed the transfer and the new scheme had been set up. He also found out at this stage that there had been no need to move to a new provider.

Mr C contacted the two provider firms and they agreed to return him to his original position if he acted immediately. Mr C asked the adviser who had recommended the transfer to help him reach a quick decision on the matter. The adviser refused, insisting that the original advice had been suitable. The adviser had taken his fee directly from the amount transferred.

Mr C was able to obtain help from a second adviser. In due course, Mr C complained to us about the first adviser and submitted a claim for reimbursement of the second adviser's fees. His complaint was successful and we thought it reasonable that he had sought assistance from a second adviser, in view of the strict time restraints, the complexities of the transactions and the first adviser's refusal to help.

The second adviser's fees were fair and were clearly detailed. In the unusual circumstances of the case, we agreed to reimburse the fees.

■ 16/10

Mr T complained to the firm about advice it had given him to take out a mortgage endowment policy. The firm rejected the complaint but made it clear to Mr T that he could refer the matter to us if he was unhappy with its response. Mr T consulted a complaint-handling firm that specialises in financial services. The complaint-handler submitted the complaint to us.

The complaint was a straightforward one and we were able to resolve it quite speedily by mediation. The firm conceded liability and made Mr T an offer. This offer was along the lines an ombudsman would have awarded if the case had proceeded to a full investigation and an ombudsman's final decision.

We rejected Mr T's claim for reimbursement of the complaint-handling firm's fees and costs. There was no reason why he could not have dealt with us direct and the involvement of the third party had not influenced the outcome of the case.

5 pension cases

The Financial Ombudsman Service handles complaints about the sales and marketing of pension schemes. But a separate organisation – the Pensions Ombudsman – investigates complaints and disputes about the way pension schemes are run.

Some of the pension cases that are referred to us could be covered by the jurisdiction of both the Financial Ombudsman Service and the Pensions Ombudsman. The two organisations operate under different rules and can award different amounts of compensation.

To help determine which organisation should deal with which individual cases, we are due to sign a new Memorandum of Understanding ('MOU') with the Pensions Ombudsman.

This MOU will follow on from a similar agreement reached in 1995 between the Personal Investment Authority (PIA) Ombudsman Bureau and the Pensions Ombudsman. The earlier MOU related purely to personal pension arrangements. Its effect was to allow the PIA Ombudsman Bureau to handle ***all*** complaints relating to those contracts, irrespective of whether they concerned sales and marketing activities or administration and management.

The new MOU needed, in addition, to reflect the changes made to the subordinate legislation under the 1993 Pensions Act.

It also needed to address potential complaints about stakeholder pensions, since unless they are exempt, employers are now required by law to provide access to a stakeholder pension scheme, deducting and paying over contributions through the payroll.

The new MOU applies to complaints about personal pension schemes and to the complaints we currently handle about the small occupational schemes, such as executive pension schemes and small self-administered schemes. It means that pension complaints will now be handled as follows:

- Where the complaint predominantly concerns the circumstances of the sale of the pension, ***we*** will handle the complaint.

- Where the complaint predominantly concerns the management or administration of the pension scheme, ***the Pensions Ombudsman*** will deal with the complaint.

Inevitably, there will be some instances where it is unclear at the outset which of the two ombudsman schemes should deal with the complaint. We may, for example, take on a case that, because of complex jurisdiction issues, we may ultimately have to refer on to the Pensions Ombudsman. Similarly, there may be certain unusual complaints that the Pensions Ombudsman begins working on but finds, eventually, that it ought to pass to us.

In such instances, at as early a stage as possible, both organisations will liaise and reach agreement about the handling of the case. This will avoid unnecessary delays and make sure that the customer is not left in any confusion about what is happening.

...both organisations will liaise and reach agreement about the handling of the case.

6 a selection of recent cases –

illustrating the wide range of complaints dealt with by the investment division

mortgage endowment policies

- **16/11**

Mr E took out a £40,000 mortgage endowment policy over a 25-year term, extending two years into his retirement. He believed the policy would provide a surplus of £10,000 to £15,000, on top of the amount he needed to repay his mortgage. He had been planning to use some of this surplus to cover the cost of his mortgage payments after he retired.

When he realised that the policy would not produce the amount he expected, Mr E complained – first to the firm and then to us. He had no evidence that the firm had guaranteed the amount the policy would produce. However, the firm was unable to provide any records from the time of the sale to show that it had established Mr E's attitude to risk, or discussed with him how he would pay the policy premiums after he retired.

We concluded from Mr E's circumstances at the time of the sale that he could have afforded a 23-year term. This would have allowed him to repay his mortgage before he retired. We also concluded that it was unlikely that he would have accepted the degree of risk associated with an endowment policy, had it been explained to him.

We therefore awarded redress, calculated in accordance with Regulatory Update 89 (RU89), on the assumption that Mr E should instead have been sold a repayment mortgage over 23 years. We told the firm that, in accordance with Regulatory Update 94 (RU94), it should not deduct the value of the windfall shares that Mr E received when the product provider ceased to be a mutual company.

- **16/12**

Mr and Mrs C complained about the firm that had sold them a mortgage endowment policy. The policy continued beyond both their retirement dates and they claimed they were not warned that it might not produce enough to repay their mortgage.

The firm maintained that the sale had been appropriate, given the couple's situation and requirements at the time. However, it conceded that the policy should not have extended over so many years, so it made an offer of redress.

But before Mr and Mrs C had accepted this offer, the firm withdrew it, saying it had found new evidence. This evidence proved that it had discussed with the couple how they would afford the payments after they retired. At this point the couple referred the complaint to us.

It was clear from our review of the evidence that the firm had indeed discussed the length of the policy term – and its implications – with the couple. We also found that the sale of the mortgage endowment policy was appropriate for the couple's needs and circumstances, and that the firm had explained the risks to them. We therefore rejected the complaint.

■ 16/13

Mr and Mrs V had been sold a mortgage endowment policy that extended beyond their retirement. They said they had not realised this at the time of the sale and they were worried about how they would be able to pay the premiums once they had given up work. They claimed that they had only taken out a mortgage endowment policy because the adviser told them it would produce enough to let them to repay their mortgage early.

The firm investigated the complaint but concluded that Mr and Mrs V's ***current*** financial circumstances meant that they should now be able to afford the premiums after they had retired. It therefore did not offer them any compensation.

We found no evidence from the time of the sale that the adviser had discussed the length of the policy term with the couple. The subsequent improvement in the couple's financial circumstances did not alter the fact that the original sale had been unsuitable.

We recommended that the firm should pay redress in line with RU89, using a term to coincide with Mr V's retirement age.

■ 16/14

After investigating Mrs M's complaint about her mortgage endowment policy, the firm made an offer in line with RU89. However, Mrs M was not at all certain if this was an appropriate remedy so she came to us. We confirmed that the firm should pay redress in accordance with RU89 and we asked it to update the sum offered. This was because of the length of time that had elapsed since it made its original offer.

The firm was reluctant to do this. We explained that Mrs M had been entitled to wait for the outcome of our investigation before accepting the offer, and she had been continuing to pay in to her existing scheme in the meantime.

The firm then asked if it could at least take into account the notional ‘savings’ Mrs M had made since the original calculation was made. We had seen no evidence that Mrs M had been informed of any such savings, so we did not agree that this was reasonable in the circumstances.

■ 16/15

Ms E complained to the firm about her mortgage endowment policy. She said the firm had not made her aware of any risk associated with this type of policy but had led her to believe the policy was guaranteed to pay off her mortgage.

Ms E was an employee of the firm and had taken out the policy in conjunction with the firm’s staff mortgage scheme. The firm could find no evidence that it had explained the risks, so it carried out a loss assessment in line with RU89. This showed that Ms E had not suffered a loss, so it told her that no compensation was payable. Unhappy with this conclusion, Ms E came to us.

We found no evidence that the policy had been guaranteed to pay off her mortgage. We noted that the firm had offered this mortgage arrangement as a concession to staff, and that, as a condition of the scheme, Ms E was required to take a mortgage endowment policy. However, participation in the staff mortgage scheme was not compulsory. Even if the risks of the scheme had been adequately explained to Ms E, it seemed likely that she would still have proceeded with the mortgage endowment policy in order to secure the benefits of the staff mortgage.

Ms E had not suffered financial loss and we did not uphold her complaint.

■ 16/16

Mr and Mrs D had a 24-year deferred-interest mortgage, where the mortgage loan would increase to £54,270 after the deferred interest was added. They decided to remortgage their property to raise extra capital of £41,000 for home improvements and repairs. They would repay this with the proceeds of a second mortgage endowment policy. S

When they subsequently discovered that their policies might not produce enough to repay the combined mortgage, they complained to the firm. They claimed that the adviser had told them there would definitely be a surplus after the mortgage was paid off and he had never mentioned any risk.

The firm accepted liability but disputed the basis of redress. It did not consider it should have to take the deferred interest into account when calculating redress.

However, it accepted our view that the couple could have afforded a repayment mortgage rather than the mortgage endowment policy that the firm sold them. We awarded redress in line with RU89 to compensate the couple for their loss and cover the deferred interest repayments.

cases involving other types of investment

■ 16/17

Mrs F complained about negligence on the part of her stockbroker.
In December 1998, she had given the firm discretionary management of her investment portfolio and in the period to 5 April 2000, it had carried out 30 sales and 48 purchases.

Mrs F's complaint focused on one of these transactions in particular – the purchase of 3,900 shares at a cost of £29,994. The share price declined sharply after the purchase and six months later the holding was worth only £21,879. When the holding was eventually sold, the shares produced a loss of £15,890.

Mrs F claimed that the firm had behaved irresponsibly and was in breach of its obligations because it had watched the price of these shares fall progressively without taking any action.

A stockbroker does owe his clients a duty of care. However, there was no evidence of any negligence in this case. We did not uphold Mrs F's complaint as it was based solely on the fact that the shares declined in value and she incurred a loss when they were sold.

■ 16/18

Mr L wrote to his Individual Savings Account (ISA) provider, asking for details about what he should do if he wanted to close his and his wife's ISAs. The firm misread the letter, closed the ISAs and sent Mr and Mrs L cheques for the proceeds.

The couple were somewhat annoyed by this, but they decided to bank the cheques and use the proceeds to pay off part of their mortgage.

They subsequently complained to the firm about its mistake. The firm said it would reinstate the ISAs if Mr L and his wife sent cheques for the amounts it had sent them when it closed the accounts. The couple refused to do this and asked the firm to pay compensation for its error. When the firm refused, Mr L brought the complaint to us.

We told the firm that Mr L's request was reasonable and it eventually offered a total of £250 compensation, which Mr L and his wife accepted.

■ 16/19

In February 2000, Mr T gave discretionary management of his investment portfolio to an investment management firm. His portfolio came under the direct control of a Mr M, who had previously managed Mr T's investments at a different firm.

During the nine months from 31 March to 29 December 2000, the portfolio's value fell from £394,000 to £290,000. Mr T complained that Mr M had failed to respect instructions. He felt that the portfolio was holding high-risk stocks that he had not explicitly agreed to in his instructions.

Mr T had switched to the new firm specifically so that Mr M would continue to manage his portfolio, so we considered his previous investment arrangements were of some relevance. Mr T had held high-risk stocks when Mr M managed his portfolio at the previous firm.

However, we considered that, in the absence of any specific new authority from Mr T, Mr M had placed too much emphasis on Mr T's agreement with the previous firm. He had retained too large a proportion of the portfolio in smaller company shares, given the agreed risk profile of the new arrangement. We believed that Mr M should either have reduced that portion of the investment or sought specific authority from Mr T to retain it.

We obtained a calculation of what the portfolio's performance would have been since March 2000, if Mr M had kept a more appropriate amount in smaller company shares. We compared the result with the performance of the remaining portfolio, excluding these shares, for the same period. Although the firm had reservations about the calculation, it offered Mr T the amount of difference calculated – £11,600 – and Mr T accepted the offer.

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☐	October 17	Edinburgh	Edinburgh Balmoral Hotel	banking and investment
☐	December 4	London	British Library	banking and loans

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