ombudsman news

essential reading for people interested in financial complaints – and how to prevent or settle them

Financial Ombudsman Service

settling financial disputes, without taking sides

issue 60

# txt msg frm ombdsmn?

Our website has been receiving nearly 8,000 visitors a day in recent weeks. And by the time you read this, the brief video clip I've just recorded may already have been added to the site. The aim is to make sure our service is accessible to those who might be put off by written procedures and forms – and who would prefer to watch and listen to an explanation rather than read all about it.

People who have never used the services of an ombudsman before aren't necessarily at all sure what to expect. Are they going to encounter something that resembles a court or tribunal – or something nearer to a consumer action service? So the challenge was to give a brief explanation – in just two or three minutes – of what we do and how we can help.

I guess that our predecessors who started ombudsman schemes 25 years ago would never have imagined we would ever be communicating with the public in this way. They might well have thought the right stance for an ombudsman would have been to appear as similar to a judge as possible: respected, but formal, distant and austere.

We moved decisively away from this model when the Financial Ombudsman Service was set up – so that now we do much more of our communication on the phone, email and through the website. That, after all, is what customers now expect – and largely receive – from financial firms.

We have to move with the times. Customer service – for both consumers and firms – is high on our agenda. Against the background of rapidly-changing lifestyles, we have to adapt our service – but not our core values – to the altering scene.

Decisions by text message, anyone?

Walter Merricks

**Walter Merricks** chief ombudsman

## in this issue

case studies – pension complaints involving alternatives to traditional annuities **3**

*ombudsman focus* credit where it's due **10**

investment and banking administration complaints – issues involving the end of the tax year **12**

ask ombudsman news **16**

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



March/April 2007

## did you know...

# our website gives you free access to over 1,000 pages of up-to-date information?

This includes details about us and our process, plus practical guidance on a wide range of topics to help those involved with financial disputes.

What's more, all our publications are available online, allowing you – for example – to browse through case studies in earlier editions of *ombudsman news*, refer to technical briefing notes on a specific subject, or check out our expected workload for the year ahead.


**www.financial-ombudsman.org.uk**

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

switchboard **020 7964 1000**
website **www.financial-ombudsman.org.uk**
consumer enquiries **0845 080 1800**
technical advice desk **020 7964 1400** (this number is for businesses and professional consumer advisers only – consumers should ring us on 0845 080 1800)

*ombudsman news* is printed on Challenger Offset paper – made from ECF (Elemental Chlorine-Free) wood pulps, acquired from sustainable forest reserves.

# case studies – pension complaints involving alternatives to traditional annuities

At one time, people approaching retirement had to use their pension savings to buy a straightforward annuity that provided a guaranteed pension income. But for some years there have been a number of alternatives to the traditional annuity.

These include investment-linked annuities, temporary annuities, phased withdrawal, pension fund withdrawal (often known as 'income drawdown') and, following last April's pension tax changes, unsecured income.

Disputes involving these alternative arrangements do not reach us in significant numbers, but we do see a fairly steady stream of them. This selection of recent cases illustrates the wide range of situations we see – and our general approach.

**... for some years there have been a number of alternatives to the traditional annuity.**



## 60/01

**customer on limited income advised to take flexible annuity arrangement**

Mr C consulted an independent financial adviser (IFA) for advice on how to make the most of his retirement income. He was in his early 60s and receiving incapacity benefit. This was due to be replaced by the state pension when he reached the age of 65. He had investments and savings of about £20,000 and pension plans worth around £52,000 in total. His wife had already retired and had a small state pension but no other income or savings.

The IFA recommended Mr C to put the money from his private pension plans into a five-year annuity and to invest the balance, with the aim of buying a further annuity at the end of the first five years.

Mr C went ahead and bought the initial annuity, which would provide him with just over £3,000 a year after he had taken a tax-free cash sum. The balance of his money was put into a mixed, unitised fund, classified as 'medium risk'.

After five years, this investment left Mr C with less money to put in the second annuity than predicted – with the result that his income fell. When the IFA rejected his complaint about this, Mr C came to us.

**complaint upheld**

Mr C told us that the IFA had never properly explained the risks involved in the recommended arrangement. After looking at all the evidence, we agreed.

The IFA had mentioned the possibility of buying a traditional annuity. And he had given Mr C an illustration of an annuity that would provide an income of £2,750 a year. However, the adviser had not explained the benefits of a traditional annuity. He appeared to have used the illustration purely to highlight the apparent advantages in the alternative arrangement.

We said that given Mr C's circumstances – in particular that the money involved represented all the income he and his wife had, apart from their state pension – the product was not suitable. Mr C could not afford to take a risk that his income might fall.

In our view, Mr C should have been advised to buy a traditional annuity. On the basis of the discussion that had taken place when he first consulted the IFA, we thought that if he had been properly advised, he would have taken an annuity that provided a level pension, with a 50% pension for his wife on his death.

Mr C had received more from the flexible annuity than he would have done from a traditional annuity. However, we did not think it fair that his future income should be reduced to reflect this. He had limited means, and had spent the 'extra' income on ordinary living expenses.

**... the adviser had not explained the benefits of a traditional annuity.**

We said that the IFA should compensate him by buying a traditional annuity for the future. The amount should be based on annuity rates available *at the time of the advice*. In this instance, we were able to refer to the rates in the illustration the IFA had shown Mr C when first advising him. Had this not been available, we would have provided the IFA with an appropriate historical annuity rate from a library of rates that we maintain.

## 60/02

**customer advised to use pension fund withdrawal to repay a mortgage**

Mr J, who was in his early 60s, contacted an adviser to discuss how best to fund his plans for retirement, which included buying a property from which he could run a bed-and-breakfast business.

He was a member of his employer's final salary pension scheme and had nearly £600,000 in a separate personal pension policy. He was also expecting to receive dividends of around £50,000 a year from a business in which he retained some shares.

The adviser recommended that Mr J should transfer the personal pension policy to a pension fund withdrawal arrangement. This would provide a tax-free cash sum that Mr J could use to pay the deposit on the property he wanted to buy. And by withdrawing a regular income from the arrangement, Mr J could meet the repayments on a ten-year variable-rate mortgage.

Mr J went ahead with this recommendation. He decided to take the maximum amount of income permitted under the tax rules. This meant that, net of tax, his monthly income was about 20% more than he needed for his mortgage payments.

As with all pension fund withdrawal arrangements, the limit on the amount of income that could be taken had to be reviewed every three years.

Because the fund had produced a lower-than-anticipated return, the first review resulted in a fall in the maximum amount available as monthly income. So Mr J was left with slightly less than he needed for his monthly mortgage repayments. Three years after that, the monthly income covered only around 85% of the amount he needed.

**... he was left with less income than the amount he needed.**

Mr J concluded that he would have to re-mortgage his property, over a longer term. He complained to the firm about its advice, saying it had never warned him of the risk that the recommended arrangement would not produce enough income to support his mortgage. When the firm rejected the complaint, Mr J came to us.

**complaint upheld**

Given his overall circumstances and his very particular income requirement, we did not think Mr J should have been advised to enter into an arrangement that put his income at risk. We established that he could, instead, have bought an annuity that would have ensured the mortgage payments were covered.

The amount of income he was able to withdraw from the arrangement had originally been greater than the amount he would have had from an annuity, even though it later dropped to a lower level. So it was possible that – overall – Mr J had received slightly more income than he would have had from an annuity.

We took this into account when looking at how best the firm could put matters right. We noted that;

- Mr J's decision to take a high level of income was not a direct result of the unsuitable advice
- the 'excess' over the annuity income he would have received was not significant; *and*
- he had other means.

We said the firm should compare the net income Mr J actually received – month by month – with the amount he *would have* received if he had taken an annuity. The differences – both positive and negative – should then be rolled up, with interest, to the settlement date. This calculation showed that Mr J had received less than he would have had from the annuity. So we said the firm should pay him the difference in the form of a lump sum.

We also said that the firm should add to Mr J's remaining pension fund, bringing it up to the amount he would now need to buy an annuity of the same size and in the same form as if he had taken it at the outset.

## 60/03

**IFA tells customer that a pension fund withdrawal arrangement will not '*erode*' his capital – and defends its advice on the grounds that the customer was '*annuity-averse*'**

Because arthritis was causing Mr B increasing difficulties, he decided to give up his professional practice and retire early. He was a self-employed architect with savings of about £40,000. His only pension plan of any significance was worth about £250,000. Mr B had a wife, who was nine years younger than he was, and four children, who had all now left home.

**... he had clearly specified that he had not wanted to take any risks.**

On the advice of an independent financial adviser (IFA), Mr B transferred £200,000 from his pension plan into a pension fund withdrawal arrangement.

Mr B later told us that the IFA had said: '*If we can have £200,000 [as the initial investment], then income withdrawal will not erode your capital and you would have some growth ready for when you buy an annuity*'.

Mr B started drawing income from this arrangement, at a little below the maximum permitted level. However, the growth on the fund was not sufficient to cover the amount of income he was taking. When it became clear that he would not be able to continue taking an income at the same level, Mr B complained about the advice he had been given.

**complaint upheld**

Mr B told us he had clearly specified that he had not wanted to take any risks. He said the adviser had stressed the advantages of the recommended arrangement. In particular, the adviser had said that Mr B's capital would '*not be eroded*', so he would eventually be able to pass on his money to his children. Mr B said this had seemed an attractive prospect – but it had not been a special concern of his when he consulted the adviser – and had not been a deciding factor.

The IFA defended its advice, telling us that Mr B had been '*averse*' to buying an annuity because he had been particularly keen to be able to pass funds down, in due course, to his children.

We looked at all the evidence, including the IFA's misleading statement that the proposed arrangement would ensure Mr B's capital was not '*eroded*'. We concluded that Mr B had not been informed of the risks. In view of the rosy picture the IFA had painted of the pension fund withdrawal arrangement, it would not be surprising if Mr B had appeared to be '*averse*' to an annuity. That did not mean he would not have bought an annuity, if the risks of the alternative arrangement had been explained to him.

We thought that if he had been appropriately advised, Mr B would probably have bought a traditional annuity, giving him a pension and a two-thirds pension for his wife, after his death.

So we said the IFA should calculate the net monthly amount Mr B would have received – to date – from such an annuity. It should compare that with the amount he got from the recommended arrangement. And it should add interest, on a monthly basis.

**... part of the fund, at least, should have been protected from stock market volatility.**

If the calculation showed that Mr B had received less than he would have had from a traditional annuity, then the IFA should pay Mr B the difference. We said the IFA should also pay the difference between the realisable value of the fund and the amount it would cost him to buy an annuity for the future.

If Mr B had received more income than he would have done with a traditional annuity, then the firm could reduce the compensation accordingly.

## 60/04

**customer needing to withdraw income within a year or so is advised to put pension funds into unsuitable investments**

Ms K, a senior manager in her late 50s, had started giving serious thought to her retirement options. She worked full-time, but with her employer's agreement she occasionally did paid consultancy work for other companies.

She didn't feel she was yet ready to retire altogether from her job. However, semi-retirement within the next twelve months or so seemed an attractive prospect, particularly as she thought her consultancy work was likely to continue for some years.

Ms K sought financial advice from XY & Co, the IFA that advised her employer on its money purchase pension scheme. Ms K had built up a fund of about £450,000 in this scheme, invested in an equity broker fund operated by XY & Co.

She also had other investments, totalling around £200,000. XY & Co's representative advised Ms K to transfer the money she had built up in her employer's pension scheme into a personal pension, invested in the same equity broker fund. The representative told her that doing this would enable her to start withdrawing an income as soon as she needed to do so.

Ms K acted on this advice, but was alarmed to find that the fund fell significantly in value over the following year. She had not yet started to withdraw an income, but was planning to do so very shortly. After consulting different advisers, Ms K changed the pension investments into cash, gilts and a modest amount of equities.

Ms K complained – first direct to XY & Co and then to us – that the fund into which it had transferred her pension funds had been inappropriate because it was too risky.

**complaint upheld**

We found that XY & Co had not given Ms K any proper advice before transferring her funds out of her employer's scheme. The firm said it had not needed to do this because there had been no real change; Ms K's pension remained invested in the same fund throughout.

We pointed out that the decision to invest the employer's scheme in the broker fund had been made by the scheme's trustees, not by Ms K. So XY & Co should have given careful consideration to Ms K's personal circumstances. They should then have made a suitable recommendation based on those circumstances.

We did not consider it suitable to have advised her to leave the entire fund in equities. Part of the fund, at least, should have been protected from stock market volatility.

It was impossible to say exactly what the most appropriate recommendation would have been in this case – there were a number of possibilities. But we decided that fair compensation should be based on the assumption that a quarter of the fund (representing a possible tax-free cash sum) should have been invested in cash and another quarter in a gilt index fund.

So we said the firm should calculate what Ms K's fund (invested in such a way) would have been worth, on the date on which she acted on her new adviser's recommendation. It should then pay her the difference, plus interest.

**... she was alarmed to find that the fund's value fell significantly over the following year.**

**... he said he had not understood the risks involved.**

## ■ 60/05

**income withdrawal a suitable option in situation where there was an urgent need for income**

Mr E was in his mid-50s when his job was made redundant. He had an urgent need for income and was very worried about his future. Even though he had started to train as a financial adviser, his future earnings would be heavily dependent on commission.

Mr E had very little in the way of savings, but he did have around £25,000 in a pension policy that carried guaranteed annuity rates. He contacted the pension provider for advice and was told he should start withdrawing an income from his pension fund.

The provider's representative said that, initially, Mr E would need to withdraw the maximum amount of income permitted under the policy. However, Mr E would be able to reduce the level of his regular income from the policy once he became established in his new career and his commission earnings began to build up.

Mr E lost the option of taking up the annuity rate guarantee, because this would only have been available if he bought an annuity when he was 65. Mr E later said that the representative had not explained this.

Some years later, Mr E complained. The fund had suffered some losses, and he was approaching the age at which he would have been able to take advantage of the annuity guarantees. He said he had not understood the risks involved and had not realised he would lose the guarantee.

**complaint rejected**

We concluded that Mr E would have had a fair understanding of the risk he was taking. Although he had been only a trainee adviser at the time of the advice, risk would have been explained at an early stage in his training. In any event, it was evident from the paperwork we saw that the representative had provided a clear explanation.

Mr E's urgent income needs had driven his decision and we considered that, in view of the limited options available to him, he had received suitable advice.

The representative should have explained to Mr E that by taking the recommended course of action, he would lose the annuity rate guarantee. However, we did not think the representative's failure to do this had made any difference to the outcome. At the time of the advice, annuity rates were significantly higher than the guaranteed rates. But in any event, it would not have been possible for Mr E to obtain the income he needed without losing the guarantee.


**Jane Hingston**
lead ombudsman


# credit where it's due

**Following the widening of our remit from 6 April 2007, the Financial Ombudsman Service is pleased to welcome businesses with a consumer credit licence. Our new responsibility for handling disputes involving consumer credit came about through the *Consumer Credit Act 2006*.**

**It means that, for the first time, customers of all businesses which hold a standard consumer credit licence will have access to a dispute-resolution scheme other than the courts.**

**We asked Jane Hingston, lead ombudsman for banking and credit, to tell us more.**

## is it a logical development for the ombudsman's remit now to cover consumer credit?

For me, this latest extension of our service just seems like a natural progression. Our remit has been gradually widening since the ombudsman service was first created.

Businesses with a consumer credit licence already come under our so-called 'compulsory' jurisdiction if they're also regulated by the Financial Services Authority (FSA). That's not going to change. The rules governing our existing compulsory jurisdiction have simply been amended to include consumer credit activities from 6 April 2007. So we'll cover all businesses holding standard consumer credit licences (as issued by the Office of Fair Trading).

So yes, it's a logical development. And it benefits everyone. We'll be able to provide the same kind of dispute-resolution service for all consumers – taking a consistent approach to disputes involving both FSA-regulated firms and businesses with a consumer credit licence.

## what sort of complaints will the ombudsman service now be able to consider that it couldn't before?

We will be able to look at disputes involving businesses with a consumer credit licence in areas relating to consumer credit and hire, credit brokerage, debt adjusting, debt counselling, debt collecting and the operation of a credit reference agency. The other consumer credit categories (such as debt administration and provision of credit information services) will be added to our remit from 6 October 2008. However, we'll not be able to look at consumer credit complaints relating to events that took place *before* 6 April 2007.

So we certainly aren't envisaging an immediate flood of complaints which might have been stored up for years!

## how has the ombudsman prepared for its new remit?

We had to ensure we had a good understanding of the particular issues the new consumer credit complaints are likely to involve. So we have had comprehensive discussions with consumer advice and advocacy organisations, as well as with the wide range of consumer credit industry bodies.

We also had to ensure that businesses knew about the changes, so our communications programme has been extensive. We seemed to spend most of 2006 spreading the word to any consumer credit stakeholders who would listen! Our external liaison team and ombudsmen have hosted seminars, run a nationwide series of roadshows


and taken part in consumer and trade events. We would certainly hope that stakeholders are now aware of – and prepared for – the new consumer credit complaints-handling arrangements, including the role of the ombudsman service.

### has the ombudsman service had to do much internal preparation or retraining?

Our current involvement in banking and credit complaints has already provided us with a wealth of experience and knowledge. Around 70% of consumer credit (areas such as plastic cards and loan products) is provided by banks, building societies and other lenders. And these are already covered by the ombudsman service. There are, of course, going to be some new areas and we have invested considerable time in preparing our staff so they are able to deal with these new complaints.

We also have significant experience of dealing with complaints about activities such as debt collecting and debt advice – so it's not surprising that many of the topics that come up in discussions with consumer credit businesses are already familiar to us.

### will you be able to offer any support in the early stages of a potential complaint?

Absolutely. We can work with businesses to help reduce the likelihood of their customers ever needing to refer disputes to us. By identifying common problems and outlining our usual approach to putting things right, we can save them valuable time and resources.

We will also be offering ongoing support to help businesses with a consumer credit licence understand how the new rules on complaints-handling apply to them. The rules were finalised on 14 December 2006. They require businesses to have proper complaints-handling procedures in place. This means they have to refer customers to the ombudsman service if the complaint is not resolved.

We realise that in the early days (and particularly for small consumer credit businesses) there may be a settling-in period while people get used to our process. We will aim to help businesses through that.

### are consumer credit businesses welcoming this change?

The message I hear most is that businesses want to act professionally and responsibly – to be seen by their customers as fair and focused on providing good service. When looking to reinforce this message of reassurance and professionalism, consumer credit businesses will, I hope, be proud to say that they are covered by the Financial Ombudsman Service. ❖

## the resources we offer businesses include:

- Our technical advice desk, dedicated to answering queries from businesses about the ombudsman service and our general approach (call 020 7964 1400 or email technical.advice@financial-ombudsman.org.uk)
- Regular issues of this newsletter, *ombudsman news*, providing articles and case studies showing our approach to the wide variety of cases referred to us
- Our website, containing a wealth of information including an special section for businesses – www.financial-ombudsman.org.uk/faq/businesses.htm

# investment and banking administration complaints – issues involving the end of the tax year

A number of the investment and banking disputes we see arise from errors in administration. If these errors occur towards the end of a tax year, they may result in deadlines being missed and consumers losing the opportunity to benefit from tax advantages.

We sometimes see examples of this when a business has promoted its ISAs (individual savings accounts) very strongly in the lead-up to the end of the tax year, and has then attracted a larger volume of applications than it is able to process within the required timescale.

Where an administrative error leads to a consumer losing out on a tax advantage, disputes can arise over whether the business responsible for the error should compensate the consumer – and about how any such compensation should, reasonably, be calculated.

In the disputes referred to us, we often find that any loss is actually relatively small. Indeed, sometimes there has been no quantifiable loss at all. As ever, each case turns on its own individual facts. But we sometimes consider it appropriate for the business to pay the customer a modest amount in recognition of the inconvenience that its error has caused, even where the customer has suffered no loss.

The following case studies illustrate some of the complaints we have dealt with – and how we have approached the issue of compensation.



**case studies**
investment and banking administration complaints – issues involving the end of the tax year

■ **60/06**

**administrative error results in negligible loss but business makes a small compensation payment to the customer as a goodwill gesture**

Mr T complained that he had been disadvantaged when the business failed to carry out his instructions to invest £7,000 in a Maxi ISA for the 2002/03 tax year. The business accepted that it had made a mistake and it offered him £200 as a gesture of goodwill.

However, Mr T thought he was entitled to a larger sum. He said that this compensation should be based on the fact that he had been planning to keep his money invested in the ISA for 25 years.

The business did not agree, so Mr T referred the complaint to us.

**... we often find that any loss is actually relatively small**

## ... disputes can arise over how any compensation should be calculated.

**complaint rejected**
Mr T produced evidence that he had used his tax allowance in previous years and had not cashed-in any of these previous investments. So we accepted that, in all probability, he *had* intended to invest for an indefinite period.

However, what he had lost out on was the potential tax advantage on the *return* from his investment, not on the whole of the capital sum invested. He was a basic-rate taxpayer, so the tax advantage he had lost out on in March 2003 related to the 10% tax credit on the dividend paid each year.

This tax credit was abolished at the end of the 2004/05 tax year. That meant that Mr T had only lost out on it for two years. Taking his overall financial position into account, it seemed unlikely that he would be liable for capital gains tax when he cashed-in his investment. So we concluded that his actual loss had been modest.

We rejected the complaint and recommended that Mr T should accept the goodwill offer of £200 that the business had already made, as we thought this was fair and reasonable in the circumstances.

### 60/07
**bank rectifies its administrative error and makes a payment for the distress and inconvenience it caused**

Ms M, who had several different ISAs with bank A, asked it to transfer her cash ISA to bank B, and to cancel her direct debit for monthly payments into the cash ISA. Unfortunately, bank A made a mistake and transferred *all* Ms M's ISAs, not just her cash ISA. It also cancelled all the direct debits that related to her ISAs, not just the one for payments into the cash ISA.

When she discovered what had happened, Ms M contacted bank A to complain. It retrieved from bank B all the funds that it had transferred in error. But because bank A had cancelled all the associated direct debits, Ms M had not been able to make her usual monthly payments into her ISAs. So bank A asked Ms M to send a cheque to cover the missed payments. It said it would then buy units for her at the best available price, and bring the unit-holdings in her remaining ISAs up-to-date. Once it had done this, Ms M then transferred all her investments to bank B and complained to us about bank A's mistake.

**complaint settled**
Bank A said it had taken the necessary steps to restore Ms M to the position she would have been in, if it had not made the error. It had also sent her a cheque for £25 as a gesture of goodwill, in recognition of the inconvenience it had caused. So it did not consider she was entitled to further compensation.

Ms M said she had only needed to transfer her investments to bank B because of bank A's mistake – so she thought bank A should pay the transfer charges she had incurred. We did not agree that bank A should pay these costs. It had acted swiftly to put matters right – and it had been entirely her own decision to transfer.

However, it was clear that Ms M had suffered distress and inconvenience. With this in mind, and by way of an apology, the firm agreed to increase its goodwill payment from £25 to £100. We told Ms M we thought this was reasonable and we recommended that she should accept it.

## 60/08

**customer said building society's delay had caused loss of opportunity for the proceeds of her TESSA**

Mrs B had a Tax Exempt Special Savings Account (TESSA) with her building society. This was due to mature in March 2004. In January 2004, the building society wrote to her setting out the options available to her when the TESSA matured. These included transferring the proceeds into a TESSA-only ISA, so that she could preserve the tax-exempt status of these savings. However, this transfer would have to take place within six months of the TESSA's maturity date.

**... by the time the building society found the form... the deadline had passed.**

Shortly before the end of the six months, Mrs B decided instead to invest the proceeds of her TESSA in a cash ISA with her bank. The bank gave her a form to sign, authorising it to apply direct to the building society to transfer the proceeds of the TESSA into the new cash ISA.

Unfortunately, the building society mislaid the form. By the time it had found it and arranged the transfer, the deadline had passed. Mrs B complained to the building society and claimed compensation for the loss of the tax-free interest she said she would have received, had the transfer gone ahead in time.

**complaint rejected**

When we looked into the complaint we found that before the TESSA had matured, Mrs B had already opened a cash ISA for the tax year in question – with a different bank. It appeared she had not understood that it was not permissible to have more than one cash ISA during the same tax year.

So even if the building society had carried out her instructions promptly, this would not have preserved the tax-exempt status of the TESSA proceeds. That could only have happened if Mrs B had transferred the TESSA proceeds into a TESSA-only ISA account.

We did not think the building society could reasonably have realised the mistake that Mrs B was making. So we did not accept that it could, fairly, be held responsible for the loss of the tax advantages. The building society had offered Mrs B £50 as a goodwill gesture and we recommended that she should accept it.

## 60/09

**bank and customer unable to agree on appropriate measure of compensation**

Mr G applied to open a cash ISA with his bank for the maximum annual holding of £3,000. After promoting this investment very heavily in the weeks leading up to the end of the tax year, the bank had received so many applications that it was unable to process them all in time. Unfortunately, Mr G's application was one of those that the bank failed to process before the tax deadline for that year.

The bank offered Mr G compensation, based on the amount of tax he would have saved over two years, if his application had been processed on time. However, Mr G said that since there was no set maturity date for cash ISAs, the compensation should be based on the likely tax saving over the rest of his lifetime, or at least until he retired – in 15 years' time. The bank did not agree, so Mr G complained to us.

**complaint upheld in part**

In view of Mr G's overall financial position, we thought it would be fair to assume that he would have held the cash ISA for five years, and to calculate compensation on this assumption. Customers looking to use some of their savings tend to turn first to cash deposits of this type.

And although the current government has recently given a commitment to continuing the ISA regime, there is no guarantee that ISAs will continue indefinitely.

Because tax and interest rates for the coming years cannot be predicted precisely, we thought it would be fairest to base the calculation on current rates. We made no reduction to take account of the fact that the compensation payment represented a lump sum payment – in advance – for tax savings that would otherwise have accrued gradually over five years. Equally, we did not make any additional award for inconvenience caused by the bank's error.

**... the bank received so many applications it was unable to process them all in time.**

# ask ombudsman news

## first-ever complaint – what do we do?

*an IFA emails...*

**Q** We've received a complaint for the first time. What do we do?

**A** Many financial services businesses receive complaints only rarely – so may not be used to the official procedures they have to follow if a customer complains.

You'll find more information about what you need to do on our website (www.financial-ombudsman.org.uk) in the publication, '*a quick guide to helping you resolve complaints*.' You'll find this by going to our publications pages and looking under '*technical notes*'. And don't forget our special online resource for businesses, at: www.financial-ombudsman.org.uk/faq/businesses/index.htm

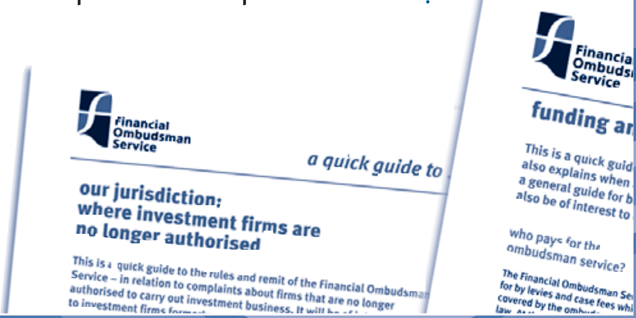
'*quick guides*' are our series of fact sheets for businesses – giving an informal overview of a range of technical issues. Current titles in the series are:

### helping you resolve complaints

A quick guide for businesses – briefly setting out what you need to do if a customer complains.

### how we handle disputes between businesses and their customers

A quick guide for businesses that don't usually have much direct contact with us – explaining our general process and procedures.




### funding and case fees

A quick guide to how we are funded and when and how the case fees apply.

### our jurisdiction: where investment firms are no longer authorised

A quick guide – primarily for investment firms formerly regulated by FIMBRA or PIA – to our rules and remit relating to complaints about firms that are no longer authorised to carry out investment business.

### hearings

A quick guide – for consumers and businesses who have complaints with the ombudsman service – to how hearings fit into our process.

### calculating redress for mis-sold mortgage endowments

A quick guide – primarily for insurers and advisers – to how redress is calculated if we uphold a mortgage endowment complaint and award standard redress (as set out by the FSA).

### calculating redress in investment complaints

A quick guide – primarily for investment firms and advisers – to how redress is calculated if we uphold an investment-related complaint.


*ombudsman news* gives general information on the position at the date of publication. It is not a definitive statement of the law, our approach or our procedure. The illustrative case studies are based broadly on real-life cases, but are not precedents. Individual cases are decided on their own facts.