

“splits” complaints

This factsheet gives a brief overview of the work we have done on “splits” complaints – and provides links to more detailed information about our approach to these cases.

what exactly are “splits”?

The term “splits” relates to shares issued by certain kinds of investment trust companies (sometimes called “splits” companies).

Investment trust companies are listed on the stock exchange but they are not themselves regulated by the industry regulator, the Financial Services Authority (FSA), and are not covered by the Financial Ombudsman Service.

what went wrong with some “splits”?

From around July 2003 the Financial Ombudsman Service started receiving large numbers of complaints involving “splits”. The complaints did not involve all “splits” companies. The main problems related to a limited number of these companies that found themselves in difficulties following falls in the stock market.

In the worst cases, share dealings were suspended or liquidators appointed. In other cases, the company’s assets fell drastically in value – by much more than the stock market generally. This meant there was not enough money to pay dividends on the income shares or to repay the capital on capital shares.

Some splits companies invested in one another’s shares – this is called “cross-holding”. Doing this can increase the benefits if everything is going well. But it can increase the dangers if things go badly. And there were some instances where splits companies started to bring each other down.

what types of complaints about “splits” has the ombudsman service been able to look at?

Because “splits” companies are not regulated by the FSA, “splits” themselves are not within our jurisdiction. This meant – for example – that we could not deal with complaints about the management of a “split”.

We were also unable to help with complaints:

- where a consumer lost out purely as a result of poor performance or a fall in the stock market; *or*
- that were purely about the way in which “splits” companies carried out their day-to-day business – including complaints about the directors of these companies and the commercial decisions made in running these companies.

But we have been able to help in certain circumstances. For example, we have looked at complaints about:

- advice given to investors to put money into “splits”;
- misleading marketing material; *and*
- “splits” that formed the investment element of a “packaged” product, such as an ISA.

why has dealing with “splits” complaints been so challenging?

These disputes have been among the most complex that we have handled. Our work on these cases has involved a great deal of time and resource.

The majority of the complaints we looked into required us to establish the suitability of a particular “splits” investment in relation to an individual investor's attitude to risk.

The complaints we received involved over 100 split capital investment trust companies – each with different classes of share (in some cases more than five different classes) which in turn differed in risk. And a significant number of “splits” had re-organised or changed their structure over time.

For “splits”, the assessment of risk was complicated by the way the structure of the share capital of various trusts evolved. So we had to establish objective measures to tell whether a particular “split” – or a later re-constructed version of it – properly reflected each individual investor's attitude to risk.

A further complication has been that, in most of the cases where we indicated we were likely to uphold complaints, the firms concerned responded with vigorous and extensive representations disputing any liability. So we have needed to consider wide-ranging legal arguments as well.

some compensation was paid out by a “distribution fund” – how did that work?

In December 2004, the FSA announced that a number of “splits” firms had agreed to contribute to a “distribution fund” for certain eligible investors who had suffered a loss and met certain criteria. The “Distribution Fund” was set up completely separately from the Financial Ombudsman Service and it had its own terms and conditions in relation to eligibility and time limits *etc.*

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This factsheet for consumers is only a general guide. It is not legal advice. We look at each case on its own individual facts and merits. We will always give you the chance to query anything you don't understand or agree with.

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what decisions has the ombudsman service made on “splits”?

Initially, where possible, we focused on lead cases – selecting one or more complaints as examples of a wider group of apparently similar cases. This enabled us to explore these lead cases in depth and to draw general conclusions about many of the issues affecting a wider group of cases.

In May 2004, we published a technical briefing note* to clarify our process and approach in dealing with complaints against intermediary firms involving “splits”.

We wrote regularly to the consumers with ongoing “splits” complaints, to keep them up to date with developments. For example, in February 2006 we sent an update letter* giving a general overview of our progress, at that stage, on the remaining “splits” cases.

In June 2007 we issued a number of ombudsman final decisions on “splits” cases. Four of these final decisions – broadly representative of the issues involved – are available to download from our website*. Because our service is confidential – and we do not publish the names of firms or consumers whose complaints we handle – these final decisions have been anonymised.

* these documents are available to download in PDF-format at <http://www.financial-ombudsman.org.uk/publications/factsheets/splits.html>
