ombudsman
news

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essential reading for financial firms and consumer advisers

Financial Ombudsman Service

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about this issue

In this edition of *ombudsman news* we highlight some of the complaints we have dealt with recently about single premium investment bonds, including high income bonds, sometimes referred to as ‘*precipice bonds*’.

We look, too, at some recent insurance disputes involving ‘*unoccupied*’ properties. Most household insurance policies say that you will not be covered for events such as theft, malicious damage and escape of water if you leave your home ‘*unoccupied*’ for a period of time, normally 30 or 60 days. But few policyholders realise that their insurer may consider them to have left their property ‘*unoccupied*’ simply because they have been away for a few weeks, even if they visited the property regularly during that time.

Complaints about the mis-selling of mortgage endowment policies continue to form a major part of our overall workload. On page 7, we summarise the main points that emerged at the *mortgage endowment forum* we hosted recently with the Financial Services Authority, in order to discuss current issues and concerns with representatives of consumer and industry bodies.

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

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The increasing popularity of payment methods such as debit and credit cards means that people are tending to use cheques less frequently than in the past. Even so, nearly 12 million cheques are written in the UK every day. That leaves plenty of scope for things to go wrong. Many of the disputes we see that involve cheques arise from the way that the clearing system operates. On page 8 we offer an outline of what generally happens when a cheque goes through this system, and we illustrate some of the problems that can occur.

services for **firms** and **consumer advisers**

technical advice desk

- Our technical advice desk deals with a range of queries from people working in financial services firms (complaints handlers, compliance officers *etc*) and in the consumer advice sector (citizens advice bureaux, trading standards *etc*).

- Most of the queries are from firms wanting to run cases past us on an informal basis – to see how they can resolve a particular complaint. The advice desk can generally give a broad indication of how the ombudsman service has viewed similar cases in the past.

- We cannot give any guidance on cases that have already been referred to the ombudsman service. Any guidance we give on other matters is informal and the ombudsman service cannot be bound by it if the case is later referred here.

It is important that when writing to consumers or telephoning them about their complaints, firms do not mention any guidance they have obtained from the technical advice desk. This is because the technical advice desk will have heard just one side of the story, so will not be in a position to provide any definitive statement about a case.

contact our **technical advice desk** for:

- information on how the ombudsman service works
- help with technical queries
- general guidance on how the ombudsman might view specific issues.

phone **020 7964 1400**

email **technical.advice@financial-ombudsman.org.uk**

1 insurance – '*unoccupied*' properties

Most household insurance policies say that if you leave your home '*unoccupied*' for a period of time, normally 30 or 60 days, then you will not be covered for certain '*insured perils*' (usually theft, attempted theft, malicious damage and escape of water).

But it is often unclear exactly what an insurer means when it talks of a property being '*unoccupied*'. Policies rarely define the term, although it is potentially unclear and ambiguous. Does it mean that the property is uninhabitable? Does it mean the property is incapable of being inhabited to a reasonable degree of comfort, health and safety? Or maybe it is simply that nobody was actually living in the property at the relevant time.

Many of the disputes about '*unoccupied*' property that are referred to us involve properties that are undergoing refurbishment or renovation. The properties tend to be visited frequently for work to be carried out. But they also tend to be uninhabitable – at least to a standard acceptable to most reasonable people.

Court cases about the *Occupiers' Liability Act* or the *Landlord and Tenant Act* have held that a person can '*occupy*' premises – sometimes for many years – without physically being in them. For example, the person who has legal title to a property may be regarded as the '*occupier*' even if they never live in the property and it is empty.

In the disputes referred to us, we are likely to follow the *Unfair Terms in Consumer Contracts Regulations 1999* in concluding that if the firm has not provided a plain and intelligible definition of terms such as '*left unoccupied*', then we will apply the meaning that is most favourable to the consumer.

In a number of cases, that may result in our deciding that, so long as the insured property was visited on a reasonably frequent basis, then it was '*occupied*', even though the policyholder was not sleeping there every night. It is important to stress, however, that we look at the facts of each case on their own merits, rather than applying a strict rule.

... it is often unclear exactly what an insurer means when it talks of a property being 'unoccupied'.

... many of these disputes involve properties that are undergoing refurbishment or renovation.

We do not consider it good practice for insurers to decline to pay out where the policyholder's breach of a policy condition has been only a technical breach that has not prejudiced the firm's position in any way. So, for example, if it can be established that the event that gave rise to the damage occurred within the first 30 days of the property having been left '*unoccupied*', then the firm should normally meet the claim, even if the property was not actually visited for a longer period. In such cases, the fact that no one lived in, or visited, the property was probably not material to the circumstances of the loss or damage.

Having said that, we are unlikely to support a policyholder who misrepresents the true situation when taking out or renewing their insurance. Nor are we likely to support a policyholder whose property has simply been abandoned, or has been so neglected that it practically invites unwelcome attention.

case studies – insurance – '*unoccupied*' properties

■ **34/1**
buildings policy – policyholder claims for fire damage after arson attack – firm voids policy on grounds of misrepresentation – says property was '*left unoccupied*'

Mr S, who worked in London, bought a house near his parents' home in Cardiff. His mortgage lender arranged the buildings insurance and was aware that Mr S had bought the house with the intention of renovating it and then letting it out.

Mr S visited the property almost every weekend to work on it, sometimes staying there overnight and sometimes sleeping at his parents' house. One weekend, he arrived at the house to find it had been damaged by fire. He later found this had been a case of arson.

When he put in a claim, the firm refused to pay out. It said it had '*voided*' the policy (cancelled it from the outset) on the grounds that Mr S had misrepresented the position when he tookout the insurance. The firm said Mr S had not made it clear that he did not intend to live in the property long-term. Mr S then brought his complaint to us.

complaint upheld

The firm agreed to reinstate the policy after we pointed out that there had been no misrepresentation. Mr S had made his intentions perfectly clear when he asked the mortgage lender to arrange the policy. However, the firm still rejected the claim, citing the policy exclusion relating to properties that were left '*unoccupied*'.

We did not consider that the firm had acted fairly or reasonably in rejecting the claim. The house had minimal furniture and lacked adequate facilities, such as a lavatory and a working kitchen. However, Mr S was able to provide ample evidence to show that he had visited it frequently to carry out work and to check up on the property. The house was neither abandoned nor neglected and Mr S had not applied for a council tax discount on the grounds that it was '*unoccupied*'.

Because we considered the wording of the policy exclusion to be unclear and ambiguous, we interpreted it in favour of Mr S. We concluded that the property had *not* been left '*unoccupied*' for more than 30 days, even though it had not been lived in and was not yet habitable on a long-term basis.

... the firm said it would not meet claims if the property was '*left unoccupied*'.

■ **34/2**

buildings policy – firm refuses claim for damage following break-in – considers property '*unoccupied*'

Mr K lived in London but owned a house in Belfast, where he had been a student and where his girlfriend lived. His insurer turned down the claim he made after he discovered the house in Belfast had been broken into and extensively damaged. He then came to us.

complaint rejected

The firm had rejected Mr K's claim because of the exclusion clause in his policy that said it would not meet claims if the property was '*left unoccupied*'.

Mr K told us that he visited Belfast periodically to see his girlfriend and to check up on the house. There was a small amount of evidence that he had visited Belfast occasionally, but we concluded he had simply been staying with his girlfriend. It was doubtful whether he had checked on the property at all.

The house was in such a poor state of repair that it stretched credibility that anyone would be able to live there, even for one night. We considered that the firm's position had been prejudiced by the fact that the house was not lived in.

We did feel that the exclusion clause could have been written more clearly. However, in the circumstances of this case, we thought it reasonable for the firm to cite the clause in order to reject the claim.

■ **34/3**
buildings policy – firm refuses claim for water damage after pipes burst – property left unlived in for over a year

Miss Y, an elderly woman, was unexpectedly admitted to hospital and she ended up spending more than a year away from her home. During that period, she had made no arrangements for anyone to visit or check the property.

She subsequently discovered that her home had been damaged when some water pipes had frozen and burst. She put in a claim, but the firm rejected it because she had '*left her house unlived in for more than 30 days*'.

complaint rejected
The property had effectively been abandoned for a very long period and this had led directly to the damage. We established that it would have been relatively easy for Miss Y to have ensured the property was looked after while she was away. We therefore concluded that the firm had acted reasonably in rejecting her claim.

... the firm rejected the claim because she had '*left her house unlived in for more than 30 days*'.

2 mortgage endowment forum

On 1 December 2003, the Financial Ombudsman Service and the Financial Services Authority (FSA) hosted a mortgage endowment forum to discuss current issues and concerns with representatives of consumer and industry bodies.

time limits

Reports that some firms are refusing to investigate complaints about mortgage endowment policies that were sold more than 15 years ago formed a major part of our discussions. The FSA confirmed that the '15-year rule' relates to the taking of court action. It does not prevent the ombudsman from considering complaints about events that took place over 15 years ago. The position remains unchanged after the FSA's recent review of the time limit for bringing a case to the ombudsman. As we noted in response to a query in issue 33 of ombudsman news (November 2003), consumers generally have six years in which to bring a complaint to us – from the date of the event they are complaining about. If the complaint goes back further than that, we may still be able to help if the consumer only became aware of the problem within the last three years.

The FSA stressed that the complaint-handling rules do not permit any firm to refuse to investigate complaints. It would be contacting those firms that had been citing the '15-year rule' as a reason to reject complaints.

firms' communication with consumers

There were several areas where the forum concluded there was room for firms to improve their communication with consumers. The FSA and the Financial Ombudsman Service will be having further discussions on this with the relevant industry bodies.

calculating compensation

The way in which some firms are calculating compensation in mortgage endowment cases will be discussed further with the industry bodies and individual firms. We will be encouraging consumers who contact the Financial Ombudsman Service to ensure they find out, and are satisfied with, the way in which the firm calculated compensation. In future editions of *ombudsman news* we will be including examples to illustrate compensation calculations in some common, but fairly complicated, situations.

documentary evidence

Some firms had expressed concern that, in a number of instances, full records of a sale may no longer exist. The ombudsman service said it recognised that both sides could have limited documentary evidence. We therefore look at whether, on the basis of information that could reasonably have been established at the time, mortgage endowment policies were suitable for investors at the time they were sold. We do not base our view on what consumers *now* think of that sale, their current circumstances or what they could afford now.

confidentiality

There had been some concern about issues surrounding the confidentiality of firms' settlements, following incidents where consumers had contacted the Consumers' Association. Firms were reminded that although, when they settle cases, they can make it a condition that consumers do not seek publicity, they must not do this in such a way that consumers believe the matter to be so confidential that they cannot seek advice about the adequacy of the offer.

3 banking – *'but I thought the cheque had been paid...'*

The increasing popularity of payment methods such as debit and credit cards means that people are tending to use cheques less frequently than in the past. Even so, nearly 12 million cheques are written every day in the UK. That means there is still plenty of scope for things to go wrong, and we continue to get a steady flow of complaints relating to this method of payment.

Many of the problems we see come from the way the clearing system operates – often because many customers, and indeed some bankers, do not understand how it works. Here's a simplified explanation of what generally happens:

- **Day 1** – Mr X goes into a branch of bank B (where he has his account) and pays in a cheque. The cheque was drawn on a branch of bank A. At the end of that day, bank B puts the cheque in the clearing system.

- **Day 2** – the cheque arrives at the central clearing system's 'exchange house'. It is collated with other cheques drawn on bank A and they are all sent off to bank A at the end of the day.

- **Day 3** – the cheque arrives at bank A and is normally then paid. But if there isn't enough money in the account, it may bounce. In this example, we will assume that is what has happened to the cheque Mr X paid in. So bank A sends the cheque back to bank B by first-class post.

- **Day 4** – if the post is prompt, the cheque arrives. BankB then writes to Mr X to tell him the cheque has bounced. (The decision to bounce a cheque can be delayed, in certain circumstances, until the following morning. For high value cheques, the 'bouncing' bank – in this example, bank A – will phone the other bank. Otherwise, it may be necessary to add a day.)

- **Day 5** – if the post is prompt, Mr X gets the bank's letter. This is normally the first indication the customer has that there is a problem with a cheque.

Weekends and bank holidays do not count in the overall timescale and there can be an extra day's delay if – for example – one of the banks is in England and the other is in Scotland (because of different clearing practices). Further delays can arise if the customer's account is, say, with a small bank or building society that uses another bank to process its cheques.

Most cheques pass through the system without a hitch. But what if the customer wants to know for sure that the cheque has been paid before, for instance, he releases goods to someone? How can the customer be certain that the cheque has been paid? The simple answer is – with some difficulty, unless the customer pays a separate fee for '*special clearance*'.

Banks and building societies normally treat cheques as 'cleared' after sufficient days have elapsed for the cheque to have completed the standard clearance cycle, as set out on page 8. They generally indicate this by updating their computer systems to show that the money is '*available for withdrawal*'.

So, continuing with our example, if – on the afternoon of day 3 in the clearing cycle – the customer asks to withdraw the money that the cheque represented, there's a good chance that the bank will say '*yes*'. This will be because, having expected the cheque to be cleared by then, the bank will have updated its computer system to show the money as available for withdrawal. But saying the customer can withdraw the money is not the same as saying the cheque has cleared and been paid. So it is no help if what the customer wants to know is whether the money is definitely theirs.

Even if the customer uses a more technical word and asks if the cheque has '*cleared*', the bank may misunderstand and say '*yes*', because the computer system has been updated to show that the money is available for withdrawal. But that's still not the same as saying that the cheque has been '*paid*', and the money is guaranteed.

Different problems arise when a cheque gets lost in the clearing system. Often, the customer knows nothing about the loss for quite some time – usually because the customer's bank doesn't know anything about it either. The customer will reasonably have believed that the cheque had been paid, so it comes as quite a shock if they find that the bank then wants the money back.

In cases that come to us, we generally take the view that the firm – not the customer – is the expert. Unlike most customers, banks and building societies deal with these transactions every day. So if a customer ends up releasing goods to someone and then, some time afterwards, finds out that the cheque has bounced, we could decide that the customer's loss arose directly because of the firm's failure to give proper and correct information. Or we might think that the firm failed to understand the true nature of the customer's enquiry when it should have done.

The following case studies illustrate some of the problems that can occur with the payment of cheques.

... it comes as quite a shock if the bank then wants the money back.

case studies – banking – '*but I thought the cheque had been paid*'

■ **34/4**

exchange of goods on basis that bank said cheque had been paid – cheque subsequently bounced – whether bank liable for customer's loss

Miss F advertised her much-loved classic car for sale in a specialist car magazine. A week later, a Mr H came to see it. After a successful test-drive, he agreed to buy it for £9,000. He wrote Miss F a cheque and they agreed that she would pay the cheque into her bank account. Once the money had been '*safely received*', Mr H could then take the car.

Miss F paid in the cheque on a Tuesday. The following Friday, she asked her bank if it had been paid. The bank told her it couldn't say for sure, and that she should ask again the following Monday. She went into her branch first thing on Monday morning and the cashier told her the cheque had been paid. So Miss F rang Mr H and he collected the car that afternoon.

The next day, Miss F received a letter from her bank– the cheque had bounced. She tried calling Mr H, but the mobile phone number he'd given her was '*unobtainable*'. And he had not given her his address. Miss F complained to the bank that she had lost out because of its actions, but the bank said it had done nothing wrong. Dissatisfied with this response, Miss F came to us.

complaint upheld

Miss F's bank had sent the cheque to Mr H's bank through the clearing system. On the Monday morning that Miss F had gone into her bank, Mr H's bank had returned the cheque unpaid. It did this because it had just been notified that a man claiming to be Mr H had been using cheques stolen from the 'real' Mr H. However, at the time Miss F went into her branch, the fact that there had been a problem and that the cheque had bounced had not been recorded on the bank's system. The system was still showing the money as '*available for withdrawal*', so the cashier had told her the cheque had been paid.

The bank agreed that it had told Miss F the money was available for withdrawal. And we were satisfied that she had asked about the specific cheque, she hadn't just been making a general enquiry about her account. So we concluded that when the bank told Miss F on the Monday morning that the cheque had been paid, it had been negligent. At that point, there was still a significant chance that the cheque could bounce.

Miss F had only allowed the man to take her car on the strength of what the bank had told her. So we said it should reimburse her with the £9,000.

■ **34/5**
customer pays in cheque for friend and withdraws £3,000 cash – cheque bounces – whether customer used knowledge of clearing system to defraud bank

After Mr P received a cheque for £3,000 – made out to himself – he endorsed it over to his friend, Miss C. Mr P lived in Portsmouth, but he paid in the cheque at the Newcastle branch of the bankwhere Miss C had an account. He did this on a Monday morning.

That Thursday, Miss C went into a branch of her banknear her office in Watford and asked to withdraw £3,000. The cashier checked Miss C's account and gave her the money.

The next day, Miss C's bank discovered that the cheque for £3,000 had bounced, so it debited her account. Before Mr P had paid in the £3,000 cheque, the balance of her account had been just £10, so she was now £2,990 overdrawn. The bank asked Miss C to pay the money back, but she refused. She said it shouldn't have let her take the money out in the first place. When the bank rejected Miss C's complaint about this, she came to us.

complaint rejected
The bank said that the cheque had come back '*in the ordinary course of business*' and that by withdrawing the money, Miss C had taken a risk that the cheque might bounce. So it refused her demand that it should credit her account with the £3,000.

Miss C said she could not pay the money back as she had already handed over the £3,000 to Mr P in cash. She said she had only cashed the cheque to help Mr P, and that she was now unable to contact him. She said he had needed the money to visit his sick father who lived abroad.

When we looked further into the complaint, it came to light that there was more to the relationship between Miss C and Mr P than first met the eye. In addition, it appeared that Miss C understood in some detail how the clearing system operated, as she used to work in a bank.

We wrote an informal letter to Miss C explaining that we were unlikely to uphold her complaint. She didn't respond. In fact, we haven't heard from her since.

... we concluded that the bank had been negligent.

... five months later, the bank told her that the cheque had been '*lost in clearing*'.

■ **34/6**
cheque lost in clearing – bank discovers mistake after crediting customer's account – whether it was right for the bank to take the money back

Mrs L owned a flat on the Sussex coast, which she rented out. Each month, her tenant, Mr T, sent her a rent cheque for £900. In February last year, Mrs L paid Mr T's monthly cheque into her bank account as normal and the bank credited her account with the money.

However, five months later, the bank told her that the cheque she had paid into her account in February had been '*lost in clearing*'. The bank said Mrs L should ask Mr T to '*stop*' the original cheque and write her a replacement. But Mrs L was unable to do this – Mr T had moved out of the flat in May to return home to New Zealand and she had no forwarding address for him.

Mrs L had not kept a copy of the cheque, and she couldn't remember which bank Mr T had held an account with. She explained this to her bank, but after a lengthy discussion that resulted in an unhappy stand-off, the bank went ahead and debited the money from her account. She complained about this, but the bank said it had '*dismissed*' her case, so Mrs L came to us.

complaint upheld
When we contacted the bank, it agreed that Mrs L had paid the cheque in – she had a receipt for the 'paying in' slip and the bank had credited the money to her account. However, it said that since Mr T could not be traced, it was entitled to debit Mrs L's account.

Banks tend to take microfilm pictures of cheques for their records. But in this case, the cheque had been lost before the bank could do this, so it had no details of where Mr T had his account. We suggested to the bank that, even though it had no information about the missing cheque, it was likely that Mr T's other rent cheques to Mrs L had been drawn on the same account. The bank checked its records and was able to discover where Mr T banked.

Mr T's bank confirmed that it would have paid the £900 from Mr T's account if it had been presented with the cheque in February. But it was unable to help track down Mr T because he had closed his account when he moved abroad.

Since the bank had lost the cheque in the clearing process and Mrs L did not have a reasonable prospect of getting the money from Mr T, we decided the bank should reimburse her. We also told it to pay Mrs L an additional amount to compensate her for the distress and inconvenience it had caused. This was because it had initially dismissed her complaint without considering it properly.

4 case studies – single premium investment bonds

This selection illustrates some of the complaints we have dealt with recently about single premium investment bonds – including high income bonds, sometimes referred to as 'precipice bonds'.

■ **34/7**
customer invests in plan for '*cautious investor*' following mailing from firm – plan makes significant loss – whether firm's mailing incorrectly suggested plan was '*low risk*'

Mrs G was on the mailing list of an independent financial adviser (IFA). In February 2000, the IFA sent her a copy of its newsletter, promoting an '*Extra Income & Growth Plan'* described as being suitable for '*the cautious investor*'. The plan was for a fixed term of three years and two months. It offered a choice of a tax-free and fixed income of 9.25% a year, or 30% growth over 3 years. The capital return was linked to the Dow Jones Eurostoxx 50 Index.

As a result of the mailing, Mrs G decided to invest in the plan. However, when it matured, she was shocked to find that she got back significantly less than the amount she had invested. When the IFA rejected her complaint about this, she came to us.

... she got back significantly less than the amount she had invested.

complaint upheld
The IFA said this had been an *'execution-only'* sale – no advice had been sought or given – so the suitability or otherwise of the investment advice was not an issue.

We looked at the documentation that the IFA had given Mrs G, in order to check what it said about the investment. The IFA's newsletter included full details of how the plan worked and how the capital return was calculated. It described the plan as '*one of the best currently available*' and said it would suit '*the cautious investor who's looking for high income (or growth)*'. The IFA also said that the plan was '*a good alternative to the Corporate Bond fund and, in our view, the best investment of its kind available to date*'.

The IFA had rejected Mrs G's complaint on the grounds that she had made her own decision to invest in this plan, based on the information presented to her. We accepted that the IFA had not intended to provide individual investment advice. However, we felt that an average person would interpret the statements in the firm's newsletter, and in the personalised letter, as confirmation that this was a low-risk investment and as advice to invest. In our view, the plan carried a higher level of risk than the IFA had suggested and than Mrs G had wished to take.

We established, on the balance of probabilities, that if she had not invested in this plan, Mrs G would have left the money in her building society account. The IFA therefore agreed to refund the amount that Mrs G had originally invested and to pay her interest, based on the building society's highest rate during the period that Mrs G had invested in the plan.

34/8
high income bond advertised in national press – '*execution-only*' sale – whether firm's material was misleading

Mr B sent off for further details of a '*High Income Bond*' after seeing the firm's advertisement in a national newspaper. The firm sent him a product brochure and a '*key features*' document, together with a covering letter. Mr B decided to invest in the bond, which offered a capital return linked to the NASDAQ-100 Index.

The bond had a three-year fixed term investment period. When the bond matured at the end of this period, Mr B was dismayed to find that his investment had resulted in a significant loss. He brought his complaint to us after complaining unsuccessfully to the firm.

complaint rejected

This had been an '*execution-only*' sale (in other words, the firm had not given Mr B any advice). And there was no question of the firm having specifically targeted Mr B as a suitable investor, since it had advertised the bond in a national newspaper.

The firm's covering letter had stated that the bond was '*only suitable if the investor can afford an element of risk to the capital sum invested*'. It had also recommended that prospective investors should '*seek investment advice if in doubt about the suitability of the investment*'.

The brochure stated that '*while the track record of the NASDAQ-100 Index is excellent, it is no guarantee to future performance and therefore does not guarantee the return of all your original investment*'. The brochure also included an illustration showing several projected returns, including one that assumed the index had fallen by up to 50%.

We concluded that the firm had given Mr B full information about how the bond worked, and about the possible outcome of an investment in it. We did not consider that any of the material was misleading, and we noted that the firm had provided a clear statement that customers should seek investment advice if they were in any doubt about the bond's suitability.
We therefore rejected the complaint.

34/9
customer invests in '*low risk*' plan after receiving firm's mailshot – whether product literature complied with the regulator's rules

In November 1999, a firm of independent financial advisers sent Mr C a mailshot about an '*Extra Income & Growth Plan*'. The mailshot included a document setting out the key features of the plan and a substantial '*newsletter*'.

The plan was for a fixed term of three years and two months and it offered 9% income or 28% growth, with a capital return linked to the Eurostoxx 50 Index.

Mr C invested in this plan as a result of the IFA's mailing. When his plan matured, Mr C found it had failed to grow or provide any income, and he got back less than the amount he had invested.

complaint upheld

In its newsletter, the IFA had described the product as being '*a low-risk investment for growth investors*'. The IFA also quoted '*independent consultants*', who confirmed that the firm's risk assessment of the plan was '*perfectly valid, based upon the investment conditions at the time*'.

We concluded that the IFA had made a clear and unambiguous statement that the plan was low-risk. However, given that this investment had a fixed term and that the return was linked to the Eurostoxx 50 Index, we did not agree that the plan *was* low-risk.

The IFA had a responsibility to ensure that its literature complied with the rules set by its then regulator, the Personal Investment Authority. Among other things, these rules stated that the information in any direct offer advertisement had to be *'adequate and fair'*. We did not consider that the IFA had met its obligations in this case and we upheld Mr C's complaint. The IFA agreed to refund the amount Mr C had originally invested, and to pay an additional amount for the interest that Mr C would have been able to earn on that amount.

■ **34/10**

firm's mailing advertises plan with a '*low downside risk*' – customers made significant loss – whether the firm was right to classify the plan as '*low risk*'

Mr and Mrs J received a mailing from a firm of IFAs in June 2000. The mailing concerned an '*Extra Income & Growth Plan*' and consisted of a product brochure, a document setting out the plan's key features and a covering letter. This letter referred several times to the plan's '*low downside risk*'. The plan had a fixed term of three years and two months. It offered a choice of 10.25% annual income or 31% growth, and its return was linked to the Eurostoxx 50 Index.

After reading the mailing, Mr and Mrs J went ahead with the investment. When the plan eventually matured, the couple found they had lost a significant amount of their capital.

complaint upheld

The mailing contained numerous references to the plan being '*low risk*'. But a feature of the plan was that the capital return could fall by twice the amount of any corresponding reduction in the Eurostoxx 50 Index. So we did not agree that the plan could be classified as '*low risk*'. We upheld the complaint and the firm agreed to pay the couple an amount equivalent to the capital they had invested, together with an additional amount for the interest they would have been able to earn on that amount.

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ask ombudsman news
your questions answered

firm's refusal to provide insurance cover – can we complain?

Q *The manager of a citizens advice bureau writes* ... One of our clients has been refused cover by his insurer. Can the ombudsman service deal with his complaint about this?

A Under our rules, we have the discretion *not* to consider complaints that we believe involve a firm's 'legitimate exercise' of its 'commercial judgement'.

In practice, this means we do not normally look into complaints about matters such as a firm's decision to refuse cover, increase premiums or apply special conditions *unless* we think the firm's decision wasn't just a question of legitimate commercial discretion.

This might be the case if, for example, the decision appears to have been the result of maladministration, where the insurer may be breaking the law on race, disability or sex discrimination, or where there is other evidence (like an industry code or agreement) that suggests the insurer should not have acted as it did.

conference plans for 2004

Q Unfortunately I was unable to get to any of your ombudsman conferences in 2003. Will you be running more of these events in 2004?

A The last in our 2003 series of working together conferences took place in Manchester on 10 December. We've had very positive feedback from this, and from all the events we organised last year, and we are now busy planning the programme for 2004.

We will probably be holding the conferences towards the later part of the year – so that in the spring we can focus on smaller-scale events at different venues around the country. These smaller-scale events will be more tailored towards smaller firms – including mortgage and insurance intermediaries who will soon be coming under the ombudsman's jurisdiction for the first time.

Watch this space for more details ...

send your questions to: ask-ombudsman-news@financial-ombudsman.org.uk
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