

issue 36 April 2004

essential reading for
financial firms and
consumer advisers



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about this issue

Some of the disputes that are referred to us are outside our '*jurisdiction*' – which means we have no power to deal with them, whatever their merits. On page 3, we outline the criteria we use when establishing whether complaints against banks and building societies are within our jurisdiction.

On page 8, we discuss the small but increasing number of insurance disputes referred to us where firms have varied the terms of an insurance policy after the customer has bought it. For example, we have seen cases where a travel insurer has sought to exclude from cover not just any medical conditions that customers suffered from *before* they took out the policy, but also any medical conditions arising between the start of the policy and the start of the holiday. We would not normally expect a firm to issue a policy and later change its mind about what cover – if any – it will provide. And we do not necessarily consider the terms of such policies to be fair and reasonable – particularly if they were not highlighted when the policy was sold. 

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Following on from last month's article about calculating compensation for mortgage endowment mis-selling, on page 13 we give further examples of cases where the firm has been uncertain of the approach to take. The situations we look at are where the firm has argued that the customers failed to 'mitigate their losses', and where the complaint involves the sale of more than one mortgage endowment policy to the same customer.

Finally, a reminder that we are always keen to hear from our readers and that we welcome your comments, queries and suggestions. Details of how to contact us are on the front page. In this month's *ask ombudsman news* on the back cover, we hear from the director of a small firm of independent financial advisers, asking whether our increased caseload will impact on the amount that firms have to pay for our service.

services for firms and consumer advisers

our external liaison team can:

- provide training for complaints handlers
- organise and speak at seminars, workshops and conferences
- arrange visits – you to us, or us to you.

phone **020 7964 0648**

email liaison.team@financial-ombudsman.org.uk

contact our technical advice desk for:

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- general guidance on how the ombudsman might view specific issues.

phone **020 7964 1400**

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1 issues of jurisdiction in complaints against banks and building societies

Some cases are outside our '*jurisdiction*' – which means we have no power to deal with them, whatever their merits. In this article, we look at some jurisdiction issues in cases involving banks and building societies.

is the firm covered by our jurisdiction?

When establishing whether or not a case is within our jurisdiction, we look first at whether the financial firm concerned is covered by our jurisdiction. All banks and building societies are covered for complaints about events that took place from 1 December 2001, when we acquired our legal powers. But they are only covered for events that took place *before* 1 December 2001 if they were previously covered by the Banking Ombudsman scheme or Building Societies Ombudsman scheme.

Before 1 December 2001, it was compulsory for building societies to be covered by the Building Societies Ombudsman scheme. But membership of the Banking Ombudsman scheme was voluntary and although more than 120 banks – including the well-known high-street names – were covered by it, some smaller banks were not. For banks that were *not* covered by the Banking Ombudsman scheme, we can only deal with complaints about events that happened *from* 1 December 2001.

... some cases are outside our '*jurisdiction*' – we have no power to deal with them, whatever their merits.

is the activity covered by our jurisdiction?

We can deal with complaints about activities that are regulated by the Financial Services Authority (FSA) – and with complaints about certain other specified activities. Together, these activities include:

- deposit accounts
- current accounts (whether in credit or overdraft)
- mortgages
- loans, apart from '*restricted credit*'
- plastic cards (debit, credit, cash or charge), but not '*store cards*'
- ancillary banking services, such as cash machines and safe deposit boxes.

(In broad terms, '*restricted credit*' and '*store cards*' – which we do not cover – relate to point-of-sale credit provided by a retailer, even if the finance house that provides the funds is – technically – a bank, because it has permission from the FSA to accept deposits. We do not cover American Express cards, as the company that issues them is not a bank and is not regulated by the FSA. It could join our jurisdiction voluntarily, but has not yet done so.)

We can also deal with advice and activities that are ancillary to the activities listed above. This would cover, for example, the situation where a mortgage lender provided the valuation for a mortgage application it was considering – unless the lender made clear to the borrower that the valuation was carried out by an independent surveying firm.

... ordinarily, we can deal with complaints only if they are made within the relevant time limits.

where did the activity take place?

We can only deal with complaints about the activities already described if they are carried on in – or from – the United Kingdom. That means we cover accounts in the UK and problems with plastic cards issued in the UK (even if the problems take place abroad).

However, the Channel Islands and the Isle of Man are not part of the UK, so we cannot deal with complaints about accounts that are held there, even if they involve a UK-owned bank or building society and the customer lives in the UK. The Isle of Man has its own financial ombudsman scheme – the Channel Islands are still thinking about it.

who has made the complaint?

We are only able to accept complaints if they are made by an *'eligible complainant'*.

Usually, the complaint must arise from the complainant having been a customer (or potential customer) of the bank or building society. But non-customers can bring their complaint to us as well, if the complaint relates to:

- a guarantee or security that they gave for a mortgage or loan granted to someone else;
- a cheque guarantee card issued by the bank or building society that the complainant relied on when they accepted a cheque for their business;
- a cheque, collected by the bank or building society for someone else's account, where the complainant is the *'true owner'* of the cheque or of the funds it represents;
- a banker's reference given to the complainant by the bank or building society;
- a trust or estate where the complainant is a beneficiary and the bank or building society is the trustee or personal representative.

If the complaint is made by a business, its yearly turnover must be under £1million – although this limit does not apply to sole traders and partnerships if the complaint is against a bank and the events took place before 1 December 2001.

when did the event complained about take place?

Ordinarily, we can deal with complaints only if they are made within the relevant time limits. Those making a complaint have:

- six years to bring the complaint to us, from the date of the event complained about *or*
- (if later) three years from the date when they knew, or should have known, that they had cause for complaint.

If they do not refer the complaint to us within that time, they must be able to produce some record (such as a written acknowledgement) that the bank or building society concerned received the complaint within the time limit. In any event, the complaint must be referred to us within six months of any final response letter from the bank or building society.

We can waive the time limits in exceptional circumstances – for example, if someone was unable to submit the complaint in time because they were seriously ill in hospital. And there are special time limits for mortgage endowment complaints.

There are also instances where we have the discretion to dismiss certain cases without considering their merits – even though the cases are technically within our jurisdiction. We will write about these in a future edition of *ombudsman news*.

case studies – issues of jurisdiction in complaints against banks and building societies

■ 36/1 building society share account – whether we can consider complaint about the firm’s failure to notify member of its annual general meeting

Mr T saved part of his earnings every month and put the money into a building society share account. He was very annoyed when the building society failed to give him notice of its annual general meeting. Unhappy with its response to his complaint about this, he complained to us. He said that the firm had deprived him of the chance to attend the meeting and to vote on an issue about which he felt strongly.

complaint outside our jurisdiction

The holder of a building society share account is an ‘*investing member*’ of the society. So under the society’s principles of ‘*mutuality*’, the account holder is entitled to receive notice of – and to vote at – the society’s general meetings. So the firm should have given Mr T notice of its annual general meeting.

However, membership rights do not qualify as one of the ‘*financial activities*’ that are regulated by the Financial Services Authority (FSA), nor are they an ancillary service. So we had to explain to Mr T that his complaint was outside our jurisdiction and we could not consider it.

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■ 36/2 broking of personal loan – whether we can consider customer’s complaint

Ms J wanted to take out a personal loan and she contacted the broking service of her building society. It recommended what it considered to be the best deal for a personal loan, which was provided by another lender – bank D.

Ms J went ahead and took out the loan from bank D. However, she later complained about the standard of service she had received from the building society’s brokers. When the firm dismissed her complaint, Ms J came to us.

complaint outside our jurisdiction

If the building society had advised Ms J to take out one of its own loans, then in doing so it would have been providing an ‘*ancillary service*’ and we would have been able to consider her complaint. However, we are not able to consider complaints that are solely about the broking of personal loans. So we told Ms J we were unable to look into her case.

.....

■ 36/3 bank B carries out mortgage valuation for bank Z as a ‘free-standing’ service – whether we can consider the customer’s complaint about the valuation

Mr A found a house he wanted to buy and applied to his bank – bank Z – for a mortgage. As bank Z did not have its own surveying department, it asked bank B to carry out the mortgage valuation on the property. Bank Z and bank B were owned by the same holding company, but were regulated as separate entities by the FSA.



... we had no power to look into the complaint.

Bank B prepared the valuation report in its own name, saying that the property was worth £150,000 and that it was 'good security for the loan'. Both bank Z and Mr A based their decisions about the mortgage on this valuation. Mr A took out a mortgage with bank Z and bought the house.

Six months later, Mr A contacted bank Z to complain about the valuation report, which he said had overvalued the house and been 'negligent'. When bank Z told him it could not look into his complaint, Mr A came to us.

complaint outside our jurisdiction

We could not consider Mr A's complaint. We cannot deal with complaints about mortgage valuation as an activity in its own right.

If bank Z had carried out the valuation itself, then we would have been able to look into the matter. This is because the valuation would have been an ancillary service that bank Z offered as part of its business as a provider of mortgages.

However, since the valuation had been provided as a 'free-standing' service by bank B, we could not deal with the complaint.

■ **36/4** **whether we can consider complaint about business valuation**

When B Ltd got into financial difficulties, its managing director, Mr W, complained to his bank. He said that a 'senior official' at the bank had given a 'negligent overvaluation of the company's worth', and that this had led to B Ltd entering into larger commitments than it could afford. Unhappy with the bank's response to his complaint, Mr W came to us.

complaint outside our jurisdiction

We explained to Mr W that business valuation is neither a regulated financial activity nor an ancillary banking service, so we had no power to look into the complaint.

■ **36/5** **shareholder complains about the company's bank – whether shareholder is bank's customer**

Mrs K was the majority shareholder in the company, P Ltd. After P Ltd's bank called in its overdraft, Mrs K complained. She said that the bank had acted 'too hastily' and had caused her a large financial loss, by devaluing her shareholding.

complaint outside our jurisdiction

Companies are separate entities from their shareholders and the bank's customer was P Ltd, not Mrs K.

Since Mrs K was not the customer of the bank, and this was not one of the instances where we are able to look at a complaint from a 'non-customer', her complaint was outside our jurisdiction and we could not deal with it.

If Mrs K had given a guarantee for P Ltd's overdraft, then we could have looked into any complaint from her about claims made against her under the guarantee. But we would still not have been able to look at her complaint to us about how the bank's actions had affected the value of her shares.

■ **36/6** **whether we can consider customer's complaint about solicitor's bank**

Ms L asked her solicitor, Mr D, to transfer money to her bank account. However, it was over six weeks before the money arrived in Ms L's account. Claiming

this had caused her *'inconvenience and worry'*, Ms L complained to Mr D's bank, which had initiated the transfer. She subsequently brought the complaint to us.

complaint outside our jurisdiction

Although Ms L was the beneficiary of the money transfer, it was her solicitor, Mr D, who was the customer of the bank concerned, not Ms L. And as this was not one of the situations where we are able to consider complaints from a non-customer, we were unable to help her.

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■ **36/7**
potential beneficiary of a will complains about bank's delay in drawing up the will

Mrs M decided to make a will, leaving all her money to Mr O. She instructed the bank to draw up the will, but died before it had done so. Mr O therefore received nothing from her estate and he subsequently complained to Mrs M's bank that it had acted too slowly in carrying out Mrs M's instructions. Unhappy with the bank's response, Mr O came to us.

complaint outside our jurisdiction

Mr O was not the bank's customer. We can investigate complaints brought by non-customers who are the beneficiaries of a deceased's estate if the bank acted as a *'personal representative'* or trustee. But Mrs M had only asked the bank to draw up her will – not to carry out any other function. And in any case, Mr O was not a beneficiary of Mrs M's will – he was a *potential* beneficiary. So the complaint did not fall within our jurisdiction and we were unable to look into it.

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■ **36/8**
customer comes to us more than six months after the firm issued its 'final response' letter – whether we could look into his complaint

In February 1999, Mr A made a complaint to his building society. The firm did not uphold the complaint and it sent Mr A its *'final response'* letter, confirming this, in July 1999.

In October 2003, Mr A referred the complaint to us. The firm said that we should not consider Mr A's case because, in its view, it was out of our jurisdiction. This was because more than six months had elapsed since it had sent Mr A its final response letter.

complaint within our jurisdiction

In fact, we *were* able to consider Mr A's complaint. In its final response letter, the firm had not made it clear that Mr A had six months from the date of the letter in which to bring his complaint to us if he wished to do so.

At the time when the firm wrote the letter – July 1999 – there was no requirement for it to provide this information. However, our rules say that from 1 December 2002 (one year after we acquired our legal powers) the time limits that apply are those of the Financial Ombudsman Service, not those of the previous ombudsman schemes. And that means we can only dismiss a complaint that is referred to us more than six months from the date of the firm's final response letter if the firm has made this time limit clear.

The firm had *not* made the time limit clear, and Mr A had contacted us within six years of the events that gave rise to his complaint, so his complaint fell within our jurisdiction and we were able to deal with it.

.....

2 when firms vary the terms of an insurance policy after the customer has bought it

Sometimes, a firm will attempt to vary the terms of an insurance policy unilaterally – after the customer has bought it. We have seen this – for example – with some travel policies. The firms concerned have sought to exclude from cover not only any medical conditions that the customer suffered from before they took out the policy, but also any medical conditions arising between the start of the policy and the start of the trip.

The terms of one of these policies said:

'If your health changes between the date the policy was bought and the date of travel, you should advise us as soon as possible. We will advise you what cover we are able to provide after the date of diagnosis.'

We do not necessarily consider the terms of such policies to be fair and reasonable, particularly if they were not highlighted when the policy was sold. By issuing a policy, the firm has effectively promised to cover the policyholder against certain contingencies. In most cases, if the policyholder's circumstances change during the term of the policy, that is generally just part of the risk the firm agreed to take on. We would not normally expect the firm to then change its mind about what cover, if any, it will provide.

It is well established that the customer's duty to disclose any relevant facts to the firm arises only at certain times. These are:

- when the firm and customer finish the contract '*negotiations*' and the customer takes out the policy;
- when the policy is renewed; *or*
- when a claim is made.

Firms cannot normally expect customers to recognise relevant facts and to inform them of these facts – voluntarily – as and when they arise. By varying a contract after it has been agreed, the firm arguably creates a '*significant imbalance in the parties' rights and obligations*', as defined under the *Unfair Terms in Consumer Contracts Regulations 1999*.

Schedule 2 of the Regulations gives specific examples of terms that may be regarded as unfair, including:

- *making an agreement binding on the consumer, whereas the provision of services by the seller or supplier is subject to a condition whose realisation depends on his own will alone;*
- *enabling the seller or supplier to alter the terms of the contract unilaterally without a valid reason which is specified in the contract; and*
- *obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his.*



... we would not normally expect the firm to issue a policy and then later change its mind about what cover, if any, it will provide.

In certain cases, of course, it is reasonable for the firm to vary the terms of an insurance policy after the customer has bought it, such as when the nature of the risk changes so fundamentally that the subject matter of the insurance is completely different. If a customer buys a new car, for example, then the firm can change the terms of the customer's motor insurance policy. And if a policyholder moves house, the firm will alter the terms of their home insurance policy.

There are also instances where the policy cover does not begin on the date of purchase, but on a future date. Since the policy contract has not been finalised at the date of purchase, there is – in principle – nothing wrong with the firm requiring policyholders to disclose any material change in their circumstances that occurs before the cover begins.

However, in these situations the firm should tell customers clearly, at the time of the sale, that it has the right to vary the terms of the policy. It should also make it clear that the customer must disclose any relevant change in their circumstances.

case studies – when firms vary the terms of an insurance policy after the customer has bought it

■ 36/9

travel insurance policy – customer cancels holiday – whether customer breached the terms of the policy by not disclosing information

Early in the New Year, Mr C decided to arrange his summer holiday. He booked two weeks in Tenerife for that August. At the same time, he took out a travel insurance policy with the firm.

In February, Mr C's mother was diagnosed with cancer. However, it was only a few weeks before Mr C was due to travel that she was told her illness was terminal. As soon as he discovered this, Mr C cancelled his holiday and put in a claim to the firm for the cost of the trip.

The firm refused to pay out. It said that Mr C should have got in touch when his mother's illness was first diagnosed. Mr C argued that he had not known at that stage that her condition was terminal, or that her failing health would mean he had to cancel his trip. The firm was insistent that because he had not disclosed this information at the earliest possible stage, he had breached the terms of the policy. Mr C then came to us.

complaint upheld

The firm said the policy imposed an 'ongoing duty of disclosure' on policyholders. In other words, it said that policyholders had to inform the firm of any illnesses or other 'relevant matters' that occurred after they had taken out a policy. If policyholders failed to do this, then it could refuse to pay a claim.

We acknowledged the general point the firm made to us that customers should not delay in cancelling their holiday if a situation arose where there was clear medical evidence or advice that they should not travel. However, that was not what had happened in this case.

We felt the firm's clause arguably amounted to an unfair contract term. It is acceptable for policies to exclude claims from cover if they arise from 'pre-existing conditions' – medical conditions that pre-date the start of the policy. But in this case, the firm excluded not only illnesses known about in the three years before the start of the policy, but also those that occurred 'before the trip started'.

In our view, in turning down a claim because of circumstances that arose between the time Mr C took out the policy and the date when his holiday began, the firm was acting unfairly. Its clause effectively relieved it of any obligation to pay health-related claims. By seeking to remove the element of risk, the policy undermined one of the fundamental principles of insurance. We upheld Mr C's complaint and told the firm to meet the claim.

■ **36/10**

annual travel policy bought online – cover to start from a specified date – customers cancel holiday before cover starts – whether firm should pay cancellation costs

Mr and Mrs B bought their annual travel policy online in March, but specified that the cover should not begin until 1 June, the day they were due to fly to Malta for a holiday.

At the end of May, Mr B's father died and the couple cancelled their holiday. When they put in a claim to the firm, they were dismayed to be told that they were not covered. The firm explained that the policy had not yet come into effect because the couple had chosen 1 June as its start date.

As a gesture of goodwill, the firm offered the couple a sum towards the costs of the cancelled holiday, although it refused to pay the whole of the claim. Dissatisfied with this, the couple complained to us.

complaint rejected

We felt that the firm's offer had been more than fair. The online sale process was very straightforward, with clear instructions. The firm's website explained that if customers asked for the cover to begin at a future date, rather than from the time of the sale, the customers would not be covered if they cancelled their holiday before the cover began.

... the policy undermined one of the fundamental principles of insurance.

This was not a case of the firm varying the terms of the policy after it had come into effect. The policy had not been in force when the couple made their claim. We therefore rejected their complaint.

.....

■ **36/11**
house insurance policy – unoccupied house burns down – whether firm right to reject customer’s claim

Ms G left her home unoccupied while she was working abroad for six months. While she was away, her house was broken into and set on fire. The house was so badly burned that it was beyond repair.

Ms G was covered for ‘*malicious damage*’ to her property and she put in a claim to the firm. However, it told her it was not liable in cases where the property had been ‘*left unoccupied*’ and it said she should have notified it when she moved abroad.

complaint upheld

We agreed with the firm that it was not obliged to pay Ms G’s claim for any ‘*malicious damage*’ to her home. The policy clearly defined the term ‘*left unoccupied*’ in relation to this type of claim, and it did not cover claims for this kind of damage to unoccupied properties. However, the primary cause of the damage to Ms G’s house was a separate, insured event – ‘*fire and explosion*’. There was no general or specific reference to the firm not being liable for such an event if the house was unoccupied.

While acknowledging that this was the case, the firm insisted that Ms G should have told it when she moved out of her house. The firm said this had changed the ‘*nature of the risk*’ and that, because she hadn’t disclosed the fact she had moved out, it was entitled to vary the terms of the policy and cancel it.

We disagreed. We did not feel that Ms G had been obliged to disclose this fact to the firm, in the way she would have had to do if – say – she had sold the property and bought another house. We thought that by attempting to vary the policy after Ms G took out her house insurance, the firm had acted unfairly. We upheld Ms G’s complaint and told the firm to meet her claim.

.....

■ **36/12**
travel insurance – customer disclosed medical condition after taking out policy – whether firm right to invalidate policy

In February, Mr and Mrs J took out a travel policy to cover the holiday they had booked for May.

Mrs J was unexpectedly admitted to hospital in April for a clot on the lung. Her treatment was successful and her consultant said there was no reason for the couple to cancel their forthcoming trip. ❖

When she was double-checking all the arrangements the day before the holiday, it occurred to Mrs J that she ought to ring the firm just to update them on what had happened. She was shocked when the firm told her it would have to invalidate the policy and refund the premium.

As there wasn't time for Mr and Mrs J to arrange any alternative cover, the couple felt they had no option but to go on holiday without any insurance. When they returned home, they complained to the firm about its actions and about the 'unnecessary distress and inconvenience' they had suffered as a result. When the firm dismissed their complaint, they came to us.

complaint partially upheld

This was not a case where the policyholders had failed to disclose a material fact. At the time the couple took out the policy, Mrs J had not been suffering any ill health. And in any event, the firm had never asked the couple any questions at all about their health.

The firm told us it had invalidated the policy because there was a 'continuing duty of utmost good faith' that required policyholders to 'notify the firm of any change to the risk' after the policy was taken out.

We cited Professor Malcom Clarke's *Policies and Perceptions of Insurance*, together with Ivamy's *General Principles of Insurance Law*, to support our view that – generally – there is *no* duty on a policyholder to disclose 'material facts' once the firm and policyholder have agreed on the contract.

In addition, we noted that there was nothing in the terms of the policy that entitled the firm either to 'avoid' it (in other words, to treat it as though it had never existed) or to cancel it. Although there was no claim to consider, we required the firm to pay Mr and Mrs J modest compensation for the distress and inconvenience they had been caused.

... the couple felt they had no option but to go on holiday without any insurance.

3 calculating compensation payments in complex mortgage endowment mis-selling cases

In the last edition of *ombudsman news* we noted that we are seeing some mortgage endowment mis-selling cases where – because the customer’s situation is not straightforward – the firm has been unsure how to calculate compensation. We now provide two further examples of these situations and clarify the approach that firms should take.

The situations we examine are where:

- the firm argues that the customers *‘failed to mitigate’* their loss; or
- the complaint involves the mis-selling of more than one mortgage endowment policy to the same customer.

firm argues that customers failed to *‘mitigate their loss’*

Mr and Mrs B complained that the firm had wrongly advised them to take out a mortgage endowment policy. The firm accepted that it had mis-sold the policy. However, it said that since the couple had not suffered any financial loss, no compensation was payable. Unhappy with this, the couple brought their complaint to us.

Mr and Mrs B had kept the endowment policy and were still using it to pay their mortgage. We found that when the firm calculated whether the couple had suffered any financial loss, it had failed to factor in the cost of the policy up to the present date. Instead, it had factored in this cost only up to the date when it had first written to the couple, informing them that their policy might not produce enough, when it matured, to pay off their mortgage.

The firm said that its letter had given the couple sufficient information to enable them to *‘mitigate their loss’* (by, for example, changing to a repayment mortgage or increasing their payments into the mortgage endowment policy). So it did not consider it was liable to compensate Mr and Mrs B for any losses they incurred after receiving the letter.

We noted that although the letter in question warned of a potential shortfall, it also showed a potential *surplus* if the policy met the higher of the possible rates of investment return. The letter suggested that the couple had four options, one of which was to take no action at present but to *‘wait and see’*.

We did not think there was anything in the firm’s letter to suggest an urgent need for Mr and Mrs B to take action. In deciding simply to leave things as they were for the time being – and to *‘wait and see’* – the couple had chosen an option put to them by the firm itself. So we did not agree that they had *‘failed to mitigate their losses’*, or that the firm was entitled to say it would compensate them only for any losses incurred before the date of the letter.

We required the firm to calculate loss in accordance with the regulator’s guidance, factoring in the cost of the mortgage endowment policy up to the present date. We said it should then compensate the couple for any loss that this calculation revealed.

complaints involving the sale of more than one mortgage endowment policy to the same customer

In some complaints of this type, the firm has tried to pool together the different policies it sold to the customer in order to make one overall calculation of loss. We do not believe this is the correct way to carry out the calculation.

When dealing with cases that involve the sale of more than one mortgage endowment policy to the same customer or customers, firms should perform a separate calculation of loss for each separate policy.

In a recent case, for example, Mr and Mrs H complained that the firm had wrongly sold them two mortgage endowment policies. The first policy, taken out on 1 August 1985, had a 25-year term and was intended to repay a mortgage loan of £70,000. The second policy, sold two years later, had a 22-year term and was intended to repay the couple's further borrowing of £25,000.

After investigation, the firm agreed that the policies were not suitable for Mr and Mrs H. When calculating whether the couple had suffered a financial loss, the firm added together the original borrowing and the further advance. It then deducted from this sum the total of the current surrender values of the two policies. This calculation showed that Mr and Mrs H had not lost out financially, so the firm told them that no compensation was payable. Unhappy with this response, the couple came to us.

We told the firm that it had not performed the calculation correctly and we said it should calculate loss as follows.

1 Compare the couple's 25-year £70,000 endowment mortgage with a repayment mortgage for the same amount, over the same term.

Calculate the loss to the current date (as the policy was still in force).

Deduct the current surrender value of the policy.

2 Compare the couple's 22-year £25,000 endowment mortgage with the cost of a repayment mortgage for the same amount, over the same term.

Calculate this loss to the current date (as this policy was also still in force).

Deduct the current surrender value of the policy.

After performing the calculation for the first endowment policy, the firm found that the surrender value was higher than the amount of capital that Mr and Mrs H would have paid off over the same period, if they had taken out a repayment mortgage instead. The couple had therefore not suffered any financial loss as a result of having this first endowment policy.

However, the second calculation revealed that Mr and Mrs H *had* suffered a financial loss as a result of taking the second endowment policy.

We explained to the firm that the couple's '*gain*' on the first policy could not be used to offset their loss on the second one, and we pointed out that each policy, and any financial loss caused, must be considered independently. The firm agreed to compensate Mr and Mrs H for their loss on the second policy.



workingtogether events 2004

mortgage endowment complaints – conferences for smaller firms

These conferences are aimed specifically at smaller firms that deal with relatively low numbers of complaints. The conferences address key issues relating to mortgage endowment disputes, including ‘suitability’ of the sale and the approach to redress. These events also give smaller firms the opportunity to discuss some of these issues informally with senior staff from the Financial Ombudsman Service.

Both conferences feature:

- presentations by an ombudsman and other senior staff
- discussion groups on key mortgage endowment topics
- buffet lunch
- value for money – just £125 + VAT per delegate.

For more information, look on our website *or* email your details to conferences@financial-ombudsman.org.uk

Alternatively, complete this form, ticking the event(s) you are interested in, and return it to us.

Please send information about the *workingtogether* conferences to:

name(s)	<input type="text"/>	office address	<input type="text"/>
firm	<input type="text"/>		
phone	<input type="text"/>		
email	<input type="text"/>		

please tick

<input type="checkbox"/>	9 June	London	British Library
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Please send this form (or a photocopy) to:
 Caroline Wells, Industry Relations Manager
 Financial Ombudsman Service
 South Quay Plaza
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 London E14 9SR

ombudsman service – budget and workload

Q I run a small firm of independent financial advisers. In 25 years of business, only a couple of complaints about my firm have ever been referred to the ombudsman service – and they were both decided in our favour.

I accept – rather reluctantly – that there is a case for having the cost of the ombudsman service met by financial firms. But I'm worried by reports in the press of a huge increase in your caseload. Does this mean that I'll now have to pay even more for a service I hardly ever use?

A We handled a 57% annual increase in the number of new complaints we received in the financial year ending 31 March 2004 – and now expect to receive over 100,000 complaints in the financial year that has just begun. However, the funding arrangements we have in place, and which we and the FSA consult on in January each year, are flexible enough to make sure we always have the appropriate budget to deal with changing volumes of complaint.

Two thirds of our funding comes from the case fees we charge firms for each complaint about them that we receive from their customers. So the increased costs of handling more complaints will be met by collecting an increased number of case fees from the firms against which our customers complain. ♦♦♦

Our research shows that your experience – in seldom having any complaints referred to the ombudsman service – reflects the experience of most small firms. In recognition of this, we've said that we will not charge firms a case fee for the first two complaints against them that are referred to us in any one year.

So for the current financial year, a small firm like yours (with just one or two FSA-*'approved persons'*) will pay the minimum levy of £75 (the same as last year) and you'll pay no case fees at all, as long as we don't have to deal with more than two complaints about your firm during the year.

Our experience from previous years is that:

- 74% of financial firms covered by the ombudsman service do not have any complaints referred to us, so will not pay any ombudsman case fee.
- 21% of firms have no more than two complaints referred to us in the year, so will also not pay any ombudsman case fee.
- Only 5% of firms will actually pay a case fee to the ombudsman – with 68% of case fees coming from the largest firms, which comprise only 0.5% of all financial firms covered by the ombudsman service.

You will find more information about our budget and funding for the year 2004/5 – and about our estimates of the number of cases we expect to receive – by looking at the feedback statement on our *plan & budget 2004/5*, which is on our website at www.financial-ombudsman.org.uk/publications/feedback-pb-2004-5.htm