

## Sample case studies – dismissals under DISP 3.3.4AR (seriously impair the effective operation of the Financial Ombudsman Service )

There are other parties involved

Maria instructed a firm of solicitors to buy an off-plan apartment in a residential development. The solicitors also took out a warranty with insurance, to protect Maria's deposit.

The developer became insolvent before the building was finished. But when Maria tried to claim under her policy for her lost deposit, the insurer voided her policy instead – saying that the solicitors hadn't disclosed key information when they bought the policy. One of the conditions of cover was that Maria would be living in the property when it was built. But the insurer had evidence from her solicitors which suggested she was only investing – and intended to sell the property at a profit before completion. The insurer also questioned the nature of the solicitors' involvement in the deal.

Maria complained to us, with her solicitors acting as her representative. Her solicitors sent us evidence suggesting Maria intended to live at the property. There was a clear evidential inconsistency on a key issue. We thought that the complaint would be better dealt with by a court. A court could take testimony under oath from the various parties involved about what had happened. And a court could compel the solicitors to provide paperwork about the extent of their involvement with the purchases made by Maria and a number of other investors the solicitor was representing. We couldn't do that and dismissed the case .

A dispute between beneficiaries of an estate

After Leon's mother passed away, Leon noticed a number of transactions on her account that he believed were fraudulent. They were all carried out in a different part of the country to where his mother lived, and some were carried out after she died. Leon thought his sister – who was the other executor for his late mother's estate – had made the transactions.

When Leon complained to the bank, they told him the usual security checks had been carried out. So Leon arranged for a solicitor to become sole executor and brought a complaint to us.

We thought this would be more suitable for a court to deal with. The only person who could say how the account should have been managed was Leon's mother, and she'd sadly passed away. And we had no information from Leon's sister – who was being accused of fraud – to help us get to the bottom of what had happened. She wasn't prepared to be part of our investigation and we couldn't compel Leon's sister to provide evidence or cross-examine her. So we didn't think our informal procedures were the way to resolve the complaint.

## Power to obtain key evidence from a third party to a complaint

Emma complained that her insurer wouldn't pay out after her car was stolen. The insurer wasn't happy with what it had been told about the car's use. It was owned by a finance provider and leased to a separate company owned by one of Emma's relatives. But Emma had insured the car for personal use. Emma said that was right, because she'd never worked for the company in question. She provided a letter showing she'd 'bought' the car from her relative by giving him the money to make the lease payments.

The discrepancy needed to be resolved with evidence from the company, explaining how Emma had ended up driving the car and whether the letter Emma had provided was genuine. However, the company wasn't willing to engage with us.

The company's evidence was of key value in establishing the facts of the case. It was possible that proceeding with only part of the evidence might have led to a finding that the company had acted unlawfully, putting it at risk of action by the finance provider. But we weren't able to force the company to respond. We thought it would be better for Emma's dispute with her insurer to be dealt with by a court, who had greater powers to compel third parties to attend and give evidence.

## Who's entitled to the compensation?

Deepak's bank agreed that he'd been mis-sold PPI. It worked out that £2,000 compensation was due, but said that the money should go to reduce the £3,500 Deepak had owed on his defaulted credit card account. The debt had been sold to a third party. Because Deepak had been in an individual voluntary arrangement (IVA), the bank paid the compensation to the IVA supervisor.

Deepak complained, as he felt the money should be paid to him. The courts were considering a similar issue at the time, and we thought Deepak's dispute was better dealt with in that way too. Resolving it rested on the terms of an agreement with a third party, the IVA supervisor, and would have had an impact on Deepak's creditors – none of whom were party to the complaint. So we said it was more appropriate for the respective arguments to be heard by a court.

## Another dispute between beneficiaries of an estate

Mike and his partner lived together. When Mike died intestate his parents were appointed legal representatives for the estate. The proceeds of a life policy formed part

of the estate and, in court action, his partner successfully claimed money from the estate.

Mike's parents said that the insurer should have made sure that the policy was set up in trust. Had that been the case money from the policy would not have been included in the estate and could therefore have been distributed differently.

We thought that this was a dispute between potential beneficiaries of the estate. The court had already decided that a trust was not created and the insurer had properly paid the estate. The court had also allowed Mike's partner's claim on the estate. We could not re-decide those matters. And even if those matters had not been considered by a court it may not have been possible for us to reach a fair conclusion without input from Mike's partner which was unlikely in the circumstances.