

*harder times are affecting how people feel about complaining*

Natalie Ceeney, chief executive and chief ombudsman



# Ombudsman News

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

## tougher times make harder cases

It's pretty daunting reading newspaper headlines at the moment. Whether it's the fact that – in high streets across the UK – up to one in four shops are now empty and boarded up, or that there are now 2.7 million people out of work, the messages make uncomfortable reading.

We're seeing the impact of harder times here at the ombudsman service.

At a time when family finances and job security are under more pressure than ever, the volumes of complaints referred to us by consumers have risen significantly in some key areas.

For example, complaints about debt collection are up 25% on last year. And mortgage complaints are up over 35% – often as more people face problems when they come off cheaper mortgage deals and find their interest payments rising. ▶



Financial Ombudsman Service



scan for previous issues

### in this issue

complaints involving cash ISAs  
**page 3**

*ombudsman focus:* introducing our new chairman, Sir Nicholas Montagu  
**page 10**

investment round-up  
**page 14**

Q&As  
**page 20**



## tougher times make harder cases

▶ But as everyone who deals with debt or money problems knows, harder times are affecting not just the *number* of complaints but also how people *feel* about complaining.

Many consumers are finding themselves in financial difficulty for the first time – and it can be very tough emotionally for some people to admit they're in trouble.

In the letters I see, people are getting a lot more emotional and angry about their case.

After all, if you're worrying where the money for next month's rent or mortgage payment is coming from, the £50 you think has been wrongly charged or unfairly deducted *really* starts to matter.

Of course, at the ombudsman service we're impartial – weighing up the facts and coming to a measured outcome. We don't rush to take sides – and we try not to be distracted by the charged emotions that complaints understandably stir up.

Sometimes we decide cases in favour of consumers, sometimes in favour of businesses. Those we don't agree with won't always like our decisions – and they tell us so in no uncertain words.

So it's true that as life gets tougher, settling disputes gets harder. But this just means that people need us more than ever – to make difficult decisions on complex cases in a difficult, complex world.

**Natalie Ceeney**  
chief executive and  
chief ombudsman

*... at the ombudsman service we're impartial – weighing up the facts and coming to a measured outcome.*

### Financial Ombudsman Service

South Quay Plaza  
183 Marsh Wall  
London E14 9SR

switchboard 020 7964 1000

### consumer helpline

Monday to Friday 8am to 6pm and  
Saturday 9am to 1pm  
0800 023 4567 or 0300 123 9 123

### technical advice desk

020 7964 1400  
Monday to Friday 9am to 5pm

© Financial Ombudsman Service Limited. You can freely reproduce the text, if you quote the source.

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

# complaints involving cash ISAs

*... we will consider whether compensation is appropriate.*

In many of the complaints referred to us involving cash ISAs, the consumer tried to deposit cash into an ISA towards the end of a tax year (5 April) – but the financial business was unable to carry out their instructions in time.

We also sometimes see cases where this happened when the consumer tried to top up their ISA *during* the tax year.

In these cases, the consumer was unable to use their ISA allowance (or part of it) for that particular tax year – and could be disadvantaged as a result. Where we are satisfied that this situation arose because of an error by the financial business, we will consider whether compensation is appropriate.

Our usual approach is to tell the financial business to compensate the consumer for any financial loss they are likely to incur – as well as for any distress and inconvenience that may have been caused.

Our online technical resource, *‘our approach to compensation where a consumer misses their annual ISA allowance because of a business error’* gives more information about this.

The following selection of recent cases includes several instances where the consumer was unhappy that their cash ISA was not set up before the end of a tax year.

We also include complaints where:

- ◆ a bank refuses to accept the transfer of ISA funds into new cash ISA;
- ◆ a consumer loses the tax-free status of her cash-ISA savings when she moves her money to a different provider’s cash ISA; *and*
- ◆ a bank imposes a penalty fee when a consumer transfers the proceeds of a cash ISA to a different provider’s ISA. ▶



*... she had taken the money out of her ISA, so it had lost its tax-free status.*

▶  
case study  
101/1

consumer loses  
tax-free status of cash  
ISA savings when  
moving the money  
to a new cash ISA

Ms J had savings totalling £15,000 in a cash ISA with her bank. Concerned that she was not getting a good enough return on this money, she asked the bank if she could talk to one of its investment advisers.

The bank made an appointment for her but then cancelled it the day before the meeting was due to take place.

The same thing happened on two further occasions. The bank then promised to phone Ms J 'within a couple of days' to arrange another appointment.

She was still waiting to hear from the bank more than two weeks later. By then she had researched a number of different savings options online and had concluded that she could manage without the bank's advice.

She decided to transfer all the money from her existing cash ISA into another provider's cash ISA, offering a better rate.

Ms J thought that opening the new ISA and transferring her money would be a quick and easy online transaction. However, she encountered a number of difficulties.

She then thought it might be easier to transfer the £15,000 out of her ISA and into her current account, before moving the money into her new cash ISA.

Ms J was able to move her ISA savings into her current account without any difficulty. But she was frustrated to find she was not then able to transfer all of it into the new ISA.

When she rang her bank for advice, Ms J was told that she should not have taken the money out of her original ISA and put it in her current account.

She should instead have completed an ISA transfer request form, authorising the bank to transfer her savings directly into her new cash ISA account.

This would have meant she could transfer all the savings she had accumulated in her cash ISA – and the tax-free status of these savings would not have been affected.

As it was, because she had already taken the money out of her ISA, it had lost its tax-free status. So she could now only invest as much in her new ISA as the maximum permitted in that particular tax year. This was considerably less than the £15,000 she had intended to re-invest.

Ms J then complained to her bank. She said the situation would never have arisen if she had not found it so difficult to get an appointment with one of the bank's advisers.

The bank offered to pay Ms J £50 in recognition of these difficulties.

However, it said it was not responsible for the fact that she had transferred her money out of her cash ISA or for the consequences of that decision.

Dissatisfied with this response, Ms J then referred her complaint to us.

**complaint not upheld**

We established that when Ms J had tried to transfer the funds from her existing ISA into the new one, the website had prompted her to look at its online ISA user guide.

This explained very clearly why customers wishing to transfer funds from one ISA to another should ask their ISA provider to arrange the transfer. Customers were warned of the tax implications if they moved their money into a non-ISA account before investing it in their new ISA.

We asked Ms J if she recalled reading this information on the website. She said she was not sure.

We also asked why, even if she had not read it, she had not rung her bank when she first encountered problems transferring her money online. She said she *'just wanted to get it all sorted out quickly'*.

We said we appreciated the difficulties that Ms J had experienced when trying to make an appointment with the bank. We thought it was fair and reasonable for the bank to have offered her £50 for the inconvenience this had caused her.

However, we said the bank was not responsible for her decision to transfer the money from her original ISA to her current account – or for the financial consequences of that decision. We did not uphold the complaint.

## case study 101/2

### consumer complains that bank failed to set up his cash ISA before the end of the tax year

When Mr C unexpectedly inherited £10,000 from a distant cousin he decided to put the money into a cash ISA.

It was already very close to the end of the tax year and Mr C knew there was a limit on the amount he could invest in any one tax year.

He therefore decided to open an ISA account right away and to invest half of his inheritance. He planned to pay in the rest of the money as soon as the new tax year started.

Mr C applied online for a cash ISA provided by a major bank. As he was not a customer of this bank he was asked to send the bank some documents confirming his identity before it could set up the ISA for him.

Three days after that, Mr C called in at a local branch of the bank with his documents. He was told they would be sent through the bank's internal mail system to its ISA processing department, which would then get in touch with him.

Mr C was very disappointed when he found the bank had failed to open his ISA account before the end of the tax year.

He complained that this had caused him considerable inconvenience, as he was not able to invest his money in the way he had intended. He was only able to put half of his inheritance into the ISA and had to place the remainder in an ordinary savings account.

In its response, the bank said that its ISA processing department had received Mr C's identity documents just two working days before the end of the tax year. This did not leave enough time to process his application before the tax year ended.

Mr C then referred his complaint to us. ►

*... the bank said there was not enough time to process his application before tax year ended.*



### complaint upheld

The bank had been entitled to ask Mr C to confirm his identity before it opened the cash ISA. But we noted that the bank had not given him any indication of deadlines, to help ensure the cash ISA could be opened before the end of the tax year.

The transfer of his documents from the bank branch to the ISA processing department took three days. This meant they arrived too late for the bank to deal with them and set up the ISA before the tax year ended.

We accepted Mr C's point that if he had known how long the internal transfer would take, he would have made his own arrangements to get his documents to the processing department more quickly.

We upheld the complaint. We told the bank to pay Mr C the difference between the interest rate he would get on the money he had now put in a savings account, and the amount he *would have got*, if he had been able to invest it in the ISA in the previous tax year.

There was nothing in the circumstances of Mr C's case to make us depart from our established approach, as set out in our online technical resource.

So we said the bank should pay interest calculated on the assumption that Mr C would have kept this money in the cash ISA for five years. In addition, we told the bank to pay Mr C £100 for the inconvenience it had caused him.

### case study 101/3

#### consumer complains that bank refused to deal with cash ISA application that arrived after the deadline

Mrs B decided to apply for her bank's fixed-rate cash ISA after picking up a leaflet about it in her local bank branch. She completed her application form and, because there was a time limit for applications, she posted it to the bank using next-day recorded delivery.

Over three weeks later she had still not received any acknowledgment of her application, so she wrote to the bank to check what was happening.

In its reply, the bank told her it had been unable to process her application because it had arrived the day *after* the deadline.

Mrs B then complained to the bank that it had treated her unfairly. She said there was '*no excuse*' for its failure to open the ISA, as she had taken care to ensure her application '*arrived promptly*'.

She also said that the bank had provided '*very poor service*' in failing to contact her at all until she had written to ask what was happening.

*... the bank said it was unable to open an ISA for her because she had missed the deadline.*

## ... the terms and conditions did not allow the transfer of funds from an existing ISA.

The bank apologised for its delay in letting her know that her application had been unsuccessful. However, it again told her that it was unable to open an ISA for her because she had missed the deadline.

It also explained that it was not accepting any further applications for the ISA in question.

Mrs B then referred her complaint to us.

### complaint upheld in part

The bank sent us a copy of its leaflet about the ISA. This stated very clearly the final date by which applications had to have *arrived* at its ISA processing centre. This was the date on which Mrs B had *posted* her application.

We were satisfied from the evidence that the bank had handled Mrs B's application promptly and in line with its normal procedures.

So we explained to her that, since her application had arrived after the deadline, the bank had been entitled to reject it.

However, we agreed with Mrs B that the bank should have acted promptly to let her know that it could not accept her application.

Interest rates had been falling during the period in question and the bank's delay meant that she had lost a small amount of interest on her money.

We told the bank to pay her £50, which would cover this loss and compensate her for the inconvenience it had caused her.

### case study 101/4

#### consumer complains about bank's refusal to accept transfer of ISA funds into a new cash ISA

Several years after Mrs M started investing in a cash ISA with her bank, she noticed the bank was offering a cash ISA with a better interest rate. She asked the bank to open one of these new ISAs for her and to transfer her existing ISA savings into it.

She was surprised to be told that this would not be possible. The bank said the terms and conditions of the new ISA did not allow the transfer of funds from an existing ISA.

Mrs M then wrote to the bank's head office. She said the bank was treating her unfairly, as she was now *'stuck in a lapsed account offering a poor deal'*. She also pointed out that other banks allowed customers to transfer existing ISA funds into newer accounts.

In its reply, the bank told Mrs M that it had designed the newer ISA to attract savers who were not currently making use of their ISA allowance. The bank said that while it valued existing customers, it also wanted to attract new ones.

It did not agree with Mrs M that her existing ISA was a *'lapsed'* account or that she was *'trapped'* in it.

The bank also noted that it was a *'legitimate commercial decision'* for banks to target specific types of customers when introducing new accounts or special offers, such as advantageous interest rates.

Unhappy with this response, Mrs M referred her complaint to us.

### complaint not upheld

We noted that in its brochure describing the new ISA – as well as in the detailed terms and conditions – the bank stated clearly that *'transfers of funds from an existing ISA are not permitted unless forming part of your annual ISA subscription allowance'*. ▶

... she said the bank ‘had a responsibility’ to check she understood what she was signing.



We did not consider that the bank was obliged to allow Mrs M to transfer her existing ISA to the new account – or that the bank was breaking any rules by refusing to do so.

We told Mrs M that it was for the bank to decide the terms on which it was prepared to offer accounts to its customers.

We also pointed out that she was not ‘trapped’ in her ISA. She was free to withdraw her money at any time, or to move it to any other ISA that accepted transfers. We did not uphold the complaint.

## case study 101/5

### complaint about bank’s imposition of a penalty fee when consumer transferred proceeds of her cash ISA

Just under a year after Mrs A took out a cash ISA she noticed that a different bank was offering a better interest rate. She called in at a branch of her bank and completed a transfer form, instructing the bank to move her savings to the new ISA.

After the bank had carried out the transfer, Mrs A was very surprised to find she had been charged a ‘penalty fee’ of £246.

When she queried this, the bank told her the fee was payable because she had transferred her money out of the ISA before the end of its initial twelve-month fixed-rate period.

Mrs A complained that this was unfair and she blamed the bank for carrying out the transfer ‘too quickly’.

She said that as she had completed the form just a couple of weeks before the end of the fixed-rate period, she had ‘naturally assumed’ that her money would not be moved until the end of that period.

The bank rejected her complaint. It pointed out that the transfer form gave the bank clear instructions to ‘proceed immediately with the transfer’.

The form also contained a declaration that she would ‘bear any consequential penalty which may be applied’.

Mrs A accepted that she had signed the form. However, she said the bank ‘had a responsibility’ to check she understood what she was signing.

When the bank refused to reconsider the outcome of her complaint, Mrs A referred it to us.

### complaint not upheld

After examining all the evidence, we concluded that the bank had processed the transfer correctly and had been entitled to charge the penalty fee.

The terms and conditions for the cash ISA set out very clearly the circumstances in which a penalty would be payable. Mrs A had signed the transfer form, giving the bank clear instructions to make the transfer immediately.

And Mrs A had confirmed to us that she had not been rushed into signing the form. She had been offered a seat in a quiet corner of the branch, where she was left to read through the form before completing it.

We considered that she should have been aware, from the wording on the form, that a penalty might be applied. So she had the opportunity to enquire about the penalty before proceeding. She could then have instructed the bank not to make the transfer until the end of the fixed-rate period.

We explained to Mrs A that, in the circumstances, we did not accept that the bank had any obligation either to check that she had understood the form – or to inform her about the penalty, before proceeding with the transfer. We did not uphold the complaint.

## case study 101/6

### complaint about administrative problems when paying into a cash ISA

Just after the start of a new tax year, Mr T asked his bank to transfer £1,000 from his current account into the cash ISA he had opened several years earlier.

A few weeks later, Mr T discovered that the bank had not carried out his request. When he rang the bank's helpline he was very surprised to be told there was no record of his ever having asked for the transfer of funds.

He asked to speak to a more senior member of staff but was told that no one was available. He therefore asked that someone should ring him back as soon as possible.

The following day he got a call telling him that his transfer request had been traced but that the bank had never carried out the transaction. The member of staff who called him was unable *either* to explain why the money had not been transferred *or* to confirm that this would now happen.

Mr T then wrote a letter of complaint to the bank. In its reply, the bank apologised for the fact that its helpline had not dealt with his enquiry as well as it should have done.

The bank said that because Mr T had not paid anything into his ISA during the previous tax year, the rules of HM Revenue and Customs (HMRC) required him to make a new cash ISA application.

The bank said that when Mr T had requested the transfer of funds it had written to him to explain this. It had also sent him an application form to complete and return. He appeared never to have returned the form, so the bank had not been able to transfer his money.

Mr T was adamant that the bank had never written to him or sent him a form. He also remained unhappy about the way in which the helpline had handled his enquiry. He therefore referred the complaint to us.

#### complaint upheld in part

We noted that by the time Mr T referred his complaint to us, the bank had sent him a copy of its earlier letter and another application form. It had subsequently dealt efficiently with his application, transferring £1,000 from his current account into the ISA.

After reviewing all the evidence, we were satisfied that the bank had acted correctly when it first received Mr T's request to transfer funds to his ISA.

It had written to him promptly, sending him a form and explaining what he needed to do before he could start using his ISA again.

Mr T was certain he had never received this letter, so we could only conclude that it had gone astray in the post.

It was clear, however, that the bank had not handled Mr T's subsequent phone enquiries well and had given him confusing and inaccurate information, causing further delay.

We told the bank to pay Mr T £75 compensation, in recognition of the inconvenience it had caused him and to cover any lost interest.

*... the bank had acted correctly when it received his request to transfer funds to his ISA.*



# ombudsman focus: introducing our new chairman, Sir Nicholas Montagu

Sir Nicholas Montagu joined as the new chairman of the Financial Ombudsman Service in February 2012 – succeeding Sir Christopher Kelly, who stepped down after ten years on the board.

*ombudsman focus* catches up with Sir Nicholas to ask his views on customer service, financial services jargon, the challenges ahead – and how he'll be following his predecessor's parting advice.

**what did you know about the Financial Ombudsman Service before you joined?**

I already knew broadly about the role of the ombudsman service – helping people with their difficulties with financial institutions. I was previously the chairman at the board of the Inland Revenue, where we had a Revenue Adjudicator doing something similar.

I knew from the Revenue Adjudicator's work how important it is to have someone independent and accessible handling complaints in an area that can often seem complex and confusing.

**what was it about the job advert for our new chairman that attracted your attention?**

I like organisations that deal simply and clearly with sorting out what are often really worrying problems for customers. The way outcomes are explained is very important – whether or not they're favourable to the parties involved in the dispute.

**do chairmen have to have job interviews?**

Absolutely. My application was filtered through the recruitment process. Then I was invited to an informal meeting with Sir Christopher Kelly, the previous chairman, and Natalie Ceeney, the chief ombudsman. I think this was to see whether she and I felt we'd be able to get on with each other, if I was appointed to the job! Finally, I had a formal interview with a three-person panel questioning me.



Financial  
Ombudsman  
Service

**who officially appointed you as chairman – and who do you report to?**

The formal appointment was made by the Financial Services Authority (FSA) – as required under the *Financial Services and Markets Act*. This also required the approval of HM Treasury.

As part of our formal framework of accountability, twice a year I'll be going with the chief ombudsman to meetings of the FSA's board – to talk about our work and to answer their questions. We also report formally through our annual *plan and budget*, our *directors' report* and our *annual review*.

I also have very real accountability in relation to the board of the Financial Ombudsman Service, whose members are the non-executive directors. I'll want to be sure that as part of the board's appraisal process – involving self-appraisals – I'll be appraised in my own role as chairman.

**the job of chairman of the ombudsman service is described as 'non-executive'. What does this mean in practice – and will this be a change for you?**

It means I'll be leaving Natalie Ceeney and the executive team to run the service on a day-to-day basis. I'll be available to support them, being a 'critical friend' for them to bounce ideas off.

More formally, being the non-executive chairman also means ensuring there's a robust process for challenging the executive team constructively – and holding them to account. And, of course, chairing the ombudsman service means a real involvement in setting the strategic direction for our plans.

I also see the role of the chairman as important at a representative level – for example, in maintaining strong relationships with stakeholder organisations.

But no, none of this will be a huge change for me. Since I retired as chairman at the Revenue, all the things I've done have been on a non-executive basis.

**what kind of knowledge do you already have of retail financial services – do you know your APRs from your OEICs?**

I'm not going to fall into the acronym trap! And I don't like acronyms and jargon, because they so often exclude rather than inform – and that in itself can cause problems that lead to complaints.

But more generally – yes, of course, I've got a lot to learn, which is why I've been going through a hefty induction over the last few months. Helpfully, my experience in establishing and chairing the Aviva With-Profits Committee – and as a board member of a couple of pension companies – has given me a broad grounding in the kind of things we deal with at the ombudsman service.

And a lot of our cases are quite similar in some ways to the social security or tax disputes that I saw in government.

**in the press release announcing your appointment, Lord Turner, the FSA chairman, described you as a 'customer-service champion'. Why do you think that's important?**

It's important because we want to be recognised and trusted as the place where consumers and financial businesses alike can get a fair and impartial review of their case if they can't sort things out between themselves – whether or not the eventual outcome is in their favour. ▶

*... I like organisations that deal simply and clearly with what are often really worrying problems for customers.*



**customer service may not be what most people immediately think of, if you ask about their experience of paying tax! What change did you oversee, when you were chairman of the Inland Revenue, that you think made the biggest difference to customers?**

One of the things I'm proudest of is getting the Revenue away from the idea that it was Revenue civil servants who 'owned' the tax system – and to start seeing taxpayers and tax-credit claimants as *customers*.

We recognised that we needed people to see themselves as customers – to help them make their affairs as easy to understand and resolve as possible.

Introducing customer contact centres and making sure we led the way in government 'e-services' helped a lot with this. I'm also proud of making the Revenue a leading organisation in the public sector in terms of diversity – a particular passion of mine.

**do you think consumers and businesses alike should have the same level of customer service?**

Of course. Settling for less than the best service you can give is an admission of failure.

**what's the best customer service you've ever experienced personally?**

It was the superb service provided by the insurance company that handled my travel insurance claim for disruption caused by volcanic ash.

**... and the worst?**

A nightmarish hotel in Yorkshire – with unspeakable food and poor accommodation. When I checked out, the receptionist asked if I'd enjoyed my stay. I said I hadn't and explained why – but she clearly didn't listen because she simply said, *'Well, hope to see you again soon.'*

**did you complain about that poor experience?**

There was no point after that. I just said *'I think that's most unlikely'* and left.

*... Settling for less than the best service you can give is an admission of failure.*

**what are your top tips for getting a complaint taken seriously?**

Think about the heart of what you're complaining about, state it at the outset and then support it with relevant facts. When you're steamed up, it's tempting to throw everything into your complaint bar the kitchen sink – but don't.

**have we become a nation of complainers?**

No. But we've become a nation that's moved away from old-style deference to big institutions towards the expectation that we're entitled to decent service. And I think that's healthy.

**what do you think will be the biggest challenges for financial businesses in the year ahead?**

Given the economic environment, financial pressures on businesses are undoubtedly going to be considerable. The challenge will be to make sure that the urgent pressures of the moment don't knock other priorities off course.

And for businesses, it's obvious that treating people fairly has to come right up there at the top of the list of priorities.

**what are you most looking forward to as chairman of the Financial Ombudsman Service?**

Working with committed people at all levels in the organisation.

**... and what do you think the most difficult part of your job will be?**

Identifying the areas where the board collectively – and I personally – can add most value – and making sure we concentrate on those areas.

**what would you like to have achieved in your first year as chairman?**

I'll want to have a deep understanding of the ombudsman service and its future direction – and a real feel for how we should take that vision and direction forward. I'll also want our strong relationship with our wide range of external stakeholders to continue.

But it's really important for me, as well, that I can get to know colleagues right across the ombudsman service – and be open and accessible for them. I want people to feel they can tell me what they think – and I'm always open to new ideas.

**and finally – your predecessor, Sir Christopher Kelly, gave three words of advice for the incoming chairman – 'question, probe, challenge'. How will you be doing that?**

I'll be asking lots of questions as I get to know my way around. I'm never worried about looking stupid – and I've often found that it's the 'stupid' questions that turn out to be the most challenging ones!

In board meetings I'll want to make sure that the non-executive directors and I use each other's talents to the full – in challenging the executive team and each other. When you're all pursuing the same goals, there's no threat in that – and it makes for solutions that stick and that the executive and non-executive team are all happy with.

.....

# investment round-up

Overall, the number of investment-related complaints referred to us is continuing to decline, partly no doubt because market conditions have not been as subdued as anticipated.

And, encouragingly, we are seeing evidence of improved complaints-handling on the part of some investment businesses – which is also resulting in fewer complaints being referred to us.

The cases we *do* see include a significant number where consumers complain that they have invested in products carrying greater levels of risk than they had anticipated – and that the underlying investments failed to match the descriptions they were given.

In some instances we have found that highly unsuitable products have been sold to elderly and inexperienced investors. We are talking individually with businesses – and, where appropriate, with the regulator – where this appears to have happened.

A small but steady stream of the investment complaints reaching us involves pensions and portfolio management. Many of these complaints also relate to the degree of risk involved – where market volatility has given rise to unexpected losses.

Disagreements between consumers and businesses about what investments should make up a ‘high’, ‘balanced’, ‘low’ or ‘no risk’ portfolio form a significant part of our casework.

This selection of recent case studies illustrates some of the wide range of investment complaints referred to us. They include:

- ◆ allegations of inappropriate advice, involving the sale of bonds designed for relatively long-term investment;
- ◆ a complaint about the delay in transferring a consumer’s personal pension fund to an annuity provider;
- ◆ a case where an inexperienced investor was advised to put her inheritance in an investment ISA;

◆ a complaint from an investor who said he lost out because his stock broker failed to carry out his instructions correctly; *and*

◆ a case where a consumer claimed he had been given misleading information about an investment he made after reading a newspaper advertisement.



## case study 101/7

### consumer close to retirement advised to put savings in an investment bond

When Mr H retired, at the age of 64, he contacted his bank in order to withdraw the funds it had advised him to put in an investment bond two years earlier.

He had invested just under £100,000 and he later told us he had been *'distraught'* to find the amount he got back was less than this.

He wrote to the bank to complain that he had lost out because of its poor advice. He also queried why he had been obliged to pay a *'significant charge'* for withdrawing his money.

In response, the bank sent him what he considered a *'superficial and dismissive reply'*, telling him that the investment had been *'suitable'* for his needs and that the charges were *'in accordance with the normal tariff'*. Mr H then referred his complaint to us.

### complaint upheld

Mr H told us he had not been actively seeking investment advice. He had been in a branch of his bank one day, paying some bills, when the cashier suggested that he should see one of the bank's financial advisers.

The cashier had noted that he had a balance of £100,000 in a high-interest savings account. She told him an adviser would help ensure this money *'worked harder'* for him.

At that time, Mr H was 62 years old. He had no dependants and was still working full-time. He said he had made it clear to the adviser that he wanted his money *'kept safe'* and that he would need easy access to it as soon as he stopped working. He was planning to retire *'within the next year or so'* but had not yet got a definite date in mind.

We were satisfied, from the evidence, that the bank had given Mr H unsuitable investment advice. He was an inexperienced investor and, until he had been advised to invest in the bond, had only ever kept his money in bank and building society savings accounts.

The amount he had invested in the bond comprised virtually all his savings and the adviser had clearly been aware that Mr H would need this money as soon as he retired.

The bank attempted to justify its advice by stressing that the funds in which the bond invested *'did not present a particularly high level of risk'*.

We accepted that this was the case. However, we pointed out that the bond still presented *some* risk of capital loss and was designed for relatively long-term investment.

We also noted that, in the circumstances, it had been inappropriate to place all of Mr H's capital in a single investment.

We upheld the complaint. We took the view that Mr H would have left the money in the high-interest savings account, if the bank had not advised him otherwise.

We told the bank to pay Mr H the difference between the amount he had invested in the bond and the amount he eventually got back. We said the bank should also pay Mr H the same amount of interest he would have received if he had left the money in his savings account.

*... We were satisfied, from the evidence, that the bank had given unsuitable investment advice.*

... we concluded that the product provider had not misinformed him.

▶  
case study  
101/8

consumer's executor complains that consumer was mis-sold a five-year bond

Mrs N was executor for her late uncle, Mr D. While she was going through his finances she found he had invested £50,000 in a five-year bond.

This had matured shortly before Mr D's death, paying him the same amount of capital he had invested, together with £139 in interest.

The paperwork relating to the investment stated that no withdrawals were permitted until the end of the bond's five-year term. Interest was then *'calculated by reference to movements in the stock market'*.

Mrs N was concerned that the bond had not been a suitable investment for her late uncle. She contacted the investment provider to complain about it, pointing out that Mr D had been 80 years of age at the time he invested in the bond.

She said that by then he had *'already become frail and vulnerable'*. She added that he *'had only his state pension left to live on'* and *'had never been at all knowledgeable about financial matters'*.

The investment provider did not accept that Mrs N had any grounds for complaint. It told her the bond *'guaranteed'* that the capital sum would be returned in full at the end of the term – and this had happened.

The investment provider said Mr D had sought advice on an investment that could produce a better return than he would obtain from a savings account.

It said he had been *'fully apprised of the nature of the recommended investment'*. He had known he would not have access to his funds for five years, and had said that he had no future plans for the money.

Mrs N was unhappy with this response and she referred the complaint to us.

complaint not upheld

We looked at the investment provider's records regarding Mr D's investment. It was clear from the *'fact find'*, completed when Mr D first contacted the provider, that he had stressed he was an experienced investor.

He had not wanted to leave all his money in savings accounts, paying low rates of interest.

Mrs N had suggested that the £50,000 her late uncle invested in the bond was virtually all the money he had – other than his pension. However, we established that at the time he made this investment, Mr D also had around £10,000 in a building society savings account.

He also had over £75,000 in a range of investments that were all due to mature at regular intervals over the following three years.

We explained to Mrs N that, in many instances, it might well be inappropriate to recommend a five-year investment for an elderly consumer.

However, much would depend on the requirements and circumstances of the individual consumer.

We said that in this specific case, the investment provider had not been wrong to recommend the bond to Mr D. We did not uphold the complaint.

## case study 101/9

### consumer says he was misled about nature of an investment he made on an ‘non-advised’ basis

Mr A invested £8,000 in a five-year investment plan that was advertised in his daily newspaper.

After reading that the plan offered ‘*extra income*’ he had sent off for more details. And shortly after receiving a product brochure and ‘key features’ document, he had completed and returned the application form, together with his cheque.

Five years later, when the plan matured, he complained to the product provider. The value of his investment had fallen significantly and he said he would never have invested if he had known this might happen.

The product provider sent him a robust reply, denying that it had misled him in any way. It insisted that it had ‘*fully outlined the potential risks – as well as the potential rewards*’. Mr A then referred his complaint to us.

### complaint not upheld

The evidence confirmed that Mr A had not received any investment advice and had invested on a so-called ‘*non-advised*’ basis. He had chosen to invest on the basis of information sent to him by the product provider, after he had responded to its advertisement in a national newspaper.

This information, consisting of an introductory letter, a product brochure and a ‘key features’ document, included a clear description of the plan. The description stated that the plan offered a capital return linked to an international stock market index.

The risks were set out clearly and prominently – and the illustrations of projected returns included a scenario where the stock market had fallen. The introductory letter told Mr A that he should seek investment advice if he had any doubts about the suitability of the plan for his own circumstances.

We concluded that the product provider had given Mr A clear, complete and accurate information about the investment plan and had not misinformed or misled him. We did not uphold the complaint.

## case study 101/10

### complaint about delay by personal pension provider in transferring consumer’s pension fund to annuity provider

Mrs G was close to retirement, when she would need to convert her personal pension fund into an annuity. This would then provide her with a series of regular pension payments for the rest of her life.

She had been contributing for some years to a personal pension scheme run by provider A. But after comparing its annuity rate with those available elsewhere, she found she would get better value from a different provider. She therefore asked to transfer her funds to provider B.

Two months later, not having received any confirmation that the transfer had taken place, she rang provider B to check that everything was in order. Provider B said it knew nothing about the transfer.

Mrs G then contacted provider A. She was concerned to be told it had no record of her ever having requested a transfer.

She had not kept a copy of the authorisation form it had asked her to sign and return. But she *was* able to say exactly when she had received the form – and when she had posted it back. She also remembered the date when she had first phoned to discuss the transfer, and she had kept a note of the member of staff she had spoken to.

Despite all this, the provider still said it had no record of her request.

She later told us that ‘*insult was added to injury*’ when a member of staff spoke to her in what she considered an ‘*inexcusably patronising manner*’, calling her ‘*dear*’ and suggesting she might have ‘*got confused*’ and ‘*been mistaken*’ about asking for a transfer.

Mrs G had to make three further phone calls to provider A before she was finally able to establish that it *had* received her request. She was not given any explanation for the failure to make a proper record of her request – or to deal with it. ►

... the pension provider had caused her a considerable amount of concern and inconvenience.



It took another two months and several further phone calls by Mrs G before the transfer was finally completed.

She then complained to provider A about the poor service she had received. It apologised and offered to pay her £25. Mrs G thought this offer was 'inadequate, in the circumstances' and she referred her complaint to us.

#### complaint upheld

We noted that the transfer value of Mrs G's pension had increased slightly in the period between her first requesting the transfer and the date when it finally took place. So she had not suffered any financial loss as a result of the delay.

However, we were satisfied from the evidence that provider A's administrative failures had caused Mrs G a considerable amount of concern and inconvenience.

We upheld the complaint and told provider A to increase its offer of compensation to £175. We told Mrs G we thought this reasonable, in the circumstances, and she was happy to accept it.

## case study 101/11

### complaint that stock broking business failed to carry out instructions correctly

Mr V complained that he had lost a significant amount of money because a stock broking business made a mistake in carrying out his instructions.

He was a regular client of the business and said he had phoned it with an instruction to buy '£5,000-worth' of shares in a particular company.

He was making this investment on an 'execution-only' basis, meaning that he had not received any advice. He simply required the business to obtain the shares for him.

In the days immediately following Mr V's purchase, the price of these shares fell dramatically. He later told us he decided to 'cut his losses' by getting rid of the shares before the price dropped even further.

However, after instructing the business to sell them he found that instead of buying £5,000-worth of shares for him, it had bought 5,000 shares.

This meant that when the shares were sold, he lost significantly more money than he had expected.

Mr V referred his complaint to us when the business denied having made any mistake in carrying out his instructions.

#### complaint upheld

We asked the business to send us its recording of the phone call in which Mr V had instructed it to buy the shares.

We noted that his exact words had been 'buy 5,000'. He had not specified whether he meant 5,000 shares or £5,000-worth of shares.

Normally, those engaging in such transactions would assume that an instruction to 'buy 5,000' referred to the *number* of shares to be bought, rather than to the *value* of the shares.

We put this to Mr V. He told us he had carried out a number of transactions with this particular business and had always expressed his instructions in the same way. He had never been told this was incorrect and his instructions had never before been 'misinterpreted'.

We established that until the transaction in question, Mr V had always spoken to the same member of staff. However, she had been away from the office when the disputed transaction had taken place.

The member of staff who took his call that day had only been with the business for a few months and had never spoken to Mr V before.

We told the business that in these circumstances, as a matter of good practice, the staff member should not have processed the transaction without first checking to confirm Mr V's exact requirements. Instead, the member of staff had made an assumption which proved to be incorrect.

We upheld the complaint. We told the business to pay Mr V the difference between his actual loss and the amount he *would have* lost, if the business had bought the correct number of shares for him. We said the business should also pay interest on this sum.

## case study 101/12

### consumer complains she was wrongly advised to put money into an investment ISA

Mrs K, who worked part-time on the checkout in a large supermarket, contacted an independent financial adviser (IFA) after she unexpectedly inherited £5,000 on the death of an elderly aunt.

Acting on the IFA's advice, Mrs K put this money into a medium-risk investment ISA. However, when she decided to withdraw her money, five years later, she was concerned to find that its value had fallen significantly.

She complained to the adviser, saying she would never have taken his advice if she had known she might get back less than she had invested.

When the adviser rejected her complaint, Mrs K contacted us.

### complaint not upheld

Mrs K told us that the adviser had '*gone into great detail*' about the tax advantages of ISAs. However, she could not recall his ever having said there were any risks.

The adviser sent us several documents relating to the advice he had given Mrs K.

As well as the 'fact find' that he had completed during their first meeting, these included notes of his subsequent phone conversation with Mrs K and a copy of a letter he had sent her.

The letter outlined the main points they had discussed and gave his reasons for recommending the investment ISA.

We accepted that Mrs K might not have remembered being told that the recommended investment carried any degree of risk.

However, we were satisfied, from the evidence, that the adviser *had* explained the advantages and disadvantages of this particular investment, setting out the risks very clearly.

The 'fact find' showed that although Mrs K had a relatively low income and few savings, she had regarded her £5,000 inheritance as a '*windfall*'.

She had told the adviser she was happy to '*gamble on the chance of getting a modest return*' by investing it.

We concluded that Mrs K had received appropriate advice, in keeping with her requirements and her attitude to risk at the time. We did not uphold the complaint.



Printed on Challenger Offset paper made from ECF (Elemental Chlorine-Free) wood pulps, acquired from sustainable forest reserves.

100% of the inks used in *Ombudsman News* are vegetable-oil based, 95% of press chemicals are recycled for further use, and on average 99% of waste associated with this publication is recycled.

# Q? &A

featuring questions that businesses and advice workers have raised recently with the ombudsman's technical advice desk – our free, expert service for professional complaints-handlers

## question

**a consumer recently came to our advice centre with problems about her car finance and associated 'gap' insurance. I'd not heard about this kind of insurance before. Is it covered by the ombudsman?**

## answer

Guaranteed Asset Protection ('GAP') insurance was originally sold to cover any shortfall – or 'gap' – between:

- ◆ the amount paid out by a motor insurance policy if the vehicle was written off; and
- ◆ the amount still to be repaid on the finance that was taken out to buy the vehicle in the first place.

There are now other types of GAP cover available on the market. These include 'new car GAP insurance', which is specifically based on the price of a new vehicle, of the same model and specification, at the time of the claim – less the amount the motor insurer pays out.

Last year we received 200 or so complaints involving GAP insurance – and we upheld around half in favour of the consumer.

In these cases, the consumers generally complained to us that a GAP policy had been wrongly sold to them – or that the cover was not correctly described.

People also complain that the amount the insurer paid out was not enough to pay off *all* the outstanding finance – or that they cancelled their policy but the insurer would not refund any of the premiums.

And as with all insurance disputes, we continue to see cases about claims being rejected – and delays in paying out claims.

We have recently added information about our general approach to GAP insurance complaints on our online technical resource – available in the publications section of our website.

## question

**why do you use the ugly acronym 'FOS' – which is meaningless to most consumers?**

## answer

We don't. We say Financial Ombudsman Service in full – or just 'the ombudsman'. People who work in financial services sometimes refer to us as 'FOS' – as a form of shorthand.

Shorthand is fine if you and the people you're using it with all understand it. But otherwise, we agree that it's meaningless.

People in financial services use a lot of abbreviations and acronyms. Sadly, it's often this kind of shorthand and jargon that leads to the communication problems underlying many of the disputes referred to us.

Our research shows that around 75% of adults in the UK know about the Financial Ombudsman Service – and recognise who we are and what we do.

Only a very much smaller number of people recognise the acronym 'FOS' – and in recent research, consumers responded very negatively to this acronym – so we prefer not to use it.



Financial  
Ombudsman  
Service