ombudsman news

from the **investment** division

Financial Ombudsman Service

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in this issue

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welcome to ombudsman news

by **Walter Merricks**
chief ombudsman
financial ombudsman service

I am very pleased to welcome you to *ombudsman news*, which this month brings you news from our investment division, headed by principal ombudsman, Jane Whittles. *ombudsman news* is aimed primarily at firms and professionals working in the relevant areas of financial services, and at consumer advice agencies, but it may also be of more general interest. It will focus each month on news from one of our three main divisions:

- investment;
- insurance; and
- banking and loans.

If you're not already aware of the range of services we offer to firms and professional advisers, do take a look at the section *how we can help*, on the back cover. I would draw your attention, in particular, to the help we can provide if you need to know more about the new single set of ombudsman rules, under which we are to operate. The rules are now available, even though we do not yet know from HM Treasury the exact date when they will come into effect. We will be happy to answer your questions about them and how they will affect your firm.

We hope *ombudsman news* will prove a helpful source of information about our activities and that it will assist firms in their own complaint-handling. We welcome your comments.

about this issue of ombudsman news

by **Jane Whittles**
principal ombudsman
investment division

Every three months, *ombudsman news* will focus on the work of the investment division. The publication builds on, and replaces, the quarterly bulletins previously published by the Personal Investment Authority Ombudsman Bureau and covers the work of all three schemes in the investment division. These schemes are:

- the Personal Investment Authority (PIA) Ombudsman Bureau;
- the Office of the Investment Ombudsman (which deals with complaints about firms regulated by IMRO – the Investment Management Regulatory Organisation); and
- the SFA Complaints Bureau (which covers complaints about firms regulated by the SFA – Securities and Futures Authority).

Over the past year, these three schemes have received 17,000 new cases and handled well over 60,000 telephone enquiries. There has been a steady increase in our workload, resulting in an average of 2,500 new complaints now reaching us each month. We have been recruiting a number of additional adjudicators to help ensure we can deal with this increase.

In this issue we concentrate mainly on mortgage endowments, which now account for approximately 50% of the complaints reaching the investment division.

In this issue we concentrate mainly on mortgage endowments, which now account for approximately 50% of the complaints reaching this division. We provide case studies showing some of the more typical mortgage endowment complaints that we receive. We also provide a few case studies illustrating the wide variety of complaints we deal with on other topics. The case studies are not intended as any form of definitive guidance, but we hope they will be useful in showing our general approach.

In addition, we:

- highlight a forthcoming test case concerning the pension review and windfalls
- include news of some important changes to the PIA Ombudsman Bureau's terms of reference, particularly concerning the pensions review;
- clarify the position concerning time limits for cases referred to the PIA Ombudsman Bureau; and
- outline our preliminary thoughts on the impact on our work of the Human Rights Act.

Together with the investment division ombudsmen, Ron Bennett, Richard Prior, Philip Roberts and Chris Tilson and all the staff of the division, I hope you will find *ombudsman news* interesting and informative. We welcome your comments and suggestions.

1 mortgage endowments

... compensation is likely to be due only where the endowment policy was wrongly sold and there has been a loss as a result.

As we have already noted, mortgage endowments currently account for approximately 50% of all new complaints reaching the investment division of the Financial Ombudsman Service. The number has risen sharply, from 3,133 new cases in the period 1 April to 30 September 2000, to 5,110 in the last five months. These cases vary considerably in detail. However, in a very large number of the complaints we upheld, the endowment was an inappropriate product, bearing in mind the customer's attitude to risk.

In October 2000 we issued a briefing note for firms. This outlined how we had been dealing with mortgage endowment complaints to date and explained our approach. Our aim was to enable firms to handle these complaints with greater confidence and consistency. We stressed that compensation is likely to be due only where the endowment policy was wrongly sold at the time and there has been a loss as a result.

Our note was followed in November 2000 by the Financial Services Authority's Consultation Paper on endowment mortgage complaints, CP75. This set out the guidance the Financial Services Authority (FSA) proposes to issue, helping firms to determine whether customers suffered financial loss and to quantify the loss, where there was one.

Firms will be reviewing their procedures in the light of this consultation paper, and we are developing our working methods, in the the light of the anticipated regulatory guidance, to deal with the large number of complaints we have received.

We are keen to give firms whatever assistance we can. We plan to publish the identification of common issues, decision trees and the guidance on appropriate redress that we will be using. We also plan to provide training based on this information. More details will be available on our website (www.financial-ombudsman.org.uk) after the FSA has issued its regulatory guidance.

... we are keen to give firms whatever assistance we can.

… the adviser simply failed to consider whether the policyholder could afford the policy and mortgage payments after retirement.

case studies – mortgage endowment policies

Most of the mortgage endowment complaints we receive raise one or both of the following issues:

- suitability of the policy for the customer's circumstances – with particular emphasis on their attitude to risk; and
- customers' allegations that they were guaranteed their endowment policy would produce sufficient funds to repay the loan.

In addition, we receive a number of complaints from individuals whose policies continue after their retirement dates. Some policyholders were led to believe this was immaterial, since the value of their policy would be sufficient by the time they retired to let them pay off their mortgage at that point. In other cases, the adviser simply failed to consider whether the policyholder could afford the policy and mortgage payments after retirement.

The following cases studies illustrate some of the mortgage endowment complaints we have dealt with and the approach we have taken.

- **In this case, the customers were entitled to redress. Their endowment mortgage was unsuitable, given their attitude to risk, and they suffered a loss as a result of having the endowment rather than a capital repayment mortgage.**

02/01
Mr & Mrs R had a capital repayment mortgage for 12 years before they decided to move house in 1992. Initially, they were wary of changing to a different type of mortgage, when the life company representative suggested it. However, they were assured that an endowment mortgage would be cheaper for them. Moreover, the representative said that when the endowment policy matured, it was guaranteed to repay their mortgage.

These were important considerations, not least because Mr R was facing the possibility of redundancy at the time, so they agreed to the change.

In August 2000, the life company sent Mr & Mrs R a 're-projection' letter showing a projected shortfall when the policy matured. This prompted Mr & Mrs R to complain about the advice they were given and about the suitability of the unit-linked endowment policy.

We upheld their complaint on the basis that the policy was not compatible with their attitude to risk. The literature they were

... they would not willingly have taken a risk that the policy might not fully repay their mortgage.

given at the time did point out that the policy's maturity value was not guaranteed and would depend on investment performance over the policy term. However, we decided that in the circumstances of this case, this risk warning did not transform an unsuitable sale into a suitable one.

When looking at the question of redress, we found that if Mr and Mrs R had chosen a capital repayment mortgage, they would have repaid £3,440 more, to date, than the amount they would get if they cashed in the endowment policy. And comparing their mortgage outgoings, we found the endowment mortgage was £1,700 more expensive than an equivalent capital repayment mortgage over the same period. So the redress payable to them was the total of these two figures, plus the £125 administration fee they needed to pay to switch to a repayment mortgage. This all added up to £5,265.

In addition, we awarded £200 for distress and inconvenience, since Mr and Mrs R were by now in their early fifties and had suffered a certain degree of distress after learning of the potential shortfall.

... we decided that this risk warning did not transform an unsuitable sale into a suitable one.

In the following two cases, the customers had suffered no loss, so were not entitled to redress.

02/02

- In August 1992, Mr & Mrs A were advised by their independent financial adviser (IFA) to take out a low-cost joint-life endowment policy (unit-linked) to cover their mortgage. The amount payable when the policy matured was not guaranteed.

In June last year, Mr and Mrs A learnt from the product provider that if their policy achieved a rate of return of 4% each year until the maturity date, it would produce £13,700 less than they needed to pay off the mortgage. If the policy achieved the higher rate of 8% p.a, they would have a projected surplus of £1,700.

Concerned by the possibility of a shortfall, Mr & Mrs A complained to the IFA. They said that when the policy was sold, they were told it would produce enough to let them repay their mortgage early, or repay it at the end of its term and have a lump sum as well. They were unaware that a shortfall was possible and they would not willingly have taken a risk that the policy might not fully repay their mortgage.

The IFA could find no documents from the time of the sale which might have supported the recommending of the endowment policy. The IFA therefore went straight to looking at whether the investors had suffered any loss.

The calculations showed that if Mr and Mrs A cashed in their policy, they would get £2,800 more than the amount of capital they would have repaid on a capital repayment mortgage over the same period. Furthermore, they had actually paid £4,800 less in mortgage outgoings than they would have done with a capital repayment mortgage.

The net result was that Mr and Mrs A had not suffered any loss, so the firm decided not to pay any redress. We upheld this decision when the case was referred to us.

02/03

In November 1989, acting on the advice of an estate agent who was an appointed representative of a life company, first-time buyers Mr & Mrs C took out an endowment policy. This ran over a 25-year term to repay the £70,000 mortgage on their new house.

Early in 2000, after reading a newspaper report about mortgage endowment policies, they asked for a forecast of the policy's value when it matured. They were concerned to learn that, based on an assumed future growth rate of 6% pa, it was likely to produce a shortfall of £9,500.

Mr & Mrs C complained to the life company. They said that if they had known the policy was not guaranteed to repay their loan, they would have opted for a capital repayment mortgage instead.

The firm rejected the complaint, maintaining that Mr and Mrs C received sufficient information at the point of sale to make them aware of the risks associated with the policy. The firm also said there was no evidence to suggest the policy's maturity value had been guaranteed. However, there *was* documentation showing that this value would depend on investment performance over the period.

We considered the unit-linked endowment policy was inappropriate for Mr and Mrs C, as there was sufficient evidence to show that their attitude to risk was cautious. We therefore upheld their complaint.

Having regard to CP75, we found the couple's mortgage outgoings over the period were £3,750 greater than they would have been with a capital repayment mortgage. The endowment policy's surrender value was, however, £5,980 greater than the amount of capital they would have repaid to date with an equivalent capital repayment mortgage.

So Mr and Mrs C had suffered no loss and no redress was owed to them. They were able to surrender the endowment policy and switch to a repayment mortgage, using the proceeds of the endowment policy to reduce their mortgage.

... they discovered the policy was not due to mature until three years after Mr Y retired.

In the following case, the mortgage endowment policy was suitable in all respects except that it extended into the customers' retirement.

02/04

Mr & Mrs Y took out their joint-life with-profits endowment policy in November 1992, on the advice of a life company representative. It was to be used in connection with a mortgage for £90,000 over 25 years.

They recently complained to the firm when they discovered the policy was not due to mature until three years after Mr Y retired.

When the complaint was referred to us, we concluded that the firm's recommendation of a with-profits endowment had not been inappropriate. Mr and Mrs Y's existing investments and circumstances indicated they had a balanced attitude to risk, compatible with the policy sold to them

However, when he recommended the policy, the adviser had not considered the fact that it extended beyond Mr Y's retirement date. If the adviser had looked at Mr and Mrs Y's likely pension income, it would have been clear that they would not be able to afford the policy and mortgage repayments when they retired; the payments would then take up more than 50% of their net income.

As the policy was suitable in all other respects, we asked the firm to reconstruct the endowment policy so it would mature in the same year that Mr Y reached age 65. The firm agreed and quoted a revised premium, which Mr and Mrs Y agreed to pay from that point onwards. This was the same amount they would have paid from the outset if the policy had originally been set up over the shorter term.

The total of the revised premium plus the mortgage interest did not exceed 35% of Mr and Mrs Y's net income when they took out the initial policy. So they could have afforded it from the outset, if the firm had recommended it. The firm agreed to our request that it should make good the difference between the original and revised policy premiums to date.

Here the endowment policy was inappropriate, in view of the customers' circumstances and attitude to risk, and it also ran beyond their retirement.

02/05

Mr & Mrs O took out their with-profits endowment plan in May 1988, to enable them to buy their council house. The mortgage was for £24,000 and was set up over a 20-year term. The endowment policy to support the mortgage was also for a 20-year term and would mature when Mr O reached the age of 68.

When they complained recently to the firm, Mr and Mrs O claimed they were never warned of the risks of an endowment policy and were not aware they would still be making policy and mortgage payments after Mr O retired. They also said they were given the impression the policy was guaranteed to repay their mortgage when it matured.

The firm offered to pay them a lump sum. This was the equivalent of the premiums that would be due from Mr O's retirement date until the end of the policy term, discounted to allow for the interest Mr and Mrs O could earn by investing the money until it was needed.

Dissatisfied with this offer, Mr and Mrs O contacted us. We found no evidence to support their allegation that the policy had been guaranteed to repay their mortgage. But there was also no evidence to show that the adviser had considered whether they could afford the endowment policy and mortgage after they retired. And there was no reason to think Mr and Mrs O had been willing to take risks in view of their ages and the fact that this was their first (and only) house purchase.

When looking at redress, we considered not only the inappropriateness in these circumstances of a policy which extended into the customers' retirement, but also the fact that the policy itself was unsuitable for them.

... they said they were given the impression the policy was guaranteed to repay their mortgage ...

We looked at the cost of a capital repayment mortgage over the shorter term, to end at Mr O's retirement date. We compared this to Mr and Mrs O's income and outgoings at the time they took out the policy. Based on the evidence presented to us, it was clear they could have afforded the shorter-term capital repayment mortgage at the outset.

We calculated redress by looking at the amount of capital Mr and Mrs O would have repaid to date if, from the outset, they had taken a capital repayment mortgage with the shorter term. We compared this to the amount they would get if they cashed in the current policy.

The firm's payment of the resultant redress enabled Mr and Mrs O to switch to a repayment mortgage and reduce its term, so that it ended just before Mr O's 65th birthday.

- **The adviser's negligent behaviour in this case compounded the problems caused by his selling a policy which was unsuitable and which extended into his client's retirement.**

02/06

Just before she was due to retire, Miss C discovered serious problems with her mortgage endowment policy. Not only did it run beyond her retirement age, but the product provider wrote to tell her it was not forecast to produce enough to pay off her mortgage.

… great emphasis was laid on the possibility of their receiving a ‘nest egg’ when the policies matured.

To add to these concerns, her financial adviser had arranged a top-up interest-only mortgage for her, but failed to put any mechanism in place to repay it. He simply advised her to take out a Free Standing Additional Voluntary Contribution (FSAVC) plan to enhance her pension benefits.

The firm concerned accepted that the original endowment had not been appropriate for Miss C’s needs and offered her a refund of premiums with interest. However, it did not accept liability for any other aspect of the complaint.

Regrettably, the firm had taken considerable time to complete their investigations and a significant amount of paperwork was missing.

We decided:

1) The original mortgage endowment had been unsuitable, both because of the length of the policy term and because it did not take into account Miss C’s attitude to risk. Affordability had not been an issue. The redress we considered appropriate was therefore the amount needed to put her in the position she would have been in if, at the outset, she had taken out a capital and interest mortgage and it had run until her selected retirement date.

2) The representative had acted in a negligent manner concerning the unprotected top-up mortgage. Here, the redress we considered appropriate was the amount Miss C needed to put her in the position she would have been in if she had taken out a capital and interest mortgage rather than the top-up endowment, and this had run until she retired.

3) The adviser had not discussed with Miss C the generic differences between the FSAVC and her employer’s in-house scheme. The redress considered appropriate was reinstatement to her AVC scheme, the company making up any shortfall in fund value.

4) The maximum award we can make for distress and inconvenience in a complaint dealt with under our mandatory jurisdiction, £1,500, was appropriate in this case, taking into account the report provided by Miss C’s doctor.

■ **This case was unusual in that, after establishing that there was no loss, and that no redress was payable, the company that provided the endowment policy asked us to determine the suitability of the sale in relation to the customers’ attitude to risk.**

02/07

Mr and Mrs B took out a mortgage endowment policy in 1987, followed by a top-up endowment policy in 1989. Both policies extended past their retirement ages. They maintained they had not fully understood the policies and had not been made aware that their premiums would be invested in funds linked to the stock market. They did recall great emphasis being laid on the possibility of their receiving a 'nest egg' when the policies matured.

... the adviser said that endowments were 'not invested in the stock market' and were 'minimal risk'.

We established that the representative had provided Mr and Mrs B with a comprehensive report on the affordability of their policies after their retirement. He had also given them illustrations of shorter policy terms than the ones they took. However, there was no evidence that he had discussed their attitude to investment risk or given them risk warnings.

As a result of corresponding with Mr and Mrs B, we established they were 'no risk' investors. And after corresponding with the representative, we thought it unlikely he understood how endowment policies worked. He said that endowments were 'not invested in the stock market' and were 'minimal risk'. This suggested to us that he might have given Mr and Mrs B misleading information.

We upheld Mr and Mrs B's complaints about both policies. The company refused to agree. It considered the representative's comments about endowments not being stock market investments, made in his letter to us, to be part of 'communication between two professionals', when 'careful wording' was not necessary.

We issued a Provisional Assessment, upholding the complaint on the grounds of Mr and Mrs B's attitude to risk and the fact that misleading information may have been provided both in 1987 and 1989.

The company did not accept this. They asked us to refer the case for an ombudsman's decision on the question of attitude to risk, even though, since Mr and Mrs B had suffered no loss, no compensation was payable.

The company's argument was that a 'no risk' investment did not exist. They said that even government securities could fail to deliver anticipated returns, and simple bank deposit accounts could suffer from a decline in interest rates or a bank's insolvency. They maintained, therefore, that there was risk attached to repayment mortgages and, in particular, that 'failure to maintain repayments may lead ultimately to the repossession of the property by the lender'.

We pointed out that if a bank fails, deposit protection is available to its customers. We also noted that the company's attitude towards repayment mortgages 'could be extended to the inability of a tenant to pay rent. And if this argument is pursued, it could lead to the conclusion that all forms of accommodation are too financially risky to be acceptable'. The ombudsman's final decision in this case upheld Mr and Mrs B's complaints.

Here it appeared likely that the clients had been mis-sold their policy, although the company denied this and there was no conclusive evidence.

02/08

Mr and Mrs V said their adviser had 'promised' that their endowment policy would repay their mortgage when it matured. They claimed the company had subsequently dismissed the adviser because of the large number of complaints about him, and they asked the company to guarantee to pay the estimated shortfall of £24,378.

The company denied that they had dismissed the adviser or that he had made any promise that the policy would repay the loan. They did, however, offer to pay Mr and Mrs V £15,126.84. This sum comprised a refund of their premiums, plus interest.

We were unable to find evidence to support Mr and Mrs V's assertion about the adviser's 'promise', and wrote to tell them this. In their reply, Mr and Mrs V told us the adviser had been under investigation by the company and had mis-sold policies to 30 other clients. They claimed that this justified their receiving a higher amount of compensation.

We then asked the company for details of the adviser's complaint record and found that 56 relevant complaints had been made against him; 21 of them had been upheld and three were still pending.

Noting this high level of complaints, we informed the company that, in the absence of any rebuttal by the adviser, the balance of probabilities indicated that he had misled Mr and Mrs V.

The company did not concede that there had been any mis-selling. However, they offered a one-off payment of £5,640. They calculated that if this was invested at 6%, it would produce £11,401 (the projected shortfall at 6%) when the policy matured.

They also asked us to point out to Mr and Mrs V that if the company ceased to be a mutual, and Mr and Mrs V surrendered their policy, they would lose any possible 'windfall' benefits. Mr and Mrs V accepted the offer.

... we then asked the company for details of the adviser's complaint record ...

2 complaints about other types of investment

Currently, the different regulatory bodies for firms conducting investment business each have a different scheme for the independent consideration of unresolved complaints. Until the Financial Ombudsman Service receives its full powers under the Financial Services and Markets Act 2000, we deal with complaints on their behalf under the rules of these different schemes.

The endowment cases we have mentioned were all handled by the Financial Ombudsman Service on behalf of, and under the rules of, the PIA Ombudsman Bureau. However, the investment division of the Financial Ombudsman Service also handles disputes on behalf of two smaller schemes:

- the Office of the Investment Ombudsman (for complaints about IMRO-regulated firms); and
- the Complaints Bureau of the SFA (for complaints about SFA-regulated firms).

The following two cases indicate the wide range of investment matters we deal with.

Case studies

- **We dealt with this complaint about an IMRO-regulated firm under the rules of the Office of the Investment Ombudsman.**

02/09
Mr E had windfall shares in a Personal Equity Plan (PEP) with company A. He issued instructions by telephone to transfer his funds to company B, and complained when he subsequently discovered that he had been charged for the transaction. His main allegation was that his shares were immune from charges as they were windfall shares. He also felt it was significant that the charges were not mentioned to him when he telephoned his instructions.

At the time company A had demutualised, it had offered a free share dealing service. At our request, it produced copies of the documents it had sent to everyone who received these windfall shares, including Mr E. The documents stated that, as a special concession, recipients of windfall shares could dispose of them without charges, up to April 1999. Details were given of the charges which would apply after that date.

We therefore did not consider company A had been obliged to draw Mr E's attention to the charges when taking his telephone instructions. We did not uphold the complaint.

... you can lose more than your original stake. And you are legally obliged to pay up, no matter how much you lose...

■ **This case involves an SFA-regulated firm and was dealt with by the SFA Complaints Bureau. It concerns spread betting, an activity which is regulated under the Financial Services Act 1986.**

02/10
Essentially, spread betting involves taking a bet on future events, such as the movement of financial indices (the FTSE, NASDAQ *etc*) or on the outcome of sporting fixtures. It is a form of gambling which has become increasingly popular in the past few years. However, it is a high-risk activity and not for the inexperienced.

Unlike conventional gambling, you can lose more than your original stake. And you are legally obliged to pay up, no matter how much you lose. Before you enter into a spread betting contract, you are required to sign an agreement acknowledging the terms and conditions of the firm concerned.

Company C is regulated by the SFA and conducts spread betting, taking bets by telephone. Their client, Mr F, placed a bet on how many wins there would be in home games, as opposed to away games, in the English Premiership Football League. In fact, the firm only quotes for home/away goals, not home/away wins. So the bet would be on how many more goals would be scored in home matches than in away matches.

Mr F guessed wrongly and ended up owing the company £2,500. He complained that he had misunderstood the nature of the bet and had thought he was betting on wins, not goals.

When we examined the tape-recording of the telephone dealing conversation (often an essential element in complaints involving equities, derivatives and spread betting), we found that both the client and the dealer referred to 'homes over aways' but never specifically mentioned 'wins' or 'goals'. Each assumed he knew what the other meant.

The firm's terms and conditions, which Mr F had signed up to, state that they do not quote for bets on home/away wins. They also state that before customers place any bets, they must familiarise themselves with the nature of spread betting, the jargon used, the market/index hours and the expiry times and dates of the contracts made.

Mr F has reluctantly agreed that he should have ensured he understood the details of the bet he was placing. He has now paid the company the amount outstanding.

3 the pensions review and windfall payments

Under its terms of reference, the PIA Ombudsman Bureau contains a test case procedure under which it may, at a firm's request, discontinue the investigation of a complaint in favour of court proceedings if:

- the case involves an issue which may have important consequences for the business of firms generally or an important or novel point of law; and
- the firm undertakes to pay the complainants' legal costs.

There has only been one of these test cases to date. However, the PIA Ombudsman Bureau has now received a second test case notice, which relates to a complaint arising from the pension review.

The investor transferred his deferred pension benefits from a former employer's final salary pension scheme to a private pension scheme. The private pension was with a mutual company. This has since demutualised, making a 'windfall' payment to all policyholders.

The transfer was inappropriate and there is a dispute about the calculation of the amount the company should add to the pension policy as compensation for this.

When we consider such complaints, we are bound by the guidance issued by the PIA, whose Regulatory Update 33, issued in May 1997 states:

"PIA is receiving a number of questions about whether the value of any shares which an investor may receive in consequence of demutualisation should be taken into account in loss or redress calculations.
By way of clarification, we confirm that we regard the share value as the price paid by the demutualising entity for the exchange of membership rights in favour of the shareholder rights. The actual value in the hands of the investor is entirely collateral to the value of whatever investment contract he or she may have. It follows, therefore, that the financial impact of demutualisation should be ignored in calculations of loss or redress."

In the firm's view, the value of the demutualisation benefits received by the investor should be included in the calculation of loss and redress.

The PIA Ombudsman Bureau's policy on demutualisation benefits, in relation both to Pensions Review and other cases, was discussed in the PIA Ombudsman Bureau's *News from the Ombudsman* in December 1999. PIA-regulated firms will therefore be aware that we follow two different practices. Where the case concerns the Pensions Review, we are required to follow the Pension Review guidance (PIA Regulatory Update 33).

Our present understanding is that the firm wishes to obtain a declaration from the court in relation to the guidance, rather than to challenge our application of the guidance. In view of the comments made by the PIA Ombudsman in 1999 and the scale of the pension review, we accept that this issue is a matter of importance to firms.

The Ombudsman has issued a decision accepting that the arguments made by the firm are, on the face of it, reasonable, and confirming that we will cease investigating the complaint. There does, however, remain the question of what should be done in relation to all similar cases. Where a firm requests that the calculation of redress is deferred until the court has decided this test case, we will not conclude our investigation.

4 changes to the PIA Ombudsman Bureau's terms of reference

pensions and FSAVC reviews

With effect from 14 November 2000, complaints about matters that have been properly dealt with under the terms of the Pensions Review are beyond the scope of the PIA Ombudsman except in limited circumstances.

The following paragraph was added to the PIA Ombudsman Bureau's terms of reference to bring about this position:

"5.2A If, in respect of a complaint relating to a pension transaction, the Ombudsman is satisfied that the firm in question has reviewed the transaction in accordance with the PIA's standards for the review of such transactions (including, if appropriate, making an offer of redress to the complainant) then he shall make no award or recommendation unless he is of the opinion that the particular circumstances of the case are not addressed by the standards."

This applies equally cases to which are subject to the Review of FSAVCs (Free Standing Additional Voluntary Contributions).

other amendments

The ombudsmen no longer require the leave of either the Council or Board to reopen a case where either the complainant or the firm presents new evidence after an ombudsman has reached a final decision. If no new evidence is presented, then the ombudsman's decision is final.

The new paragraph 6.1(c)*(i)* now says,

6.1 "The Ombudsman shall have no power to investigate a complaint unless he is satisfied that . . .

(c) *(i)* the complaint contains no subject matter any part of which was comprised in any previous complaint made to any Ombudsman (provided that the Ombudsman may consider a complaint if he is satisfied that new evidence is available in relation to the complaint which was not available at the time the previous complaint was considered);"

The PIA Ombudsman Bureau's Board has also made a number of minor amendments to the terms of reference to deal with the replacement of the Council by the Board, so that former references to Council now read as references to the Board.

Printed copies of the amended terms of reference are available from our communications team (phone 020 7964 0370) or via our website www.financial-ombudsman.org.uk (link from the web version of this issue of *ombudsman news*).

5 time limit for cases referred to the PIA Ombudsman Bureau

Under its mandatory jurisdiction, the PIA Ombudsman Bureau is not permitted to deal with complaints which, if they were negligence claims, would be time-barred under the Limitation Act 1980, as amended. Exceptions to this are cases which would otherwise fall under the Pensions Review.

In very general terms, this has meant that customers have had up to six years after acting on investment advice to complain to the firm about that advice. A longer period, subject to an overall longstop of 15 years, could apply in some cases where the complainants had three years from the time when they knew, or ought reasonably to have known, about the matters they were complaining about.

The terms of reference have not changed. However, firms may have noticed a change in our policy in this area. The reason is that the law relating to the suspension of limitation periods in professional negligence cases under the Limitation Act has been the subject of recent judgements in the Court of Appeal in ***Brocklesby-v-Armitage & Guest*** (1999 Lloyds Ref PN888) and applied in ***Liverpool Roman Catholic Archdiocese Trustees-v-David Goldberg QC*** (*The Times* 18 July 2000). These have been confirmed again in ***Cave-v-Robinson, Jarvis & Rolf*** decided in the Court of Appeal on 20 February this year.

Of course, each case is decided on its own facts. However, in the light of these cases, in September 2000, the PIA Ombudsman Bureau revised its policy. What this means in practice is that a client who was advised to take out an endowment policy in 1989, raised concerns in 1994, but did not complain to the firm until 2000, may *not* be time-barred under the Limitation Act.

This is illustrated in the following example.

In **October 1989** a customer is advised by a company representative to take out an endowment to repay his mortgage. If the representative had assessed the customer's risk profile, which he did not, it would have proved to be cautious.

It is not until **October 1994** that the customer receives his first review letter from the product provider. He is concerned that the policy's projected value when it matures is less than the amount he will need to repay on his mortgage but he does nothing about his concerns at that time.

In **July 2000** the customer receives a letter from his product provider warning that the policy is not on target to repay the loan. Partly because of the press coverage at the time, the customer complains immediately to the firm and within six months of the firm's reply, the case comes to the PIA Ombudsman Bureau.

It could be argued that with 'reasonable diligence' the customer could have discovered the company's professional negligence in 1994.

Nevertheless, he now has had six years (instead of three) from then to bring his complaint and has done so just in time. In these circumstances, it could not be said that he ought to have discovered the fault before 1994, as he has no reason to question the advice he was given initially or to 'double check' it with another, more competent, adviser.

Another important change, not highlighted by our example, is that apparently in such cases there would no longer be any longstop period in bringing a claim.

6 hearings

In common with many other bodies, over the last months we have been paying particular attention to developments in the implementation of the Human Rights Act.

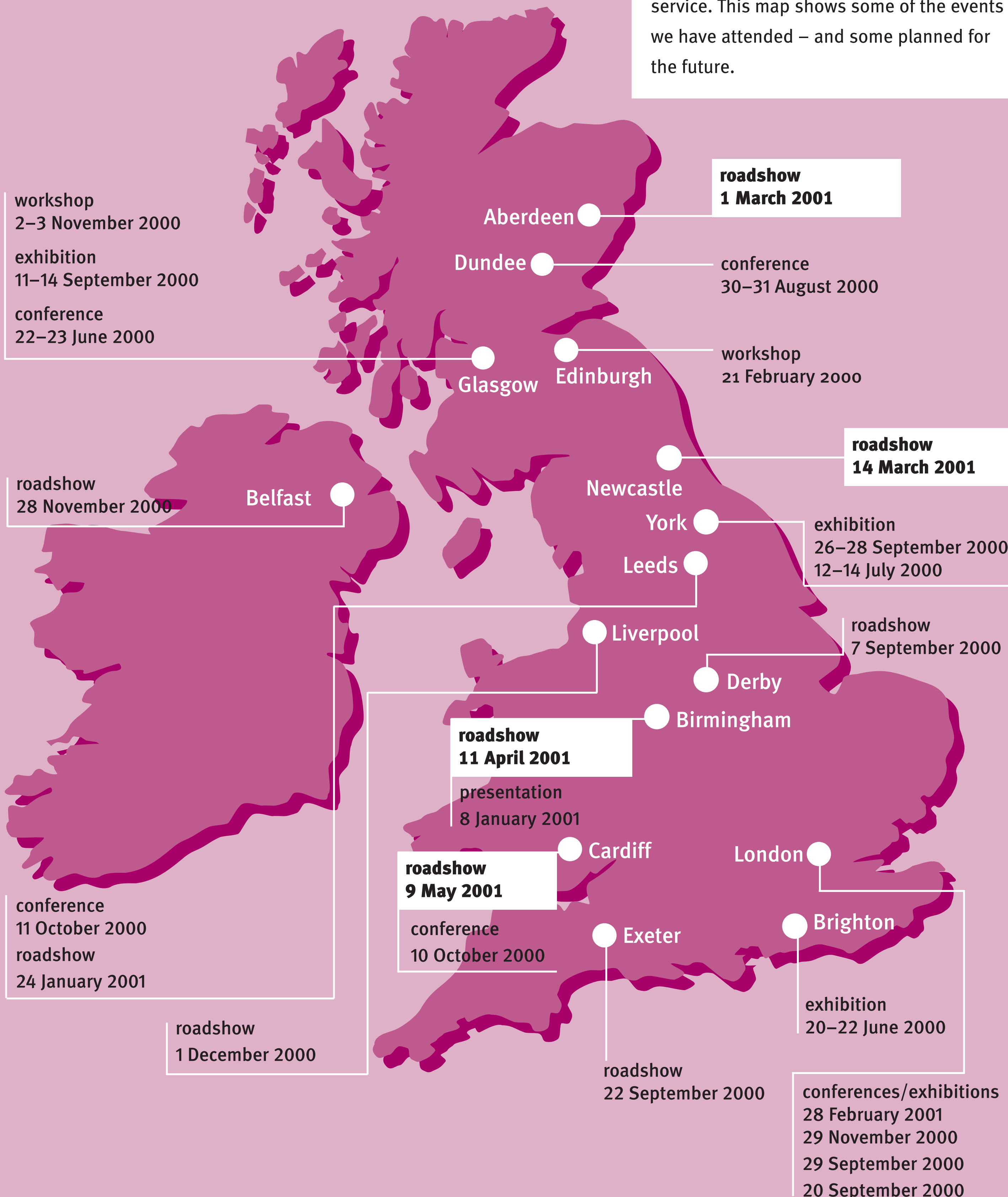
As a whole, our process of investigating complaints and reaching an appropriate resolution of them is designed to take account of the Human Rights Act and the general principles of 'natural justice'. The most familiar aspect of the ombudsman process is that we examine cases on the papers alone, rather than by requiring the parties to present their cases in person, and we adopt a largely informal approach to the way we gather evidence from all the parties involved. The general result of this is that anyone involved in a complaint will have been given ample opportunity to put their points across before we reach any resolution or determination.

Nevertheless, it has always been our practice to request a hearing in specific cases, where we think it necessary to enable us to reach a decision. This practice will continue and we will carry on holding hearings with an appropriate degree of informality, taking into account the particular circumstances of the complaint. Additionally, either party to a complaint may ask us to consider whether a hearing should be granted.

We are establishing a regular schedule for hearings and will give firms general guidance on our procedures in the near future. We are, however, extremely grateful to those firms who have informed us that they only wish to request hearings in exceptional circumstances, rather than being reminded of the provisions for hearings in every single case. We therefore need only wait to see if the complainant in any particular case wants us to consider a request for a hearing.

the financial ombudsman service – out and about

By taking part in exhibitions, workshops and roadshows all over the country, we meet consumers, consumer advisers and people working in financial services – and spread the word about the new ombudsman service. This map shows some of the events we have attended – and some planned for the future.



See the back cover for details of our next event.

Call in and see us in Birmingham on Wednesday 11 April 2001

On Wednesday 11 April we will be at the Britannia Hotel, New Street, Birmingham, from 10.00am to 2.00pm to answer your questions and tell you more about the new service.

There's no need to register in advance – just call in.

If you can't come but want more information, please contact us on 020 7964 1400 or email technical.advice@financial-ombudsman.org.uk And for up to the minute information about us and our activities – check our website www.financial-ombudsman.org.uk

'we provide a number of useful services'

how we can help

technical advice desk

guidance on ombudsman practice and procedures – for consumer advisers and professional complaints handlers

We can:

- explain how the ombudsman service works
- answer technical queries
- explain how the new ombudsman rules will affect your firm
- provide general guidance on how the ombudsman is likely to view specific issues.

technical.advice@financial-ombudsman.org.uk
phone 020 7964 1400

external liaison

We can:

- visit you to discuss issues relating to the ombudsman service
- arrange for your staff to visit us.

Contact graham.cox@financial-ombudsman.org.uk

phone 020 7964 0132

Contact us
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

***investment division* 020 7216 0016**

website www.financial-ombudsman.org.uk
technical advice desk 020 7964 1400

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- ask to go on our mailing list (phone 020 7964 0092)