ombudsman news

May 2003 issue 28

essential reading for financial firms and consumer advisers

Financial Ombudsman Service

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

about this issue – May 2003

Following the article in our March 2003 edition about changes to the time limits for making a complaint, in this edition we look at two contrasting cases where we had to decide whether the complaint had been made 'in time' – and was therefore one we could deal with. We also outline our approach when deciding whether instances of damage, claimed for under insurance policies, were caused by an 'insured risk' – such as flooding – or by poor maintenance or neglect on the part of the policyholder.

Two of our banking case studies illustrate a situation that sometimes arises in complaints relating to credit cards. This is where a firm has justified its actions by citing credit card rules that the customer has not signed up to – or even seen. Our other banking case studies include several complaints involving mortgages, and one where a customer lost out because of exchange rate fluctuations, after the firm incorrectly transferred into sterling the money he had deposited in euros.

Finally, our regular round-up of investment-related cases includes a complaint from a couple who felt the firm should not have transferred their unit trust holding into an OEIC investment, even though a majority of unitholders had voted for the change. We also outline a complaint from a lady who felt she had been mis-led when she cashed in her investment and received a cheque that was nearly £1,000 less than the surrender value the firm had quoted over the telephone.

1 time limits

Following our article in the March 2003 edition of *ombudsman news* about changes to the time limits for making a complaint, we now feature two case studies involving time limits. But it may be helpful if we first re-cap the changes.

It is important to note that, in all instances, it is for the ombudsman service, not firms, to decide whether a complaint is out of time.

The first of the changes affects the rules that say that we cannot normally consider a complaint if the complainant refers it to us:

- more than six years after the event complained of; *or*
- (if later) more than three years from the date on which they became aware (or ought reasonably to have become aware) that they had cause for complaint.

... it is for the ombudsman service, not firms, to decide whether a complaint is out of time.

This rule has now been amended so that a complainant who might otherwise be out of time when they come to the ombudsman will be *in time* if they:

- referred their complaint to the firm concerned within the time limits; *and*
- have a written acknowledgement or some other record that the firm received the complaint.

The second change amends the rules so that we can consider complaints that are outside the time limits if the firm has not objected to this.

The third change relates only to mortgage endowment complaints. In essence, the time limit for these complaints starts to run from the date the complainant receives a 'red' re-projection letter (a letter from the firm warning of a high risk of the policy failing to produce enough, when it matures, to repay the target amount).

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If it gives the complainant more time, then this time limit is extended to six months after the date the complainant received a *second* re-projection letter containing the same warning or other reminder of the need to act.

However, the rules allow a firm, in some circumstances, to assert that the time limits should start *before* the complainant received the first 'red' re-projection letter. If the firm does assert this, it will need to show, among other things, that the complainant received an individualised calculation using the growth rates set down by the regulator for use in illustrations at that time.

...we can consider complaints that are outside the time limits if the firm has not objected to this.

case studies – time limits

■ 28/1
time limits – mortgage endowment policy complaint – complaint 'out of time'

Mr and Mrs F complained to the firm about the mortgage endowment policy it sold them. When it rejected their complaint, the firm said it was unlikely that we would be able to look into the matter because the couple had left it so long to complain.

complaint outside jurisdiction
The firm argued that the complaint was 'out of time' because it was more than three years since it had sent Mr and Mrs F a 'ten-year contractual review' letter. This letter had said that the endowment might not produce enough when it matured to repay the mortgage. The firm said the date when the couple received this letter marked the beginning of the period when they ought reasonably to have been aware that they had cause for complaint.

We needed to check that the letter sent was in line with the regulator's guidance in that it:

- provided an individual calculation, indicating the amount of the expected shortfall (using the growth rates set down by the regulator for use in illustrations at that time); *and*

- urged the couple to take appropriate action.

As the letter met these requirements, we agreed that the time period started when the couple received the letter. Mr and Mrs F had not complained to the firm or to us within three years of receiving the letter, and they could provide no satisfactory explanation for not doing so. We therefore considered the complaint to be 'out of time', so we were unable to deal with it.

■ 28/2

time limits – mortgage endowment policy complaint – re-projection letters not fully compliant so complaint not 'out of time'

After Mr and Mrs D complained unsuccessfully to the firm about its sale of a mortgage endowment policy, it told the couple that they had probably left it too late to refer their complaint to us.

complaint within jurisdiction

In the firm's view, the complaint was 'out of time' because more than three years had elapsed since Mr and Mrs D had received 'red' re-projection letters.

However, when we looked into the matter, we found that the letters (sent in 1995 and 1997) had only partly complied with the regulator's guidance. They both contained individualised calculations that used the correct growth rates for illustrations at that time. And both letters indicated that a shortfall was possible. However, neither mentioned the need for the couple to take action.

We therefore decided that the time period could not begin from the date when the couple received these letters. The complaint was not 'out of time' and we were able to consider it.

... the letters ... had only partly complied with the regulator's guidance.

2 banking case round-up

a selection of some of the banking cases we have dealt with recently

■ 28/3

banking – firm mishandled temporary Euro deposit

Mr A, who lived in Portugal, had a sterling current account and a sterling deposit account with a UKfirm. He faxed the firm, quoting his existing current account number as identification, to say the firm would be receiving the proceeds of a house sale amounting to 150,000 Euros. He told the firm he wanted to put this money in a separate interest-paying account for one month.

Some days later, when the money reached the firm, it converted the Euros to sterling and credited the sum to Mr A's sterling deposit account. A month later, Mr A asked for this money and the firm converted it back to Euros. But the exchange rate had changed, so the resulting amount was significantly less than the original 150,000 Euros. Mr A complained that he had neither asked the firm to convert the money to sterling nor authorised it to do this.

... he had neither asked the firm to convert the money to sterling nor authorised it to do this.

complaint upheld

The firm's own international payments guide, and its internal procedures, said it would check with the customer before it converted any Euro payments that amounted to the equivalent of over £25,000.

Mr A's fax had made it clear that the deposit was only a temporary one. If there had been any doubt about his intentions, the firm would have had time to contact him before the payment arrived. But although it had Mr A's phone and fax numbers, it had made no attempt to contact him – either before or after the money arrived.

We required the firm to make good the exchange-rate loss, with interest.

■ 28/4

mortgage – delayed application led to lost purchase

Mr and Mrs H found a house they wished to buy and they applied to the firm for a mortgage. They needed to arrange this as quickly as possible to secure the purchase, as the seller had set a time limit for exchanging contracts.

The firm preferred to use the same solicitors as the borrowers, provided the solicitors were on the firm's approved panel. Unfortunately, Mr and Mrs H had already appointed solicitors who were not on this panel. There was a delay before the firm pointed this out to them. And although the couple then immediately switched solicitors, the delay meant that the mortgage offer did not arrive until just after the seller's time limit had expired. He then sold the house to someone else.

When the couple complained to the firm, it said it would refund their £220 survey fee. Annoyed that the firm was not prepared to do more, Mr and Mrs H came to us.

complaint settled

We considered that the delay was, in the main, the firm's responsibility. It agreed to pay Mr and Mrs H a further £750 to cover their wasted legal fees and their disappointment.

■ 28/5

mortgage – transferee liable for whole balance

Mr J bought a house with a £30,000 mortgage from the firm. His mother lived in the house and made the monthly mortgage payments. Later, in order to pay off some personal loans, Mr J took out a £20,000 further advance on the mortgage. He made the monthly payments on this himself.

However, Mrs J became worried about her son's financial difficulties and he agreed to transfer ownership of the house to her, subject to her continuing to pay the mortgage. Shortly after the transfer had gone through, Mr J became bankrupt.

The firm held Mrs J responsible for making payments for the £20,000 advance, as well as for the original £30,000 mortgage. She complained to the firm about this, saying it should have written off the £20,000 when her son became bankrupt.

complaint rejected

The firm was not aware of Mr J's financial arrangements with his mother. It was still entitled to receive payments for the total mortgage, which included the additional £20,000. Mrs J knew the total amount of the mortgage when she tookit over. We therefore rejected the complaint.

... the mortgage offer did not arrive until just after the seller's time limit had expired.

... she had gone ahead with the purchase on the strength of the firm's valuation.

■ 28/6
mortgage – defective valuation – inconvenience

After seeing a 1920s house that she was interested in buying, Ms T applied to the firm for a mortgage. She had been concerned about some cracks in the property, but she was reassured by the mortgage valuation prepared by one of the firm's staff valuers. He said that the cracks were of long standing, typical for a property of that age, and that they did not indicate a serious problem.

MsT completed the purchase and moved in. But she soon noticed that the cracks were widening. Further investigations revealed that extensive repairs were required. Luckily, the property insurers agreed to pay for these repairs, but they said Ms T would have to pay an excess of £1,000.

Since she had gone ahead with the purchase on the strength of the firm's valuation and its assurance about the cracks, Ms T held the firm responsible. She thought it should pay her some compensation as well as the £1,000 excess required by her insurers. When the firm refused to settle the case on any basis that was acceptable to her, she referred the complaint to us.

complaint upheld
We noted that Ms T would suffer major inconvenience while the work was carried out, and that a number of the attractive period features of the house would be destroyed. In the circumstances, we felt the firm should make a total payment to her of £4,000, to cover the excess on the insurance and compensation.

3 what caused the damage – poor maintenance or ‘insured risk’?

We receive many complaints where the firm has rejected a claim for damage on the basis that it was caused by poor maintenance rather than by the ‘insured risk’ (something the policyholder took out insurance against, such as burglary, flooding *etc)*.

For example, if a poorly-maintained roof is damaged during a storm, a firm may say that it simply deteriorated with the passage of time (a matter of wear and tear and/or lack of maintenance), rather than having been damaged by the storm (the insured risk). Or if a badly-maintained car is involved in a road accident, the firm may say that damage to the car’s engine was caused by the policyholder’s failure to check the oil level (poor maintenance), not by the accident (the insured risk).

The outcome of such complaints invariably turns on the difficult issue of ‘causation’ (in other words, establishing what caused the situation). When we look at cases that require us to establish causation, we apply:

- the ‘but for’ test; *and*
- a common sense approach.

The ‘but for’ test involves posing the question ‘*but for occurrence X, would Y have resulted*?’ The answer should reveal the likely cause of the damage. However, much will depend on the evidence presented to us, such as loss adjusters’ reports and expert evidence. And we need also to apply common sense. We are looking for the dominant or effective cause of the damage that the policyholder has claimed for.

... each case turns on its individual facts and the quality of the evidence.

And sometimes the ‘but for’ test merely produces an answer to the question ‘*in what circumstances did the damage take place?*’ (the ‘occasion’ of the damage), rather than the dominant or effective cause. Applying common sense normally resolves the matter.

Take – for example – a dispute about a claim for storm damage, made under a buildings insurance policy. The policyholder says that tiles fell off his roof as a result of a storm; the firm says they fell off because of poor maintenance. Both parties accept that it was the high winds at the time that led to the tiles falling off. And weather reports record storm-force winds in the area at the relevant time. The loss adjuster’s report notes that the roof had not been properly maintained. So the issue is whether it was the storm itself, or the lack of maintenance, that caused the damage.

To try to establish this, we apply the ‘but for’ test, asking ‘*but for the storm, would the roof have been damaged?*’ On the balance of probabilities, the answer is ‘no’. So at first sight it would seem that the claim should succeed. But the loss adjuster’s report contains expert evidence indicating that the roof was extremely old and worn and the tiles were so loose that even fairly moderate winds, significantly below storm force, could have displaced them. Applying common sense in the light of this evidence, we might conclude that the dominant or effective cause of the damage was wear and tear and/or lack of maintenance, rather than the storm.

Whether or not there was a storm, the roof would inevitably have been damaged sooner or later. The storm was merely the occasion of the damage; it was not the cause. So it would not be fair or reasonable to require the firm to pay the claim because that would, effectively, be turning an insurance contract into a maintenance contract.

In a separate case, where water leaked through the roof of the policyholder's home during a rainstorm and damaged the interior, we concluded that it was the storm that caused the damage, even though the roof was poorly maintained. It is true that – *but for* the lack of maintenance – the water would not have entered. However, a common sense review of the evidence indicated that the dominant or effective cause of the damage was still the rainstorm. Even though the roof was worn and torn, it was not completely dilapidated. It would have remained watertight during normal levels of rainfall but it could not withstand the storm. The fact that a well-maintained roof *could have* resisted the storm was, in the circumstances, irrelevant. This storm was the dominant or effective cause of the damage claimed for.

It is important to stress that each case turns on its individual facts and the quality of the evidence. No formula can predict with certainty what the outcome will be. This is why these maintenance cases continue to come before us and why, though apparently straightforward, they can often be among the most difficult to determine.

case studies – what caused the damage – poor maintenance or 'insured risk'?

■ 28/7

causation – damage to carpet caused accidentally rather than by flood – customer had no accidental damage cover under household policy

When a sewer became blocked, effluent threatened to flood Mr B's home. He called the fire brigade and they managed to stem the flood but, in the process, they soiled Mr B's carpet.

Mr B put in a claim under his household policy. However, his policy did not include cover for accidental damage. The firm said that, strictly speaking, it was not liable to pay him anything because the damage was accidental – not caused by an event that he was insured against. However, it agreed to pay the claim on an *ex gratia* basis.

Mr B was dissatisfied with this. He insisted that his policy *had* covered him for the damage and he said that the firm should also pay him compensation for distress and inconvenience.

complaint rejected

We concluded that flooding – something that Mr B's insurance covered – was not the cause of the damage. The damage had been caused accidentally in an emergency situation when the fire fighters had failed to remove their soiled footwear or put down protective covering before walking over Mr B's carpet.

So the flooding was merely the '*occasion*' of the damage; the fire fighters would not have been in his house if it had not happened. Flooding was not the dominant or effective cause of the damage and no water had, in fact, entered the property. We considered that the firm had not been obliged to pay the claim and that its *ex gratia* offer was more than reasonable in the circumstances.

■ 28/8

causation – furniture warranty – whether recliner chair damaged by insured event of structural fault or by wear and tear/neglect

When Mr G bought a recliner chair, it came with a five-year warranty. Among other things, the warranty covered structural faults, which were defined as including '*breakage of metal components, including recliner and sleeper mechanisms*'.

Shortly before the warranty expired, the chair collapsed when Mr G used the recliner mechanism. The firm rejected his claim on the basis of a report from its upholsterer. This said the chair '*has obviously had very heavy use and has not been looked after*'. So the firm said the cause of the damage was '*wear and tear and/or neglect, rather than any event covered by the warranty*'.

... the chair had simply been used. It had not been misused or abused.

complaint upheld

The warranty contained no exclusion clause for wear and tear – only for neglect, abuse or misuse. The chair had simply been used. It had not been misused or abused. And we did not consider that there was anything Mr G could reasonably have done to maintain or service the internal recliner mechanism in order to prevent its failure.

Given that the warranty expressly defined 'structural faults' as including the breakage of recliner mechanisms, we concluded that the firm should pay the claim.

■ 28/9

motor insurance – whether damage to insured car caused by inadequate repairs or by some other event

While driving home from work one evening, Mr H was involved in an accident. After he put in a claim, the firm's approved engineers carried out repairs.

However, nine months later Mr H discovered that the front offside tracking (the area of impact in the accident) appeared to be faulty and was causing undue wear to the front offside tyre. Mr H complained to the firm that the approved repairs had been unsatisfactory.

The firm rejected the complaint, saying there was no evidence to support his view. It said that the damage to the front tyre must have been caused by a separate, 'intervening', incident that occurred after the accident.

Dissatisfied with the firm's response, Mr H consulted an independent engineer, who concluded that the damage had happened in the original accident, but had not been seen to as part of the approved repairs. The engineer supported his conclusions with geometric reports made before and after these repairs.

Following a joint inspection of the car by the independent engineer and an engineer appointed by the firm, the firm agreed to pay for the damage to be repaired. However, it refused to reimburse Mr H for the cost of the independent engineer's report, or to pay Mr H any compensation.

complaint upheld

Mr H had produced persuasive expert evidence to support his view that the damage was caused by the original accident and/or by the inadequate repairs that followed it.

Following the joint inspection, the firm had already effectively conceded liability. So we felt it was unreasonable for it not to reimburse Mr H for the engineer's fee. Despite having no basis for disputing the cause of the damage, the firm had maintained its allegations long after it was reasonable for it to do so.

Mr H had proven his case on the balance of probabilities. We awarded him the cost of obtaining the engineer's report (with interest) plus compensation for distress and inconvenience.

■ 28/10

motor trade policy – whether damage to machinery caused by accidental damage or whether the damage pre-dated the insured event

Mr N, who owned a vehicle repair workshop, had a motor trade policy that covered accidental damage at his premises. Following a break-in, during which the workshop roof was damaged, Mr N put in a claim to the firm. He said that rain had entered through the damaged roof and seriously affected two machines.

... he said that rain had entered through the damaged roof and seriously affected two machines.

The firm rejected the claim, saying there was no evidence to show that the machines had been damaged accidentally.

complaint rejected

None of the evidence we examined – which included correspondence from the machine suppliers, an independent engineer's report, and weather reports – supported Mr N's view that the damage was caused accidentally, following the actions of a burglar or burglars (an 'insured event').

The letters from the suppliers were inconclusive, but the report from the independent engineer clearly indicated that the damage had been caused by internal faults, not by rainwater entering the machines accidentally. The weather reports did not indicate any significant rainfall during the relevant period.

We concluded that the dominant cause of the damage appeared to be mechanical failure and/or wear and tear over a long period. These causes were not covered under the terms of the policy.

... even light rainfall would have caused the roof to leak.

■ 28/11

household buildings policy – whether damage caused by storm or lack of maintenance

Mr K submitted a claim for storm damage to his home after water had leaked in through the roof. The firm rejected his claim on the basis that:

- there was no evidence of storm conditions at the relevant time; *and*
- the roof was in such a poor state of repair that water would have entered the property in any event.

However, as a goodwill gesture, the firm offered Mr K 10% towards the cost of replacing the roof. He rejected this, saying he was entitled to the full amount.

complaint rejected

We studied the loss adjuster's report and photographs, together with the estimates provided by Mr K's contractors. This evidence indicated that the property was in a very poor state of repair. No recent maintenance had been carried out to the exterior and even Mr K's own estimates indicated that the roof needed replacing.

Given the absence of stormy weather on or around the period claimed for, we concluded that the dominant or effective cause of the damage was lack of maintenance, rather than storm or any other insured event. Even light rainfall would have caused the roof to leak.

We considered that the firm had been correct in rejecting Mr K's claim and that its *ex gratia* offer had been very fair.

4 credit cards: card rules can't take away contractual rights

In order to be able to issue credit cards to their customers, firms must agree to abide by the rules of the relevant card scheme (such as Visa or MasterCard). Firms often cite these rules as authority for their own actions if customers have a complaint relating to their credit card.

But customers never see the card rules. So the rules cannot take away the customer's rights under their contract with the card-issuing firm. If that firm's contract does not reflect the rules, that is the firm's problem – not the customer's.

The following two case studies illustrate this situation.

... firms often cite these rules as authority for their own actions.

case studies – credit cards: card rules can't take away contractual rights

■ 28/12
credit card – sums debited for which customer not liable

Mr W hired a car while on holiday and authorised the car-hire company to debit his credit card *'for the rental and any excess payable*'. On the rental agreement, he named two additional drivers and confirmed that his signature would constitute his authority to debit his card '*with the total amount due*'.

The booking form said, in relation to insurance and damage:
'[The hire company] covers the hirer with Collision Damage Waiver/Theft loss Waiver. In the event of accident or any damage to a vehicle, the renter will be responsible for the excess applicable on the hired vehicle.

In the event of an accident occurring or damage being caused to the vehicle where no co-driver has been nominated and a person other than the hirer was driving the vehicle, the hirer will be liable for the full value of the loss. It is the responsibility of the hirer to return the vehicle in a reasonably clean condition. Should the vehicle require a valet, the hirer will be liable'.

... his credit card had been debited with transactions he had no knowledge of – totalling £1,000.

The car was damaged in an accident while one of the additional drivers was driving. No other vehicle was involved. The car-hire company provided a replacement car and Mr W continued with his holiday.

After he returned to the UK, the car hire company sent Mr W an invoice for a sum that comprised not only the hire cost and insurance, but also approximately £5,000 for damage (the full value of the vehicle). The total sum had been debited to his card account in four separate amounts.

When Mr W complained to the firm, it told him that its actions were justified under the card scheme rules, so he brought his complaint to us.

complaint upheld

We pointed out to the firm that:

- The rental agreement did not mention liability for damage in cases where no other vehicle was involved.
- Mr W had agreed only that sums for which he was liable under the contract could be debited from his credit card.
- The invoice had not been generated until after Mr W returned home. So there was no evidence that he had authorised the debit, or that he was even aware of the amount concerned.

The firm agreed to rework Mr W's account as if it had not debited the disputed costs. It also paid him £200 for inconvenience.

■ 28/13

credit card – card wrongly debited – firm says customer took too long to notify it of the error

When Mr G was completing his tax return he discovered that, nearly a year earlier, his credit card had been debited with transactions he had no knowledge of – totalling £1,000.

He contacted the firm and it agreed that he had probably been the victim of fraud. However, it noted that Mr G had taken a very long time to spot the transactions and it said it was now too late, under the rules of the credit card scheme, for it to 'charge back' the transactions. So it told Mr G that he would have to bear the loss himself. Dissatisfied with this response, Mr G brought his complaint to us.

complaint upheld
Mr G, who was self-employed, told us that he had not spotted the fraudulent transactions earlier because he received his statements quarterly and did not check them in detail until he completed his tax return.

We thought this was a reasonable explanation. And since Mr G was unaware of the rules of the credit card scheme, he could not be expected to be aware of, or to comply with, any timescales they might impose.

The firm agreed to refund Mr G with the value of the disputed transactions.

... he got less from the personal pension plan than he would have done if he had left his money in a savings account.

5 investment case round-up

a selection of some of the investment-related complaints we have dealt with recently

■ 28/14
single-premium payment into unit-linked personal pension – customer wrongly advised

In 1999, when he was 63 years old, Mr D was advised to make a single payment of £8,000 into a unit-linked personal pension. He said he had wanted to put this money into a savings account. However the firm's representative had persuaded him that he would be better off paying it into a personal pension instead.

Two years later, when Mr D retired, he got less from the personal pension plan than he would have done if he had left his money in a savings account. The firm refused to uphold his complaint so he came to us.

complaint upheld
Initially, the firm refused to accept our view that Mr D had been wrongly advised. The case therefore went to the final stage in our complaints-handling process and received an ombudsman's final decision.

... she received £940 less than she said the firm had led her to expect.

The ombudsman agreed with our case-handler's initial view that the pension plan had been mis-sold. The 'fact find' that the representative had completed at the time of the sale recorded that Mr D had always planned to retire at the age of 65. This meant that his investment had a maximum of two years to grow. Two years is very little time for a pension plan to grow sufficiently even to recoup the initial charges. Moreover, because the pension was unit-linked, it was subject to stock market fluctuations, so we felt it was suitable only as a medium- to long-term investment. Two years was not medium- to long-term.

Rather than asking the firm simply to refund Mr D's initial investment plus interest, we asked it to amend the annuity. We told it to assume that the value of Mr D's pension fund on the day he retired was equal to the amount of his initial investment, plus interest. It should then base his annuity on that amended amount. We also asked the firm to refund, with interest, the difference between the annuity payments Mr D had already received to date and those he should have received, based on the amended amount.

■ 28/15

surrender value quoted over telephone – whether this was misleading

Mrs T needed to cash-in her unit-linked bond earlier than she had originally expected. She telephoned the firm to find out how much she would get. But when she surrendered the policy some weeks later, she received £940 less than she said the firm had led her to expect. She asked it to pay her £940 to bring the payment up to the 'correct' amount. When the firm refused, she referred the complaint to us.

complaint upheld

In support of its case, the firm sent us a taped recording of Mrs T's telephone call to its customer service department. During the call, the representative said that the policy's surrender value would be '*around*' £7,000. However, he stressed that this value could not be guaranteed and would be subject to any market fluctuations in the period before she surrendered the policy.

We considered that the representative's statement about the amount Mrs T would receive was somewhat misleading, even though he had made her aware that the figure he quoted was not guaranteed. When Mrs T had asked the representative if the value could be *much* more or less than the figure he had quoted, he replied that he could not say, but that it would be '*close*' to £7,000. We did not think that a reduction of £940 left a sum that was particularly '*close*' to £7,000.

The firm offered to:

- reinstate the bond, if Mrs T returned the payment it had sent her for the proceeds of the policy; *or*

- pay her £470 (50% of the difference between the policy's actual surrender value and the value it had quoted over the telephone).

Mrs T accepted the second option.

28/16
mis-selling of mortgage endowment policy

Ms A's complaint concerned a with-profits mortgage endowment policy. She said she had been reluctant to take out an endowment mortgage, but the firm's representative had persuaded her to do so. He had told her that the policy would not only repay her mortgage, but also provide her with a sizeable lump sum.

complaint upheld

Because the firm was unable to provide much documentation about the sale, we asked Ms A to complete our mortgage endowment questionnaire. Her answers showed that she was single with no dependents. She was a member of her firm's occupational pension scheme and the scheme included life cover. She had no other savings or investments, and she described her attitude to risk as '*Cautious 1*' on a 1–10 scale.

We concluded that, in the circumstances, the sale of an endowment policy had been unsuitable. The firm agreed and offered to pay redress, to be calculated in accordance with Regulatory Update 89.

However, when Ms A was given details of the redress, she told the firm that this was insufficient. She said she wished it to calculate redress using her own, '*more appropriate*', formula. She refused to accept our assurance that the formula the firm was using was that set down by the regulator for use in all such cases.

All attempts at mediation failed, so the matter was referred to an ombudsman for a final decision. The ombudsman confirmed that the complaint should be upheld and that the firm's offer had been correctly calculated, in accordance with the regulator's guidance. Ms A then decided to accept the firm's offer.

28/17
unit trust ISA – customers disagree with trust's conversion to an OEIC

Several years after Mr and Mrs Y each invested £3,000 in a unit trust ISA (Individual Savings Account), the firm contacted all unitholders about a proposed conversion of the unit trust to an OEIC (Open Ended Investment Company). For the proposal to succeed, at least 75% of unitholders had to vote in favour of the conversion.

Although Mr and Mrs Y voted against it, the proposal went ahead. The couple then complained to the firm that, as a result of the conversion, they felt they no longer held the policies they had '*requested and signed for*'.

complaint rejected

We established that, under the terms and conditions of the original unit trust, the firm had the right to propose the conversion. And once the required number of policyholders had voted for the conversion, the result was binding on all unitholders, irrespective of how or whether they voted.

Mr and Mrs Y did not suffer any financial loss as a result of the conversion. And they still retained the right to transfer their ISA to another firm if they felt their investment was no longer appropriate. We therefore rejected their complaint.

■ 28/18

investment in corporate bond and gilt fund – whether adviser's letter to switch funds constituted advice

In 1997, on the firm's advice, Mrs M invested £7,500 in the firm's corporate bond and gilt fund. Three years later, Mrs M wrote to the adviser because she had concerns about the fund's poor performance. In his reply, the adviser wrote:

'*You may wish to consider transferring your plan into another fund, such as the European Fund, and I am enclosing our Investment Record which shows the performance of our funds, for your information*'.

As a result, Mrs M decided to switch funds. However, within a fairly short time, the value of her investment dropped considerably more than it would have done had she not switched. She complained to the firm, saying she held it responsible for her losses. She maintained that the adviser had suggested the switch and she said he had not told her that the European Fund represented a greater riskthan her existing investment. When the firm refused to uphold her complaint, she came to us.

complaint upheld

We considered that the adviser's letter had constituted a recommendation and had encouraged Mrs M to take a specific course of action. If the adviser had not intended his words to be understood as giving advice, then he should have made that clear.

If he *had* intended to advise Mrs M, then he should first have made sure he was fully aware of her current circumstances and requirements. He should also have explained that she would be increasing her exposure to risk if she switched.

We ordered the firm to make good any loss that Mrs M had suffered as a result of switching, and to pay her £250 for distress and inconvenience.

working **together**

This year we will again be running a series of conferences in various centres around the UK. For more information, look on our website or complete this form, ticking the event(s) you are interested in, and return it to us.

Please send information about the *working* **together** conferences to:

name(s)

firm

phone

email

office address

please tick

	date	city	venue	topic
	3 April	London	British Library	investment
☐	2 July	London	British Library	insurance
☐	17 September	Belfast	Europa Hotel	insurance, investment and banking
☐	8 October	Leeds	Royal Armouries	banking
☐	12 November	London	British Library	banking
☐	4 December	Manchester	Manchester Conference Centre	insurance
☐	10 December	Manchester	Manchester Conference Centre	investment

Please send this form (or a photocopy) to:

Graham Cox, Liaison Manager
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

or email the details to: conferences@financial-ombudsman.org.uk

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ask ombudsman news

your questions answered

speaking your language

Q I wonder if you are able to give any assistance to customers whose first language is not English? I am asking on behalf of my neighbour. He has been in dispute with his motor insurers for several months following a traffic accident. He speaks Urdu and although he can read *some* English, he is not at all confident about speaking it – particularly over the phone.

Things are getting complicated now that the insurers are saying they won't accept his claim. Some of his family have been helping out by making calls for him, but this hasn't been very satisfactory. The whole situation is getting very frustrating for him. I don't really know enough to advise him what to do next.

A Yes, we can help. We have sent you an Urdu version of our consumer leaflet to pass on to your neighbour. This explains how we can help with complaints about a wide range of financial services, including motor insurance.

And if your neighbour calls us on 0845 080 1800 we can get an interpreter on the line right away to help him discuss his complaint with one of our consumer advisers.

Our website (www.financial-ombudsman.org.uk) includes versions of our consumer leaflet in Urdu and a number of other languages, as well as information about how we can help customers who have other special needs.

time to pay?

Q Can you tell me when you will be sending my firm the invoice for the ombudsman service annual levy? Will we be able to pay in instalments?

A We aim to have sent out all our invoices for the 2003/04 annual levy by the end of June this year. You can pay by cheque or by BACS (Bank Automated Clearing System). If your firm pays more than the minimum levy for any fee block, you can also opt to pay in quarterly instalments by direct debit.

You'll find a mandate for direct debit payments enclosed with your firm's invoice. If you qualify to pay in this way and wish to do so, simply complete the mandate and return it to us within 30 days of the date on the invoice.