ombudsman news

Financial Ombudsman Service

issue 41 November 2004

essential reading for financial firms and consumer advisers

in this issue

welcome to mortgage and long-term care insurance firms

from **Walter Merricks**
chief ombudsman

I am pleased to have this opportunity to welcome mortgage broking and long-term care insurance firms which, since 31 October 2004, have been authorised by the Financial Services Authority (FSA) and are therefore also now covered by the Financial Ombudsman Service.

Although this change brings about a significant increase in the number and types of firms that we cover, we are not expecting a large increase in the number of complaints referred to us from these sectors. However, we recognise that – for many firms – this will be the first time that they have had to comply with the procedures and time limits in the FSA's complaints-handling rules. We have already undertaken a number of initiatives to try to ensure that the new arrangements result in as little disruption and as much benefit as possible, both for us and for the firms newly covered by us. Among these initiatives is the series of events we have been running this year – at venues around the country – for firms in the mortgage and general insurance sectors. Take a look at page 15 for details.

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As well as resolving complaints, the ombudsman service works with firms to help *prevent* complaints by identifying and reducing problems that might otherwise lead to expensive and time-consuming disputes. The range of services we offer firms as part of this complaints-prevention work includes:

- Our technical advice desk, dedicated to answering firms' queries about the ombudsman service and its general approach (call 020 7964 1400 or email technical.advice@financial-ombudsman.org.uk)

- Regular copies of this newsletter, *ombudsman news*, providing articles and case studies illustrating our approach to the wide variety of cases referred to us

- Tailor-made training, conferences and seminars on complaints-handling issues (call 020 7964 1400 or email liaison.team@financial-ombudsman.org.uk).

Firms will also find a wealth of information on our website (www.financial-ombudsman.org.uk). Of particular interest is the page that outlines the help we offer firms (www.financial-ombudsman.org.uk/faq/firms.htm).

about this issue of *ombudsman news*

There are certain circumstances in which, even though a complaint is within our jurisdiction, we can decide to dismiss it without considering its merits. This is often referred to as 'early termination'. On page 3 of this issue, we focus on the 'termination' issues that tend to arise most frequently in banking complaints.

On page 8, we set out our views on certain aspects of insurance fraud. And on page 11, we provide a selection of some of the wide range of investment cases that we have dealt with in recent months. These include a complaint about the mis-selling of a mortgage endowment policy, where the policy was not due to be paid off until the customer was 76 years old; a complaint about the mis-selling of an FSAVC (Free Standing Additional Voluntary Contributions) policy; and a dispute about whether investment advice was given in the course of a customer's routine call to the firm to obtain a valuation.

1 some banking 'termination' issues

There are certain circumstances where – even though a complaint is within our jurisdiction – we can dismiss it without considering its merits. This is sometimes called 'termination'.

Our rules set out a total of 17 sets of circumstances where we may 'terminate' a case. The circumstances listed below are those that tend to crop up most frequently in banking cases.

- **The complaint clearly does not have any reasonable prospect of success.**

  We can decide that we would not be justified in investigating a complaint if, on the evidence of the papers submitted to us, and taking account of everything the complainant says, we consider that the complaint is bound to fail.

- **The firm has already made a fair offer of compensation.**

  Where the firm has already offered the customer redress which, even if we upheld the complaint completely, we would not improve on, then we can decide that there would be no justification for our investigating the complaint.

- **The complaint has previously been considered or excluded by the Financial Ombudsman Service or by a former ombudsman scheme.**

  We do not re-open and re-consider a case, unless there is new material evidence that was not previously available and that is likely to affect the outcome.

- **A court has already considered, or will be considering, the issue or issues in the complaint.**

  We do not allow a conflict, or potential conflict, to arise between our findings and those of a court.

- **The complaint is one that is more suitable for consideration by a court**.

  Sometimes a court may be much better placed than us to deal with a complaint. An example of this is where the dispute is really between the parties to the account (such as a married couple or business partners who have fallen out). If one of the parties to the account complained to us that the firm has favoured the other, and we agreed to consider the complaint, our decision would not bind the other party to the account. It would therefore be better for the complaint to be decided by a court, where the decision would be binding on both parties.

- **The complaint is about a firm's legitimate exercise of its commercial judgement.**

  We do not interfere in how a bank or building society exercises its commercial judgement, as long as it does so legitimately. For example, it is not for us to second guess a firm's decision to refuse a loan, if the firm has carried out its risk assessment properly.

case studies – some banking 'termination' issues

The following are all cases where we have had to decide whether the circumstances warranted our 'terminating' the complaint.

termination where the complaint clearly does not have any reasonable prospect of success

■ **41/1**
customer put money in a specific savings account without asking for advice – later complaining that the firm should have advised her about a different account that might have suited her better

After reading a newspaper article that mentioned a 30-day notice savings account, offered by a certain building society, Ms D decided to open an account. She went into a local branch of the building society, filled in the application form and handed it to the counter clerk with her cheque for the opening balance. Ms D did not ask about any other savings accounts, nor did she ask for any advice.

... the complaint clearly had no reasonable prospect of success, so we terminated it

Some months later, Ms D discovered that the building society offered a 60-day notice account that paid a higher rate of interest. She complained, saying that the building society should have advised her to put her money into the 60-day account instead, as it was much better suited to her needs. When her complaint was rejected, Ms D came to us.

complaint terminated
In these circumstances, the building society had no duty, either in law or under the Banking Code, to offer the customer advice. Ms D had asked to put her money into a specific account, and the building society did not have to query her decision or offer her any advice about a 'better' option. We decided that the complaint clearly had no reasonable prospect of success, so we terminated it.

.....

■ **41/2**
firm unable to convince customer that his complaint is unjustified – when complaint brought to us, firm suggested we should terminate it

Mr B was certain that the bank with which he had a mortgage had been systematically overcharging him over a number of years. The bank had done its best to convince Mr B that he was wrong and, in particular, that it had legal justification for charging the sums that Mr B was disputing. However, Mr B did not accept the bank's explanations and eventually he brought his complaint to us.

The bank said that Mr B's concerns were not supported by any substantial evidence. It argued that it had already made every attempt to answer the points Mr B had raised and stated that since the complaint clearly had no reasonable prospect of success, we should terminate it.

complaint not terminated
It is for us to decide whether or not a case is suitable for termination. If we decide to terminate a case, we do not look into its merits at all. What the bank was asking us to do here was, effectively, to take a quick decision on the complaint's merits.

But this was not a trivial case, nor one without any obvious substance. Mr B had taken great trouble in presenting his arguments and appeared sincerely convinced that the bank had been acting unlawfully in charging certain sums to his mortgage account.

We decided the case was not suitable for termination and it went forward to be investigated.

... if we decide to terminate a case, we do not look into its merits at all.

termination where the bank or building society has already made a fair offer of compensation.

■ **41/3**
firm compensated customer adequately for its failure to pay direct debits but could not explain why error occurred – customer hopes to obtain explanation by referring the matter to us

Mrs G was very annoyed when her bank failed to pay two direct debits from her current account. The amounts concerned were fairly small and Mrs G suffered no financial loss, even though she was caused some embarrassment, worry and inconvenience.

The bank was unable to give Mrs G a satisfactory explanation for why the direct debits had failed, but it offered her £150 compensation. Mrs G rejected this offer, not because she felt it was inadequate, but because she wanted us to investigate what had happened and provide her with the explanation she was seeking.

complaint terminated
We considered that the bank had made a fair offer of compensation for Mrs G's distress and inconvenience. It was not for us to launch an investigation into the underlying facts when the complainant could be adequately compensated without it. So we terminated the complaint.

termination where the complaint has previously been considered or excluded by the Financial Ombudsman Service or by a former ombudsman scheme.

■ **41/4**
several years after complaint settled by a former ombudsman scheme, customer brings it to Financial Ombudsman Service to see if larger amount of compensation payable

Mr A complained to the Building Societies Ombudsman scheme in 1998. His building society had been taking payments from him for the interest on his mortgage but not for the capital as well. It was five years before Mr A realised that his mortgage debt had not reduced at all, as it would have done under a properly conducted capital-and-interest repayment mortgage.

The Building Societies Ombudsman scheme ordered the building society to pay compensation into Mr A's mortgage account, in line with its then approach to such cases. Mr A accepted the award, which became binding on him and the society. However, several years later he discovered that the Financial Ombudsman Service had a modified approach to such cases, so he made a new complaint about the same events – to see if the amount of compensation would be higher.

... there was no new evidence that was likely to affect the outcome.

complaint terminated
There was no reason for us to re-open Mr A's case. His complaint had already been considered by a former ombudsman scheme, and he had accepted that scheme's decision in full and final settlement of his complaint. There was no new evidence that was likely to affect the outcome.

.....

termination where a court has already considered, or will be considering, the issue or issues in the complaint.

■ **41/5**
building society obtains court order and re-possesses house – proceeds do not cover entire mortgage debt – customer disputes amount still owing and refuses to pay it

Ms E fell into arrears with her mortgage payments and eventually, following a court order for possession, the building society repossessed and sold her house. However, the proceeds of the sale were not enough to repay the whole mortgage debt, so the building society asked Ms E to pay the shortfall.

Ms E complained that the shortfall was larger than it should have been, and she said that the building society had wrongly added certain charges to her mortgage debt. When the building society refused to uphold her complaint, Ms E came to us.

The building society argued that we should exercise our discretion *not* to investigate the complaint, because the court had ruled on the validity of the mortgage debt when it ordered possession.

complaint not terminated

We did not agree. We are permitted to dismiss a complaint where we are '*satisfied that the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits*' [DISP Rule 3.3.1(8)]. In other words, we do not have to decide again something that a court has already decided.

However, from examining the court papers, it was clear to us that the court had not decided that the mortgage debt, as stated by the building society, was correct. All the court had decided was that there were sufficient arrears to justify repossession. So there was no reason for us not to investigate the complaint.

termination where the complaint is one that is more suitable for consideration by a court.

■ **41/6**

dispute over ownership of a cheque after company is sold

Mr G was the managing director and main shareholder of a company called X Ltd, which he wound up in 1998. He then formed a new company – also called X Ltd – but sold it in 2001.

Shortly after the sale of the 'new' X Ltd, a dispute arose about who was entitled to a particular cheque, made payable to X Ltd, that Mr G had paid in to his bank. The bank credited the money to the 'new' X Ltd. But Mr G said the cheque was for the 'old' X Ltd and that, under the winding-up arrangements, he was personally entitled to the money.

complaint terminated

We decided that the case was better suited to a court. Whether or not Mr G was entitled to the money was really a dispute between him and the buyers of the 'new' X Ltd. We had no powers over the buyers, so we could not settle the dispute.

termination where the complaint is about a firm's legitimate exercise of its commercial judgement.

■ **41/7**

bank tells customer she cannot transfer her fixed-rate mortgage when her job is relocated to Jersey

The mortgage that Miss J took out with her bank enabled her to pay interest at a fixed rate for the first five years. Under the terms of the mortgage, if she paid off the entire sum during the fixed-rate period, she would also have to pay an 'early repayment' charge. However, she could transfer the mortgage to another property without incurring the charge, providing certain conditions were met. One of these conditions was that the new property must meet the bank's lending criteria.

... the bank's lending criteria excluded properties in Jersey, or any of the Channel Islands.

Quite unexpectedly, two years after she took out the mortgage, Ms J's employers re-located to Jersey. Ms J thought she could simply sell her house, buy a property in Jersey and transfer her fixed rate mortgage to the new property. However, the bank told her this was not possible. It said that its lending criteria excluded properties in Jersey, or any of the Channel Islands. This was because the Channel Islands are outside the UK and have separate legal jurisdictions.

Miss J complained to the bank, saying its decision was unfair as it left her with no alternative but to pay off her existing mortgage and incur an early repayment charge. She argued that she had been a loyal customer of the bank for a number of years, and that it would do the bank no harm to make an exception in her case. However, the bank said it could not alter its decision, so she came to us.

complaint terminated

We considered that the decision whether to lend money to buy property in the Channel Islands was entirely, and legitimately, a matter for the bank's commercial judgement. It was not for us to put ourselves in the bank's position and decide what, if anything, we would have done differently.

2 aspects of insurance fraud

If we are satisfied that a complainant has perpetrated a fraud, with the intention of dishonestly obtaining something to which he or she is not entitled, then we will reject their complaint. But in deciding whether fraud has taken place, we rely solely on the evidence.

An allegation of fraud should not be made lightly. The burden of proof is on the insurer, if it suspects that fraud has taken place. Strictly speaking, the civil standard of proof 'on the balance of probabilities' applies. However, some courts have acknowledged that stronger evidence than this is usually required, which has the practical effect of raising the burden of proof to a degree more akin to the criminal standard of 'beyond reasonable doubt'.

'immaterial' fraud

In some cases, what is sometimes described as 'immaterial' fraud occurs, where a policyholder acts fraudulently simply to obtain payment of a genuine insured loss.

A classic example is where the policyholder has lost the receipt for a stolen item and, facing pressure from the insurer, produces a forged receipt to try to substantiate the claim. The loss is genuine but the policyholder has lied in the course of making the claim,

thereby breaching the duty to act 'in utmost good faith'. When the lie is discovered, the insurer generally 'forfeits' the policy (meaning that it is not obliged to pay the claim and can refuse any future cover).

One of the leading texts on insurance law states:

'*It is well established that an assured who has made a fraudulent claim is not permitted to recover at all and forfeits any part of the claim which could have been made in all honesty.*' [MacGillivray on Insurance Law (10th edition), paragraph 19-60.]

The principal legal authority for this statement is the House of Lords case, *Manifest Shipping Co Ltd v Uni-Polaris Co Ltd* (referred to as '*The Star Sea*' and reported [2001] in Volume 2 of the Weekly Law Reports at page 170). The rationale of that case is that a policyholder's fraud, however trivial, taints the entire claim and enables the insurer to reject it and 'forfeit' the policy. It was deemed to be a matter of public policy that dishonest policyholders should not be able to recover any of their losses.

... we have long considered the application of this rule to be unnecessarily harsh.

However, we have long considered the application of this rule to be unnecessarily harsh. A decision of the Court of Appeal has bolstered our view that fraud which does not prejudice the insurer's liability to pay the claim should, in effect, be disregarded. The decision was made in the case of *K/S Merc-Scandia XXXXII v Certain Lloyd's Underwriters* (referred to as '*The Mercandian Continent*' and reported [2001] in Volume 2 of the Lloyd's Law Reports at page 563). The case concerned the principle of 'utmost good faith' and Lord Justice Longmore (previously one of the editors of MacGillivray) held that an insurer should only be able to 'avoid' a policy for fraud:

- if the fraud would have an effect on the insurer's ultimate liability; *and*
- where the fraud, or its consequences, were sufficiently serious to entitle the insurer to repudiate the policy for fundamental breach of contract, if it so desired.

Thus, where the fraudulent act or omission makes no difference to the insurer's ultimate liability under the terms of the policy, it should not entitle the insurer to 'forfeit' the policy or reject the claim. In the example given above, of the forged receipt, the claim should be paid. Indeed, it was the insurer's unreasonable insistence on strict proof that caused the policyholder to act dishonestly in the first place.

Of course, there is nothing to prevent the insurer from:

- giving the policyholder written notice that it intends to cancel the policy (in accordance with the policy terms), on the basis that it no longer wishes to deal with a particular policyholder; *or*
- not inviting renewal of the policy.

But at least the genuine claim should be paid.

insurers' remedies: 'avoidance' versus forfeiture

Insurers sometimes submit that a complainant's fraud amounts to a breach of his/her continuing duty of good faith, thereby enabling the insurer to 'avoid' the policy from its start (in other words, to treat the contract as though it had never existed). This means that the insurer not only cancels the policy from its start, it may also try to recover any monies previously paid out under the policy, even for genuine claims. And in cases of fraud, the insurer is not obliged to refund the premium(s).

It now seems clear in law that policyholders only have a continuing duty of good faith, insofar as they are obliged to deal fully and frankly with the insurer at any time when it properly requires them to provide information. Thus, a duty arises when the policy is renewed annually or when a claim is submitted. However, if a policyholder breaches that duty in the course of making a claim — for example, by submitting forged receipts — the insurer's remedy is not to 'avoid' the policy from its start but to 'forfeit' the policy (and benefits) *from the date of the breach*. This means that the insurer is not obliged to pay the fraudulent claim and it can cancel the policy prospectively. But it cannot cancel the policy retrospectively and seek to recover monies previously paid for genuine claims.

There is some legal authority for this proposition: see, for example, *Agapitos v Agnew* (reported [2002] in Volume 3 of the *Weekly Law Reports* at page 616). Taking account of the law and good industry practice, we do not believe it is fair or reasonable for insurers to 'avoid' policies retrospectively in cases of fraud; they should only forfeit the policy from date of the fraud.

In a future issue of *ombudsman news* we will summarise some recent cases we have dealt with involving fraud.

... policyholders have a continuing duty of good faith.

3 investment case studies

This selection illustrates some of the wide range of investment cases that we have dealt with recently.

■ **41/8**
mortgage endowment policy extends well beyond policyholder's retirement – complaint that policy was mis-sold

Mrs K was 57 years of age when, on the firm's advice, she took out a unit-linked mortgage endowment policy for a term of 19 years. Two years later her son, Mr K, complained to the firm on his mother's behalf. He said the firm had acted irresponsibly in selling Mrs K a policy that, even assuming it achieved the necessary level of performance, would not pay off the mortgage until she was 76.

Mr K insisted that his mother had not been made aware of any risk in taking out a mortgage endowment policy. He added that his mother had not been in the best of health when she was sold the policy, and had since had to give up work altogether because of a deterioration in her condition. And he questioned the mortgage figure of £28,000, quoted on the policy documents, saying that his mother had borrowed only half this amount.
The firm rejected the complaint, so Mr K came to us.

complaint upheld
When we asked Mrs K why she had opted for a mortgage that would take her over 19 years to pay off, she said that this was the only way in which she could afford the repayments.

From the 'fact find' completed by the firm's representative at the time of the sale, it appeared that Mrs K had confirmed that she would have no difficulty meeting the payments after she had retired. However, there was no mention of where the money would come from. We noted that the medical questionnaire on the proposal form had been fully completed and revealed no significant health problems.

The mortgage application form showed that Mrs K had indeed borrowed £28,000. This sum comprised a re-mortgage of £14,500 and a new loan of £13,500, which included £6,000 for home improvements.

We concluded that Mrs K had decided to raise a new long-term loan, despite her unsatisfactory financial circumstances and age, and that she had believed that she could afford the repayments.

However, there was no evidence that the firm's representative had raised with her the issue of investment risk. The unit-linked endowment policy that he recommended was not suitable for Mrs K's personal and financial circumstances or requirements. The firm agreed to pay

... the adviser had not told them there was any element of risk.

redress for any financial loss that Mrs K had suffered as a result of its inappropriate advice. This was based on a comparison with a repayment mortgage for the same amount over the same term.

■ **41/9**
customer complains about advice he claims he was given in the course of telephone call to firm's customer service department

Mr O held a with-profits bond with the firm. He complained that when he had telephoned the firm – just days before it announced cuts in its final bonus rates – it had incorrectly advised him not to sell his bond and had assured him that its value would not fluctuate.

The firm rejected the complaint. It said that it had not provided Mr O with any form of advice when he telephoned. His call had been a routine one to its customer service department in order to obtain a current valuation. The firm also pointed out that bonus rates could – and did – vary, and that this fact had been made very clear to Mr O when he first took out the bond. Dissatisfied with the firm's response, Mr O came to us.

complaint rejected
In support of his complaint, Mr O sent us evidence in the form of a telephone bill. This showed that he had made a telephone call to the firm's customer service department, lasting around 10 minutes. He maintained that the length of the call 'proved' that he had not called merely to obtain a valuation, but had also discussed the performance of his investment and had sought and received advice about whether to cash it in.

Unfortunately, the firm did not have any tape recordings of calls to its customer service department. However, it told us that there were no circumstances in which its customer services staff would have given advice; they were not trained or authorised to do this.

The firm admitted that 10 minutes was rather longer than normal for a call involving a routine valuation. However, it said it was not that unusual for calls to take so long. The data protection checks made at the beginning of each call to establish the investor's identity could take some while, particularly if the caller did not have some of the details, such as account numbers, immediately to hand. And it was quite common, after asking for a valuation, for callers to discuss routine matters – such as the updating of their contact details – or to ask about the procedure for selling their investment.

We concluded that, on the balance of probabilities, the firm had not given Mr O any investment advice in the course of his telephone conversation and we rejected his complaint.

■ **41/10**
mis-selling of mortgage endowment policy – no provision in 'tick boxes' on 'fact find' for customers with lower than 'cautious' risk level

Mr and Mrs H complained to the firm when they discovered that their mortgage endowment policy was unlikely to produce enough, when it matured, to pay off their

mortgage. They said that when they took out the mortgage nearly 14 years earlier, the adviser had not told them there was any element of risk. When the firm refused to uphold their complaint, they brought it to us.

complaint upheld

The 'fact find' that the firm's adviser had completed at the time of the sale recorded the couple's attitude to risk as 'cautious'. This seemed to match the level of risk represented by the with-profits endowment policy that they were sold.

However, unlike most 'fact find' documents, this one had not provided a full range of risk options. There were a series of boxes on the form, representing different levels of risk, and customers were asked to tick the box that matched their attitude to investment risk. There was no box for customers who were not prepared to take any risk at all with their money. So we thought it possible that the couple had ticked the box indicating that their attitude to risk was 'cautious', simply because this was the lowest risk category available.

To try to get a clearer picture of the couple's attitude to risk, we therefore needed to try and find out more about their circumstances at the time of the sale. We found no reason to suppose that either of them had any particular knowledge or experience of financial matters when they took out the mortgage. Although both were in full-time employment, their earnings were quite modest and they had no savings. They had no form of investment other than Mr H's holdings in his employer's 'Share Save' scheme. However, we considered this to carry minimal – if any – risk since employees could sell back any shares allocated to them as soon as they received them, if they wished.

We concluded that the couple would not have wanted to take any risks, when they took out a mortgage, and we upheld their complaint.

41/11
customer asks firm to re-instate existing pension policy – it sets up new policy instead, without his authority

Mr D believed that he had reinstated an existing pension policy that allowed him to vary the level of his regular payments and to make additional payments from time to time. However, when he attempted to make a one-off additional payment of £380, the firm told him that this was not possible.

When he contacted the firm about this, he discovered that it had not reinstated his existing policy, as it had agreed to do, but had sold him a completely new policy. The firm did not accept his complaint that he had not given it permission to do this, so he came to us.

complaint upheld

It was clear from the paperwork that the firm sent us that Mr D had asked the firm's representative to arrange for his existing pension policy to be re-instated. An internal memo from the firm to its representative explained that, for various reasons, the policy could not be re-instated and a new policy would have to be set up. There was no authority from Mr D to set up a new policy.

Mr D told us that one of his main reasons for asking for his existing policy to be re-instated was because he wanted to avoid the charges associated with setting up a new policy. He claimed that if he had known that a new policy was his only option, he would have shopped around.

He accepted that the firm had sent him a policy document quoting a new policy number, but he strenuously denied that he had been told he had a new policy. He said the firm's representative had told him that, for '*administrative reasons*', he had been allocated a new policy number. However, the representative had assured Mr D that he had been given an '*updated plan linked to the existing policy*', not a new policy.

We concluded that the representative had misrepresented the policy to Mr D. And we were not persuaded that Mr D would have taken out the policy had he known it was a new contract. We told the firm to refund, with interest, all the contributions that Mr D had made into the new policy.

41/12
FSAVC review – firm fails to offer reinstatement option when making redress

Mrs M, a primary school teacher in her mid-40s, consulted a financial adviser as she felt she ought to be doing more to save for her retirement. On the firm's advice, she left her employer's Additional Voluntary Contributions (AVC) scheme and took out a Free Standing Additional Voluntary Contributions (FSAVC) policy.

Over 5 years later, Mrs M found out – by chance – that she would almost certainly have been better off if she had not taken the firm's advice. After she complained to the firm, it agreed that the FSAVC policy had been mis-sold. It calculated her financial loss, based on a comparison between her FSAVC and her employer's AVC scheme, and then paid redress in the form of a lump sum added to her existing FSAVC.

Mrs M queried the way in which the firm had calculated her loss, as she was not convinced that it had used appropriate information. The firm failed to provide her with what she thought was a satisfactory explanation, so she came to us.

complaint upheld

We considered that the firm had failed to act in accordance with the regulator's guidance. This was not because it had used inappropriate information when calculating Mrs M's loss, as she had thought. It was because the firm had failed to offer her the option of being reinstated in her employer's AVC scheme (providing the scheme was able to take her back).

We referred the firm to section 8.1.3 of the regulator's guidance for the review of FSAVC mis-selling. This states that firms should offer reinstatement, where this is available, if the AVC scheme was offered to employees as a 'defined' benefit.

an invitation to meet the Financial Ombudsman Service

Throughout the year, the Financial Ombudsman Service has been running a series of events around the country for firms in the mortgage and general insurance sectors.

The events include an informal question and answer session and give firms that are new to the ombudsman service the chance to learn more about us. The current series of these events is drawing to a close, but there's still time to come along to the last three.

You and your colleagues will be most welcome at any of these events. No need to book – just turn up!

Each event starts at 10.50am, with a presentation at 11.00am (lasting around 50 minutes), followed by an informal question and answer session.

1 Dec	Chester	The Queen Hotel, City Road, Chester CH1 3AH
8 Dec	Sheffield	Marriott Hotel, Kenwood Road, Sheffield S7 1NQ
15 Dec	Oxford	The Randolph Hotel, Beaumont Street, Oxford OX1 2LN

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ask ombudsman news

inconsistent decisions?

a financial adviser emails ...

Q Two separate clients complained about advice given by my firm to take out endowment policies. The advice was given in the same month, the product was identical and the sum assured was the same in each case.

After looking into the complaints, my firm turned them both down. Both clients then took their complaints to the ombudsman service. One of the complaints was rejected by an adjudicator. But now a different adjudicator has upheld the other complaint. How can you explain such inconsistency in decision-making?

A The fact that we may arrive at different outcomes for separate cases shouldn't be seen as surprising. This isn't a question of inconsistency – it's a matter of our looking at each complaint individually and making a decision on what we believe is fair and reasonable in the circumstances of the particular case. There may be surface similarities between some complaints. But when we look at them in detail, we generally find very different facts and issues – reflecting the reality that everyone's personal and financial circumstances will be different.

We sometimes hear from people who compare case studies in *ombudsman news* with a personal complaint they brought to the ombudsman service – and then feel that we have been inconsistent.

By necessity, summarising a complex case into a few hundred words for *ombudsman news* means we are rarely able to paint the full, detailed picture. Our purpose in *ombudsman news* is not to include every fact about a particular case – but to highlight key themes or issues that we hope will give a 'steer' on our general approach in that type of case. Deciding complaints – like financial advice itself – can involve a complex balance of judgement, often based on a wide array of seemingly contradictory facts. The 'right' outcome in one case will not automatically be the right answer in other 'similar' cases.

information and help for firms

Q My firm has recently become covered by the ombudsman service for the first time. Can you tell me what we can expect if a complaint made against us is referred to you?

A Take a look at the *information and help for firms* section on our website at http://www.financial-ombudsman.org.uk/faq/firms.htm

Among other useful items, you'll find our guide for firms, *an introduction to the Financial Ombudsman Service*, which explains our role and gives a quick review of the ombudsman rules and procedures.

And don't forget our special events for firms in the mortgage and general insurance sectors – see page 15 of this issue for details.