ombudsman news

Financial Ombudsman Service

issue 44

March 2005

essential reading for financial firms and consumer advisers

in this issue

about this issue

We begin this issue with a round-up of some of the banking cases we have dealt with in recent months. These include the case of a couple who sought their bank's help in protecting themselves from any adverse currency fluctuations in the period between finding a buyer for their house in the UK and moving to New Zealand. They signed an agreement that they believed gave them the option to convert the proceeds of their house sale into New Zealand dollars, at a set rate at a future date. However, before the couple had found a buyer for their house, and without consulting the couple, the bank went ahead and bought the dollars. It said the couple had not arranged an *option* to buy the currency but had signed a *forward exchange contract* that was a binding agreement.

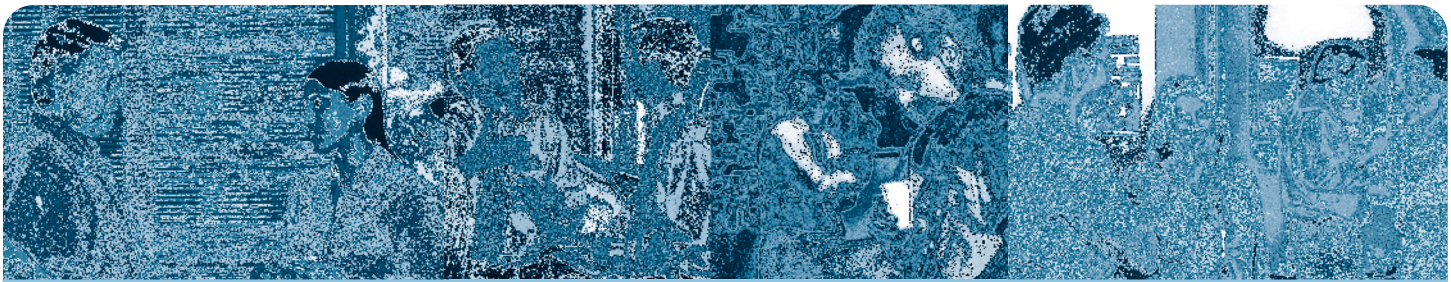
We also feature a case where a student who had a career development loan tried to take action against his bank under section 75 of the Consumer Credit Act, when the training provider went out of business shortly after the student began his course. And we look at several disputes involving credit

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

cards, including a complaint where – after £30,000 worth of purchases had been made on a company credit card in the first nine months – the company's sole director said he had no knowledge of the card and that his signature on the application form must have been forged.

Some of the most difficult personal accident insurance cases we deal with are those where the policyholder was injured or died following surgery. On page 9 of this issue we outline our approach to these cases and highlight the importance of distinguishing between cases where the complications were an unfortunate but unavoidable result of surgery – and those where the policyholder was injured because something unplanned or negligent occurred during or after the surgery.

Finally, on page 12 we examine the issue of attitude to risk in mortgage endowment cases. Using recent case studies we show the importance, when assessing these complaints, of not assuming that a recommended product was suitable for the customer simply because its level of risk appears to match the customer's attitude to risk – as noted on the 'fact find' completed at the time of the sale.



services for firms and consumer advisers

our **external liaison team** can

- provide training for complaints handlers
- organise and speak at seminars, workshops and conferences
- arrange visits

phone **020 7964 1400**
email **liaison.team@financial-ombudsman.org.uk**

contact our **technical advice desk** for

- information on how the ombudsman service works
- help with technical queries
- general guidance on how the ombudsman might view specific issues

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

phone	**0845 080 1800**
switchboard	**020 7964 1000**
website	**www.financial-ombudsman.org.uk**
technical advice desk	**020 7964 1400**

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

1 banking case round-up

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

44/1
banking: guaranteed capital bond

Mrs J invested £10,000 in the firm's guaranteed capital bond – a five-year bond that guaranteed to return all the investor's capital at the end of the five years. It promised to pay the equivalent of more than 8% per year if the FTSE 100 index (Financial Times – Stock Exchange 100 index) did not fall during the bond's 5-year term. This was to be measured by comparing the FTSE 100 index at the start of the bond with the average figure for the bond's last six months – to even out any undue fluctuations.

When Mrs J's bond reached the end of its term, the firm told her that as the FTSE 100 had fallen, she would get her capital back, but no more. The firm rejected Mrs J's complaint that she would receive no interest on her money, so she brought the complaint to us.

... guaranteed capital bonds are really just fancy deposit accounts.

complaint rejected

Guaranteed *income* bonds, called '*precipice bonds*' by some commentators, are investment products – to which the normal rules about investment advice apply. Typically, the *income* is guaranteed for the life of the bond – but may be paid out of capital if the stock market falls substantially (as it has done), so that the capital starts to disappear.

However, guaranteed *capital* bonds, like the one Mrs J took out, are a quite different product. They are really fancy deposit accounts – and the normal rules about investment advice do not apply. Typically, the customer is guaranteed to get their capital back at the end of the bond's term – but if the stock market falls (as it has done) there is no income.

The firm was not required to volunteer advice to Mrs J or to carry out a 'fact find', detailing Mrs J's financial circumstances and objectives, before she put her money in the bond. It did not, in fact, give advice. The product literature provided a clear explanation of how the account worked. In reality, Mrs J knew the deal she was making at the time. From the information and evidence we were given, we concluded that she had been content with the bond when she took it out but later wished to change her mind, with the wisdom of hindsight. We did not uphold her complaint.

… it was up to the firm to explain clearly the nature of the transaction.

44/2
banking: altering company mandate

Mr and Mrs A and Mr C were the directors of G Ltd and had given the bank personal guarantees for G Ltd's account with the bank. In February 2002, Mr C authorised a payment that resulted in G Ltd's account becoming £3,000 overdrawn. In March 2002, Mr and Mrs A told the bank they had resigned as directors. The following month the bank called in the overdraft, and claimed against Mr and Mrs A and Mr C under their personal guarantees.

Mr and Mrs A said they were not liable because they had sacked Mr C in February 2002, and had told the bank to cancel his signing authority.

complaint rejected

The bank said it had no record of Mr C's authority being terminated. Mr A claimed that he had phoned the bank to cancel Mr C's signing authority, speaking first to the branch and then being transferred to the business centre. He produced a phone bill which he said confirmed the call. However, leaving aside the formalities normally necessary in order to change a company's signing authorities, the call was only 20 seconds long – which was insufficient time to cover what Mr A said had happened. We therefore rejected the complaint.

44/3
banking: dispute between company owner and new owners of his business

Mr N owned and ran Z Ltd. In 1998, Z Ltd was wound up. The following year, Mr N set up a new company, which he also called Z Ltd.

In 2000, Mr N received a cheque for £5,000 payable to Z Ltd. He told the bank that it related to the 'old' Z Ltd, wound up in 1998, and he asked the firm to pay the money into his personal account.

In 2001, Mr N sold Z Ltd. Some while later the new owners of Z Ltd heard about the £5,000 cheque. They said it belonged to the 'new' Z Ltd, that they had bought the previous year. The money was still with the bank, in Mr N's personal account, so the 'new' Z Ltd claimed the money from the bank. The bank then 'froze' the money, which meant that Mr N could not withdraw it. When the bank rejected Mr N's complaint that it should not have done this, he came to us.

complaint rejected

The cheque was payable to Z Ltd, and was received after the 'old' Z Ltd was wound up and the 'new' Z Ltd was formed. So it was clearly arguable that the money might well belong to the 'new' Z Ltd.

The bank acted correctly in freezing the money, so that it could be preserved until the dispute between Mr N and the 'new' Z Ltd was resolved. The 'new' Z Ltd was not a party to the complaint, and we had no power to decide whether or not the money belonged to it. The real dispute was not between Mr N and the bank; it was between Z Ltd and Mr N. That could only be resolved in court.

44/4

banking: buying foreign exchange – confusion about whether transaction was a forward-exchange contract or an option

Mr and Mrs H planned to sell their house in the UK and emigrate to New Zealand. They asked the bank's advice about how they could protect themselves against an adverse movement in exchange rates while they were waiting to sell the house.

After a meeting with the bank, Mr and Mrs H signed an instruction, drafted by the firm, to arrange an 'option' to convert £150,000 into New Zealand dollars three months later. (In essence, an option gives the buyer the right to purchase a commodity – in this case currency – at a pre-determined price at a particular date in the future.)

Mr and Mrs H were very surprised when, at the end of the three months and without any consultation, the bank went ahead and bought the New Zealand dollars on the couple's behalf. The couple complained, saying that they had understood they had only arranged an *option* to buy the dollars – they not instructed the bank to go ahead and buy them. It had taken longer than they had expected to sell their house and they still had not found a buyer, so they had no immediate plans to move.

The bank told Mr and Mrs H that options were not available for transactions under £500,000 and that the couple were obliged to accept these dollars, since they had committed themselves to a binding *forward-exchange* contract.

complaint upheld

We did not consider that this was the sort of transaction that many customers would be familiar with. It was therefore up to the bank to explain clearly to Mr and Mrs H the nature of the transaction and the obligation that they were taking on. It failed to do that. And the instruction it drafted for the couple to sign clearly referred to an '*option*'. Since at the time they signed, Mr and Mrs H did not know when their house sale would go through, we did not think they would knowingly have committed themselves to anything more than an option. We required the bank to compensate them for their loss, plus interest.

44/5

career development loan not covered by section 75 of the Consumer Credit Act

Mr F applied successfully for a £2,000 loan, after reading about the government initiative to encourage people to obtain training with the help of a '*career development loan*'. Under this system, the government provides applicants with a list of banking firms prepared to lend the money needed for course fees. If the application is successful, the firm concerned sends the money direct to the training provider. The government then agrees to meet the interest payments on the loan until the student has reached the end of the course.

Unfortunately, in Mr F's case, the training provider went out of business soon after he started his course. Mr F felt that, in the circumstances, he should not have to repay the loan and he contacted the bank about this. Mr F thought that, since the bank had sent the money direct to the training provider, the transaction constituted a *debtor-creditor-supplier agreement* as covered by Section 75 of the Consumer Credit Act. If this were the case, then the bank would be equally liable, with the training provider, for the provider's breach of contract. When the bank rejected his complaint, Mr F came to us.

complaint rejected

We agreed with the bank that section 75 of the Consumer Credit Act did not apply in this instance. For a debtor-creditor-supplier agreement to exist, there has to be an arrangement between the *creditor* (the bank) and the *supplier* (the training provider). There was no such arrangement here. The only reason why the bank had paid the money to the training provider was to comply with the government's rules for the scheme, not because of any arrangement between the bank and the training provider. So Mr F was still liable for the loan.

44/6

credit card: '*gross negligence*' on customer's part not relevant when stolen card used by thief to obtain cash

Mr K's wallet, containing his credit card and a heavily disguised note of his security PIN number, was stolen from his car. Shortly afterwards the thief used the card to make a series of cash-machine withdrawals that increased the debit balance on Mr K's account by £2,000.

The firm held Mr K liable for this, saying that he had been '*grossly negligent*' in keeping a disguised note of his PIN number with his card. Mr K then complained to us.

complaint upheld

We reminded the firm that the gross negligence provisions in the Banking Code do not apply at all where a card is used to incur credit, rather than to spend money that is already in the account. That is because the Consumer Credit Act applies, and limits the cardholder's liability for withdrawals on a stolen card to £50.

44/7

credit card: supplier of goods bought by credit card refuses refund – impracticable for customer to return goods, as asked by credit card firm to do when customer claims against firm instead

Mr T needed a new engine for his car and he advertised for a second-hand replacement. J Ltd replied to the advertisement and it arranged to send him an engine, after taking Mr T's credit card payment over the phone.

However, when the engine arrived, it did not match the specification. Mr T was unable to get J Ltd to agree to refund his money. He therefore claimed against his credit card firm because, in the circumstances of this case, it was equally liable with the supplier under section 75 of the Consumer Credit Act.

The credit card firm suggested that Mr T should return the engine to J Ltd by registered post and said it would then try to claim a refund. However, Mr T did not think it was practicable to post a car engine, and he discovered that it would cost £200 to send it back by courier. Unwilling to increase his losses by paying for a courier, Mr T pursued his claim against the credit card firm. However, the firm refused to deal with it because it said there was insufficient documentary evidence.

complaint upheld

We were satisfied that there *was* sufficient evidence of Mr T's claim against J Ltd, and that the credit card firm was equally liable. The credit card firm should therefore have settled Mr T's claim. We required it to refund the price of the engine, plus the interest it had charged on Mr T's card. We also said it should pay Mr T £200 for causing him unnecessary inconvenience. And we required the credit card firm either to take the engine away, or to pay for Mr T to send it back to J Ltd.

44/8

credit card: whether sole director of company was aware of credit card taken out for his company's use

Mr C was the sole director of C Ltd. The company secretary, Mrs G, took out a company credit card with the bank and asked for repayments to be collected by direct debit from C Ltd's account.

After purchases totalling around £30,000 had been made with the credit card in the first nine months, Mr C complained to the bank. He asked the bank to repay all of the expenditure on the card to C Ltd as he said he did not know about the credit card and he assumed that his signature on the application form must have been forged.

The bank arranged for a handwriting expert to check the signature, but his report was inconclusive and the bank said there was no evidence to support Mr C's claim that he knew nothing about the credit card.

complaint rejected

Although Mrs G had carried out some transactions with the credit card that appeared to be personal, most of the transactions clearly related to C Ltd's business.

The mandate for C Ltd's bank accounts would have allowed Mrs G to sign the application herself. She would not have needed Mr C's signature in order to obtain the card, so there would have been no need for her to resort to forgery. And, although Mr C denied the signature was his, he accepted that Mrs G often gave him large amounts of paperwork to sign, and he signed without reading what he was given. We concluded it was more likely than not that Mr C *did* sign the credit-card application and we rejected the complaint.

... he said he assumed that his signature must have been forged.

44/9

mortgage: lender asks customers to pay early repayment charge when they changed mortgage product, even though this was not specified in mortgage contract

In 2000, Mr and Mrs O took out a mortgage that included:

- a 1% discount from the firm's variable interest rate, for the first two years;
- an early repayment charge that was payable if they redeemed the mortgage within three years; *and*
- a promise by the firm that, when the discount expired, the couple could choose from the firm's range of mortgage products.

When the discount expired in 2002, the firm refused to let Mr and Mrs O change to another mortgage in its range unless they paid the early repayment charge. Mr and Mrs O paid under protest and complained to us.

complaint upheld

This was not a case where Mr and Mrs O could change products only with the firm's consent, which the firm could then make conditional on payment of a fee.

The mortgage contract had specifically promised that Mr and Mrs O could change products when the discount expired. The contract said the early repayment charge was payable if Mr and Mrs O redeemed the mortgage. It did not say the charge was payable if they changed mortgage products. If that was what the firm intended, it should have put that in the mortgage contract. We required the firm to refund the charge, with interest.

... the firm had never set up the endowment policy intended to repay the capital.

44/10

mortgage: firm fails to set up endowment policy when it arranges endowment mortgage – after error discovered, firm deducts value of customer's voluntary overpayments from compensation paid

Mr and Mrs A took out an endowment mortgage with the firm, making regular payments. After a while they decided to pay the firm £100 extra per month, with the intention of paying off the mortgage early.

Eventually, the couple discovered that the firm had never set up the endowment policy intended to repay the capital. If the firm had done so, the policy would already have been worth £6,000. So Mr and Mrs A owed £6,000 more capital than they would have done if things had gone according to the original plan. But their extra payments of £100 per month had reduced the capital owed on the mortgage by £2,000. So the firm said the couple were really only £4,000 worse off than they should have been. Mr and Mrs O complained to us that it was unfair of the firm to take advantage of the fact that they had made additional voluntary payments.

complaint upheld

We decided that, by failing to arrange the endowment policy, the firm had caused Mr and Mrs O a loss of £6,000. So that was the figure the firm should have used as the basis for calculating compensation. The evidence showed that Mr and Mrs O could easily have made the additional monthly payments even if the endowment policy had been set up.

2 personal accident insurance: surgical complications

Personal accident policies are one of the clearest examples of *non-indemnity* insurance contracts. In other words, their aim is not to return you (so far as reasonably possible) to the position you were in before the actual occurance of the event you insured yourself against. Instead, the policies simply pay a financial benefit if that event occurs.

If your car is damaged, your motor insurer can *indemnify* you — by repairing or replacing the car (or, if it chooses, by paying a cash sum in lieu of repair or replacement). If you accidentally lose an eye, your personal accident insurer cannot repair or replace the eye, but it can pay you a lump sum to compensate you for the loss.

Most personal accident policies pay out only if the policyholder suffers '*accidental bodily injury or death solely and directly as a result of an external, violent and visible cause*', or words to that effect. There are usually defined benefits for certain injuries depending on the level of cover purchased, for example, £10,000 for loss of use of a limb, £8,000 for loss of an eye, £80,000 for permanent total disablement, *etc*.

Many cases are relatively straightforward: if you are involved in an accident which results in permanent '*bodily injury*' as defined in the policy, then you receive the appropriate sum for that type of injury.

Sometimes there are issues about whether the injury was the sole and direct result of the accident, particularly in the case of orthopaedic injuries where pre-existing degenerative changes may have contributed towards the disability. However, these cases can usually be resolved by reference to appropriate medical evidence. If, for example, the evidence establishes that the accident caused only 10% of the injury — the other 90% being due to degenerative change — then we would usually ask the insurer to pay 10% of the benefit. This is on the basis of good industry practice: many insurers voluntarily make a proportionate contribution if the accident is shown to have accelerated pre-existing degenerative changes.

A recent High Court judgment — *Blackburn Rovers Football & Athletic Club plc v Avon Insurance plc & others* [15 November 2004] — indicates that only abnormal degenerative changes should be taken account of when limiting or excluding a claim. Mr Justice Moore-Bick held that a clause in a personal accident policy which excluded disablement caused directly or indirectly by degenerative conditions should not apply. The injured professional footballer suffered normal degenerative change for a man of his age and occupation. Accordingly, the judge considered this should be disregarded when assessing whether his injury was caused solely and independently of any other cause:

... more problematic are cases that concern surgical complications.

‘*I have reached the conclusion that [the exclusion] must be construed as referring to degenerative conditions that are abnormal in their degree and of sufficient severity to amount to an illness. For the same reason I do not think a normal degree of degeneration is to be regarded as a “cause” of injury when considering the definition of Accidental Bodily Injury.*’

The judge also stated that ‘*it has been recognised for a long time that the court should lean against construing a policy of insurance in a way that would substantially deprive the insured of the protection which the policy is designed to provide*.’ This corresponds with our view that it is neither fair nor reasonable to use the mere presence of degenerative change to exclude genuine personal accident claims, which such policies are clearly designed to respond to.

More problematic are cases that concern surgical complications. All surgery involves an element of risk. Even with a ‘textbook’ procedure where everything goes according to plan, there is a chance, albeit minimal, that the patient will react badly during or after the operation. This is why surgeons are under a duty to warn their patients of the potential risks, however small. Indeed, in a controversial judgment a majority of the House of Lords recently held that a surgeon’s failure to warn made him liable for all the reasonably foreseeable consequences of the surgery, even where the surgery itself was not carried out negligently: (*Chester v Afshar*, reported [2004] in Volume 4 of the All England Law Reports at page 587.)

... these cases are very difficult.

Among the disputes referred to us, we have seen a number of cases where the policyholder died or was injured following surgery. The insurer has usually rejected the personal accident claim on the basis that the bodily injury or death was not caused accidentally and/or was not the sole and direct result of an external, violent and visible cause. When dealing with these cases, we try to distinguish between:

- cases where the patient was simply unlucky enough to fall into the small class of those who inevitably and unavoidably suffer complications as a result of surgery; *and*
- cases where something unplanned or negligent happened before, during or after the surgery.

These cases are very difficult and we share many of the insurance industry’s reservations about treating surgical complications as accidents. However, even case law indicates that we ought to distinguish between those situations where the injury is a potentially natural result of the procedure (for example, where cutting into a particular part of the body might result in injury) and situations where injury – although a possibility – is not the natural result of the procedure (for example, where the wrong part of the body has been cut).

All surgery carries some risk, but it is usually possible to isolate those cases where something accidental has caused the injury. And those are the cases that we consider it fair and reasonable for personal accident insurers to meet.

case studies – personal accident insurance: surgical complications

44/11

Mr T underwent minor surgery to correct a prolapsed disc. The operation appeared to be uneventful. However, during recovery Mr T complained of tightness in his neck and eventually he was rushed to intensive care, where he died. The coroner concluded that the cause of death was haemorrhaging from a vertebral artery. When the insurer rejected the personal accident claim brought by Mr T's widow, she complained to us.

complaint upheld

The weight of the medical evidence indicated that the surgeon had negligently torn or cut the artery during the surgery. We felt that this was not a natural consequence of the risks inherent in surgery. Something had gone wrong and this was not what any of the parties to the surgery had anticipated.

The injury was not the natural result of the procedure as it was solely and directly caused by external, violent and visible means. The injury therefore fell within the scope of the policy. When we put this argument to the insurer, it agreed to meet the claim.

44/12

Mrs G had an operation to remove a lump from her neck. During recovery, the wound started to bleed profusely, resulting in a massive haemorrhage. As a result of this, Mrs G died.

The insurer rejected a claim made by Mrs G's husband on their personal accident policy. It said that Mrs G's death had resulted from the complications of planned surgery – rather than from an accident. Mr G then brought his complaint to us.

complaint rejected

There was nothing to suggest that this was an accident. The medical reports and the coroner's inquest cleared the surgeons of any wrongdoing. No error had occurred during the operation. Mrs G was just one of the very few unfortunate patients who react badly to this type of surgical intervention.

The bodily injury here was a natural, though tragic, consequence of the surgery. It was an anticipated risk which Mrs G had consented to, insofar as the general risks of surgical complications had been explained to her. So despite sympathising with Mr G's situation, we could not agree that the insurer had acted unfairly or unreasonably.

... we could not agree that the insurer had acted unfairly or unreasonably.

3 attitude to risk in mortgage endowment cases

When assessing a complaint and looking at whether the customer was given suitable advice to take out an investment product, it is important to take into account the customer's overall circumstances at the time of sale and not to rely solely on one piece of evidence.

This is particularly the case when considering complaints about the sale of mortgage endowment policies, where a box will have been ticked on the 'fact find' (a document completed at the time of the sale) to note the customer's attitude to risk. The information provided in the 'fact find' can often be a helpful indication of what the customer's attitude to risk might have been. However, as the following case studies illustrate, it should not always be assumed that the recommended policy was suitable for the customer simply because the level of risk represented by the policy appears to match the customer's attitude to risk, as noted on the 'fact find'.

... it is important not to rely solely on one piece of evidence.

case studies – attitude to risk in mortgage endowment cases

44/13

mortgage endowment policy – whether policy mis-sold – attitude to risk as indicated on 'fact find' did not appear to have been appropriate or reliable

Mr and Mrs A were very distressed when they found there was a high risk that their endowment policy would not produce enough – when it matured – to pay off their mortgage, particularly since Mr A had already retired.

The firm that had advised them said that the couple had no grounds for complaint. It said the policy had been suitable for the couple's needs and matched their attitude to risk – as indicated on the 'fact find'. The couple then brought their complaint to us, claiming that the firm had never made them aware of the risks associated with the policy.

complaint upheld

Mr and Mrs A had approached the firm for a mortgage in order to take advantage of their council's *right to buy* scheme. The firm advised them to take a unit-linked mortgage endowment policy with a 15-year term. It said the advantages this offered were that it:

- would provide a fixed term for the mortgage (even if the couple moved house);
- offered the possibility of a cash surplus; *and*
- provided the couple with life cover.

The 'fact find' completed at the time showed that Mr A was 52 years old and had worked as a security guard for the past 9 years. He was a member of his employer's pension scheme and earned £9,000 per year. He expected to retire at 65 – 2 years and 7 months before the recommended policy matured.

His wife was 49 at the time and worked as a part-time sales assistant earning £3,000 per year. She expected to retire at 60 and did not have any pension arrangements.

This was the couple's first mortgage and they had no savings and investments. The firm's 'fact find' offered a choice of three boxes to indicate attitude to risk – '*cautious*', '*balanced*' and '*adventurous*'. In this case, the box marked '*balanced'* had been ticked.

When we contacted the firm, it insisted that its advice had been '*suitable for someone with a balanced attitude to risk – like Mr and Mrs A*'.

We looked at the overall circumstances of the case. The mortgage continued to run after both Mr and Mrs A had retired. The adviser had discussed with the couple whether they would still be able to afford the mortgage payments after they stopped work. However, he did not appear to have explained the possibility of a shortfall, or considered how the couple would deal with such a situation, should it arise. They had no savings or investments and their pension provision was modest.

Having looked at Mr and Mrs A's overall needs and circumstances, we concluded that although the 'fact find' indicated that the couple had a '*balanced*' attitude to risk, this was not likely to have been an appropriate or reliable assessment of the risks that the couple were prepared to take, or in a position to take. We upheld the complaint. But we did not consider Mr and Mrs A could have afforded the alternative of a repayment mortgage over a shorter term.

We asked the firm to pay redress in accordance with the FSA's guidance, in order to put the couple in the position they would have been if they had taken out a repayment mortgage over the 15 year-term. We also asked the firm to add a modest sum for the distress and inconvenience caused to Mr and Mrs A, who were already retired and faced the prospect of a significant shortfall on their policy.

... we looked at the overall circumstances of the case.

... the firm was unable to produce any evidence to back up its view.

44/14

mortgage endowment policy – mis-selling – no evidence in ‘fact find’ to justify firm’s assessment of customer’s attitude to risk

Mrs N complained to the firm, saying it had wrongly advised her to take out a 20-year unit-linked mortgage endowment policy that was invested in the firm’s managed fund.

She said the adviser had not mentioned the possibility that the policy might not provide enough funds, when it matured, to enable her pay off her mortgage. She also complained that the adviser had not discussed any other types of mortgage with her but had told her she was ‘*not eligible*’ for a repayment mortgage.

The firm rejected Mrs N’s complaint. It said that the level of risk represented by her mortgage endowment policy ‘*matched*’ the level of risk that the ticked box on the ‘fact find’ suggested she was prepared to accept. It added that Mrs N had been willing to accept this level of risk as she wished to benefit from the potentially higher returns available with unit-linked investments.

complaint upheld

The ‘fact find’ completed by the firm at the time of the sale indicated that Mrs N’s ‘*attitude to investment risk*’ was a ‘3’ on a scale of 1-5. However, we saw nothing in the ‘fact find’ to justify that rating.

Mrs N had no savings, investments or pension provision. She was 40 years of age at the time and her only income was the £10,200 per year she received in benefits for looking after her mentally ill son and sick mother.

The firm was unable to produce any evidence to back up its view that that Mrs N understood and had been prepared to accept the risks associated with the policy.

Her financial position was precarious. She had no savings to use if there was a shortfall in the policy and her income was made up of benefits that would decrease in future, on the death of her mother.

We were satisfied that Mrs N could have taken out a repayment mortgage and – if suitably advised – would have done so. We told the firm to pay compensation calculated in accordance with the FSA’s standard guidance.

our 2005 series of conferences for firms

This year we will again be running a series of events in various centres around the UK, focusing on current complaint topics, the handling of complaints and the ombudsman process. Aimed primarily at financial services practitioners, the events all feature:

- presentations by our ombudsmen and senior adjudicators
- discussion groups and case studies
- first-class conference venues
- refreshments, including hot buffet
- value for money – we run these conferences on a not-for-profit basis, charging just £125 + VAT per delegate, to cover our costs.

Places are limited. For more information and a booking form, please complete this form, ticking the event(s) you are interested in, and send it (or a photocopy) to

Kerrie Coughlin, communications team
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

name(s)

firm

phone

email

office address

please tick

☐	12 May	IFAs, mortgage and insurance intermediaries	The Brewery, Chiswell Street, London EC1
☐	30 June	IFAs, mortgage and insurance intermediaries	Weetwood Hall, Leeds
☐	13 July	life, investment, banking and Insurance firms	Belfast
☐	6 October	life, investment banking and Insurance firms	Glasgow
☐	27 October	banking firms	Barbican Conference Centre, London
☐	10 November	insurance firms	Barbican Conference Centre, London
☐	1 December	life and investment firms	Barbican Conference Centre, London

ordering the ombudsman leaflet

Q How can my firm get supplies of the ombudsman's consumer leaflet, and is it true that we can print the leaflet ourselves rather than having to buy copies from you?

A Our leaflet *your complaint and the ombudsman* – which firms are required under the FSA rules to send customers who have a complaint – is available in packs of 25 at £5 per pack (incl p&p).

Just download a copy of the order form on the publications page of our website (www.financial-ombudsman.org.uk) and send it to us with a cheque for the correct amount. Copies are free of charge for public libraries and consumer advice agencies such as Citizens Advice Bureaux and trading standards departments. For help ordering publications, phone our publications orderline on 020 7964 0092.

Yes – it's true that firms can print the leaflet themselves, under licence, if they wish to do so. We can supply the leaflet in an electronic format – free of charge – enabling firms to get copies printed themselves. The leaflets must be printed using sheet-fed offset litho – it is not an option simply to use an office colour printer.

Firms wishing to print their own supplies must first sign a licence agreement, under which they agree to reproduce the leaflet so that it is identical in every way to the leaflet we produce. Generally speaking, except for the largest financial firms who require very large quantities of the leaflet, it is usually cheaper to buy copies from us.

ombudsman independence

the manager of a consumer advice bureau writes ...

Q Several months ago we advised one of our clients to refer his complaint to you when he was unable to reach agreement with his bank. He has now been back to see us. He is very unhappy that you have written to tell him you do not uphold his complaint. He says he is particularly disappointed because he thinks that, as a consumer champion, you should be supporting ordinary people in their disputes with 'big business'. We would be interested in your comments.

A We are sorry that your client was unhappy with the outcome of his case. However, it is important to stress that we are neither a consumer champion nor an industry trade-body. We are completely independent – just as a judge would be if your client took his case to court.

We look at complaints impartially and make what we believe is a fair and balanced decision, based on the facts and circumstances of the individual case. This may sometimes involve our resolving misunderstandings by reassuring consumers that the firm has treated them fairly, if – as in your client's case – we believe this to be so.