ombudsman news

Financial Ombudsman Service

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essential reading for financial firms and consumer advisers

in this issue

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

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welcome to the 50th edition of *ombudsman news*

I'm delighted to welcome you to this, the 50th edition of *ombudsman news* – the regular voice of the Financial Ombudsman Service. Our aim has always been to keep you updated on the issues facing firms and consumers, as seen from our vantage point.

Our articles and case studies this month are typically wide-ranging, reflecting the breadth of our work in general. On page 3 we take a look at some of the complaints we see involving the contracts that govern the business relationship between banks and building societies and their customers. On page 9 we set out the way in which – from 1 October this year – we have been dealing with redress in pension cases that fall outside the industry-wide Pensions Review. And on page 11 we illustrate how we tackle the significant number of queries we continue to receive – from both firms and consumers – about how the time bar rules apply to mortgage endowment complaints.

But busy as we are dealing with the thousands of complaints that reach us each week, we keep an eye – too – on what's going on in the wider world. Two matters that have been of particular interest to us recently are the Compensation Bill and developments concerning the sale of payment protection insurance.

payment protection insurance

When the Financial Services Authority (FSA) recently drew attention to poor practice by firms in the selling of payment protection insurance, it came as no surprise to us. We have consistently seen complaints about payment protection as symptomatic of wider consumer detriment. This is a matter the Office of Fair Trading (OFT) is now investigating, following a 'super-complaint' by Citizens Advice.

Payment protection is one of the most profitable forms of insurance – at least for the organisations that sell it. But our experience, and that of insurance ombudsmen over the last 20 years, is that it is often sold by people who have little knowledge of the extent of the cover. Sometimes it is sold to people who wouldn't even be eligible to claim. With both the FSA and OFT now 'on the case' – and the publicity this will attract – it is possible that we may see a short-term rise in the number of payment protection complaints reaching us. But we hope that action by the regulators will mean a better outlook in the longer term.

compensation bill

Around this time last year I called for claims management companies to be regulated. The Lord Chancellor has now decided to legislate – a very welcome move. The Bill now before Parliament will mean that those businesses offering claims management services, whether in the personal accident or the endowment claims sectors, will be subject to a regulatory code of conduct to be set out by a new regulator. The Claims Management Council (CMC) – at present a voluntary body – is clearly bidding to become the regulator.

Some of the endowment claims companies we deal with know their business and do their best to understand the basis on which complaints are judged. Others seem to be strong on marketing but weak on expertise. Their service to their customers does not appear to demonstrate value for the fees they charge.

It will obviously be a while before the Bill reaches the statute book – and presumably longer before all the rules and regulations come into force. But if the companies we encounter in the endowment sector want to demonstrate their commitment to proper standards, there's nothing to stop them joining the CMC in the meantime. I hope that is what we will see happening.

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some common issues in complaints involving banking contracts

This article describes some of the more common issues we come across involving the agreement – or *contract* – that governs the business relationship between banks and building societies and their customers.

The contract is usually in writing and consists of what are typically called *terms and conditions* – such as those which apply to a mortgage or savings account. These terms and conditions are often set out in a standard format that applies to all customers who use the same service or product. They represent the legal basis on which the firm and the customer have agreed to do business.

There is a basic legal rule that contracts must be honoured. The presumption is that customers are bound by the terms and conditions that relate to the product or service they have taken up, even if they choose not to read them.

But the legal position is often not clear-cut and there are some well-established exceptions to the rule that all the terms of a contract must be adhered to. These exceptions cater for situations where customers would otherwise be unfairly bound by the contract terms. It must also be borne in mind that

- terms and conditions are drafted by the firms;
- they may be presented – in whole or in part – in a far from prominent position in the 'small print'; *and*
- customers have – effectively – to 'take it or leave it' as they do not have the power to make any changes.

When we look at banking disputes involving contracts, we take into account the firm's duties under the *Banking Codes*. We consider relevant statutes, such as the *Unfair Contract Terms Act 1977* and the *Unfair Terms in Consumer Contract Regulations 1999*. We also consider the Financial Services Authority's Statement of Practice, *Fairness of Terms in Consumer Contracts* (published in May 2005). This gives firms an indication of how they can avoid using terms that could be regarded as unfair. It is particularly relevant when we look at terms to do with interest rate variation.

In addition, and very importantly, we are required to decide what is 'fair and reasonable' in a given case. This may mean deviating from the ordinary or strict legal position where that is necessary to ensure a fair outcome.

Among the more common issues we come across are the following.

unusual or onerous terms

There is a legal rule that a term which is particularly unusual or onerous – and would not be generally known to the customer – is only binding on the customer if the firm has brought it fairly and reasonably to their attention *before* the contract is made.

... we are required to decide what is fair and reasonable.

We often need to consider this rule in the context of early repayment charges on mortgages. But it also applies to any unusual or onerous contract terms, including those in business banking contracts.

unfair contract terms

Sometimes the law simply provides that a contract term is unfair.

Examples are terms that

- unreasonably try to exclude or limit a firm's liability for breach of contract; *or*
- unfairly tilt the balance of a consumer contract too far in the firm's favour.

real consent

Customers will not be bound by a contract if they did not freely agree to enter into it and the firm was on notice of this.

Examples include situations where

- the customer lacks the mental capacity to understand the nature of the contract and the firm knows that; *or*
- the firm knows that a customer is being pressured or unfairly influenced into agreeing to be responsible for another person's debts.

terms that do not form part of the contract

To be enforceable under the contract, a term must first be properly incorporated into it. We sometimes find that firms try to add terms *after* the contract has been finalised, or to infer terms that could not reasonably be inferred from what the contract says. It may be that, with hindsight, a firm wishes it had included a particular term. But unless that term was properly incorporated into the contract we will not apply it.

case studies – some common issues in complaints involving banking contracts

50/1

whether firm brought early repayment charge fairly and reasonably to customer's attention before making mortgage contract

Mr W borrowed money from his bank (firm A) to help buy some properties to rent to students, as part of his business. This was a commercial mortgage, and it was at a fixed rate of interest for the first five years.

Eighteen months after taking out the mortgage, Mr W decided that as interest rates had fallen he would repay it and take out a different mortgage with another bank – firm B.

He was shocked when firm A insisted that he would first have to pay a large *early repayment charge*. He complained, saying he had known nothing about firm A's right to make this charge, and that the amount demanded was, in any event, unreasonably large.

Firm A rejected Mr W's complaint. It told him that the charge had been clearly set out and explained in the mortgage terms and conditions, and that it was binding on him as part of the contract. It also said that, before Mr W had agreed to take out the mortgage, a member of its staff had explained the early repayment charge to him.

complaint upheld

The firm's right to demand an early repayment charge was an *onerous* term. So Mr W could only be bound by it if the firm had brought it fairly and reasonably to his attention before he entered into the contract.

We examined the mortgage documents. They *did* state that an early repayment charge was payable if Mr W repaid the loan in the first five years. And they set out how this charge would be calculated. But the firm had not given this information any prominence. It had placed the information in the small print of its mortgage conditions (on page 5, in clause 24). And it had not mentioned it in any of the other mortgage paperwork (for example, in its mortgage offer letter).

Moreover, we were not satisfied that the firm had explained the charge to Mr W in a face-to-face meeting before he took out the mortgage, as it had claimed.

We concluded that the term concerning the early repayment charge was not binding on Mr W. We ordered firm A to allow him to repay his mortgage without incurring the charge. We also awarded Mr W £300 compensation for the distress and inconvenience he had been caused.

... the firm had not given this information any prominence

50/2

firm fails to give early repayment charge due prominence in documents issued before making the contract – whether the charge still binding

Mr G's situation was similar to that of Mr W in the previous case (**50/1**). But the firm in Mr G's case accepted that it had failed to give due prominence to the early repayment charge in its mortgage terms and conditions or its mortgage letter.

The firm argued that, despite this, the charge was still binding on Mr G. It said it had explained the charge in a notice it sent him just before he drew down the loan. Unhappy with the firm's stance, Mr G came to us.

complaint upheld

As the firm admitted, it had not referred at all prominently to the early repayment charge in the original paperwork that was present when the contract was made. But the contract had been made at the point when Mr G accepted the firm's mortgage offer by signing and returning the offer letter.

The firm had not drawn Mr G's attention to the early repayment charge before this point. It was several days after he had signed and returned the offer letter that the firm sent him the notice about the charge. So Mr G was not bound by the term relating to the charge. We upheld Mr G's complaint and told the firm it should not apply the charge when he repaid his mortgage.

... she had only signed because her husband put pressure on her to do so.

50/3

mortgage to repay business debts is secured on home owned jointly by customer and his wife – wife not in a position to give *real consent* – whether firm can enforce terms of contract

A solicitor, Mr K, ran up a large overdraft with his bank (the firm), in connection with his business. Eventually, because of the size of the overdraft, the firm told Mr K he would have to secure the debt with a mortgage, using his house as security.

As he owned the house jointly with his wife, she would have to agree to – and sign – the mortgage. So the firm arranged – through Mr K – for Mrs K to come to its branch office. In the presence of Mr K, the firm's official asked Mrs K whether she fully understood what she was agreeing to and if she had taken legal advice. She replied '*yes*' on both counts. She said her husband, acting as her solicitor, had given her all the legal advice she needed. On that basis, the firm witnessed the couple's signatures on the mortgage deed.

On a number of occasions over the next twelve months the firm contacted Mr K about his repeated failure to make the required repayments. Eventually, it told the couple that it intended to obtain possession of their house and to sell it, to recover the money that Mr K owed.

Shocked by this news, Mrs K complained to the firm, insisting that it could not do what it proposed. She said she had only signed the mortgage because her husband put pressure on her to do so. She also said she had never been made aware that she could lose her home as a result of her husband's business debts.

complaint upheld

The fact that Mr and Mrs K were a married couple should, in itself, have indicated to the firm that Mrs K might not have been exercising her free will when 'agreeing' to the mortgage. And it should have realised that it was not acceptable for her to be advised about the mortgage by her husband. Mr K was clearly not in a position to give his wife impartial advice, since it was his borrowing that the mortgage was intended to secure.

The firm should only have allowed the mortgage to go ahead once it had taken reasonable steps to satisfy itself that Mrs K

- understood there was a real possibility that she might be evicted from her home; *and*
- was freely agreeing to the mortgage.

So it should have insisted that Mrs K obtained independent legal advice. And it should have obtained written confirmation from the independent solicitor that she had received that advice.

We therefore decided the firm could not enforce the mortgage against Mrs K.

50/4

whether firm acted correctly in accepting loan application from customer who had learning difficulties and autism

Mrs C complained to the firm on behalf of her adult son, Mr C, who had autism and learning difficulties. She felt the firm had taken advantage of her son by agreeing to give him a loan. She said it should have realised that, because of his medical condition, her son could not have understood the nature of the loan or his legal obligations.

The firm defended its actions. It said it had known Mr C as a customer for many years. There was nothing to suggest he had any difficulty in understanding the firm's other products (for example, his current account). And, at the time it had discussed Mr C's loan application with him, it had no reason to think he had any difficulty in understanding the loan.

complaint rejected

We were able to look into this complaint because Mr C had given us permission to deal directly with Mrs C.

Both autism and learning difficulties affect individuals in many different ways. It should certainly not be assumed that customers who are autistic or who have learning difficulties are unable to understand financial transactions. They are entitled to have their applications for credit considered in exactly the same way as any other customers.

If, because of his learning difficulties, Mr C had been mentally incapable of understanding the contract, and the firm knew – or ought reasonably to have known this – then the contract would have been *voidable.* Mr C would not then have been bound by it. However, this was not the case.

The firm was aware that Mr C had been employed in a steady job for many years. Throughout that time he had been a customer of the firm and had conducted his finances without difficulty.

We were satisfied, from what Mrs C herself told us, that her son's learning difficulties did not prevent him from understanding how ordinary banking products worked. More importantly, we were satisfied that Mr C had fully understood the loan transaction in question, and its implications for him.

The loan repayments appeared to be manageable for Mr C. We did not consider that the firm had taken advantage of Mr C by agreeing to lend to him, as his mother had suggested. We agreed with the firm that it had acted entirely correctly and that there was no reason why Mr C should not be liable for the loan.

... she felt the firm had taken advantage of her son.

50/5

whether firm acted correctly in accepting loan and credit card application from customer who had a serious mental disorder

... he was not in a fit state of health to enter into a contract.

Mr V complained to the firm on behalf of his adult son, T. He said the firm should not have given T a loan and credit card because T's mental disorder had prevented him from understanding the commitment he was making.

The firm rejected the complaint. It said that although T had not been an existing customer when he came into the branch and applied for the credit card and loan, his application had passed its credit scoring process. The firm had no reason to suppose he had been unable to understand what he was doing.

complaint upheld

We were able to consider this complaint because T gave us permission to deal direct with Mr V, on his behalf.

Mental illness can take many forms and certainly does not, of itself, mean that a person should not be given credit. But Mr V provided persuasive medical evidence that T had been suffering from a serious mental disorder on the day he obtained the loan and credit card. This disorder affected T's perception in such a way that he was unable to understand the effects of his actions. So we were satisfied that, at the time in question, T had lacked the mental capacity to enter into the contracts for credit. But we had also to assess whether the firm should have known that.

We were able to establish that – on the same morning that T applied to the firm for the loan and credit card – he had visited several nearby shops. Most of these retailers had declined to do business with him at all because he clearly appeared unwell. One retailer had accepted an order from him but had decided not to act on it because T was '*not behaving normally*'.

We thought it reasonable to expect the firm to have paid at least as much attention to T's manner and appearance as these retailers did. The firm had not only approved T's application for a loan and credit card, but had also allowed him to take some of the credit that same morning – in the form of a large amount of cash.

The retailers had concluded that T was not in a fit state of health to enter into a contract. We thought the firm should have realised that as well. The contracts for credit were therefore *voidable*.

T had received no benefit from the money he borrowed. Later that same day someone took advantage of his confused condition and stole the cash from him. We told the firm that T was not bound by the loan and credit card agreements and was not liable to repay the debt.

redress for pension mis-sale cases that fall outside the Pensions Review

This article explains how – from 1 October 2005 – we have been dealing with redress in complaints about pension sales that fall outside the period covered by the industry-wide Pensions Review. We are taking a different approach to that used in Pensions Review cases because – unlike Pensions Review cases – these complaints are not a 'closed' group relating to a specific fixed period. For redress purposes, Pensions Review cases continue to be handled in line with the review methodology and assumptions fixed by the Financial Services Authority (FSA).

background

The regulators – first the Personal Investment Authority and subsequently the FSA – laid down the methodology and assumptions to be used in the Pensions Review (such as the discount rate used to value future benefits). The methodology and assumptions were revised on several occasions – most recently in April 2003.

Along with many firms, we often used that same methodology when dealing with pension cases that were similar, but fell outside the boundaries of the review. This methodology had the advantage of being understood by firms and consumer groups and – in the context of the review – it carried the authority of the FSA.

But the Pensions Review is now drawing to a close. And the FSA's *Pensions Review Bulletin 27* announced that – unless exceptional circumstances arose – it would not be updating the assumptions last revised in April 2003.

It said firms should continue using those assumptions for Pensions Review cases, regardless of the future date of settlement.

This raised the issue of what approach firms – and the ombudsman service – should take for similar pension cases that fall *outside* the Pensions Review. *Bulletin 27* accepted that firms would continue referring to the methodology and assumptions as benchmarks. But it required firms to consider how far the methodology and assumptions remain appropriate in individual cases.

This meant there might be inconsistencies between different firms' approach to cases outside the review – and between those cases and cases within the review. And firms would be unsure if the approach they adopted was likely to be upheld if the case was referred to the ombudsman service. This will become an increasing problem over time.

'wider implications'?

We adopted our '*wider implications*' process to look at this issue (details of this process are explained on the special joint website that we have set up with the FSA to cover wider implications matters – www.ombudsmanandfsa.info).

Given the relatively small number of customers with outstanding Pension Review cases – and the advantages of cost savings, speed of conclusion and certainty – the FSA decided it was not appropriate for it to sponsor the updating of the assumptions.

We concluded there would be benefits for all concerned if there were greater certainty about the methodology and assumptions to be applied in cases that fall outside the Pensions Review. Continuing with the wider implications process, we invited the chairman of the Investment Liaison Group (on behalf of the industry) and the chairman of the Financial Services Consumer Panel (on behalf of consumers) to each nominate an expert to provide input.

These experts were in broad agreement with the proposal that we should

- use the same methodology as for Pensions Review cases; *and*
- commission PricewaterhouseCoopers LLP (who advised the FSA on appropriate assumptions for the Review) to report to us on assumptions to be used for future cases.

future basis

With effect from 1 October 2005, redress will usually be based on the Pensions Review methodology – but will refer to the assumptions opposite, recommended by PricewaterhouseCoopers in their report.

We plan to ask PricewaterhouseCoopers to review these assumptions every April – although we are not expecting changes to be necessary as at 1 April 2006.

financial assumptions : 1 October 2005

These assumptions apply for calculations of:

(a) prospective loss; *and*
(b) redress.

validity

All calculations done in the period from 1 October 2005.

as at date

All calculations of prospective loss and redress of prospective loss done in this period, and the value of all personal pensions, should be done as at 1 October 2005.

discount rate

Using this basis, the table of interest rates is shown below.

term to retirement	average interest rate in force over period to retirement
0	5.0
1	5.1
2	5.2
3	5.2
4	5.3
5	5.3
6	5.4
7	5.5
8	5.6
9	5.7
10	5.8
11	5.9
12	6.0
13	6.1
14	6.1
15-19	6.2
20-24	6.4
25-29	6.5
30 or more	6.6

The interest rate for annuities in payment is that for zero years to retirement.

Retail Prices Index ('RPI')	3.00% per annum
Limited Price Indexation ('LPI')	2.90% per annum
Section 21 orders (future)	RPI + 2.00% per annum
Statutory revaluation in deferment	3.00% per annum
Escalation of post-5 April 1988 GMP	2.90% per annum
Escalation at RPI capped at 3.00%	2.90% per annum

mortality

Standard table PA (90) rated down 6 years.

time bars and mortgage endowment complaints

We are continuing to receive a significant number of queries from both firms and consumers about how the time bar rules apply to mortgage endowment complaints.

Consumers often say the firm has treated them unfairly if it tells them it will object to our considering the merits of their complaint because the complaint is *time-barred*. When this happens, we explain the rules about time limits and check that the firm has applied those rules correctly. We also look to see if the consumer can point to exceptional circumstances that prevented them from complaining within the time limit. If we are satisfied that their failure to comply with the time limit was the result of exceptional circumstances, we can consider the complaint.

Since June 2004, firms have been required to set out a *final date* for consumers. If a consumer does not complain to the firm by this date, the firm can object to our considering the complaint, if it is referred to us.

This new rule sets the time limit at three years from the firm's first warning to the consumer (in what has become known in the industry as a '*red*' letter) about the high risk of a shortfall, *provided* that the consumer also received – within the three-year period and at least six months before the final date – an explanation that the time limit will expire at the final date.

The new rule applies only to cases that were not already out of time on 31 May 2004. That means many consumers continue to be subject to a time bar without having received any prior notice of a deadline. These consumers often find the rules difficult to understand. They frequently question whether the firm can restrict their access to the ombudsman service in this way.

In our experience, clear and complete explanations in the firm's final decision letters can help minimise the number of complaints about time limits that are referred to us.

If the firm

- attaches to its final decision letter copies of any relevant documents (in particular, copies of the letters that the firm has relied on in reaching its view on the time limit); *and*
- includes a clear statement that it objects to our consideration of the case;

then it will normally be apparent – when the case is referred to us – whether it has been correctly time-barred.

As the following case studies illustrate, it is often *not* apparent that the case has been correctly time-barred and we need to investigate further. Firms should be aware that if we need to make enquiries with them and/or their customer to confirm the position, the case becomes chargeable and a case fee will be raised.

case studies – time bars and mortgage endowment complaints

50/6

firm says complaint made 'out of time' – consumer claims to have registered dissatisfaction within time limit

In January 2001, and again in November 2002, the firm sent Mr and Mrs D a 'red' re-projection letter. These letters warned of a high risk that the couple's mortgage endowment policy would not produce enough, when it matured, to pay off their mortgage.

The couple had until January 2004 – three years after they received the first 'red' letter – to raise a complaint. But it was not until April 2004 – two months after that time limit had expired – that they wrote to the firm complaining about the policy. The firm rejected the complaint. It also said it did not wish us to consider the merits of the complaint because it had been made '*out of time*'. The couple then came to us.

complaint dismissed

Mr and Mrs D said they had '*expressed dissatisfaction*' about their policy at a meeting with the firm in July 2003 – well within the time limit. They told us that the firm had advised them at this meeting to '*wait and see*' rather than going ahead with the complaint at that stage.

... the firm had correctly time-barred the complaint.

The firm was unable to produce any record of the meeting. But in a letter it sent the couple in August 2003 it referred to a July 2003 meeting '*to discuss the possibility of a re-mortgage*'. The letter put forward various options. But it did not indicate that the couple had raised any complaint. Nor did it suggest that they should wait before complaining.

When they referred their complaint to the firm in April 2004, Mr and Mrs D didn't mention the meeting or any earlier complaint. We did not think it possible to safely conclude that the couple had raised their complaint at a meeting with the firm in 2003. We dismissed the complaint.

50/7

firm disagrees that consumer's delay in complaining was caused by exceptional circumstances

Mr Y received 'red' letters from the firm in November 2000 and August 2003. These warned of the high risk that his mortgage endowment policy would not produce enough – when it matured – to pay off his mortgage.

Mr Y complained to the firm in March 2004. The firm issued its final response letter in April 2004. It rejected his complaint because it was made outside the time limits. It also said it would object to our considering the matter if he referred it to us.

Mr Y did not respond to the firm but he did refer the matter to us. We wrote to him, explaining that unless the delay had been caused by exceptional circumstances, the firm could correctly time-bar the complaint.

... she was certain she never received the firm's warning letters.

Mr Y wrote back to us with his reasons for the delay in referring the complaint. We asked the firm to review these reasons but it said it didn't think Mr Y's circumstances were sufficient to waive the time bar. Our adjudicator then wrote to the firm, expressing the view that Mr Y's delay was caused by exceptional circumstances. The firm disagreed and asked for an ombudsman's decision.

complaint upheld

Mr Y said he had been unable to complain to the firm within the time limit because he and his family had suffered the following serious health problems.

- In January 2001, after a series of miscarriages, his wife gave birth to a son. Mrs Y had needed constant medical attention throughout her pregnancy and for some months after the birth. The child spent his first six months in a special baby care unit and was still seriously ill.
- In December 2001 Mr Y was diagnosed with throat cancer. He had surgery a month later and continued to receive medical treatment for the cancer until August 2003.
- In October 2003 Mr Y suffered a nervous breakdown. He was unable to return to work until late February 2004. He complained to the firm just a few weeks later, in March 2004.

The ombudsman told the firm he was satisfied that Mr Y's delay in complaining was a result of these exceptional circumstances. Mr Y's problems had started shortly after the firm had issued its first 'red' letter, and they did not end until after the deadline had expired. He had complained to the firm soon after he was well enough to return to work.

50/8

consumer challenges firm's decision that her complaint was '*out of time*' – saying she never received its warning letters

In September 2000 and June 2003, the firm sent Mrs J 'red' letters warning of the high risk of a shortfall. When she complained to the firm, in April 2004, it rejected her complaint. It said it would object to our considering the matter because her final date for complaining had been December 2003.

Mrs J contacted us. She said she was certain she had never received either of the warning letters that the firm claimed to have sent her. She told us she had only realised there was a problem in March 2004, when she asked the firm about the performance of her policy. She had complained the following month.

complaint upheld

We established that the firm had sent its 'red' warning letters to Mrs J at *Flat 11, 150 Main Road*. Mrs J lives at *Flat 1/1* and Royal Mail told us there is no *Flat 11*.

We accepted there was a possibility that Mrs J *had* received the letters. But we were not persuaded that it was likely she had done so. We thought it entirely possible that the letters were delivered to another flat, or not at all. We concluded that Mrs J's complaint was not time-barred.

50/9

firm says the time limit 'clock' started before it sent a 'red' letter

Mr O bought a mortgage endowment policy in June 1991. In May 2004 he complained to the firm, saying he had not been made aware of the risks associated with endowment policies. He said the firm had led him to believe the policy would easily produce enough to repay his mortgage and leave him with an additional lump sum.

The firm told him it considered the complaint to be time-barred. It said it believed Mr O had been fully aware of the risks presented by his policy when he bought it in 1991. He had therefore had six years – until June 1997 – in which to make a complaint that could be referred to the ombudsman. Unhappy with this explanation, Mr O came to us.

complaint dismissed

We discovered that Mr O had worked as a financial adviser with the firm from August 1987 until June 1993. During 1989 and 1990 he undertook intensive training that covered all the firm's endowment products. And at the end of this training, Mr O had taken and passed a series of formal tests. Some six months later, Mr O sold the endowment policy to himself.

We agreed with the firm that Mr O should have been aware of the risks of the policy when he sold it to himself in 1991. We told Mr O the firm had acted correctly in time-barring his complaint.

our *working***together** events for firms

'totally relevant to my day-to-day work'

'very lively and interactive'

'... we gained so much from the day'

'... really useful and enjoyable'

These are just a few of the many positive comments we've received over the past year from delegates at our *working***together** conferences. During 2005, getting on for 500 financial services practitioners attended these events – held at a variety of venues across the UK.

For many of the delegates, the highlight was the opportunity to meet some of our senior ombudsmen and discuss topics of mutual interest in an informal atmosphere. Some delegates had a lifetime of experience in financial services – others were fairly new recruits. All of them said they found the events useful and informative.

Plans for our 2006 series of events are well advanced. Watch out for details on our website shortly.

www.financial-ombudsman.org.uk

ask ombudsman news

'execution-only' sales and the ombudsman service

an IFA writes …

Q Am I right in thinking that consumers who buy a financial product on an 'execution-only' basis (without receiving any advice) have no recourse to the ombudsman service if they later have a complaint?

A No this is not the case. We would be unlikely to uphold any complaint about the suitability of the product if the consumer bought it without receiving any advice. However – we could still look into the complaint if it related to misrepresentation, maladministration *etc*.

frequent change of ombudsman approach?

the compliance manager of a large investment firm writes...

Q Do the articles in *ombudsman news* all reflect new policy? If so, you seem to change your approach very frequently on a number of fronts.

A It's certainly not the case that the decisions and commentary we publish represent brand-new policy. Much of what we publish explains and illustrates existing – and very well-established – practice. This is because many readers tell us they are just as interested in how we deal with the more 'everyday' type of cases as they are in some of the newer, more unusual or complicated subjects.

And we sometimes re-visit a topic we have featured before. Newer readers – or those new to the industry – may not have seen earlier editions, while other readers tell us it would be helpful to have a 'refresher'. We're always keen to receive feedback from our readers, so please let us know if there are any particular topics you'd like us to cover.

explaining the redress formula

a financial adviser emails us …

Q In deciding a complaint in favour of my client, the ombudsman has made an award expressed as a formula. It talks about:

'*A: The original capital invested, less any amounts paid out by way of withdrawals, distributions of capital or before-tax income*'.

I understand that this is what my client invested – *less* what she has taken out.

Added to this is:

'*B: A return on the amount from time to time of A by way of growth equivalent to 1% more than Bank of England repo rate ('base rate')*' which is the investment return that you are awarding. But I'm unsure what '*from time to time*' means.

A The expression '*from time to time*' refers to the amount actually in the investment 'pot' *at any one time*. So you start off by calculating the investment return awarded on the full sum originally invested. Each time your client made a subsequent withdrawal, the amount left in the investment decreased. So you calculate the investment return on the lesser sum that was in the 'pot' at that time.

What you *cannot* do is simply add up all the withdrawals and deduct them from the capital invested before you calculate the investment return. The calculation should be compound. You will end up with the figure from which you deduct the surrender or maturity value of the policy.