essential reading for people interested in financial complaints – and how to prevent or settle them

ombudsman news

issue 70

Financial Ombudsman Service

... settling financial disputes, not taking sides

unsung heroes

Walter Merricks
chief ombudsman

Last month the consumer organisation *Which?* called us the '*unsung hero of the world of financial regulation*'. But I want to point to some financial services practitioners who deserve a pat on the back – those who serve on our industry liaison groups.

When the Financial Ombudsman Service was first set up as a single statutory scheme, there was some concern that we might lose the two-way channel of communication provided by those practitioners who had served on the boards of many of the former schemes.

So we decided to set up three separate liaison groups – for insurance, banking and loans, and investment. We invited trade associations to nominate members and to identify an individual from each relevant industry sector to chair the groups.

Each of these liaison groups has worked well over the last eight years. They function as a useful forum – enabling industry practitioners and senior representatives of the ombudsman service to exchange information and to update each other on current issues. Serving on these groups is not the stuff of great excitement, nor, I suspect, does it lead to recognition or promotion for the industry members involved. Indeed, I wonder how many practitioners across the financial services world are aware of the work these groups carry out.

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No doubt there are ways in which their operations might be improved – but in his recent review of the ombudsman service, Lord Hunt has suggested that they should be abolished and that their functions could be transferred to the *Financial Services Practitioner Panel* and the FSA's *Smaller Businesses Practitioner Panel*. These panels have heavy agendas, mainly concerned with the work of the FSA. So I am not sure they would have room for our business. And, by their nature, these panels have to be generalist in their approach.

So the answer may, instead, be to bring more visibility and transparency to the ombudsman's industry liaison groups – by letting industry practitioners and the public see more of their work.

In the meantime thanks are due to those unsung heroes and heroines who serve – and have served – on these groups.

Walter Merricks, chief ombudsman

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a round-up of recent mortgage complaints

Many of the complaints we see involving mortgages have arisen because of a difference between how customers expect their mortgage to work, and how it works in practice. Most people who take out a mortgage have some idea how it operates. However, relatively few mortgage customers have much understanding of the technicalities. Without first asking their lender, for example, many mortgage customers would be unable to say in detail exactly what practical effects a change in their mortgage arrangements would bring about.

Because a mortgage loan is usually for a large amount of money, quite small changes can – over time – make a significant difference in money terms. So mortgage customers can sometimes end up with a very unwelcome surprise if they have not fully understood what the consequences of a change would be.

This is even more likely to be the case for customers who are experiencing financial difficulty and have limited options.

We are sometimes disappointed that the mortgage lender did not make greater efforts to explain matters to their customer when a problem or query first arose.

Even where lenders *do* attempt to explain matters, we see cases where they have failed to address an important point – or have given the customer an explanation that was wrong. In a fair number of disputes it seems to us that more effective communication on the part of the lender might well have prevented the complaint from arising in the first place.

70/1

customer experiences difficulties obtaining explanation from lender about changes to her mortgage

Shortly after her husband's death, Mrs C wrote to her building society about her mortgage. She had taken this out jointly with her husband some years earlier, and was now thinking of paying off the remaining balance.

The building society kept Mrs C waiting some while before it responded to her letter and she was totally confused by the information it sent her. After making further enquiries, she was surprised to discover that – at some point – the building society had changed the basis on which the mortgage was set up, transferring it from interest-only to capital and interest.

Mrs C had been quite unaware that there had been any change to the mortgage. She asked the building society to explain exactly what had happened, but despite sending several further letters she encountered considerable difficulties in getting any more information

Mrs C eventually paid off the remaining mortgage balance, having by then been in correspondence with the building society for almost a year. When she complained about the poor service she had received, the building society agreed that it had not dealt well with her enquiries. It accepted her point that she would have paid off the mortgage a year earlier – had it dealt with her queries right away. It therefore refunded the interest she had been paying on her mortgage over the past year. It also made a separate refund of interest totalling almost £700 and gave her £200 for the inconvenience it had caused her.

However, Mrs C still felt uneasy about the situation because the building society had never explained exactly what had happened to the mortgage. She therefore brought her complaint to us. She said she had serious doubts about the way the mortgage had been administered. She also told us she thought the building society had a general policy of altering mortgage arrangements without its customers' knowledge.

complaint upheld in part

The building society's records for the mortgage account showed that it had transferred the mortgage from an interest-only to a capital and interest basis around a year before Mr C's death.

We noted that, a few weeks before the change had been made, Mr and Mrs C had written to the building society about one of the endowment policies

... she was totally confused by the information the building society sent her.

supporting their mortgage. That policy was reaching the end of its term and we thought the mortgage arrangement had probably been changed after the building society misinterpreted what the couple said about the policy in their letter.

Our investigations enabled us to reassure Mrs C that the building society did not have a general policy of transferring mortgages without their customers' knowledge, as she had feared.

We explained to Mrs C that she had, in fact, benefited from the change. Although the monthly payments had increased, they had still been easily affordable. And the higher repayments had the effect of slightly reducing the balance on the loan – something that would not have happened if the basis of the mortgage had remained the same. Mrs C had also been paying less interest since the change. Until we pointed these things out to her, Mrs C had not realised that there had been any positive aspects to the situation.

The building society offered to pay Mrs C an additional £200 for the inconvenience it had caused her. We told her we thought this represented a fair outcome and we recommended that she should accept the offer.

70/2

consumers hand back their house to their lender but are not told they remain responsible for any outstanding mortgage arrears

Mr and Mrs A had been in financial difficulty for some while and had fallen seriously behind with their mortgage repayments. They had been trying for nearly a year to sell their house – or to rent it out – but had no success.

Accepting that they had little realistic prospect of repaying the mortgage arrears, they resigned themselves to giving up their home. They handed in the keys to the building society and moved in with Mrs A's mother.

Just over two years later, a friend of the couple told them he had seen their former home listed on a property website. The house appeared to have been sold in the past couple of months. When Mr and Mrs A contacted their building society it confirmed that the

... they thought their responsibility came to an end when they handed back the keys of their house.

sale had gone through very recently. However, it told the couple that the proceeds of the sale had not covered all of their mortgage debt – so they still owed the building society £6,300.

Mr and Mrs A were alarmed by this news, as they had thought their responsibility for the arrears came to an end when they handed back the keys of their house. They said it was unreasonable of the building society to expect them to pay the outstanding amount. In their view, the house should have attracted a high enough price to pay off all the outstanding debt. They said it was the building society's fault that this did not happen – because it had taken so long to put the house up for sale.

The couple were also concerned that the building society had not kept them informed about the sale of the property. They said they thought it '*very suspicious*' that they had not been asked to sign any papers relating to the sale.

Unable to resolve matters with the building society, Mr and Mrs A referred the dispute to us.

complaint upheld in part

The building society was unable to explain its delay in putting the property on the market. However, we were satisfied from the evidence that, once it set out to sell the house, it had obtained proper valuations and had achieved the best price reasonably available at the time.

In the particular circumstances of this case, we could not see that Mr and Mrs A had been caused any loss. There was nothing to back up their view that the building society would have got a higher price by selling the house right away. The house had been on the market for over a year by the time the couple decided to hand in the keys. The few offers they received in that time had been very disappointing and – if they had accepted any of them – they would probably have been left with a shortfall, after the sale, of around £13,000.

Part of Mr and Mrs A's dissatisfaction stemmed from their assumption that the interest on their mortgage debt would stop once they handed in the keys. They had also expected the building society to contact them and obtain their signatures before selling the house. We explained that handing in the keys to a mortgaged property does not, of itself, stop interest accruing on the mortgage account. We also explained that as they had handed back their house voluntarily, the building society had not been obliged to get their signatures on the sale papers.

But we agreed with Mr and Mrs A that the building society should have kept them informed about the sale. And we thought the building society should have taken more trouble to ensure they fully understood the implications of handing back the keys of their house. It was unlikely that this would have made the couple alter their plans. But it would at least have spared them some of the surprise and dismay they felt when they were subsequently asked to repay the shortfall.

We did not agree with Mr and Mrs A that the building society should take responsibility for the shortfall. But we arranged for the building society to reinstate its offer of an interest concession, which Mr and Mrs A

... the lender's letter did not explain the figures as well as it might have done.

had refused when the building society had first suggested it. We said that the building society should also reduce the debt by £300 to compensate Mr and Mrs A for the inconvenience caused by its poor communication.

70/3

customer misunderstands calculation of interest on overpayments made to her mortgage account

The terms and conditions of Miss G's mortgage allowed her to make additional capital repayments of up to £500 each month – without incurring any charge. She was also able, each January, to make one additional capital repayment of at least £1,000 – again without charge.

In January 2008 she decided to make an extra capital repayment of £1,000 – and on 16 January she sent her lender a cheque for this amount. On 30 January she made her normal monthly repayment of £501.79 by direct debit.

After receiving her next mortgage statement, Miss G contacted her lender to complain. She said it had '*overcharged for interest on the January overpayments of £1,501.79*', with the result that her monthly repayment from February was more than it should have been.

complaint not upheld

We looked carefully at what Miss G's mortgage agreement said about overpayments. This clearly stated that, for interest purposes, monthly overpayments took effect from the first day of the following month, while interest took effect immediately on larger overpayments that were made annually.

We were satisfied that the lender had treated Miss G's payments in January 2008 correctly; her overpayment of £1,000 reduced her interest immediately. The problem seemed to stem from her mistaken assumption that the *total* amount she had paid in January was an overpayment. In fact, the payment of £501.79 was simply her regular monthly

repayment, which did not qualify for special interest treatment.

We explained this to Miss G and sent her a simple calculation to show that the interest had been treated correctly and that the balance carried forward on her account for February 2007 was correct. This had been shown on her annual statement in March 2007, but we did not think that the lender's covering letter, sent with the statement, explained the figures as well as it might have done. And unfortunately the lender's subsequent correspondence with Miss G failed to explain the situation clearly enough to reassure her and settle matters at that stage.

70/4

customers complain of mis-selling because their mortgage loan has a longer term than the endowment policy set up to repay it

Ten years after taking out an interest-only mortgage supported by an endowment policy, Mr and Mrs W unexpectedly inherited some money and decided to pay off their mortgage.

When they checked through their mortgage paperwork they were alarmed to discover that the endowment policy supporting their mortgage had been set up for a 20-year term. The mortgage itself had been arranged with a 25-year term.

Mr and Mrs W wrote to the lender complaining of '*mis-selling*', on the grounds that the terms of the mortgage and of the endowment policy did not '*match*'. The lender's response focused in some detail on why it did not think any mis-selling had taken place. However, it failed to address the couple's specific concerns about the length of the loan not '*matching*' that of the endowment policy. The couple remained worried about this and, unable to obtain any more information from their lender, they eventually brought their complaint to us.

At the time the mortgage had been set up there was no requirement for mortgage lenders to keep detailed records. The paperwork suggested that Mr and Mrs W had probably asked for the 25-year term, but there was no indication of whether the lender had discussed this with them.

But regardless of why the terms of the mortgage loan and the endowment policy differed, the main point as we saw it was that the difference had not disadvantaged Mr and Mrs W in any way. They paid only the interest on their loan, so their monthly repayments would have been the same no matter what term they chose.

And the endowment policy was well on track to produce enough – at the end of its 20-year term – to repay the outstanding mortgage loan.

We explained all of this to Mr and Mrs W and told them that as they had not suffered any loss or damage we did not think we should investigate any further. Reassured by our explanation, the couple agreed that they had no need to pursue the complaint.

... frustrated by the bank's apparent inability to explain matters, she made a formal complaint.

70/5

bank fails to provide clear explanation when customer queries mortgage balance after temporarily stopping her monthly repayments

Mrs M had a mortgage from her bank and, because she was easily able to afford it, she had for many years been making a significantly larger repayment each month than the scheduled amount she was contracted to pay.

When she was in a branch of the bank one day, withdrawing some cash, it occurred to her to ask how far ahead she was with her mortgage. She was told she was '*about ten years ahead with payments*'.

Mrs M decided to stop making any mortgage repayments for a while. She reasoned that the bank would be able to take her monthly repayments from the accumulated overpayments she had been making over the years. When this 'fund' started to run out – the bank would presumably let her know and she would then start making repayments again.

Mrs M assumed that, until she resumed the repayments, her mortgage balance would effectively stay level – to reflect that fact that she had 'stored up' so many payments in advance. She did not mention her plan to the bank.

A few weeks after deciding to stop her monthly payments, Mrs M received her annual mortgage statement. She had no further contact from the bank about her mortgage until she received the next annual statement. She was concerned

to discover from the statement that her mortgage balance had increased. She could not understand this and thought the bank must have made a mistake.

When she contacted the bank to ask what had happened, it sent her some calculations which made no sense to her. She asked for an explanation and the bank wrote to her again. However, it still failed to explain why her balance had increased. Mrs M contacted the bank yet again. This time she was simply told that the situation could have been avoided if she had asked for a formal '*payment holiday*' to be set up on her account.

Frustrated by the bank's apparent inability to explain matters, Mrs M then made a formal complaint. She said that the bank should have taken more trouble to offer her advice about her mortgage overpayment – and she believed there would have been no increase in her balance if it had done this.

complaint upheld in part

Mrs M had not asked the bank how best to manage the overpayment on her mortgage account. And she had not sought its advice before deciding to stop her payments. In the circumstances, we did not consider the bank was under any obligation to offer her advice on its own initiative.

She had made certain assumptions about what would happen to her mortgage if she stopped making payments. Unfortunately, she had never checked with the bank that her assumptions were correct. So we did not think the bank could fairly be responsible for the fact that things did not go as she had expected.

However, we agreed with Mrs M that the bank had not dealt adequately with her queries. It had failed to give her a clear explanation about the increase in the mortgage balance – and its reference to a '*payment holiday*' had not helped her understanding of the situation.

We explained to Mrs M that although the extra payments she made could be used to meet future payments as they fell due, this did not stop interest being charged on the balance of the account in the normal way. So the mortgage balance increased over time even though she was always ahead with repayments. A formal *payment holiday* arrangement would not have made any difference.

We said the bank should pay Mrs T £100 to reflect the inconvenience it had caused her by its failure to explain matters properly.

overheard at our technical advice desk

This month's *ombudsman focus* provides a round-up of some of the questions put to our technical advice desk recently about **changes to the dispute resolution (DISP) rules**.

I run a small financial services business. I hear that the dispute-resolution (DISP) rules have been updated. Is that right?

Yes. Updated rules about how you deal with complaints in-house (DISP 1) came into force on 1 November 2007 – with a couple of minor amendments following on 6 July 2008. Updated rules describing the ombudsman service's jurisdiction (DISP 2) and our procedures (DISP 3) came into force from 6 April 2008.

who updated the rules and why?

Some of the DISP rules are made by the FSA. The others are made by the ombudsman service, and approved by the FSA. We worked together on the changes, which were designed mainly to make the rules shorter (by about 30%) and easier to understand. The DISP 1 rules also take account of the *European Markets in Financial Instruments Directive* (MiFID), but that only affects cross-border branches doing investment business.

well, mine is just an ordinary business (with no cross-border branch) – so how do the updated rules affect me when I'm dealing with complaints?

You will find the rules easier to read, and less prescriptive – but the basic process remains the same. You must still publish details of your complaints-handling process (including access to the ombudsman service) and make this available around the point of sale. But you no longer have to display a notice saying you are covered by the ombudsman service.

I hope my business never receives a complaint, but what changes are there if I do receive one?

You must still send the consumer an acknowledgement and provide a copy of your complaints-handling process, but the rules now require you to do this '*promptly*' rather than within a set time of 5 days. And the rules now require you to keep the consumer informed about your investigation of the complaint, rather than requiring a letter at the 4-week stage.

have the rules about written responses and final responses to consumer complaints changed?

The rules about responses remain largely the same – though you can no longer get consumers to settle on the basis of an interim response without telling them about the

Financial Ombudsman Service. And, where responses are required to mention the ombudsman service, this must now be in the letter itself and not just in an enclosed leaflet.

how have the rules on the ombudsman service's jurisdiction in DISP 2 changed?

Again, you will find the rules easier to read – and they are set out in a new order.

First, they explain which business activities are covered by the ombudsman service (by type and where they are carried on); then, which consumers are eligible to complain; and finally, the time limits which apply.

are the business activities covered still the same as before?

There is no change to the activities covered by our compulsory jurisdiction and the consumer credit jurisdiction (which apply automatically to FSA-regulated firms, businesses with standard consumer-credit licences and to former firms and licensees) – though the rules clarify that '*ancillary banking services*' include foreign exchange.

There is a change for the voluntary jurisdiction (which some businesses choose to join). This has been extended to cover all activities directed at the United Kingdom from elsewhere in the European Economic Area which would have been covered by the compulsory jurisdiction or consumer credit jurisdiction if carried on from the UK.

have there been any changes to the types of consumer who are eligible to complain?

These remain the same except in two cases.

First, the assignee of an insurance policy is now eligible not only where there is a *legal* assignment (as before) but also where there is an *equitable* assignment.

Second, the position on third parties has been clarified; under the rules, third parties involved in motor accidents are not now eligible complainants.

are the time limits still the same?

There have been no changes in the time limits for referring a complaint to the ombudsman service.

so are there any changes in DISP 3, the rules about the ombudsman service's procedures?

The overall procedures remain basically the same, but the opportunity has been taken to clarify a few points on which some businesses (and some consumers) were unclear.

what sort of points do you mean?

Well, consumers sometimes get confused about who their complaint is against – especially where a couple of financial businesses are involved, for example an insurance broker and an insurance company.

The new rules make it clear that the ombudsman service can point the consumer towards the correct business.

that seems sensible – but what if a single consumer's complaint genuinely involves two businesses?

In that case, the new rules clarify that we can look at both aspects of the case through a single investigation, though we will still issue a separate decision in respect of each financial business. And, where appropriate, we can apportion the consumer's loss between the businesses which contributed to it.

is there anything else?

Where appropriate, an ombudsman can hold a hearing by phone. And, in line with partnership law, the rules confirm that we are not required to deal separately with each of the partners in a partnership – one partner, on behalf of the partnership as a whole, suffices.

useful links

The rules are at http://fsahandbook.info/FSA/html/handbook/DISP

The changes are explained in policy statements at:

- **http://www.fsa.gov.uk/Pages/Library/Policy/policy/2007/07_09.shtml** (most of the DISP 1 changes)
- **http://www.fsa.gov.uk/pages/Library/Policy/Policy/2008/08_03.shtml** (mainly the DISP 2 and 3 changes – including, in annex 3, a summary of the main changes and tables reconciling the old rules with the new).

Our technical advice desk answers a wide range of queries from financial businesses and consumer advisers about the ombudsman service and how we operate – including providing informal assistance on the ombudsman's approach to particular topics.

You can call the technical advice desk on 020 7964 1400 or email technical.advice @financial-ombudsman.org.uk

case studies illustrating some recent pension-related complaints

70/6

consumer complains of being wrongly advised to contract out of SERPS

In 1990 Mr B contacted the firm for advice about saving for his retirement. He was aged 35 at the time and earning £18,000 a year. The firm told him he should contract-out of the State Earnings Related Pension Scheme (SERPS) and make regular contributions to a personal pension policy.

As the years went by, Mr B became increasingly concerned about his pension arrangements. Towards the end of 2007 he asked a claims management company to complain to the firm on his behalf. The complaint centred on the firm's advice to contract-out of SERPS, which Mr B considered to have been unsuitable. He said the firm had not considered his attitude to risk, or warned him that the value of the pension he would get from the policy was not guaranteed.

In its response, the firm said that Mr B had been below the '*pivotal age*' at the time of the advice, and had been earning enough for it to be reasonably confident that contracting-out was suitable for him.

The firm also said that when Mr B took out the policy he would have been sent various policy documents, including an explanation that the pension benefits were not guaranteed. Unhappy with this response, Mr B asked the claims management company to bring the complaint to us.

complaint not upheld

When considering whether it was suitable for a consumer to contract-out of SERPS, firms typically applied a 'pivotal age'. The idea was that consumers below that age could find it beneficial to contract-out. There was a reasonable expectation that the value of any National Insurance rebates, tax-relief and government incentive obtained by contracting-out would be greater than the value of the SERPS benefits given up.

For consumers above the pivotal age, there was less time for investment growth and therefore a greater risk that the consumer would be worse off than if they had stayed in SERPS.

When considering the suitability of contracting-out, firms also needed to consider the consumer's earned income, as the rebates and other amounts received when contracting-out were based on that income. People on lower incomes received lower rebates, if any, and the charges they would have to pay on a personal pension policy would have a greater impact.

In this instance, we agreed with the firm that Mr B had been below the pivotal age when he was advised to contract-out, and his earnings had been high enough to make contracting-out worthwhile. There was clear evidence that the firm had properly considered Mr B's attitude to risk. We were satisfied that the firm's advice had not been unsuitable and had not exposed Mr B to a degree of risk that he would have found unacceptable at the time the advice was given.

We did not uphold the complaint.

70/7

whether firm calculated appropriate level of redress for pension mis-selling

In 1988, Mr J was working for C Ltd and was entitled to join its final salary pension scheme. However, after consulting a firm of financial advisers he took out a personal pension instead.

Later on, the firm started to assess the advice it had given Mr J – as it was required to do as part of the industry-wide pension review. When it contacted Mr J in connection with the review, he asked it to postpone work on his case. He was aware that the review could result in his receiving redress – and he was anxious to avoid any increase in his assets while he was going through divorce proceedings.

In 2006 Mr J took up a job with the Civil Service and joined its pension scheme. By then he was divorced and he asked his financial adviser to complete its work on his case.

The firm's review showed that Mr J had been wrongly advised, so it arranged to put things right for him. Unfortunately, it was unable to do this by buying-back pension benefits for him in his former employer's personal pension scheme.

... he was anxious to avoid any increase in his assets while he was going through divorce proceedings.

This scheme had closed in 1998 when C Ltd had gone into liquidation. The firm therefore offered to provide Mr J with redress in the form of a 'top-up' to his personal pension.

Mr J wanted to transfer the fund value of his personal pension into the Civil Service scheme and he started making enquiries about this. He thought the transfer would result in his being credited with 10 years' pensionable service in the Civil Service scheme. This assumption was based on the fact that – if he had joined C Ltd's pension scheme in 1988 rather than taking the personal pension – he would have built up 10 years of pension benefits in that scheme before it closed.

He discovered, however, that the transfer would provide him with only 6 years' pensionable service in the Civil Service scheme. Concluding that the firm had failed to calculate his redress correctly, Mr J asked it to increase its offer. When the firm refused to do this, Mr J brought his complaint to us.

complaint not upheld

We understood Mr J's disappointment on finding that his pension fund would buy him fewer years in the Civil Service scheme than he had expected. However, as we explained to him, this was entirely unrelated to the amount of redress he had received because of the pension review.

The aim of the review had been to put right the loss he had suffered during the period when he could have been in C Ltd's scheme, but had taken the firm's advice to pay into a personal pension instead. The firm had calculated this loss correctly and had paid the correct amount of redress into his personal pension.

Mr J's subsequent decision to transfer the fund value of his personal pension into the Civil Service scheme was not related to the firm's earlier advice – or to the redress calculation carried out under the pension review.

Transfers into employers' schemes are rarely as simple and straightforward as employees generally expect them to be. Such schemes have their own rules governing whether they will accept transfers from other schemes – and the terms they are prepared to offer.

It was entirely a matter for the Civil Service scheme to determine how many years' service Mr J would be credited with, in return for the transfer of his existing benefits. Had he been transferring from a broadly comparable public sector scheme, then he might reasonably have expected to obtain a broadly equivalent amount of pensionable service.

However, that was not the case here, as C Ltd had been a small private company and the terms of its pension scheme were not as generous as those of the Civil Service Scheme. Even if Mr J had been in C Ltd's scheme for 10 years and had transferred direct from that scheme – rather than from a personal pension– the value of the benefits he was transferring in would not have 'bought' 10 years' service credit in the Civil Service scheme.

We were satisfied that the firm had carried out its review in accordance with the regulatory guidelines, and that its offer had been fair and reasonable. Indeed, we were surprised that it had agreed to Mr J's request that it should postpone its review in order to suit his personal circumstances.

We did not uphold Mr J's complaint and we recommended that he should accept the offer of redress that the firm had already made.

... we were satisfied that the firm's offer had been fair and reasonable.

70/8

consumer complains about loss of guaranteed annuity rates when he was advised to transfer into an income withdrawal arrangement.

In 1995, a self-employed accountant, Mr D, sought financial advice. He was planning to reduce the number of hours he worked and wanted to benefit from unused tax relief by making additional pension contributions.

Mr D had four pension policies. Each of them included a guaranteed annuity rate option, entitling him to a guaranteed rate when he eventually converted his pension fund into an annuity.

The firm advised him to transfer the fund values from his pension policies into an income withdrawal arrangement, taking the maximum tax-free cash lump sum and recycling it back as a pension contribution in a new pension policy (as was permitted at the time). That contribution received higher-rate tax relief, enhancing the value in the new policy.

Mr D later transferred from the new policy into another income withdrawal arrangement, and again recycled the tax-free cash lump sum into yet another pension policy.

... he said he had not received the service he had expected from the firm.

When Mr D eventually retired he was disappointed with the annuities he bought with his pension funds. He complained about the firm's advice, saying he would have been better off if he had been able to take the guaranteed annuity rate option offered with his four original policies.

complaint not upheld

Mr D was financially aware. He took a keen interest in the stock market and had a number of investments, including a portfolio of shares.

He was not reliant solely on his pension funds to provide for his retirement, and it was clear that he had been willing to take a risk with his investments – not only in 1995, when he first consulted the firm for advice – but also when he later purchased with-profits annuities.

We noted that, at the time of the advice, none of Mr D's original policies offered annuity rates that were at all competitive. We concluded from Mr D's circumstances and attitude to risk at the time of the advice that, even if the firm had stressed the advantages of a rate that was guaranteed, he would have preferred to transfer out. Doing so gave him the opportunity of obtaining a potentially higher rate.

We also noted that Mr D had gained because of the tax-relief added to his funds when he twice recycled the tax-free cash lump sum. We did not uphold the complaint.

70/9

consumer complains of being unsuitably advised to take a variable investment-linked annuity

In 2001 the firm advised Mr T to use his pension fund of £100,000 to purchase a variable investment-linked pension annuity. The level of income he would get from the annuity, which was initially £7,800 a year, was to be recalculated every five years, based on the value remaining.

Mr T was aged 67 at the time and still working part-time as a self-employed sales and marketing consultant. He had savings of approximately £120,000, predominately in bank and building society accounts but with about £5,000 in privatisation issues.

By the time of the first recalculation of his annuity income in 2006, Mr T was alarmed to find that the value of his pension fund had fallen to £60,000. He decided to use that remaining fund to purchase a normal pension annuity. He then complained to the firm about its advice. He said the type of pension annuity the firm had recommended was unsuitable for him, as an inexperienced investor. He had not needed the income it produced and he had not received the service he had expected from the firm, in the form of regular reviews of his financial situation and on-going advice.

complaint upheld

Mr T had said in his complaint that he had no need for additional income. However, he had approached the firm for advice about buying an annuity. We considered this to indicate a wish to enhance his income – something that was not unreasonable given his age.

While it is usually appropriate for a firm to review a client's situation after a certain interval, particularly where benefits are subject to recalculation, we could find no evidence that the firm had undertaken to provide Mr T with the on-going advice that he said he had been expecting.

The firm justified its advice that Mr T should take the variable investment-linked annuity, rather than a less risky type of annuity, on the grounds that he was an '*adventurous investor*'.

... the variable pension annuity exposed him to a greater degree of risk than was suitable, in his circumstances.

Initially, it could give no reason for this view, other than the fact that Mr T had agreed to its recommendation. However, it later cited the fact that Mr T had invested in the privatisation issues.

We did not agree that Mr T was an '*adventurous investor*', or that he should be rated as such simply because he followed the advice he was given. And we noted that the amount he had invested in the privatisation issues had been modest, compared with the amount he had on deposit in bank and building society accounts.

We concluded that the variable pension annuity exposed Mr T to a greater degree of risk than was suitable in his circumstances. We directed the firm to pay Mr T redress for any past loss he had suffered because of its advice. We said it should calculate this by comparing the value of the pension he would have received from a normal annuity – taken out in 2001 – with the value of the payments he actually received.

We also said that the firm should arrange an additional annuity to cover the loss of future pension income that Mr T would otherwise suffer because of the firm's inappropriate advice.

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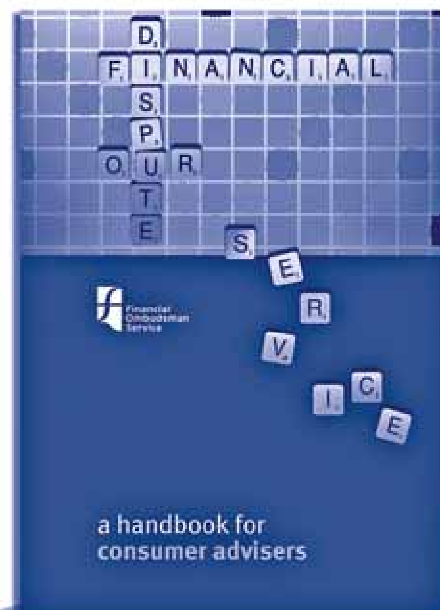

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ask ombudsman news ...

complaining about the ombudsman service

an independent financial adviser emails ...

Q I'm not happy with the way a customer's complaint against me is being dealt with at the ombudsman service – and I think the adjudicator working on this case is wrong. Is there anything I can do about it – can I appeal at all?

A If you don't agree with the adjudicator's view, you should discuss the matter with them – and do this as early and as fully as possible. Explain your concerns – and set out the reasons why you disagree with their view. If there are any new facts or arguments that you've not so far put forward, this is your opportunity to do so. Don't hold back any information for later as a surprise tactic.

The adjudicator will give careful consideration to any concerns and issues you raise – and take full account of all the information you provide. Having seen many very similar cases before, the adjudicator will have a very good idea of how the ombudsman would be likely to view your case.

If, after discussing matters fully with your adjudicator, you remain unhappy – then you can 'appeal' directly to the ombudsman. That is the final stage of our process. A final decision from the ombudsman is binding on you – if the consumer accepts it. You cannot then appeal against that final decision – or ask another ombudsman to look at the case. So you should make sure you've presented all your arguments and facts to us well before then.

We have an entirely separate procedure for handling complaints about the *level of service* we have provided. This would include instances where – for example – you think we have treated you rudely or unfairly, or have failed in some other way to deal with matters in a polite and professional way.

If it is the level of service you have received that you are unhappy about – rather than the view that the adjudicator is reaching on the merits of the case – then you should, in the first instance, tell the adjudicator this. Your adjudicator and their manager will try to put right anything we have done wrong – as quickly as possible.

If you remain dissatisfied, you should write to our service review manager, who will investigate matters. Our procedures for dealing with complaints about our standards of service include referral to our independent assessor, if we are not able to resolve matters ourselves.

The independent assessor cannot get involved in disagreements about the view we reach on the *merits* of individual disputes between consumers and businesses. But he is appointed by our board to carry out a final review of complaints about the *standard of service* we have provided – and he produces a report each year summarising his findings. We recently published in full his latest report as part of our 2007/08 *annual review*, available in the publications section of our website (www. financial-ombudsman.org.uk).

You'll find more information in the *frequently-asked-questions* section of our website about what you should do if you are unhappy about the service we are providing – or about the initial view we are reaching on the merits of an individual dispute.

ombudsman news gives general information on the position at the date of publication. It is not a definitive statement of the law, our approach or our procedure. The illustrative case studies are based broadly on real-life cases, but are not precedents. Individual cases are decided on their own facts.

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