

Financial Services Ombudsman Scheme Report at 31st March 2012

Welcome to the annual review of the Financial Services Ombudsman Scheme which covers the period from 1st April 2011 to 31st March 2012.

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1. Introduction

On the 1st January 2012 the Isle of Man Financial Services Ombudsman Scheme ('the Scheme') reached its 10th Anniversary. This therefore seems a good time to look back on the changes which have happened in the decade the Scheme has been in operation.

During the early years the Scheme established itself within both the finance sector and its client base. As the Scheme matured, a number of changes and enhancements to the Scheme were recognised as being needed in order to improve its services to all parties.

In 2007 the original legislation which created the Scheme (the Financial Supervision Act 1988) was reviewed, and the identified changes were made to the Scheme and included in the Financial Services Act which came into force in August 2008. Since 2009 an annual review has been carried out by the staff of the Scheme to consider whether any further changes should be implemented. As a result of these reviews, in 2010 money transmission services were brought within the remit of the Scheme and in 2012 the maximum award the Scheme can make was increased to £150,000 with effect from the 1st April 2012.

Since the Scheme came into operation in January 2002 the economic situation has changed dramatically in ways that could not possibly have been foreseen 10 years ago. Variations in local and global economies have directly affected the nature of complaints submitted to the Scheme such as those regarding the imposition of Market Value Adjusters on with-profit bonds, losses suffered by customers as a result of investing in 'precipice' bonds and the banking crisis of 2008. Other complaints have been driven by claims handling firms such as the current issues with Payment Protection Insurance PPI and earlier concerns about overdraft charges.

The Scheme is staffed by two Case Officers, one of whom has been with the Scheme since the start of operations. The responsibilities of the Case Officers are to first check when a complaint or enquiry is received by the Office that the matter is one which falls within the remit of the Scheme. If the matter is able to be accepted into the Scheme the Case Officers will then conduct an investigation into the complaint and request further information from both parties. If the complaint is found to be valid the Case Officers will then attempt to mediate a settlement between the parties. It is only if this mediation is unsuccessful that the complainant will be given the opportunity for their complaint to be considered by an Adjudicator and a final and binding determination issued. The Scheme has a panel of six adjudicators one of whom has also been with the Scheme since it began.

During the 10 years the Scheme has been operating the Case Officers have dealt with 3,134 complaints and handled a further 2,015 enquiries and currently the use of the Scheme remains free of charge to both the customer and the business as it is funded entirely by the Isle of Man Government.

The last 10 years have seen improvements in the way financial service providers deal with customer complaints partly as a result of the actions of the Scheme and it is hoped that standards will continue to improve in customer complaint handling and mediation in the coming decade.

2. Data

Overall we handled 559 initial enquiries and complaints from consumers, an increase of 16% on the previous year. A complaint is recorded when the Scheme receives a complaint form and the matter is investigated. In the case of an enquiry, a completed complaint form is not received but some discussion may take place with the client regarding their concerns and further communication may be necessary.

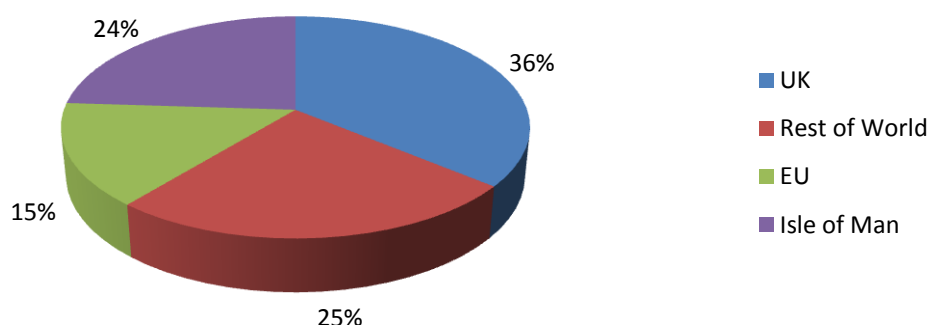
2.1 Change in numbers of enquiries and complaints received over the year

Year	2010/11	2011/12
Complaint forms received	312	287
Enquiries received	169	272

2.2 Residence of Complainants

Where the complainant lives	2010/11		2011/12	
	No.	%	No.	%
UK	134	43	103	36
Rest of World	98	31	72	25
EU	33	11	43	15
Isle of Man	47	15	69	24
Total	312		287	

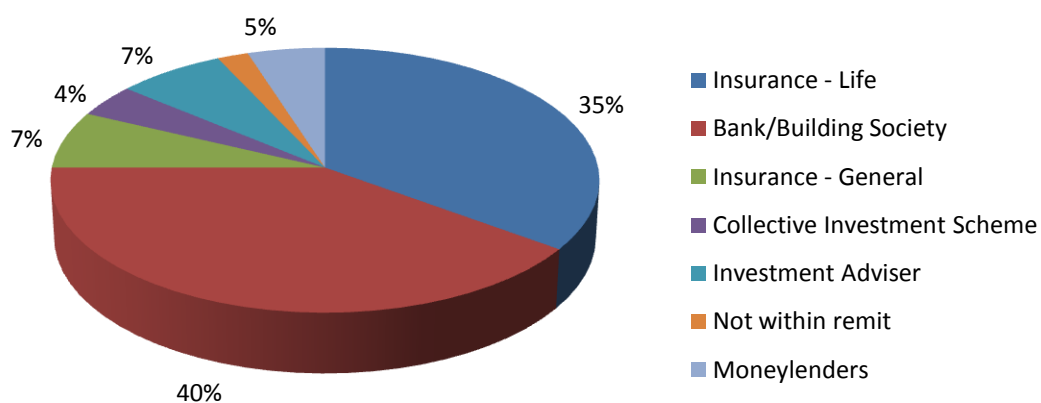
Residence of Complainants 2011/12



2.3 Provider Type

Type of provider complained about	2010/11		2011/12	
	No.	%	No.	%
Bank/Building Society	125	40	114	40
Insurance - Life	128	41	101	35
Insurance - General	30	9	20	7
Investment Adviser	10	3	20	7
Collective Investment Scheme	12	4	12	4
Moneylenders	2	1	13	5
Not within Scheme remit	5	2	7	2
Total	312		287	

Provider Type 2011/12



2.4 Closed complaints

Outcome of complaints	2010/11		2011/12	
	No.	%	No.	%
Found to be outside the remit of the Scheme	257	75	245	72
Resolved through mediation	83	24	88	26
Determined by Adjudicator	2	1	7	2
Total	342		340	

2.4.1 Reasons why outside Scheme remit 2011/12

72% of complaints received were found to be outside the remit of the Scheme as defined in the Act; a breakdown of the numbers falling into each category is shown in the table below.

Reason outside scheme 2011/12	No.	%
No financial loss through provider error	79	32
Fair offer made by provider	20	8
Not IOM provider	34	14
Commercial judgement	36	14
Out of time	48	19
Not an individual	8	4
No financial service provided	4	2
Better dealt with in court	4	2
Investment performance	10	4
Adjudicators precedent	2	1
Total	245	

2.5 Closed enquiries

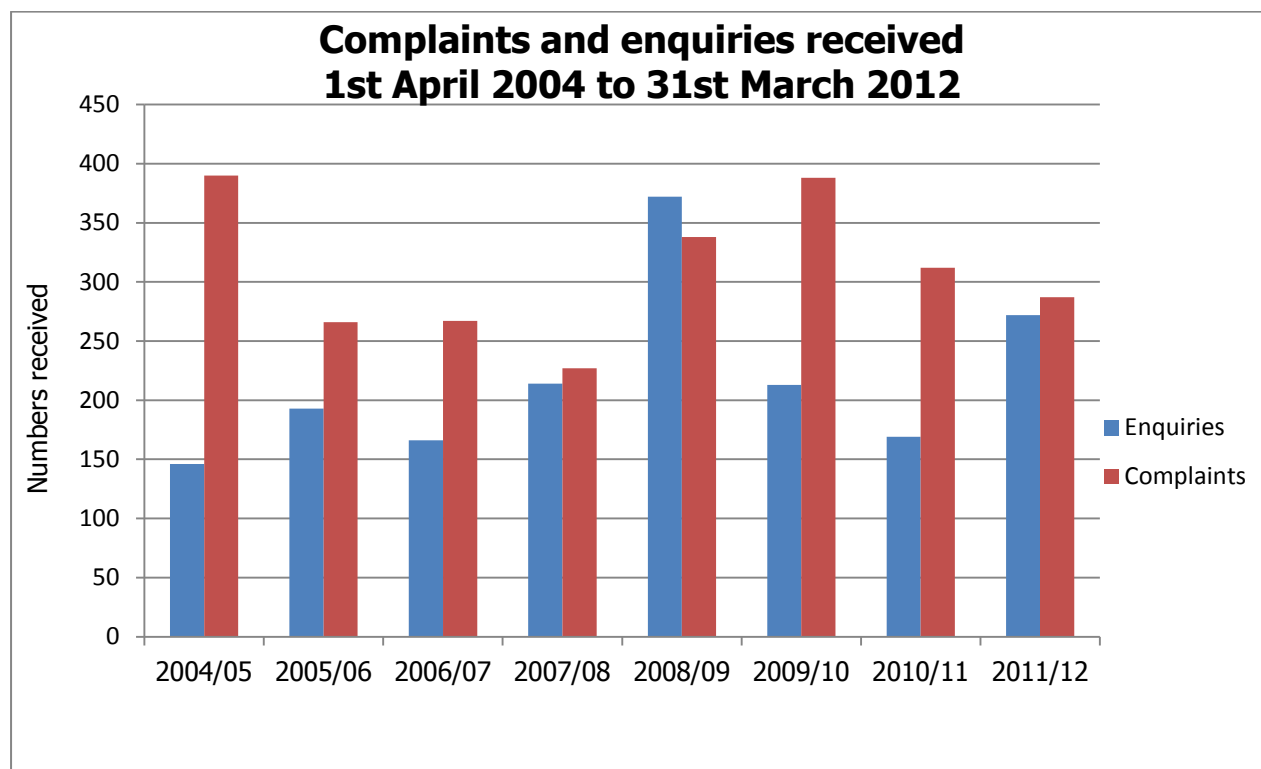
Outcome of enquiries	2010/11		2011/12	
	No.	%	No.	%
Advised - no further action required	142	78	185	80
Found to be outside the remit of the Scheme	34	19	37	16
Resolved through FSOS intervention	6	3	10	4
Total	182		232	

2.6 Work in progress

Active complaints open at 1 st April 2012	
Awaiting response from complainant	102
Under investigation	40
Awaiting response from provider	21
Total	163

3. Comment on Trends in Complaints

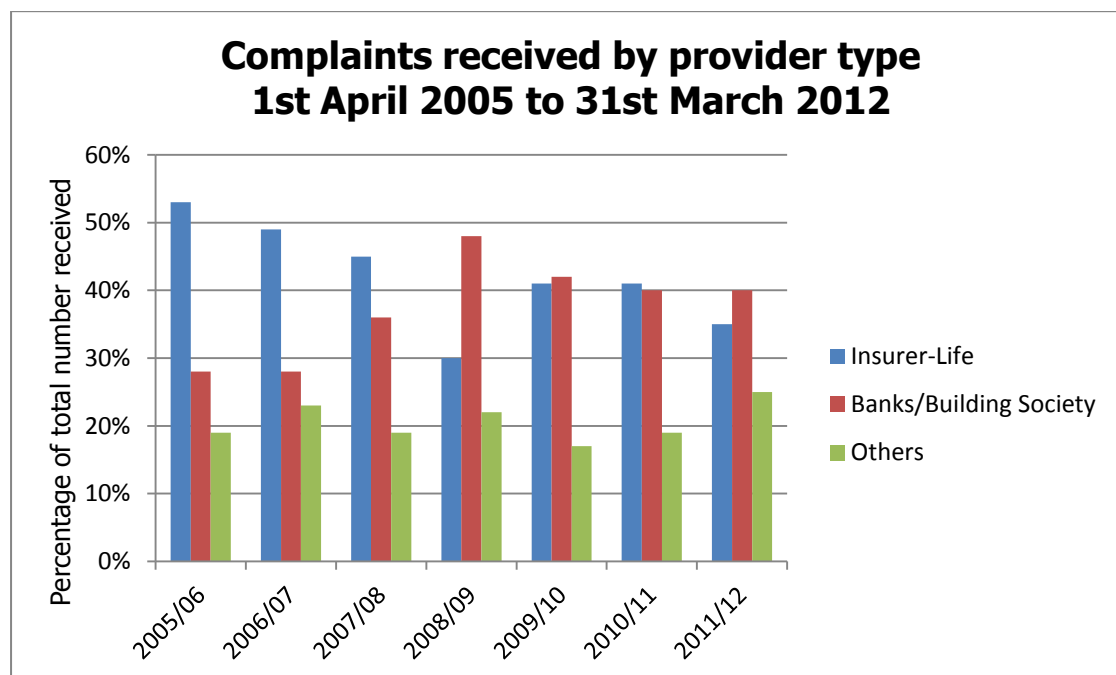
In its first year of operation the Scheme received a total of 273 complaints plus 127 enquiries. Over the ensuing years the case load has varied from a high of 710 contacts (388 complaints plus 213 enquiries) in 2008/09 to a low of 441 contacts (227 complaints plus 213 enquiries) in 2007/08. The graph below illustrates the figures since 1st April 2004, which is the first year from when the figures were collated over a fiscal year having previously been gathered over the calendar year.



The year on year comparison above in particular reflects the lack of confidence in financial markets during the year from 1st April 2008 which also had a knock on effect on complaints received during 2009/10. In times of hardship investors will look more closely at their account statements, holdings and fund performance. The Scheme will not usually consider a complaint where the dispute relates to investment performance, unless there are other relevant issues such as inadequate explanation of the risk, mis-selling or there is an allegation of negligence.

The Isle of Man has enjoyed a reputation as a leading offshore finance centre where long term insurance business is a major contributor. As a result this sector represented the most complained about area accounting for over half of the complaints received in the years 2002 to 2007. Complaints in this area have traditionally centred around issues such as maladministration and charges and in particular the application of market value adjusters (MVAs). In contrast since 2007 there has been an increase in the proportion of complaints regarding the banking sector notably during the year to 31st March 2009 when the Scheme received 177 complaints regarding this sector, an indication of the reduced confidence in the banking sector during 2008/09.

The chart below illustrates the variance in complaint numbers received by each type of provider since 1st April 2005.



During the period of this report the number of complaint forms received has fallen when compared to the year 2010/11, however the numbers of enquiries received by the Scheme has increased. In previous years not all instances where an enquiry was received by the Office were recorded; however during 2011/12 as far as possible all contacts have been registered which may account in part to the noticeable increase in the number of enquiries.

Complaints regarding the sale of PPI continue to make headlines in the UK and remain in the spotlight in part due to advertising from claims management companies. There has been an increase in the number of complaints received on this matter against banking institutions and moneylenders although numbers remain low in comparison with the UK.

Despite our close links to the UK, the diverse and in some cases unique nature of the finance industry here in the Isle of Man and the consumers who use it means that we experience different issues than our neighbours. In particular it is our global customer base which brings diversity. In 2011/12 there was a noticeable rise in the number of Manx complainants which is reflected in the increase in the number of complaints against local investment advisers and moneylenders.

A total of 572 cases made up of 340 complaints and 232 enquiries were completed during the year leaving 163 complaints active at 1st April 2012.

4. Case Studies as Determined by Adjudicators

If mediation of a complaint by the case worker fails or has no reasonable prospect of succeeding it can be referred to an Adjudicator for formal investigation and determination. The Appointments Commission nominate and maintain a panel of six Adjudicators who work independently from the Office of Fair Trading. The Adjudicator will take into account the relevant law, statutory regulations, regulators rules, guidance and standards, codes of practice and whatever they consider to have been good practice at the time the complaint arose. Six complaints were determined by the Adjudicators in the period 1st April 2011 to 31st March 2012 and these are detailed below.

1. Mis-sale of 'secured loan notes' product – No 1

Complaint made to the Scheme

The Complainant who resides in the Isle of Man and is a retired hairdresser had been advised to invest a lump sum of £50,000 into two secured loan note (SLN) products issued on the Isle of Man, she believed these products had been mis-sold.

Summary of complaint

In late January 2009 the Complainant approached the Supplier for advice in respect of her wish to invest the sum of £50,000 in a manner whereby half of that sum became available after one year, and the second half after two years, to meet living expenses.

At the time of giving the relevant advice the supplier was licensed by the FSC under Section 7 of the IOM FSA for Class 2 sub section 3 & 7 regulated activities.

On the basis of advice given by the Supplier, the Complainant proceeded to invest in two SLNs, as follows, issued by a company incorporated in the Isle of Man:

- £25,000 invested 12/2/09 due 12/2/10 @ 5.85% pa.
- £25,000 invested 12/2/09 due 12/2/11 @ 5.85% pa.

The SLNs were guaranteed by a group company incorporated in the British Virgin Islands.

On the dates of maturity in February 2010 and 2011 no matured funds were paid to the Complainant.

The Complainant felt the SLNs had been mis-sold to her as at the outset she had not received any product documentation nor had she been made aware of the risks of the investments which were not in line with her requirements.

Findings

The Suppliers were unable to evidence that they had approached their advice-giving with due skill, care and diligence and were not able to provide copies of any Fact Find, recommendation letter and product literature as supplied to the Complainant nor details of all alternative investments considered or details of the due diligence research undertaken on the relevant SLNs.

The Supplier was not licensed to arrange advice or recommend that clients invest in unregulated investments such as the SLNs: to have made this recommendation to a retired person exacerbated an already negative situation.

The complaint was upheld and the Supplier was directed to reimburse the Complainant by paying her the sum of £50,000, together with interest on that sum at the rate of 1% pa over Base Rate.

It was also directed that the Supplier prepared an assignment of the two SLNs so that the Complainant could assign the notes to them: the Supplier would then become responsible for taking such recovery action as they saw fit.

2. Mis-sale of venture capital trust

Complaint made to the Scheme

The Complainant who is a freelance artist with a young son and resides in the UK, had been advised to surrender a Prudence Bond based in the UK (the Bond) and invest the proceeds as a lump sum into a Key Data Income Venture Capital Trust (VCT), which she believed to have been mis-sold.

Summary of complaint

In mid 2005 the supplier, who knew the Complainant and her family on a social and personal level and had advised on earlier investments, reviewed the Bond already held by the Complainant to see if it remained suitable for the Complainant's needs for a regular income from an investment which could maintain its capital value.

At the review it was determined that as the Bond was invested in equities it had limited opportunities for growth, particularly as a regular income was being taken from the same, and on the Supplier's advice the Complainant proceeded to surrender the UK Bond and invest the proceeds of £48,000 into the VCT. This capital sum represented over 50% of the total of all the Complainant's assets excluding her property.

The VCT was recommended as being suitable for the Complainant as it was an ethical investment; tax relief was available on the invested capital for basic rate taxpayers, there was a target income of 5% of the capital invested and there was no capital gains liability if the VCT was held for at least three years.

The Complainant received income from the VCT during the period from 2005 to 2008 of £2,309.34 and in March 2008 when the Complainant made enquiries about selling the VCT shares she became aware that the shares had dropped in value by approximately 70% and that there was a limited market for the trading of the shares.

The Complainant felt that the VCT had been mis-sold to her as she was and remained a non-taxpayer without any liabilities to capital gains tax, she had surrendered the Bond at a cost. The Bond had provided her with a regular income stream and the risks of the VCT, of which she felt she had not been made aware, were not in line with her requirements.

The Supplier advised its view that the VCT was a suitable investment for the Complainant as both in personal discussions and through the completion of a Fact Find it had been established that the risk profile and requirements of the Complainant (specifically the need for income) were compatible with an investment into the VCT.

Findings

It was found that the VCT was not a suitable investment for the Complainant as it was not consistent with her risk profile and had not and would not fulfil her income requirements.

The complaint was upheld and the Supplier was ordered to pay the sum of £36,649.22 being the loss crystallised at the date the earlier investment to fund the VCT was surrendered less the residual value in the VCT.

The Supplier did not agree with the Adjudicator's determination and asked for it to be reviewed by the Senior Adjudicator.

Appeal to the Senior Adjudicator

The Senior Adjudicator confirmed the Adjudicator's determination that the VCT had been mis-sold but on examination increased the award to £48,027.04 to reflect the notional interest accruing to the VCT during the period of investment.

3. Misleading advice provided in regard to 'Market Value Reduction'

Complaint made to the Scheme

The Complainant who resides in St Lucia had been advised to invest a lump sum of £1,000,000 into an International With Profits Bond (the Bond) issued in the UK, which he believed to have been misrepresented to him.

Summary of complaint

In April 2006 the Complainant invested £1,000,000 (one million pounds) into the Bond and the complainant complained that:

- a) he believed that he was investing into a 5 year fixed term Bond;
- b) he understood that the first year bonus rate of 10.35% was guaranteed;
- c) charges to be applied were not clearly explained;
- d) he was told that once applied, added bonuses could not be withdrawn;
- e) he had been advised that a Market Value Reduction (MVR) had never been applied to the Bond and that the Supplier was confident that it never would.

The Supplier advised its view that details of the Bond had been clearly outlined to the client at the outset and that all information provided to the client had been technically correct.

Findings

a) Prior to making the investment the Complainant received product literature together with a written response to a query from the Complainant, all of which clearly and unambiguously stated that this was an open ended investment with no specific fixed term although it was recommended that it is kept for a minimum of 5 years in order to avoid penalties during this time. Accordingly this claim was not upheld.

b) The Supplier agreed in writing to honour this guarantee.

c) All product literature stated that all rates are net of charges which comprised an annual management charge of 1% and an establishment charge of 1.4% (for the first 5 years only). About 18 months after the inception of the investment, the Complainant indicated that he believed that the charges were deducted before the application of bonuses. Because of the delay and the fact that the literature is clear and unambiguous, this claim was not upheld.

d) Whilst the statement that once bonuses had been added they could not be removed was technically correct, it was found to be misleading because the Complainant was not informed that the application of a MVR would have a negative effect on the value of the fund.

e) Contained in the Frequently Asked Question (FAQ) document supplied to the Complainant when he first enquired about the investment is the statement that the Bond provider could apply a MVR in the future but because they had never applied an MVR on their offshore funds and that they are ring fenced from the onshore fund, the Supplier is confident that the Bond provider will never apply a MVR. Based on this information the Complainant made the investment into the Bond. Subsequent product literature indicated that a MVR could be applied. The statement in the FAQ document is misleading; whilst technically correct, it transpired that when this statement was made, the fund had only been in existence for 4 years, moreover there was no evidence that NUI was of the same opinion.

It is established that in addition to supplying clear and unambiguous information, the Supplier has a duty to bring to the notice of the Complainant the possible risks of a MVR. The Supplier had failed to do this.

Consequently the complaint regarding the MVR was upheld and the Supplier was ordered to pay the Complainant the value of the MVR applied to the Bond at the time of surrender which amounted to a sum of £60,000 plus.

4. Alleged mis-sale of an investment bond

Complaint made to the Scheme

The Complainant who was retired and resided in the Isle of Man had been advised to invest a lump sum of £250,000 into an investment which he believed had been mis-sold to him. The Complainant regrettably died during the consideration of his complaint but it was continued by his widow and advocate.

Summary of the complaint

The claim is for financial loss suffered as a result of the negligent mis-selling of an investment into the life assurance bond (the Investment). It is alleged that this particular Investment was not appropriate for a person who was 83 at the time. Also the Complainant's health and state of mind at the relevant time was nowhere near reliable enough to make an informed decision regarding the Investment.

Findings

The Complainant, his wife, his friend and tax adviser all said that the Complainant was suffering mental health problems when the Provider was advising him to invest in the bond during 2004/05 however the wife did not discuss the matter with the Doctor or the

Complainant's advisers, nor did his friend discuss the matter with the wife or the Complainant's accountants and/or his bankers. Two letters were produced written by a General Practitioner (GP) from the Health Centre where the Complainant was registered. Both were dated during 2009 and state that the Complainant attended his surgery in August 2005 at which time he manifested symptoms of memory loss. This is not recorded in the medical records but relies solely on the memory of the GP some four years later. In the circumstances, greater weight has been given to the contemporaneous written entry in April 2006 which clearly pinpoints the date of onset of the mental health problems as mid February 2006. The Provider's staff who met with the Complainant on many occasions during the relevant period (early November 2004 to December 2005) had no reason to believe that the Complainant's health was impaired; they confirm that he had good recall and an understanding of the investment product. Accordingly the claim that the Complainant's health and state of mind at the relevant time was nowhere near reliable enough to make an informed decision was not upheld.

The Complainant said that because of his age the Provider should have taken greater care when advising him because of his age in particular they should have insisted that he involve a third party. The Provider did have internal guidelines and a Fact Find Check List for persons over the age of 80. Their file indicates that these guidelines and check list were complied with.

As regards to the suitability of the Investment in view of the Complainant's age, there is no reason why an arbitrary age limit should be imposed. Provided the Complainant understood the nature of the Investment and had sufficient liquid funds should an emergency arise during the five year term, there is no reason why the Complainant should not invest in this product. From the documentary evidence provided the Adjudicator was satisfied that the Complainant was not suffering mental health problems at the time he made the decision to make this investment and that he understood the principal features of the Investment. Some discrepancies as to the Complainant's assets appear on the documentation completed in July 2005 and that completed in December 2006. It is not clear how or why this has occurred, however at all times the Complainant, who was a wealthy man, had sufficient liquid assets so that he was not prejudiced by investing in a product which had a five year term.

Accordingly this complaint was not upheld.

The Complainant did not agree with the Adjudicator's determination and asked for it to be reviewed by the Senior Adjudicator.

Appeal to the Senior Adjudicator

The Senior Adjudicator confirmed the Adjudicator's determination that the complaint should not be upheld.

5. Alleged mis-sale of an investment bond and delays in providing assistance when requested

Complaint made to the Scheme

The Complainants who are retired and reside in the Isle of Man had been advised to invest a lump sum of £225,000 into two Bonds issued in the UK, which they believed to have been mis-sold.

Summary of complaint

In October 2006 the Complainants purchased two bonds ("the Bonds") recommended by the Provider. When the stock market became volatile in January 2008 the Complainants requested monthly valuations in respect of the Bonds from the Provider.

The Complainants were minded to encash one or both Bonds in May 2008 but were strongly advised against such a course of action by the Provider. Had they ignored the advice and sold the Bonds in May 2008 they would have recouped the capital expended on the Bonds. By 25th September 2008 this was no longer the case. When the Complainants did decide to encash the Bonds the Provider was tardy in supplying the necessary paperwork and by the time they did the Bonds had further decreased in value ("The Undue Delay Complaint").

The Complainants complain they were mis-sold the Bonds as they did not suit their stipulated needs of income and capital growth and capital protection ("The Mis-selling Complaint").

The Complainants complained that the advice not to encash the Bonds in May 2008 was bad advice ("The Negligent Sale Advice Complaint").

Findings

The Negligent Sale Advice Complaint

Not Upheld.

The Complainants did not rely on the advice. They were well informed from other sources of the state of the financial market and the evidence was they made up their own minds not to encash the Bonds in May 2008.

The Provider had not given bad advice. They had taken account of the volatility of the market and the possibility of an early recovery and the financial penalty the Complainants would suffer by encashing the Bonds early.

The Undue Delay Complaint

Not Upheld.

The Complainants decided to encash the Bonds on Monday 29th September 2008 and required a staff member from the Provider to travel from Douglas to their home in Ramsey that day to complete the forms and lodge them with the relevant Bond providers. The Provider could not comply with the request that day but were able to do so the following day and did attend the Complainants at their home first thing the next day. There was no undue delay and it was not explained why the Complainants could not have travelled to the Provider's office in Douglas on the 29th September 2008. The Provider had offered to see them there and complete the forms when they arrived that day.

The Claim of Mis-selling

Claim that one of the Bonds was mis-sold was upheld.

The Provider had recommended a particular risk category of Bond which the Complainants accepted. In fact, the Provider had stated one of the Bonds purchased was a lower risk

category than it actually was. The Provider has offered to transfer the Bond to a Bond in the risk category the Complainants had agreed to. The Bond in the higher risk category has actually performed better than a correct risk category Bond.

The complaint of mis-selling in respect of capital protection was not upheld. The literature and application forms completed and signed by the Complainants made it amply clear that capital was not protected.

6. Failure of the Provider to set a life assurance policy up correctly

Complaint made to the Scheme

The Complainant, who resides in the UK, took out a life policy but the Supplier had been making higher mortality deductions from the Policy than they stated would be taken when the contract was made. As a result his Policy had no cash surrender value and the Supplier was imposing a substantial increase in premium or a substantial decrease in the sum assured in order to maintain the Policy.

Summary of the complaint

The Complainant took out a whole life policy ("the Policy") with the Provider. The Policy was to be held in trust. The intention was that the sum assured under the Policy would be sufficient to settle inheritance tax liabilities on the death of the Complainant. The Complainant was a smoker and diabetic and advised the independent financial adviser of this who in turn advised the Provider. Unnoticed by the Complainant at the time was the fact that the Provider had wrongly indicated the Complainant was a non-smoker in the Acceptance Terms. The subsequent Notice of Right to Cancel also made the same error which went unnoticed by the Complainant.

The Provider did not discover the errors until the first designated review date in January 2008. Documentary evidence shows that the Complainant and the independent financial adviser discovered the errors in January 2006 but made a decision not to notify the Provider.

The Provider then made a further error in failing to follow their normal procedure in relation to reviews. They did not send their review letter to the Complainant. In the autumn of 2008 the Provider notified the Complainant that following the first five year review the sum assured should be reduced to £45,570.38. However because of their error in not sending out the normal review letter they were content to continue the status quo until the next review.

The Complainant stated that if the correct premium had been quoted at the outset he would have chosen a different Provider via his adviser. The Complainant wanted the Provider to continue to accept an annual premium of £3,800 and provide a sum assured of £69,474 as it originally offered to do so. To do otherwise says the Complainant was a breach of contract. By making the deductions for a smoker the Provider has effectively changed the terms of the policy. The Complainant indicated that the appropriate remedy was for the supplier to return to him the monies he has paid.

The Provider indicated that whilst the offer of the terms of acceptance on a non-smoker basis was incorrect and the error came to light subsequently they cannot ignore the error and continue to offer the full sum assured as per the original premium level. The Provider invited the Complainant to proceed with the premium of £7,266 following which they will re-

instate the sum assured of £69,474. Otherwise the sum assured for the annual premium of £3,800 will be £36,577.30.

Findings

The complaint was not upheld. There was no clear evidence that better terms could have been obtained elsewhere. Therefore if the Complainant had decided to protect his estate against inheritance tax liabilities on the balance of probabilities the correct terms offered by the Provider would have been accepted. There was no evidence the Complainant had changed his position as a result of the error made by the Provider. It was not unreasonable for the Provider to require the Complainant to pay premiums in the future which take into account the rate for a smoker and also address the underfunding occasioned by the errors made.

The Complainant did not agree with the Adjudicator's determination and asked for it to be reviewed by the Senior Adjudicator.

Appeal to the Senior Adjudicator

The Senior Adjudicator confirmed the Adjudicator's determination that the complaint should not be upheld.

5. Extension of Scheme Remit

During its review of the remit of Scheme in 2011, the Board of the Isle of Man Office of Fair Trading proposed to increase the maximum limit for awards made under the Scheme from £100,000 to £150,000 and to extend its remit to include Self Invested Personal Pensions (SIPPs).

After a period of consultation and with the approval of Tynwald, the maximum award limit under the Scheme was increased to £150,000. This applies to complaints where the act or omission occurs on or after 1st April 2012.

Progression of the proposal to extend the remit of the Scheme to include SIPPs has been slowed by recent changes to the jurisdiction of the UK Pensions Ombudsman and its relationship with the Isle of Man. The Scheme continues to work towards ensuring that certain aspects relating to SIPP advice and administration are covered by either the Pensions Ombudsman or the FSOS.

Following the 2012 review the Board considered whether it was correct for the Scheme to continue to mediate complaints which related to the unregulated sale of general insurance. The Office will continue with this consideration and progress discussion with the regulators involved as to the possible regulation of these products which will increase consumer protection in this area.

6. Contact Details

We hope that this review is informative and helpful but any comments, questions or feedback is welcomed.

How to contact us:

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