



**The Financial Services Ombudsman
Scheme for the Isle of Man**

ANNUAL REPORT

2002



Isle of Man
Government
Reiltys Ellan Vannin

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Ombudsman Scheme
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CHAIRMAN'S STATEMENT

The Isle of Man is now part of a truly global finance industry and is proud to have achieved international recognition for the high quality of its financial services and the effectiveness of its regulatory environment and compensation arrangements. To enhance its consumer protection arrangements still further the Manx Parliament, Tynwald, decided in April 1999 that a financial ombudsman scheme should be established to give investors, wherever they reside, an informal and cost-effective way in which to resolve disputes with island-based financial services companies. Thus, on 1 January, 2002 the Island's Financial Services Ombudsman Scheme came into operation. It is the only such scheme operating in the British offshore islands.

The Financial Services Ombudsman Scheme is a free, independent dispute resolution service for individuals with an unresolved complaint against an Isle of Man financial firm such as a bank, insurance company or financial adviser. While the regulators set and monitor certain standards expected of suppliers of financial services, the Ombudsman Scheme's role is to resolve individual disputes between customer and supplier.

I should like to thank the staff and the previous Board of the Office of Fair Trading for getting the Scheme off the ground. The Office achieved a good dialogue with the financial industry in the various consultations over the development of the Ombudsman Scheme and also worked with the Insurance and Pensions Authority and the Financial Supervision Commission in drafting advice to suppliers of financial services on complaints handling.

We were delighted when the Ombudsman Scheme was accepted as a member of the British and Irish Ombudsman Association early in 2002. This body polices the use of the term 'Ombudsman' only accepting as members those schemes which pass its stringent criteria on independence; effectiveness; fairness and public accountability. Membership has already proved valuable in providing links with other ombudsman schemes and dialogue on issues of interest.

Ombudsman schemes are a relatively new concept for the Isle of Man, so in the past year we have sought to promote awareness of the Ombudsman Scheme through a variety of means. This has included media coverage both in local newspapers and radio and in the offshore financial press; a presentation to the Island's financial industry in November 2001 with Walter Merricks, Chief Ombudsman of the UK's Financial Ombudsman Service, as a special guest; presentations at conferences and to the staff of the financial regulators and Financial Crime Unit; and meetings with trade bodies and individual suppliers throughout the year. The website (www.gov.im/oft/ombudsman) contains full details of the Scheme and information is also available on the British and Irish Ombudsman Scheme website. The message seems to be getting through as

the Scheme has been contacted by individuals across the world, for example Australia, Fiji, Hong Kong, Indonesia, Israel, Japan, Malaysia, New Zealand, South Africa and the USA, as well as throughout Europe and the Isle of Man.

In 2002, the Scheme handled 400 enquiries, received 273 complaints and took on average five and a half months to complete cases. This volume of cases should be seen alongside the 4,000 or so enquiries the Office receives annually on general consumer matters. I am grateful to the staff of the Office of Fair Trading and the Panel of Adjudicators (Peter Crellin, Kathy Harrison and Flora Simons) for their hard work in achieving so much in the first year of operation of the Scheme.

Notwithstanding our extensive planning and preparation for handling financial complaints, this has been a year of development and learning 'on the job'. We hope that all those who have come into contact with us have experienced our guiding principles of impartiality, fairness and openness and have appreciated the key differences between the Scheme and the Courts, namely cost, speed and less formality. We welcome any comments or suggestions from our 'users' regarding our service.

John Houghton MHK

Chairman, Office of Fair Trading

REPORT FROM THE CHIEF ADJUDICATOR

The role of the Adjudicators is to provide formal investigation and determination of complaints which have failed to be resolved by informal conciliation and mediation approaches by the staff of the Office of Fair Trading (OFT). The Caseload section on page 11 gives the full breakdown of the complaints received by the Ombudsman Scheme but specifically 22 complaints received formal determinations by the Adjudicators and a further 12 complaints were under consideration by them at the year end. While most of the 22 cases were upheld either in full or in part, in most of these the sums awarded to complainants were modest (usually less than £600) and in nearly every case included an element in respect of distress and inconvenience suffered by the complainant.

It is rare for a complaint to be fully upheld by the Adjudicators. This is probably because if the case is obviously such a good one the complaint will have been dealt with at an earlier stage. In nearly every case where there has been an award in favour of the Complainant, the Adjudicators have found the claim to be justified in part only. I hope that as the Scheme develops and more experience is gained more cases will be concluded at the conciliation stage and proportionately fewer will require to be determined by the Adjudicators.

In some cases complainants have had high expectations of the compensation to which they feel entitled. For example, one complainant claimed to have lost the chance of making a large profit on a house purchase which he had been unable to transact because an erroneous valuation of his investments led to him receiving less from the Insurer than he had been led to believe would be the case. However, the potential profit from a purchase and future sale of a house was too remote from the cause of the complaint and not directly related to it in any way. Accordingly, although the Complainant was entitled to some recompense, the amount awarded fell far short of expectations! While they may have valid reasons to complain, when we uphold a complaint our awards do not represent a form of penalty against the supplier for their actions but simply compensate the complainant for their actual financial loss and award modest sums for material distress and inconvenience suffered.

Material distress and inconvenience usually arise as a result of inaccurate information being supplied to and/or delay in dealing with the client. The Adjudicators have been surprised to find on a number of occasions that queries by a client about factual matters are confirmed by the Supplier only for the Supplier to discover some time later that both the initial information and the confirmed reply were both inaccurate! The information is frequently about valuations of the client's investments and it is not surprising that when incorrect information overvalues an investment the subsequent correction to an often very much lower value causes distress. If the matter is aggravated by poor responses then the client can suffer material distress and

inconvenience. The awards for this have so far ranged from £50 at the lowest level to about £500 in an extreme case. When making these awards the Adjudicators have borne in mind awards which have been made in similar circumstances by the UK Financial Ombudsman Service.

One of the key issues in the year has been the relationship between Isle of Man based life insurance product providers and foreign independent financial adviser's (IFAs) selling their products overseas. The Scheme received a number of complaints where mis-selling or other problems have been alleged involving the IFA for which the complainant expects the insurer to take responsibility. By the nature of the arrangement between insurer and IFA, the insurer is usually not responsible for the actions of the IFA as the IFA is the agent of the client and not the insurer. Therefore, some complainants have been disappointed, especially in cases where the adviser is alleged to have not passed on key documents to the complainant or to have misled them over the policy terms and on occasion appears not to be regulated in the jurisdiction they are operating in. The complaints have raised the issue of whether insurers perform suitable checks on the quality of IFAs selling their policies. A failure to do so could carry a significant reputational risk not only for the insurance company concerned but also for the Island. There are no regulatory requirements at present on insurers as to the level of checks they should carry out on IFAs before accepting business from them. Certain voluntary standards have tried to address this previously and the Ombudsman Scheme notes the commitment made by the members of Manx Insurance Association early in 2003, following discussions with the Insurance and Pensions Authority, to follow new detailed standards of checking and monitoring foreign intermediaries before doing business with them.

Whilst most cases of this nature have not been upheld against the product provider for the reasons above, even when the IFA seems clearly to have been at fault, in one significant case (number 2 on p.16) the provider in the special circumstances was held liable.

Another emerging source for frequent complaint has been the imposition of financial penalties upon the early surrender of insurance products/life policies. In addition to the well known and relatively straightforward penalty exit charge, most companies are imposing a Market Value Adjuster (MVA) on certain life products in view of the dire state of stock markets. It is important for companies to ensure that their sales brochures and policy documentation spell out clearly what this is and in what circumstances it may be applied and its potential effect upon an early redemption. We are currently dealing with some cases where the standard was not of a very high quality.

Many long term financial products offered to the public can be very complex, especially as regards charging structures. As they are often sold through third parties it is essential that the company's publications are clearly written and able to be easily understood by unsophisticated investors and that the IFAs are well

versed in the product and capable of explaining it. In particular, the impact of charges should be clearly explained especially for early variation or termination of the product, as this is at the heart of many complaints brought to us in 2002 (see, for example case study 7).

It has been our experience that most companies with whom we have dealt have been most co-operative and have readily and positively responded to our letters and requests for information. However, there have been a small minority which have been dilatory and on occasions the Adjudicators have been obliged to remind those companies of the extensive powers which exist in the legislation and which are at the disposal of the Adjudicators. I believe that as the Scheme matures all companies will come to respect the powers and will more readily react to the staff of the OFT and to the Adjudicators. With a view to making the Scheme better known and understood, a number of “Road Shows” have been held since the year end which have been well attended by representatives of the Financial Sector.

Peter Crellin

March 2003

BACKGROUND TO THE SCHEME

The Financial Services Ombudsman Scheme for the Isle of Man is an independent dispute resolution service for individuals with an unresolved complaint against an Isle of Man financial firm such as a bank, insurance company or financial adviser.

Set up in law, it is a more accessible alternative to using the courts system: it is free, the complainant (and the supplier) does not need potentially costly legal representation and the approach is inquisitorial with the Scheme investigating complaints. Determinations are made on the basis of what is just and equitable in the circumstances of the complaint and not just on a purely legal assessment. The Ombudsman Scheme is free for suppliers of financial services as well as complainants and is funded by the Isle of Man Government through the Office of Fair Trading.

The Ombudsman Scheme is not intended to interfere in the normal relationship between a provider of financial services and its customers but is available as a last resort, if a complaint has exhausted the firm's internal complaints handling system without satisfactory resolution.

Scope of the Ombudsman Scheme

The Ombudsman Scheme is set up by statute, the Financial Supervision Act 1988 as amended by the Fair Trading (Amendment) Act 2001, and this sets the framework for the complaints that can be considered. Complaints must concern financial services supplied in or from the Isle of Man, although complainants can be based anywhere in the world. In some cases, aspects of a complaint may span several jurisdictions (for example, while the supplier may be in the Isle of Man, its administrative office may be elsewhere). Arrangements are being made to ensure the Ombudsman Scheme dovetails with the UK's Financial Ombudsman Service which covers financial services provided in or from the UK. To ensure the efficient operation of the two Schemes as regards any complaints which may span the two jurisdictions and to cement the good working relationship built up with the UK Scheme, we have jointly drawn up a memorandum of understanding covering these issues.

The complainant must be an individual, as commercial entities are deemed to have the wherewithal to use traditional redress routes. There are also various time limits within which complaints must be brought to the Scheme and the particular 'starting' point for the Scheme is that the events leading to a complaint must have occurred on or after 20th April 1999. This was the date that Tynwald, the Manx Parliament, agreed that there would be a financial ombudsman for the Island.

The Financial Services Ombudsman Scheme covers complaints about 'traditional' financial services: banking, credit, investments, insurance and pensions including the provision of financial advice as well as

the products themselves. The existing Pensions Ombudsman for the Isle of Man can consider complaints about the running of occupational and personal pension schemes, so in practice such complaints are referred to that body as it has years of experience in that area. The areas of corporate and trust service provision do not come within the remit of the Ombudsman Scheme, although this can be reviewed in the future once the regulation of these areas is more established.

Operation of the Ombudsman Scheme

The Scheme is managed by and operates out of the Office of Fair Trading, whose staff provide a first stage of complaints handling, offering conciliation and mediation services. The involvement of case officers with an impartial viewpoint can help the parties see the complaint in a different light and resolve the matter with mutual agreement.

The Office of Fair Trading has appointed a panel of three Adjudicators (or Ombudsmen), one of whom is appointed to provide a formal investigation and determination of each complaint unresolved by conciliation and mediation. In considering what is just and equitable in all the circumstances of the case, the adjudicator will take into account the relevant law; statutory regulations; regulators' rules, guidance and standards; relevant codes of practice and what he or she considers to have been good industry practice at the relevant time.

Awards

If the Adjudicator upholds the complaint, he or she can make binding awards of up to £100,000 payable by the supplier to the complainant as well as instructing it to take steps to put the matter right. The award is to put the complainant in the position he or she would have been in had the relevant act or omission of the supplier not occurred and, as much as some complainants would like, does not represent a penalty on the supplier. Awards for distress and inconvenience are discussed in the report of the Chief Adjudicator (page 5).

Under the legislation, the determination of an Adjudicator is binding on both parties to the complaint, with only limited appeal on a point of law to the High Court.

Responsibilities of suppliers of financial services

The responsibility for resolving complaints lies with suppliers first and foremost and the Ombudsman Scheme will provide a means of independent investigation for any that are unresolved. An advice note issued by the Financial Supervision Commission, Insurance and Pensions Authority and Office of Fair Trading¹ states that suppliers should have suitable internal procedures for handling customer complaints and particularly that there should be an overall time limit of 12 weeks for issuing a final response to a customer's complaint.

¹ Advice to suppliers of financial services on complaints handling and the Financial Services Ombudsman Scheme, issued October 2001

Suppliers should also generally make their customers aware of the Scheme and must specifically inform any customers making a complaint of their right to use the Scheme. The quality of complaints handling varies greatly between suppliers. Some clearly have formal processes in place, which are explained to complainants, and provide good final response letters which are helpful not only for complainants in giving a detailed, clear and final answer to their complaint but also for the Ombudsman Scheme in setting out the detailed position of the supplier. Others could improve in this area and the Ombudsman Scheme will be publishing more feedback on this area to give examples of good practice.

THE CASELOAD

The overall caseload of the Ombudsman Scheme over the year is shown below in Table 1.

Initial contacts	400
Total complaints received	273
Cases outside remit	60
Resolved by OFT	35
Resolved by Adjudicators	22
Still in progress	156

Table 1. Caseload

Initial contacts

The Ombudsman Scheme received 400 of what we have termed ‘initial contacts’ during the year. These represent any enquiry from the general public about financial services complaints and include general enquiries about the remit of the Scheme from individuals who have yet to make a complaint to the supplier, as well as fully-fledged complaints. Case officers provide general advice to individuals about progressing their complaint and supply information about the Scheme, such as our explanatory leaflet. If the complaint would not come under the Scheme’s jurisdiction, for example because it concerns a UK financial firm then appropriate advice will be given about the UK ombudsman scheme. Potential complainants are advised that they need to take the issue up with the supplier first, which will then have 12 weeks to issue a final response to the complaint. It is only at this stage, once the supplier has had the opportunity to consider the complaint fully and respond, that the Ombudsman Scheme would consider a complaint.

Potential Complaints

Within the initial contacts, the Scheme received 273 potential complaints for consideration, of which just over 20 per cent were rejected for being outside the jurisdiction of the Scheme, as set down in the legislation. The most usual reason for rejection was because the complaint did not concern an Isle of Man supplier: this accounted for around half of the rejections. Other main reasons for rejection were that the complaint fell outside the time limits within which complaints must be brought, the services provided were not financial services or the complainant fell outside the definition of an individual.

Considering whether complaints were within our jurisdiction took on average six weeks. As a new Scheme, set up under new legislation, there has had to be much deliberation and consideration of complaints against the jurisdictional limits in the legislation which in practice has tied up our officers perhaps more than was anticipated. The financial products complained of can be complicated and transacted across more than one

jurisdiction (see case study 2). Just identifying the type of product can take time and be somewhat confusing, for example we have encountered products called pensions which on closer scrutiny turn out not to be pensions, as defined in Manx legislation. This affects whether we or the Pensions Ombudsman consider the complaint.

The complainant must be the individual who received the financial services which can prevent those who have put their money into a trust subsequently bringing a complaint, such as about maladministration of the funds. In many cases regarding insurance-related investments, the products have been provided from the Isle of Man but the products were sold and advised on by an intermediary, independent of the provider and operating in a different jurisdiction. Here we must carefully examine the nature of the complaint in order to be clear if the issues complained of relate to the provision of the product, which we can consider, or aspects of the selling process, which we can't usually consider in these cases because it was not provided in or from the Isle of Man (but see case study 2 for a case that found the supplier was responsible for guarantees given during the sale).

If receiving officers consider that a case may be outside of the Scheme's jurisdiction, the reasons are always explained to complainants and they are given the opportunity to respond if they disagree. Wherever possible, we will inform the complainants of where they can take their complaint, such as the UK Financial Ombudsman Service if the supplier is a UK-based company. However, many countries do not have ombudsman schemes or their equivalent for financial complaints so the opportunity to pursue complaints elsewhere may be limited.

Subject matter of complaints

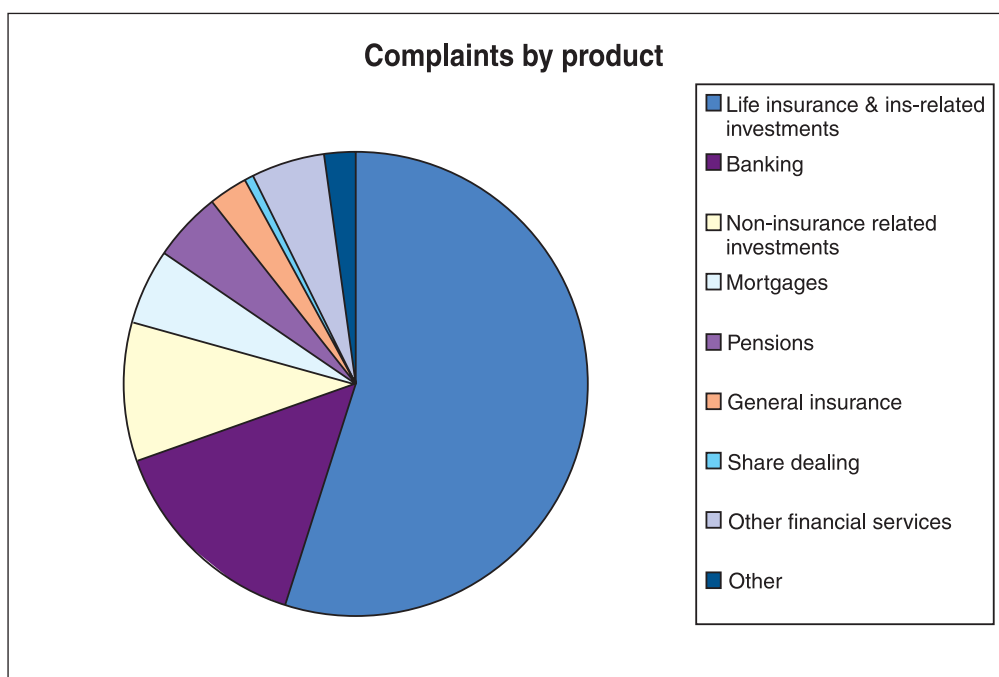
The breakdown of complaints by the financial product concerned is shown below in Table 2.

Breakdown of complaints by product	Number
Life insurance & ins-related investments	150
Banking	40
Non-insurance related investment	27
Mortgages & other secured credit	14
Pensions	13
General insurance	8
Share dealing	1
Other financial services	15
Other	5
Total	273

Table 2.

Life insurance including insurance-linked investments represented the most complained about product area accounting for over half of the complaints received. Next, 15 per cent of complaints concerned banking and 10 per cent investments without an insurance element. Mortgages and pensions each accounted for 5 per cent of complaints.

The position of long-term insurance and insurance-linked investments is perhaps not surprising given the nature of the Island as a leading offshore finance centre where long-term insurance business is a mainstay. In addition, the current poor returns from the stockmarkets mean more investors are looking closely at their holdings, considering early surrender and worrying about fund performance. The Ombudsman 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. (see case study 4).

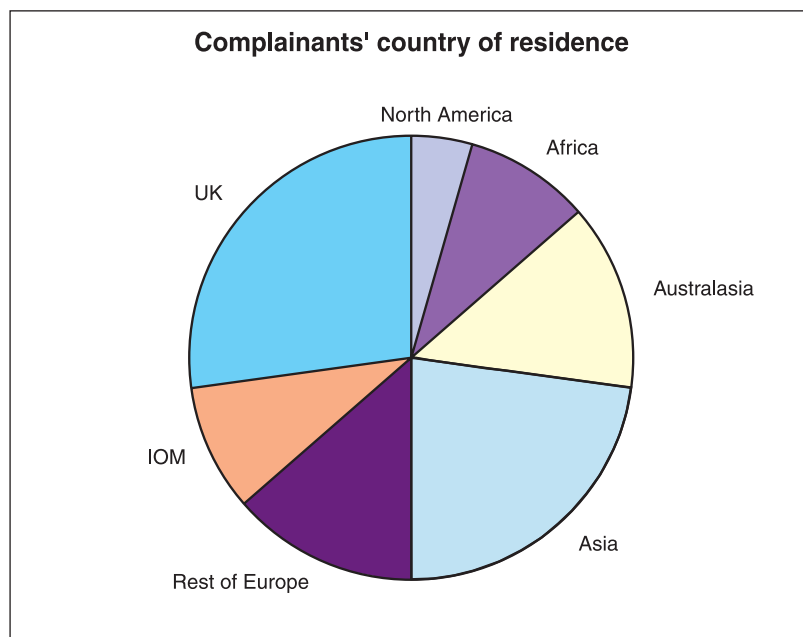


Complaints have centred around issues such as maladministration and charges. Examples of maladministration have included delay in effecting the complainant's instructions causing financial loss and provision of incorrect information on fund or surrender value. Charging issues revolve around the clarity and transparency of charges such as those imposed on early surrender of an insurance-related investment or early repayment of a mortgage. By the end of the year we were also starting to see a number of complaints concerning 'market value adjusters' (MVAs) in certain insurance-linked investments which can be applied at the insurer's discretion in addition to the specified early surrender penalties.

Residence of complainants

The Scheme received enquiries and complaints from around the world, reflecting the international nature of the financial services sector on the Island. The provision of all the necessary information and forms on the Scheme's website and our ability to communicate with complainants by email facilitated these overseas complainants.

The pie chart below shows the breakdown of where the complainants whose complaints were determined during the year lived. Half were resident in Europe, with just under a tenth local Isle of Man residents, and Asia and Australasia were the next most popular continents.



Resolved complaints

During the year, 57 complaints were resolved, with 156 still in progress at the year end. Of the complaints that were closed, 35 were resolved by conciliation and mediation undertaken by officers of the Office of Fair Trading and 22 by formal determination of an Adjudicator (or 'ombudsman').

Complaint outcomes and awards

As the cases settled by conciliation and mediation have solutions agreed by both parties, the outcome recorded is just that agreement was reached on the complaint. It is not relevant to record a 'win' or 'lose' as there is often ground conceded by both parties.

Of the complaints requiring formal determination by an Adjudicator, five complaints were not upheld and 17 were upheld either in full or in part with the suppliers required to make an award of compensation to the

complainant. These awards are to make good any loss suffered by the complainant as a result of the supplier's act or omission and can include payments for material distress and inconvenience. In all except three of the upheld complaints, the awards were for less than £1,000. Of the three greater awards, two were for £43,000 and £46,000 respectively. Payments for distress and inconvenience were made in 15 cases which ranged from £50 to £500.

Time taken to resolve

Complaints took on average five and a half months to resolve and close. Those that did not require formal determination by an Adjudicator and were resolved by conciliation and mediation took on average just over three months to complete. The Office of Fair Trading's business plan for 2003-2006 sets an objective on case handlers to complete in 90% of all cases the conciliation and mediation stage within six months.

Complaints still in progress

At the end of the year, 156 cases were still in progress. This seemingly large number is not surprising when considered more closely. This was the first year of operation of the Scheme and complaints came in steadily but in slightly increasing numbers over the year. In order to consider the complaints, we must first carry out our investigations and give all the parties to the complaint the opportunity to put their side of the case. This involves ensuring we have all the relevant documentation and so we will contact all the parties to the complaint to request the relevant product literature, contract notes, correspondence etc. This can take some time, especially if events go back over a long period, involve third parties and some of the parties are based abroad.

CASE STUDIES

This section gives selected examples from our work over the year to give a flavour of the types of issues brought to us and how we have approached them.

1. Foreign IFA - supplier not responsible

An IFA sold to the complainant a personal pension plan provided by a supplier based in the Isle of Man. At that time the complainant was resident in Japan and the IFA was based in Japan. The complaint was in two parts: firstly that during the sale the complainant was not advised of the impact of various charges levied by the supplier and furthermore he was not supplied with the sales literature which explained in detail the charges and how they are calculated. It was not possible to proceed with this element of the complaint as it relates to the actions of the IFA whose service was not provided in or from the Isle of Man as required by the legislation. The terms of business letter from the supplier to the IFA made clear that the IFA was the agent of the complainant and not the supplier, therefore the supplier could not be held responsible for any actions of the IFA which may have resulted in loss or damage to the complainant.

The second part of the complaint related to the dilatory manner in which the supplier dealt with the complaint. This was upheld as there clearly was inordinate delay in the supplier's handling of the complaint. The supplier was ordered to pay £500 to the complainant for his out-of-pocket expenses, distress and inconvenience.

2. Supplier's involvement in sale by IFA

On the recommendation of an IFA in country A, the complainant had entered into a financial scheme through a branch of the supplier in country B (not the Isle of Man). This branch housed two separate companies within the group: one with a head office in the Isle of Man, the other with a head office in country C. The scheme involved a temporary annuity contract provided from the Isle of Man, the proceeds of which funded several savings plans provided by the company in country C. The complaint was that the maturity values of the savings plans were less than promised at the outset.

The IFA had assured the complainant in writing that he would receive a maturity value of £180,000 from the savings plans. While the advice of an IFA operating outside of the Isle of Man is outside the remit of the Ombudsman Scheme, in this case an employee of the Isle of Man supplier had been involved in the sale of both parts of the financial scheme and had provided documentation signed by him on the supplier's headed paper which backed up the IFA's written assurances. This documentation was held by the Adjudicator to form part of the contractual terms and to have induced the complainant to enter into the financial scheme. There was no evidence that any disclaimers had been provided to suggest any doubt about the figures quoted nor that the complainant had been told the plans were investment products and subject to market fluctuations. The financial products were provided from different companies in the same group but were viewed by the Adjudicator as not operating in isolation, as they were sold as a package to fulfil a single objective of the complainant. Hence the complaint was upheld and the complainant awarded £46,000 which was the shortfall.

3. Introduction of new standard mortgage rate

In this case the supplier concerned originally had one standard mortgage variable rate. It introduced a new and lower variable rate with a different name and used this for new borrowers. It advertised widely in the UK and in Guernsey that its existing variable-rate borrowers could apply to transfer to the new lower rate, however it did not advertise in local Isle of Man press.

The complainant, resident in the Isle of Man, had a capped-rate mortgage – under which they were to pay the standard variable rate or a specified capped rate (whichever was lower) – and they were subject to an early repayment charge. The new lower rate was less than the specified capped rate. The complainant asked to be switched to the new lower variable rate but the supplier initially refused to do so unless they first paid the early repayment charge attached to the capped rate. Later, the Supplier sent the complainant a cheque to refund the difference in interest between the two variable rates from the date that the complainant had contacted the supplier, asking to be switched, plus £150 for distress and inconvenience. The complaint brought to the Ombudsman Scheme was that the refund of interest should be backdated to the earlier date on which the supplier introduced the new rate and that the sum offered for distress and inconvenience was inadequate.

Because the supplier had failed to advertise the new rate in the Isle of Man, which is a separate jurisdiction, the complaint was upheld and the supplier ordered to refund the difference in interest back to the date it introduced the new rate. However the sum of £150 for distress and inconvenience was held to be fair and reasonable.

4. Poor investment performance

The complainants, who live in the UK, invested £50,000 via a series of life policies issued by a supplier in the Isle of Man. This was on the recommendation of their IFA in order to achieve tax savings. The sums put into the life policies were then invested into independently managed investment funds of the policyholder's choosing and the complainants had chosen to invest into a collective investment scheme based in Ireland and the Cayman Islands.

After they had incurred losses of around £4,500 in the underlying fund, the complainants approached the Ombudsman Scheme, holding the Supplier liable for this loss and alleging that the pricing mechanism of the underlying fund was unfair and inappropriate.

Under the legislation, the Scheme may decline or cease to act in a complaint where 'the dispute relates to investment performance, except to the extent that the complainant alleges that the supplier has been negligent'. On consideration it was clear that this complaint related to the investment performance of the underlying fund, which had been chosen by the complainants and their IFA with no encouragement or advice given by the Supplier. The Supplier was not responsible for the actions of the fund management company and had included a number of risk warnings to this effect in its sales literature. So, the Adjudicator declined to determine the complaint.

5. Outcome agreed by both parties through conciliation and mediation

The complainants came to the Ombudsman Scheme because the supplier of a banking service was pursuing them for monies that had been wrongly credited to their account two years earlier. In 2001 the supplier had written to the complainants stating that in 1999 it had wrongly credited £53,000 twice to their account, when it should have been credited once, and asking the complainants to contact it to arrange the repayment of this sum. The complainants told the supplier they were not aware of any such double payment, whereupon the supplier removed the £53,000 from their account one week later, putting the account severely into overdraft.

The complainants argued that it was unreasonable to expect them to have noticed the supplier's error, at a time when their account generally had five- or six-figure balances and large transactions, and in the meantime their financial circumstances had changed such that they did not have the money to repay the sum.

The supplier agreed to give time for the matter to be considered by the Ombudsman Scheme and suspend interest charged to the account during the period. This allowed Office of Fair Trading case officers to carry out the process of mediating between the parties. We accepted on legal principle that the £53,000 did belong to the supplier but, given the complainants' changed circumstances, the fact that it had taken the supplier two years to notice the error and how they had gone about reclaiming the money, we felt there was room for discussion. We asked the supplier to come up with realistic options for the repayment of the sums and asked the complainants to provide details of what they could afford. After some discussion, the parties agreed on a third of the sum being waived and for the rest to be repaid over a number of years.

6. Supplier's delay processing refund - complainant requests backdated interest

The complainant applied to open an investment product with the supplier and enclosed a cheque for £50,000. Soon after the application had been processed and the cheque cashed, the complainant notified the supplier in writing of his wish to cancel. The supplier's standard practice was to process cancellations within two days but on this occasion it took 20 days to action the request.

Initially the supplier refused the complainant's request for an ex gratia payment but later offered £100 on the basis of a 15 working day delay in processing the cancellation over and above the standard practice. The complainant did not accept this and brought the complaint to the Ombudsman Scheme claiming interest on the £50,000 over 42 days with the rate of interest calculated at half of the supplier's loan rate.

Mediation and conciliation was unsuccessful in resolving the complaint and so the complaint was passed to an Adjudicator. The Adjudicator determined that the complainant was entitled to compensation for the delay in dealing with his cancellation instruction but that the appropriate period on which to base compensation should start from the date when the Supplier should have returned the money according to their standard practice. So, the correct period was 18 days and a rate of 4 per cent was applied. This equated to a figure of £98.63 and since the supplier had already offered £100 this was the award made.

7. Incorrect valuation inflating true value of funds

The complainant had invested a lump sum into an investment portfolio. After making various administrative errors including failing to action the complainant's switching instructions, the supplier gave incorrect information showing the value of the investment some £10,000 greater than the true value. Around seven weeks later, the supplier issued revised valuations correcting the error but the complainant alleged in his complaint that in reliance on the higher valuation he had entered into a contract for £8,000 for home improvements and had therefore suffered actual financial loss as a result of the supplier's error. In addition, the complainant considered that the sales literature was misleading, the valuations were incomprehensible and that guarantees were made in the literature regarding performance of the investment.

The main issues of this complaint were not upheld by the Adjudicator. The Adjudicator did not accept that the misrepresentation had induced the complainant to enter into the contract and even if this had been the case, he had not suffered financial loss. The value of the contract was a small proportion of the investment from which a penalty-free withdrawal could have been made and in addition the complainant's home had increased in value as a result of the work.

The Adjudicator considered that the sales literature made no promises or guarantees and included clear statements that investments may fall as well as rise. The determination did however note that the worked examples in the fund brochure did not indicate the impact of charges levied by the supplier for the first five years and that these could be made more clear.

However, an award of £450 for distress and inconvenience was made. The Adjudicator considered that the complainant suffered material distress and inconvenience as a result of the supplier's incorrect valuation and from the unsatisfactory handling of the complaint. The nature and number of errors made by the supplier warranted the involvement of a senior member of staff in the handling of the complaint from the outset however this was not the case and the supplier was excessively slow in responding to the complaint. The supplier had previously paid £52.97 for inconvenience and so this was deducted from the award.

Appendix 1: Relevant documentation:

Legislation and guidance notes

Financial Supervision Act 1988, as amended by the Fair Trading (Amendment) Act 2001

Advice to suppliers on complaints handling and the Financial Services Ombudsman Scheme: issued jointly by the Financial Supervision Commission, Insurance and Pensions Authority and Office of Fair Trading, October 2001

Leaflets

An explanatory guide to the Financial Services Ombudsman Scheme

Forms

Complaint form

All the above is available on the website at www.gov.im/oft/ombudsman or from our offices at:

Government Buildings

Lord Street

Douglas

Isle of Man

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