

essential reading for
financial firms and
consumer advisers



about this issue

Following a change to our rules, National Savings & Investments customers can now refer disputes they may have to the Financial Ombudsman Service. In this issue we discuss the background to this significant development and outline the main differences in the way these complaints are now handled, compared with the previous arrangements.

We look, too, at some of the complaints we have dealt with recently involving annual travel insurance policies. We focus in particular on the difficult situation in which some customers can find themselves when they book a holiday that starts after their policy renewal date – but then suffer a change in their medical circumstances. When their policy comes up for renewal and they inform the insurer of the change in their health, the insurer may well tell them that – as of the date of renewal – they will not be covered for the new medical condition. The customer is then left either to run the risk of continuing with their holiday plans without insurance cover, or to cancel the trip prematurely – and often quite unnecessarily – at their own expense. ❖

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Under our rules there are a number of circumstances in which we are able to dismiss a complaint without considering its merits. On page 7 we outline the circumstances that tend to crop up most frequently in the investment complaints we see. Our case studies include that of an investor whose complaint centred on the way in which a firm applied bonuses to a with-profits bond, and of a customer who brought a complaint to us that had already been resolved by a complaints-handling scheme in Ireland.



services for firms and consumer advisers

our **external liaison team**

- provides training for complaints handlers
- organises and speaks at seminars, workshops and conferences
- arranges visits and meetings

phone **020 7964 1400**

email liaison.team@financial-ombudsman.org.uk

contact our **technical advice desk** for

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

phone **020 7964 1400**

email technical.advice@financial-ombudsman.org.uk

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annual travel insurance: changes in medical circumstances after the policyholder has booked a holiday

Customers who have annual travel insurance policies often take several holidays a year and may book these some months in advance, never giving a thought to whether their policy will still cover them if they later become ill and have to cancel their trip.

However, as these policies are *annual contracts*, at the time of renewal customers are required to tell their insurer of any change in their health since the policy started, or was last renewed. In accordance with the regulatory guidelines and/or good industry practice, insurers should include a clear reminder about this on their renewal documents. However, they are not obliged to offer the renewed cover on the existing terms for the next year of insurance.

A problem can arise if, in good faith, a customer books a holiday that starts after the policy renewal date but then has a change in their health. When the time comes to renew the policy, the customer may properly inform the insurer about their new medical condition, only to be told that – from the date of the renewal – the firm will not provide cover for any claims arising from that condition.

The condition may not necessarily result in a claim and – as the holiday is often still some months away – the customer may not know at the time of the renewal whether the condition will affect their travel plans. Most travel policies only provide cover for cancellation that is *medically necessary*, which would usually be decided much closer to the time. Technically, therefore, the customer may not have the option of cancelling the holiday and putting in a claim before their valid cover expires.

The effect of this is that the customer is left to:

- run the risk of being liable for cancellation costs (or even medical expenses abroad) without insurance cover; *or*
- cancel the holiday prematurely (and possibly quite unnecessarily) and bear the cost of this.

We consider it neither fair nor reasonable that customers with annual travel policies should be placed in this difficult position.

If the customers had realised this situation could arise, they might well have taken out a single-trip policy instead. Such policies normally provide cover for medical conditions identified from the point at which a specific holiday is sold right up until its end.

We have therefore come to the view that – when the firm informs customers in this predicament that it cannot provide future cover – it should also give them the option of cancelling the holiday and claiming under the valid policy, even though cancellation may not be medically necessary at that stage. ❖

... customers should not be placed in this difficult position.

duty to inform customers of the need to notify it of material changes of circumstance. Miss J had never been given the opportunity to make an informed decision about cancelling at an earlier stage, before it was medically necessary.

■ **49/3**
policyholder became ill after booking holiday – firm should have offered to pay cancellation costs under the expiring policy from the date of renewal, even though cancellation was not medically necessary at that date

Mr G's annual travel policy came up for renewal each March. Towards the end of January 2004, just a couple of weeks after he had booked a trip to South Africa for that December, he became ill with angina.

When the firm sent Mr G the policy renewal documents he told it about the change in his health. As a result, the firm added an exclusion clause to the new policy. This stated that the policy would not cover any claims arising directly or indirectly from angina. Unwilling to travel without cover for his angina, Mr G thought he had no option but to cancel the holiday, which he did (at his own expense) in April 2004.

Unhappy with the situation, Mr G complained to us. He said he resented having being '*forced*' to cancel his holiday and he wanted the firm to re-issue the policy on the same terms as before.

... we did not think it fair and reasonable to leave him with no cover at all.

complaint partially upheld

The firm was entitled to impose an exclusion clause for a pre-existing medical condition which Mr G had disclosed in accordance with his duty of *utmost good faith*. That was a legitimate underwriting decision.

But we did not think it was fair and reasonable to leave Mr G with no cover at all for the holiday he had already booked. We felt that the firm should have given him the opportunity to cancel the holiday and claim under the expiring policy. Mr G did not have to take up this offer, but he would still be aware that his trip would proceed at his own risk. We therefore asked the firm to reimburse Mr G for the costs of cancelling his holiday.

when we can dismiss investment complaints without considering their merits

In certain circumstances we can dismiss a complaint without considering its merits. This is sometimes called *early termination* or *dismissal*. The Dispute Resolution Rules (DISP) set down by the Financial Services Authority (FSA) in its *Handbook of rules and guidance* give a total of 17 sets of circumstances where we may dismiss a complaint without considering its merits. The *Handbook* is available on the FSA's website at www.FSA.gov.uk.

The circumstances listed below are those that tend to crop up most frequently in the investment cases we deal with.

- **the firm has already made a fair offer of compensation**

We can decide that there would be no justification for our investigating the complaint if the firm has already offered the customer redress which – even if we upheld the complaint completely – we would not improve on.

- **the complaint has previously been considered or excluded by the Financial Ombudsman Service or by a former ombudsman scheme**

We do not re-open and re-consider a case we have already dealt with unless there is new material evidence that:

- was not previously available; *and*
- is likely to affect the outcome.

If a complaint has already been considered by a scheme which is no longer in operation and it is brought to us with no material differences, then it is likely to be dismissed, regardless of the original outcome.

- **the complaint has been or is being dealt with by a comparable independent complaints scheme or dispute resolution process**

We receive a number of complaints which have already been dealt with by another complaints scheme. This could be another ombudsman scheme or a comparable complaints scheme in Ireland, the Isle of Man or the Channel Islands. If the complaint dealt with by that scheme has no material difference to that brought to us, then we are likely to dismiss it.

- **a court has already considered, or will be considering, the issue or issues in the complaint**

We do not allow a conflict, or potential conflict, to arise between our findings and those of a court. ❖

... when a complaint is solely about investment performance, we can dismiss it.

National Savings & Investments joins the Financial Ombudsman Service

From 1 September 2005, new complaints about National Savings & Investments (NS&I) have been investigated and decided by the Financial Ombudsman Service.

This article gives the background to this significant development and describes how these complaints were dealt with previously, and how their treatment now differs.

background

NS&I – a government department and an executive agency of the Chancellor of the Exchequer – is one of the largest savings organisations in the UK, selling savings and investment products to personal customers both directly and through the Post Office.

NS&I provides a secure place for people to save; its products do not involve any real risk to a saver's capital. It is also a source of funding for the Exchequer. The money that NS&I receives from selling savings and other financial products is used by HM Treasury to help to manage the national debt. In return for lending money to the government, customers receive interest on their savings or are eligible for Premium Bond prizes.

NS&I is not regulated by the Financial Services Authority (FSA) but it aims to operate in accordance with the spirit of FSA regulations when dealing with its customers.

It has been the government's objective since early 2002 that NS&I should ultimately join the jurisdiction of the Financial Ombudsman Service. And in order to provide some harmonisation between the treatment of unresolved complaints against NS&I and unresolved complaints against FSA-regulated financial firms, a Financial Ombudsman Service ombudsman has been serving as the Independent Adjudicator for National Savings & Investments (the *Adjudicator*) since May 2002. ❖

... our rules were changed to allow NS&I to join the ombudsman service.

the Adjudicator

The Adjudicator:

- was appointed by HM Treasury, under section 84 of the *Friendly Societies Act 1992*;
- decided disputes between NS&I customers and the Director of Savings (the statutory post-holder responsible for NS&I);
- had power to deal with disputes under various Acts of Parliament relating to the national debt (for example, the *National Debt Act 1972*), and under a number of statutory instruments, including those relating to Premium Bonds and savings certificates;
- could only consider cases where there was a disputed claim to some legal entitlement, such as a dispute over the ownership of a sum of money or claims for compensation for financial loss;
- did not deal with complaints about matters of policy, such as levels of interest rates or the terms and conditions of NS&I products.

NS&I customers who had complaints about maladministration had to refer these, via their Member of Parliament, to the Parliamentary Ombudsman. The Parliamentary Ombudsman investigates complaints from members of the public about unfair or improper actions or poor service by UK government departments and certain other public bodies.

the Adjudicator's powers and procedures

Before a dispute was referred to the Adjudicator for a decision, both the customer and NS&I would have had the opportunity to comment on the other party's evidence and arguments. The dispute would already have been considered under NS&I's internal dispute-resolution procedure.

The powers and procedures of the Adjudicator were those of a statutory arbitrator. In the main, he decided cases on the basis of documents only – and reached a decision based on legal principles. Unlike the Financial Ombudsman Service, the Adjudicator did not have to issue his provisional assessment of the complaint or any preliminary indication of his decision – he was entitled to proceed straight to a final decision. He could hold

an oral hearing where appropriate but his powers and procedures were not conducive to the mediated or conciliated settlement of disputes. His decisions were final and legally binding on both parties to the dispute.

If a dispute fell within the Adjudicator's remit, the customer did not have the option to taking it to court but had to refer it to the Adjudicator. However, either party could ask a court to rule on whether the Adjudicator had misunderstood or misapplied the law when reaching his decision.

public consultation and rule changes

Following a public consultation, the rules of the Financial Ombudsman Service were changed to allow NS&I to join the Ombudsman Service, meaning that NS&I customers can now refer disputes to us, including the types of disputes that have been referred in the past to the Adjudicator and the Parliamentary Ombudsman.

the voluntary jurisdiction

Because NS&I is not regulated by the FSA, it has had to join our *voluntary jurisdiction*. This is a technicality, as complaints under the voluntary jurisdiction are dealt with in the same way as they would be under the compulsory jurisdiction. And NS&I's commitment to their continued membership of the voluntary jurisdiction is to be embodied in NS&I's *framework document*, which will publicly set out the aims of NS&I, how it is managed and its relationship with government.

the new arrangements from 1 September 2005

The Adjudicator will continue to deal with and decide those disputes that were referred to him *before* 1 September. He will do so using the powers and procedures which applied to disputes before 1 September, and he will continue to use the title *Adjudicator* when doing so.

But the Financial Ombudsman Service will deal with disputes, or '*complaints*' as the Financial Ombudsman Service usually calls them, which are referred after 31 August 2005 (including those that relate to events that occurred before 1 September). ❖

... NS&I customers can now refer disputes to us.

