

**From John Tiner**  
**Managing Director**  
Consumer, Investment & Insurance Directorate

Direct line: 020 7676 9242  
Local Fax: 020 7676 4501  
Email: john.tiner @fsa.gov.uk

To the Chief Executives  
of leading banks, product providers and IFAs  
in the mortgage endowment market

4 April 2002

Our Ref:

Dear Chief Executive

## **Consumer complaints about mis-selling of mortgage endowments**

I am writing with this urgent guidance to you and to other banks, product providers and larger IFAs in the mortgage endowment market to draw your attention to causes of concern about the way in which mortgage endowment complaints are being dealt with. I am asking you to let me have your views, and also to review your procedures in the light of the concerns I express. We want to ensure that our response to these concerns is proportionate to the issues and we will consider your response, together with the results of other work in hand, in deciding whether there are further measures we should take.

### Background

You will recall that in October 2000 the FSA reported the results of its consideration of whether it should mandate an industry-wide review of past sales of mortgage endowments. The FSA's conclusion was that an industry-wide proactive review would be unlikely to deliver benefits which would justify the imposition of significant administrative and other costs. The existing complaints process was judged to be the most effective way of ensuring redress for those consumers who had lost out as a result of mis-selling.

As the FSA stated at the time, the effectiveness of this approach was predicated on consumers having clear information about their position and their options for the future; on there being help and encouragement for consumers who were unhappy with the advice they received to bring forward their complaints; and on firms dealing with complaints fairly, effectively and promptly.

Fair handling of complaints is of the essence. For the approach to succeed there must be assurance that the industry is handling complaints in a way which provides full and fair opportunity to have things put right for those people who have been mis-sold. With this objective in mind we undertook to monitor progress and outcomes to assure ourselves and the public that complaints were being fairly handled, and to act in any case where we found weaknesses that put consumers' interests at risk. This work is of particular relevance now, at the outset of the second round of re-projection letters which may give rise to a further surge in complaints.

### Issues

I should stress that there is no general presumption on our part that all consumers who feel they have cause for complaint on grounds of mis-selling were indeed mis-sold. We fully expect that some proportion of complaints will prove to be unfounded and we have no preconceived view as to what that proportion might be. Our concern is with fairness of process. Our supervisory and research work has identified three issues which I would like to bring to your attention.

1. The results of our monitoring work suggest there are some firms who are not assessing some or all of their consumer complaints fairly. We have reviewed information gathered from our visits to firms, from specific cases that have otherwise come to our notice and also from consumer research conducted by the Consumer Panel\*. The most common area where issues of unfair treatment arise is in the assessment of a consumer's understanding and acceptance of risk at time of sale - a factor which is central to the suitability of the policy for the consumer. We have come across a number of features of firms' handling of complaints which in our view have weighted the balance of assessment of this factor unfairly against the consumer. The provisional messages coming out of our analysis for firms wanting to avoid unfairness are set out in Annex 1.
2. Complaint handlers in many firms are using the decision trees process for complaints published by the Financial Ombudsman Service in June 2000, but there seems to be some misunderstanding about how to interpret and apply this material. The decision trees were developed by the FOS as a skeletal route map to support its own needs, although they also issued the trees to firms as a contribution to development of firms' own procedures. They were not intended to be applied in isolation nor were they designed to cover every possible situation, whether for the entirety of firms' processes or for resolution of individual cases. By their very nature the trees require at each stage the use of judgement in the light of the facts of each individual case. In addition the trees are not mutually exclusive so, for example, cases running into retirement would need to consider both affordability and suitability in terms of risk.
3. Firms rely, as a guide to their general approach, on reasoning and explanations given in final decision letters issued by the Ombudsman. It is entirely proper and reasonable that firms should be informed by Ombudsman decisions, both for and against the firm, and should absorb any lessons to be learned. However, the Ombudsman makes specific decisions in individual cases, based on the circumstances of each case. What is said in a decision letter does not, and is not meant to be, a generic ruling to be applied

---

\* Mortgage Endowment Reprojection Study available from [www.fs-cp.org.uk](http://www.fs-cp.org.uk)

indiscriminately to other cases which may be broadly similar but which on closer examination may not be on all fours with the decided case. I am sure you will agree that application of precedent without due regard to the facts of the individual case represents poor complaint handling.

### Our response

These indications that some aspects of mortgage endowment complaints handling are unsatisfactory in some firms mean that we need to do further work to assess how widespread these issues are and with what consequence for the outcome of complaints.

Ahead of this letter, we have asked our usual supervisory contact at your firm to provide some basic historical business data together with core data about the numbers and outcomes of mortgage endowment complaints. We shall be continuing with sample enquiries of individual firms and we intend to carry out targeted investigations where information suggests a poor standard of complaints handling. We also propose a major piece of research among consumers to ascertain their views of how their complaints have been dealt with (for which we may be asking a selection of firms for their co-operation in providing a customer database).

Whilst our immediate purpose in all of this work is to assure fair treatment for mortgage endowment complainants, we also see it as part of the bigger picture objective of strengthening consumer confidence in the industry. Fair handling of complaints has an important role in achieving that.

### Conclusion

I should like you to do two things in response to this letter. The first is to let me have your views both on the points I have raised in relation to mortgage endowments and also as to where and how the handling of complaints generally fits into your strategy for the business. It appears to us, for example, that there can be quite stark differences between the 'customer service' approach of some firms and the strictly legalistic approach of others. The second is to review your firm's procedures and experience, and if this letter alerts you to changes that you feel should be made to your procedures to take the necessary action. Your firm's supervisors may in due course wish to discuss through their usual channels how this management review has been done and with what result.

Please would you reply by the end of April 2002. Your responses will help us define what further work we may need to do to ensure that mis-selling of endowment policies, where it took place, is put right.

*Yours sincerely*  
*John Tim*

**Mortgage endowment complaints: points from issue 1 of letter dated 4 April 2002**

1. The need to recognise in the assessment of the complaint that the key risk for the consumer is that the endowment may not repay the mortgage loan; and that if that were to happen the consumer would need to make good the difference from other sources of capital, if available.

Looked at from the perspective of a consumer, this risk is different in nature and consequence from the usual investment risk of an endowment policy as a long term regular savings vehicle (where the issue is not usually about capital deficiency on maturity but about the size of the prospective gain).

The magnitude of the key risk posed by the specific endowment policy recommended, and whether that particular degree of risk was suitable for (and explained to) the particular consumer, are issues for assessment.

2. The need to avoid too narrow a view of the scope of the advisory duty in the context of mortgage advice, in particular by automatically taking the consumer's choice of an interest only mortgage as a given when assessing the suitability of an endowment policy rather than considering the circumstances of the case.

When assessing the suitability of an endowment policy the adviser would normally have had regard to the purpose which it would fulfil and have taken account of the other options available to the consumer in respect of the underlying mortgage transaction, including the option of a repayment mortgage.

3. The need to recognise that oral evidence can be good and sufficient evidence, avoiding too ready a dismissal of evidence from the consumer which is not supported by documentary proof.

This frequently arises in relation to what degree of assurance the adviser did or did not give the consumer at point of sale that the policy would pay off the mortgage debt on maturity. (It can plausibly be assumed that in most if not all advisory sales the advisor would have said something about the likelihood of the policy producing sufficient at maturity to repay the loan, and that most consumers would have asked about and sought answers to this point).

4. The need to investigate the issues diligently, in particular so as to take into account the selling practices at the time, the training, instruction, sales scripts and incentives given to advisers at the time and the track record of the particular adviser.

This and the next point are particularly relevant to a fair reconstruction of what might have been said to the consumer on the issue in point 3 above, having regard to what the consumer says now and to all of the contemporaneous evidence.

5. The need to go the extra mile to clarify ambiguous issues or conflicts of evidence before finding against the consumer.
6. The need to avoid making a conclusive assumption that a pre-existing endowment held at time of sale, whether for purposes of savings or mortgage repayment, is sufficient evidence of understanding and acceptance of the key risk.
7. The need to avoid making too literal and narrow an interpretation of the issue of the complaint, as expressed by the consumer. Consumers rarely have the knowledge and capacity to express their complaints in language which can be related directly to a duty on the firm at time of sale. This can

give rise to unfair handling of the particular case and to anomalies and inconsistencies of treatment as between cases.

8. The need to avoid rejecting complaints solely on the basis that the consumer signed a proposal form or failed to exercise the cancellation right, and so must be presumed to have been satisfied with the advice and the product at time of sale.
9. The need to avoid claiming the following as evidence of risk warning at time of sale so as to justify rejection of the complaint:
  - the absence of a statement in product literature that repayment of the mortgage was guaranteed; or
  - a statement in product particulars that the firm will monitor the plan and advise the consumer if the level of contribution is insufficient for the target amount to be repaid.