

May 2005

# FSA guide to making a complaint about financial services



**FSA**<sup>®</sup>

Financial Services  
Authority

Asking the  
Right  
Questions



The Financial Services Authority (FSA) is the independent watchdog set up by government to regulate financial services and protect your rights. By law, most financial services firms in the UK must be authorised by the FSA. We regulate the way many (but not all) of them do business with you.

The FSA does not investigate individual consumer complaints. Under the complaints-handling process which firms must follow, you must first give the firm that sold you the product or provided the service a chance to put things right. If this does not resolve matters, you can then approach one of the independent complaints-handling schemes described in this booklet.

The FSA's consumer publications aim to give consumers information to help them make financial decisions and to promote consumer understanding of the financial system. This includes understanding the risks and benefits of different kinds of financial products. They provide a general guide only and are no substitute for you thinking about your own particular circumstances. This publication does not constitute financial or other professional advice. You should consult a professional adviser if you need financial advice about your personal circumstances.

This guide does not cover complaints against the FSA. Information on how to make a complaint against the FSA is on the FSA's website at: [www.fsa.gov.uk/pages/about/complaints](http://www.fsa.gov.uk/pages/about/complaints) Or you can obtain our leaflet *Bringing a complaint against the Financial Services Authority* from our Consumer Helpline on **0845 606 1234**.

# Contents

## Asking the right questions.

Introduction	3	Financial promotions	32
What kinds of financial products and firms does this booklet cover?	4	Protect yourself	34
Do I have a complaint?	6	Useful contacts	35
I have a complaint: what can I do?	8	Other FSA publications	39
Contacting the firm	10		
Tips for effective complaints	12		
Independent complaints schemes	14		
Financial Ombudsman Service	18		
Finance & Leasing Association Conciliation and Arbitration Schemes	20		
The Pensions Advisory Service	21		
The Pensions Ombudsman	22		
Ombudsman schemes and arbitration compared	24		
Financial Services Compensation Scheme	26		
Going to court	28		
Unfair contract terms	30		

**The FSA  
– here to help  
you make more  
sense of your  
money**



# Introduction

**This booklet can help you work out whether you have a valid complaint about a financial product or service. It also tells you what you need to do to get it resolved.**

Sometimes you may not be happy with a financial product or service you have or you are trying to buy.

If this happens, it's best to make an enquiry to the firm straightaway, to check your understanding of what's going on. Things can often then be explained or quickly straightened out.

However, if you continue to think there is a problem and remain dissatisfied, you may want to make a complaint to the firm, in order to seek an apology, correction or compensation. This booklet explains how to do this.



Possible basis for complaint	Types of firm: Complaints about one of these products are likely to involve one of the following:	Name of independent complaints-handling scheme	Page no.
<p><b>Operating collective investment schemes such as:</b></p> <ul style="list-style-type: none"> <li>■ Open-ended investment companies.</li> <li>■ Unit trusts.</li> </ul> <p><b>Arranging, dealing, managing or advising about securities and certain other investments including:</b></p> <ul style="list-style-type: none"> <li>■ Life insurance.</li> <li>■ Endowments.</li> <li>■ Personal pensions (including stakeholder pensions).</li> <li>■ Collective investment schemes, such as open-ended investment companies and unit trusts.</li> <li>■ Shares (including shares in investment trusts).</li> <li>■ Debentures.</li> <li>■ ISAs.</li> <li>■ With-profits policies and bonds.</li> <li>■ High-income products.</li> </ul>	<p>as above plus: stockbrokers; financial advisers; FSA-authorised solicitors, accountants and actuaries*</p>	<p>Financial Ombudsman Service</p>	<p>18</p>
<p><b>Mortgage lending, arranging, advising and administration</b> (but not complaints about second mortgages)</p>	<p>mortgage firms: mortgage lenders; mortgage administrators; mortgage brokers; general insurance brokers</p>	<p>Financial Ombudsman Service from 31 October 2004 – previously the Mortgage Code Arbitration Scheme</p>	<p>19</p>
<p><b>The selling, advising, arranging, administration or operation of insurance policies, such as:</b></p> <ul style="list-style-type: none"> <li>■ Motor insurance.</li> <li>■ Travel insurance.</li> <li>■ Private medical insurance.</li> <li>■ Home contents and building cover.</li> <li>■ Credit and mortgage payment protection insurance.</li> <li>■ Accident, sickness and unemployment insurance.</li> <li>■ Critical illness insurance.</li> <li>■ Term insurance and many others.</li> </ul>	<p>general insurance brokers; other firms that sell or arrange general insurance products in addition to their main business (eg motor dealers, retailers)</p>	<p>Financial Ombudsman Service from 14 January 2005 – previously the General Insurance Standards Council</p>	<p>19</p>
<p><b>The administration or operation of loans and credit from member firms</b> (including some banks and building societies) – a list of member firms is available from: <a href="http://www.fla.org.uk/fla_home/Members_directory.asp">www.fla.org.uk/fla_home/Members_directory.asp</a></p>	<p>larger companies offering loans and credit</p>	<p>Finance &amp; Leasing Association Conciliation and Arbitration Schemes</p>	<p>20</p>
<p><b>The running of occupational pension schemes and personal pensions (including stakeholder pensions).</b></p>	<p>trustees, employers and administrators of occupational pension schemes; pension providers</p>	<p>The Pensions Advisory Service and Pensions Ombudsman</p>	<p>21-22</p>
<p>* Complaints about the services of non-FSA-authorised professional firms should be directed to the relevant law society or regulatory body (see <b>Useful contacts</b> on page 35).</p>			

# Do I have a complaint?

## Not all problems are grounds for complaint.

A problem may not be anyone's fault but simply due to the nature of the product. For example, you might be investing regularly to build up a target lump sum. The investment might not grow as fast as you had hoped. If the final value fails to meet your target, you may feel disappointed. The fact that investments grow at unpredictable rates, and can fall as well as rise in value, is not usually a valid reason for complaint.

In some cases, though, a financial product or service turns out badly because the firm you dealt with did something wrong. Problems can arise for many different reasons, for example:

- unexpected or excessive charges;
- losing money because of a firm's slow administration;
- a dispute over who is at fault if money is stolen from an account;
- incorrect or misleading information about a product;
- a firm's failure to adequately warn about the risks of a product;
- a firm's failure to draw attention to a particularly strict condition in the contract;
- a firm's failure to carry out your instructions;
- unfairly being offered worse terms than other customers;
- not being given adequate notice about changes to a contract.

Whatever the reason for your complaint, you'll want to get matters put right. This booklet tells you how to do this.

## Delay can cost money

Mr D had an accident and wrote off his car. His insurers took three months to settle the claim. During this time, Mr D had to continue making payments on the car loan. However, he was unable to pay off the loan until he received the insurance payout.

**What happened?** Mr D contacted his insurers to complain about the delay. The insurers reimbursed his loan payments for those months and added a small amount for his inconvenience.

**Why?** The insurers accepted they were responsible for the delay.

## Pension scheme opt out

Two years earlier, Mr I had taken his own decision to opt out of his employer's pension scheme. Despite encouragement to rejoin the scheme, Mr I declined and took out a personal pension instead through an adviser.

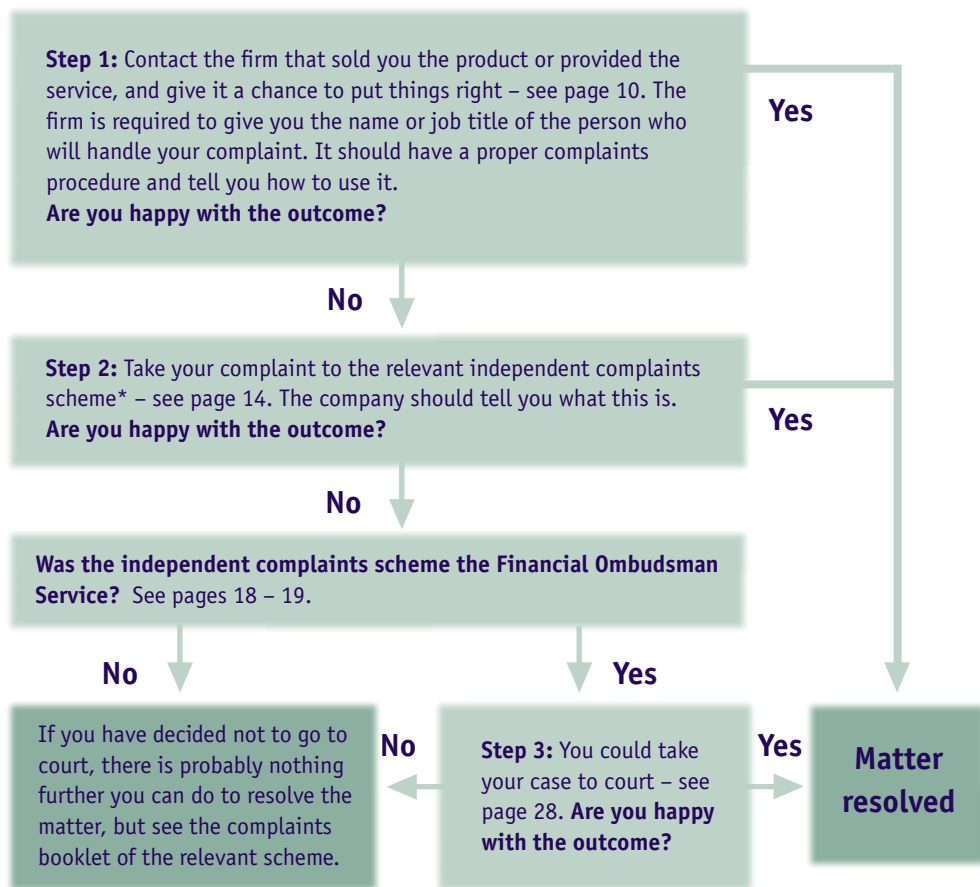
**What happened?** Mr I complained that the adviser had given him bad advice. The firm the adviser worked for disagreed, and did not uphold the complaint.

**Why?** There was strong evidence on Mr I's file that he had been determined to ignore any advice he was given and follow his own mind.

# I have a complaint: what can I do?

Follow this diagram to see what steps you can take

Start



\*Alternatively, you can take your case straight to court – see Step 3.

## Unsuitable endowment policy

Mr and Mrs E took out an endowment mortgage costing £1,000 a month in interest on the loan, plus £300 a month for a 25-year endowment policy.

They were due to retire 14 years before the end of the term. When they retired, they worried that they would not be able to afford the premiums, given their other financial commitments.

**What happened?** They complained to the firm that had advised them. The firm decided they had been mis-sold such a long-term endowment policy and agreed to put matters right.

**Why?** The sales representative who sold them the 25-year endowment policy had not adequately explored how Mr and Mrs E would keep up payments when they retired.

## Unhappy returns

After taking financial advice, which explained the advantages and disadvantages of investing in unit trusts, Ms B invested a large sum of money in a unit trust investing in UK companies. Its performance was dismal despite a big rise in the stockmarket. Ms B complained to the adviser that the unit trust's managers were incompetent.

**What happened?** Ms B's complaint was turned down.

**Why?** The nature of the investment and the risks had been adequately explained to Ms B at the outset. As long as this has been done, poor investment performance is not normally a reason for upholding a complaint.

# Contacting the firm

## Complain first to the firm that sold you the product or provided the service.

### Step 1

You must first give the firm that sold you the product or service the chance to put things right. If this does not resolve matters, please see steps 2 and 3 on page 11.

Most financial services companies are required to have a formal and free complaints procedure. Details are usually included in documents you were given when you took out the product. If not, you may want to ask for them before making your complaint.

You may get the name or job title of the person to complain to from the FSA's Firm Check Service on:

**[www.fsa.gov.uk/consumer/fcs](http://www.fsa.gov.uk/consumer/fcs)**

or the FSA Consumer Helpline on:

**0845 606 1234.**

It is usually best to make your complaint in writing – see page 12.

But always note down the names of any people you speak to and the main points each of you made. Firms are required to give you the name or job title of the person handling your complaint.

You should complain to the firm as soon as possible after you realise you have cause for complaint. There are time limits for making complaints and you should complain within either:

- six years from the date you were sold the product or service; or, if it gives you more time:
- three years from the date you realised, or ought to have realised, you have cause for complaint.

However, from 1 June 2004, slightly different arrangements apply to mortgage endowment complaints which have not been rejected as out of time. For further details please see the FSA information pack *Your endowment mortgage – find out where you stand*, available from our Consumer Helpline

– see **Useful contacts** on page 35.

### **Step 2 and Step 3**

If you are not satisfied with the firm's speed or handling of the complaint, or the outcome it has reached, you can:

- take your complaint to an independent complaints scheme – see page 14; or
- take your case to court – see page 28.

### **Financial Services Compensation Scheme**

If the firm is unable to pay your claim, the Financial Services Compensation Scheme may be able to help you – see page 26.

### **Paid complaint pursuers**

Some commercial agencies now offer to help consumers pursue their complaints with financial services firms and with independent complaints schemes. In return, the consumer has to pay the agency a fee, usually in the form of a

fixed share of any compensation that is awarded for a successful complaint.

A number of these agencies are focusing on mortgage endowment complaints in particular, where the 'success fee' you would have to give them can amount to hundreds or even thousands of pounds - money which you obviously won't then have available to put towards any endowment shortfall or to help pay off your mortgage.

An agency that pursues complaints in this way does not have to be authorised by the FSA to do so – and using them does not necessarily increase the chances of your complaint succeeding or of your getting compensation.

Your particular circumstances may mean that you would find it helpful to use an agency to handle the complaint on your behalf. But think carefully about the likely costs and benefits of this and check the agency's fees and conditions before you sign any contract with them.

# Tips for effective complaints

## It is usually best to make your complaint in writing.

You can phone to make a complaint, but make sure you make notes, as well as recording the name of the person you spoke to and the date and time you called. Keep the notes in a safe place – they are a record of your complaint.

You will often find you need to follow up any phone calls with a letter. Your letter needs to be clear and simple and include essential information. This enables the firm to understand what is troubling you and begin to address your concerns. Try not to be sarcastic or abusive – you're less likely to get a good result.

- Write 'Complaint' at the top of your letter.
- Type the letter if possible, or write clearly in black or blue ink – in case it needs to be photocopied.
- Include any reference numbers, for example for the product you bought, the account you hold, or a customer reference.

- State your case clearly, and include relevant dates. Put down the facts in a sensible order. Avoid unnecessary detail and repetition. Be firm but remain polite.
- Send copies of documents – if these are relevant – but always keep original documents.
- Every time you write, keep a copy of your own letter for reference.
- If you phone the firm or have a meeting, then make a note of the date, the name of the person you talked to and the main points each of you made. Write a follow-up letter to confirm what was said or agreed.
- You may want to send the letter recorded delivery.

The next page shows an example of a letter of complaint to a firm.

## Example of a letter of complaint to a firm

10 January 2005

Mr P Atkins  
Area Representative  
XYZ Insurance Company  
Highrise House  
Tonbridge  
Kent EF3 4GH

2 Penn Rise  
Wye  
Kent  
AB1 2CD  
Tel: 01234 123456

Dear Mr Atkins

### COMPLAINT

Policy number AB12345/C

I write following my letter to you of 7 December 2004. In that letter I asked for details of the cash-in value of the above investment.

I have now received your reply and am concerned to find that, despite having paid £1,872 in premiums, I will get back only £1,310 if I stop the policy now.

Please send me a detailed breakdown showing how you arrived at the figure of £1,310. I feel sure there must be some error in your calculations.

I look forward to your early reply.

Yours sincerely



A R Brown

# Independent complaints schemes

## These schemes have been set up to resolve disputes between you and a financial firm.

Nearly all financial services firms belong to an independent complaints scheme. Some must, by law, belong to one of these schemes; others agree voluntarily to do so.

An independent complaints scheme can:

- look at the details of your case;
- ask for extra evidence if necessary;
- decide whether your complaint is justified;
- and, if it is justified, order the firm to put matters right.

Most complaints about financial services firms will be dealt with by the Financial Ombudsman Service.

Some types of financial complaint fall outside the scope of the Financial Ombudsman Service and are dealt with by the other schemes listed in the tables on pages 4-5. See the following pages for a brief description of how each scheme works.

Some complaints fall within the scope of both the Financial Ombudsman Service and the Finance & Leasing Association Conciliation and Arbitration Schemes.

See page 24 for the main differences between an ombudsman scheme and an arbitration scheme.

Contact details for all the schemes are in **Useful contacts** on page 35.

Alternatively, if you are not happy with the way a firm has responded to your complaint, you could take your case to court (see page 28). However, in most cases, an independent complaints scheme is cheaper (usually free to you as the customer) and quicker.

## Not on your life

A boy was aged just 16 and still being looked after financially by his parents when he was sold a life insurance policy which required him to make regular monthly payments.

The policy would build up a cash-in value, but only after many years. Its main purpose was to provide a lump sum of £28,000 to be paid out to his dependants if he died.

### What happened?

The boy's parents were concerned about the policy their son had been sold. They contacted the firm but were unhappy with the treatment they received. The boy and his parents took their case to the ombudsman. The ombudsman ruled that the policy was inappropriate for the boy's circumstances and he received his money back with interest.

**Why?** This 16-year-old had neither dependants nor any other need for life insurance.

## An example showing part of a typical complaints form sent to an independent complaints scheme

Most independent complaints schemes provide information on how best to make a complaint. Usually they have a special form to help you set out clearly the key points of your case. The example below continues the scenario used in the letter of complaint on page 13.

ABC Scheme Complaints Form		Page 1 of 2
<p>The date on which you first complained to the firm:</p> <p><i>10 January 2005</i></p> <p>The date of the letter from the firm telling you the outcome of its investigation of your complaint:</p> <p><i>5 March 2005</i></p>	<p>Complaint reference number used by the firm (if known):</p> <p><i>CD/PA/42</i></p> <p><b>Please remember to send the complaints scheme a copy of this letter with the complaint form.</b></p>	
<p>Have there been any court proceedings in connection with any part of your complaint?</p> <p>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>If Yes, please give details.</p> <div style="border: 1px solid black; height: 150px; width: 100%;"></div>		

Please explain your complaint in your own words, continuing on a separate sheet as necessary. Please be as specific as possible about **dates**, as they help the complaints scheme to decide whether your case falls within its scope.

*22 January 2003* – A representative from XYZ Insurance Company called and my wife and I took out an endowment policy for £50,000. The premium was £78 a month.

*7 December 2004* – I wrote to XYZ Insurance Company (letter attached) asking how much I would receive on cashing in the policy, which I no longer needed.

*8 January 2005* – Letter from Mr Atkins of XYZ Insurance Company – attached – showing that the cash-in value of the policy was just £1,310, even though I had paid £1,872 in premiums.

*10 January 2005* – I wrote again to Mr Atkins (letter attached), making my complaint, and asking for a breakdown of his calculations.

*31 January 2005* – I phoned Mr Atkins to ask why I'd had no reply. He promised to look into it.

*7 February 2005* – Heard nothing, so I phoned Mr Atkins again – see my note of our conversation. He said the cash-in value was correct and that the policy was designed for long-term investment so a loss after only two years was inevitable.

*8 February 2005* – I wrote to Mr George Browning, Head of Customer Relations – see letter attached.

*5 March 2005* – See Mr Browning's final response attached. The firm's position is not satisfactory. I feel that we were sold the wrong policy and that the firm should at least return my premiums with interest.

# Financial Ombudsman Service

## What the scheme covers

The Financial Ombudsman Service can deal with most types of financial complaint.

However, the Ombudsman does not cover store cards and loans by non-FSA-  
authorised firms, occupational pension schemes, the way firms make their business decisions (eg, deciding who they will lend to), or the way an investment has performed.

The Ombudsman extended its coverage of mortgage complaints from 31 October 2004, and can deal with complaints about general insurance mediation from 14 January 2005. For further details please see **Mortgage firms** and **General Insurance firms** on page 19.

The Ombudsman extends its coverage of general insurance broking firms from 14 January 2005. For further details please see **General insurance firms** on page 19.

## When to contact the scheme

You should first give the firm up to eight weeks to try to resolve your complaint. The firm should send you a letter setting out its final decision and telling you how

to contact the Ombudsman if you are unhappy with its decision.

You have six months from the date of the company's final letter to take your complaint to the Ombudsman.

If you do not receive a final letter from the firm within eight weeks, and you do not want to give the firm more time, contact the Ombudsman anyway. The Ombudsman will send you a complaints form, and also has a dedicated Consumer Contact area that you can call for advice.

## What the scheme costs

The scheme is free to consumers – that is, even if the Ombudsman rejects your complaint and finds in the firm's favour, you won't be asked to pay the Ombudsman anything. You should not need to use a solicitor. If you choose to do so, you pay the legal costs and cannot normally claim them back through the Ombudsman.

## How the scheme works

The Ombudsman's role is to be impartial and investigate the dispute between you and the firm. The Ombudsman will try to help you reach agreement by a process of mediation or conciliation.

Generally, their aim is to put you in the position you'd be in if things hadn't gone wrong. This might include telling the firm to make good your losses. The Ombudsman can make an award of up to a total of £100,000, but in most cases their decisions involve much smaller amounts.

You can choose whether or not to accept an Ombudsman's decision. If you accept the decision, it is binding on both you and the firm. If you don't accept, you can take your case to court if you want to (see page 28).

The Ombudsman operates independently of the FSA, and the FSA cannot intervene in the handling and outcome of individual cases.

Very rarely, the firm, for whatever reason, may refuse to pay an award made by the Ombudsman. If you wish to enforce the award made by the Ombudsman you will have to apply to a court to do so. The Ombudsman may refer the case to the FSA for enforcement action against the firm for a rule breach but this may not result in you obtaining redress.

### **Mortgage firms**

From 31 October 2004, the Ombudsman can consider complaints about the activities of authorised mortgage firms not already within the Ombudsman's jurisdiction (that is, mortgage lenders, mortgage administrators, mortgage advisers and arrangers).

The Ombudsman can also deal with complaints made on or after 31 October 2004 about the activities of a mortgage firm before that date, but only if:

- the authorised firm is a former member of the Mortgage Code Compliance Board; and
- the complaint would previously have been considered under the Mortgage Code Arbitration Scheme.

### **General insurance firms**

From 14 January 2005, the Ombudsman can deal with complaints relating to general insurance mediation. In this sense, 'mediation' means such things as getting advice on a suitable policy, arranging to purchase a policy, making a claim on a policy or renewing a policy. It covers general insurance policies (eg motor insurance, travel insurance, private medical insurance, home contents and building cover) and some long-term insurance policies (eg critical illness, term insurance).

The Ombudsman can look at complaints relating to events before 14 January 2005, but only if:

- they relate to an authorised firm that is a former GISC member; and
- they would previously have been eligible for consideration by the General Insurance Standards Council's (GISC's) Dispute Resolution Facility.

# Finance & Leasing Association Conciliation and Arbitration Schemes

## What the scheme covers

It covers hire purchase, conditional sale, personal contract purchase, personal lease plans, secured and unsecured personal loans, credit cards and store card facilities where any of these are provided by members of the Finance & Leasing Association (FLA).

In the first instance, the FLA will try to conciliate between you and the firm. If conciliation does not provide a satisfactory outcome you will be given the option of referring your complaint to the FLA's Independent Arbitration Scheme, or to the Financial Ombudsman Service if the complaint is against a bank or building society.

Certain complaints fall outside the scope of the FLA's Arbitration Scheme (though not its Conciliation Scheme). These relate to the commercial judgement of firms – eg about whether to grant you credit or the rate of interest or other charges – and where a third party has given false information or provided faulty or unsuitable goods.

## When to contact the scheme

First give the firm the chance to set matters right. You can approach the FLA at any time once you have complained to the firm. Please see **Useful contacts** on page 35. The FLA will try to conciliate.

If this does not produce a satisfactory outcome, you can take your complaint to the Arbitration Scheme. The FLA will provide a complaints form, which both you and the firm should complete. Or, if appropriate, you can take your complaint to the Financial Ombudsman Service.

## What the scheme costs

The schemes are free to consumers, but the arbitrator has the power to order you to pay the firm's costs.

## How the scheme works

The FLA operates the Conciliation Scheme. The Arbitration Scheme is run for the FLA by the Chartered Institute of Arbitrators. See page 24 for general information about how arbitration schemes work.

The decision is binding on the firm and also on you. You do not usually have the option of going to court if you are unhappy with the decision.

# The Pensions Advisory Service

## **What the Pension Advisory Service covers**

The Pensions Advisory Service covers problems concerning the way occupational and personal pension schemes are run.

The Pensions Advisory Service can be used by anyone who has rights (or believes they may have rights) under a pension arrangement. This includes people currently paying contributions, people with a deferred pension from previous employment, those being paid pensions and the dependants of people in any of these groups.

The Pensions Advisory Service cannot normally help if you are simply disappointed with the investment performance of your pension fund.

Disputes about the selling or marketing of pensions are dealt with by the Financial Ombudsman Service. If you are in doubt about whether to refer your complaint to the Pensions Advisory Service or the Financial Ombudsman Service, the Pensions Advisory Service will advise you – see **Useful contacts** on page 35.

## **When to contact the Pensions Advisory Service**

You should complain first in writing to the firm or body you consider to be at fault.

There may be a formal internal dispute resolution procedure which you have to use. If this does not resolve the matter to your satisfaction, the next step is to contact the Pensions Advisory Service.

## **What the Pensions Advisory Service costs**

The Pensions Advisory Service is free to consumers.

## **How the Pensions Advisory Service works**

The Pensions Advisory Service gives help and advice. In many cases this is enough to clear up misunderstandings and sort out the complaint. However, if this does not work, the Pensions Advisory Service may correspond with the pension scheme on your behalf to try to resolve matters, and may ultimately recommend that you take your case to the Pensions Ombudsman – see page 22 and **Useful contacts** on page 35.

The Pensions Advisory Service and the Pensions Ombudsman are separate organisations and are independent of each other.

# The Pensions Ombudsman

## **What the Pensions Ombudsman covers**

The Pensions Ombudsman covers the same sort of pension problems as the Pensions Advisory Service and can be used by the same group of people.

The Pensions Ombudsman covers problems with the way occupational and personal pension schemes are run.

It can be used by anyone who has rights (or believes they may have rights) under a pension arrangement. This includes people currently paying contributions, people with a deferred pension from previous employment, those being paid pensions, and the dependants of people in any of these groups.

The Pensions Ombudsman cannot normally help if you are simply disappointed with the investment performance of your pension fund.

Disputes about the selling or marketing of pensions are dealt with by the Financial Ombudsman Service. If you are in doubt about which scheme is appropriate for your complaint, you can contact the Pensions Advisory Service and they will advise you – see page 21.

## **When to contact the Pensions Ombudsman**

You should complain first in writing to the firm or body you consider to be at fault. There may be a formal internal dispute resolution procedure which has to be used. If this does not resolve the matter to your satisfaction, the next step is to contact the Pensions Advisory Service, which will try to resolve the complaint for you. If this does not work, and if appropriate, the Pensions Advisory Service will then recommend that you take your case to the Pensions Ombudsman – see **Useful contacts** on page 35. The Pensions Advisory Service may help you do this.

Even if the Pensions Advisory Service doesn't recommend that you take your case to the Pensions Ombudsman, you can still do so.

If you wish to take your case to the Pensions Ombudsman, you must normally do so within three years of the event you are complaining about.

## **What the Pensions Ombudsman costs**

The Pensions Ombudsman is free to consumers.

## **How the Pensions Ombudsman works**

The Pensions Ombudsman investigates the case and comes to a decision that is binding on you as well as the other parties. You would then only have the option of going to court to appeal on a point of law or to enforce the decision if the Ombudsman's directions were not carried out.

The Pensions Ombudsman and the Pensions Advisory Service are separate organisations and are independent of each other.

# Ombudsman schemes and arbitration compared

## Ombudsmen and arbitration schemes can both look beyond the strict letter of the law.

An ombudsman can choose the way he or she carries out the investigation and reaches a decision. For example, the ombudsman might:

- look only at paperwork from you, the firm and other sources;
- take into account codes of conduct and normal standards of good practice in the financial services industry;
- take any special circumstances of your particular case into account;
- consider the purely legal position;
- (in exceptional cases) ask you and someone from the firm to come in person and tell him or her about the case.

Generally, an ombudsman can consider all aspects of the case and reach a decision based on what seems reasonable and fair, not just on the strictly legal position.

If you remain dissatisfied after complaining to the Financial Ombudsman Service, you can take your case to court if you wish (see page 28).

The Determinations and Directions of the Pensions Ombudsman are final and binding on all the parties, subject to appeal on a point of law only. So you will usually lose your right to take your case to court (see page 28).

Each of the bullet points aside about using an ombudsman also applies if you use an arbitration scheme (this is often called going to arbitration). The arbitrator will examine the evidence in much the same way as a court would do. Most cases are decided by examining the paperwork. Although you can choose to have your case presented by a lawyer if you wish, this is not necessary. Like an ombudsman, an arbitrator can consider all aspects of the case and reach a decision based on what seems reasonable and fair, not just on the strictly legal position.

When using an arbitration scheme, both you and the firm must agree in advance to accept the arbitrator's decision, subject to appeal on a point of law only. So you will usually lose your right to take your case to court (see page 28).

## Negligent adviser

Mr G asked a financial adviser to manage his portfolio of shares. They discussed Mr G's investment aims, which were to add to his share holdings and build up capital growth.

Over the next few months, the adviser reported favourable conditions for buying more shares. Despite this, it turned out that the adviser had kept a third of the portfolio in cash. This meant Mr G missed out on gains in the stockmarket.

### What happened?

After complaining to the firm he took his complaint to the Financial Ombudsman Service. The Ombudsman ordered the adviser to pay compensation to Mr G.

**Why?** Because the adviser had been negligent in carrying out Mr G's instructions.

## Card delivery problems

A finance company offered Mr H an upgrade to his credit card account, which included a promotional interest rate. The company then arranged delivery of a new card. Mr H advised the finance company that he had experienced problems with the delivery company in the past. Nevertheless, the finance company used the same card delivery company and problems arose again. When Mr H eventually received his card, he experienced difficulties with using it and then further difficulties in the delivery of a replacement card.

### What happened?

Mr H complained to the company and subsequently raised his complaint through a conciliation scheme. The finance company offered £25 as a gesture of goodwill. Mr H was not happy and made an application for arbitration. The arbitrator ordered the finance company to pay £200 compensation.

**Why?** Based on the information provided, the arbitrator found the company had failed in its duty to ensure that an adequate supply of cards was available to meet the demand resulting from the upgrade campaign. It had also continued to use the same delivery company despite their continued poor service.

# Financial Services Compensation Scheme

## What to do if a firm has gone out of business.

A firm that has gone out of business is unlikely to respond to complaints and probably will not be in a position to put matters right.

Provided the firm was authorised by the Financial Services Authority, you might be able to obtain compensation from the Financial Services Compensation Scheme (FSCS).

The FSCS can pay compensation in cases where you have a claim against an authorised firm, eg for fraud or negligence, and the firm is unable to pay claims against it.

The Scheme also provides protection for consumers if a deposit-taker (for example a bank, building society, or credit union), an insurance company or an investment firm goes out of business and cannot pay claims against it or return money that it owes to you.

From 31 October 2004, the Scheme also provides protection for consumers if a mortgage broker goes out of business and is unable to pay claims against it.

And from 14 January 2005, the Scheme provides protection for consumers if a firm conducting general insurance mediation goes out of business and is unable to pay claims against it. (For a description of general insurance mediation, please see **General Insurance Mediation** on page 19.)

The maximum compensation payable depends on the type of claim involved – see the table opposite.

You should first try to contact the firm about your claim. If the firm is unable to consider your claim contact the FSCS to find out whether you could be eligible for compensation (see useful contacts on page 35).

If you cannot find the firm you dealt with, ring the FSA Consumer Helpline on 0845 606 1234.

## Maximum compensation payable from the Financial Services Compensation Scheme

Type of claim	Compensation	Maximum
Deposits (eg bank, building society and credit union accounts)	100% of the first £2,000 90% of the next £33,000	£31,700
Investment business (eg advice about unit trusts, shares)	100% of the first £30,000 90% of the next £20,000	£48,000
Mortgages	100% of the first £30,000 90% of the next £20,000	£48,000
Long-term insurance (eg life insurance)	100% of the first £2,000 At least 90% of the remainder of claim (including future benefits already declared)	Unlimited
Claims on general insurance (eg car insurance, home insurance) and claims on general insurance mediation	<i>Compulsory insurance</i> (eg third party motor insurance, employer's liability insurance): 100% of claim	Unlimited
	<i>Non-compulsory insurance claims on general insurance:</i> 100% of first £2,000 90% of remainder of claim and unused premiums	Unlimited
	<i>Non-compulsory insurance claims on general insurance mediation:</i> 100% of first £2,000 90% of remainder of claim	Unlimited

# Going to court

## Use the small claims court if you can. Going to other courts can be a long and expensive process.

You can't normally take your complaint to the courts if you have already been through an arbitration scheme or the Pensions Ombudsman. But if you went to the Financial Ombudsman Service or you have not used an independent complaints scheme at all, you can choose to go to court if you wish. You may also go to court if the firm won't pay any award made by the Financial Ombudsman Service.

In England, Wales and Northern Ireland, you normally bring your case in the county court. In Scotland, you go to the sheriff court. Your case can usually be dealt with through the 'small claims track' or 'small claims court', if the amount you are claiming is no more than:

- £5,000 in England and Wales;
- £2,000 in Northern Ireland;
- £750 in Scotland.

The small claims track or court is less formal than other court procedures and you do not need a solicitor or barrister.

You pay a fee to use the court (the amount varies with the size of your claim). The fee may be waived if you are receiving certain state benefits or can show that paying it would cause you hardship.

If your complaint is not suitable for the small claims track or court, going to court is a last resort. This is because:

- it can be a long time before your case comes to court and reaches settlement, especially if the dispute is complicated;
- you may need to employ a solicitor and even a barrister, which may be expensive;
- if you lose the case, you might face a large bill for the firm's legal costs as well as your own.

Bear in mind that, if an ombudsman has already decided your complaint is unjustified, a judge may well take the same view.

If you are considering going to court, contact your local county or sheriff court for information on how to bring a case.

You may decide to get help from a solicitor. If you are receiving certain state benefits or your earnings are low, you may be able to get free advice and free solicitors' letters under the Legal Aid Advice and Assistance Scheme.

Legal Aid might also help with your expenses if you have to go to court, but only if your income, savings and other property are below certain limits and you are judged to have a good case. If you win your case, you must normally repay some or all of the Legal Aid you received.

For guidance on getting Legal Aid, talk to your solicitor, local Citizens Advice Bureau or local legal advice centre – see **Useful contacts** on page 35.

## Duty to tell all

Miss H took out critical illness insurance to help pay her mortgage if she was diagnosed with certain serious illnesses.

**What happened?** A year later, when she discovered she had multiple sclerosis (MS), she claimed on the policy but the firm refused to pay out after consulting her doctor. The ombudsman agreed that the firm had acted correctly. Miss H was not happy with the ombudsman's decision and decided to take her case to court. The judge too agreed that the firm acted correctly, but he ordered the firm to repay Miss H's premiums with interest.

**Why?** Miss H had twice visited her doctor with possible MS symptoms in the year before taking out the policy. Under the terms of the insurance she should have told the firm about this, and the firm would in fact have declined to insure her.

# Unfair Contract Terms

## What to do if you think terms in a standard consumer contract are unfair.

The FSA has consumer protection powers (under the Unfair Terms in Consumer Contracts Regulations 1999) to challenge firms that use unfair standard terms in their consumer contracts. So, if you have a contract concerning your banking, investments, insurance, mortgage or other financial services, which you think has an unfair term in it, you can write to us about it.

If you have a complaint about a contract concerning personal loans, hire purchase, credit cards or other credit products, you should write to the Office of Fair Trading instead, because they deal with these kinds of contracts. (See **Useful contacts** on page 35.)

When writing to the FSA, enclose a copy of the contract (which is sometimes called the ‘terms and conditions’) saying which term(s) you think are unfair and why, and giving details of any discussions you have had with the firm about these terms. You can write to us at the following address:

Unfair Contract Terms Unit  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

We will look at the contract and assess whether we think it is unfair under the Regulations.

We can, in appropriate circumstances, quickly stop a firm from using unfair terms, by using an enforcement order (ie an injunction). However, our practice is to negotiate first with firms to seek their formal agreement to stop using the ‘unfair’ term. Where justified, we can prevent firms from using or recommending terms that we regard as unfair.

The Regulations do not give us powers to give individual consumers direct compensation. If you have suffered a loss, you may be able to seek redress by making a complaint to the firm. If the firm does not deal with your complaint

in the way you think it should, you may be able to complain to the Financial Ombudsman Service, if you are eligible – see page 18 for more details.

Under the Regulations, the test of whether a term is unfair is based on whether, contrary to good faith, it causes a significant imbalance in the rights and obligations of the parties, to the detriment of the consumer. Below are some examples of possible unfair terms.

- Terms that charge you a disproportionately large sum, if you don't fulfil an obligation under the contract, or if you cancel the contract.
- Terms that exclude your legal rights like your right to redress, when the firm has failed to meet its obligations in the contract, for example, if it failed to properly provide an agreed service.
- Terms that make you fulfil all your contractual obligations, while letting the firm avoid its own.

But note that a term won't necessarily be unfair just because it looks like the examples above – that will depend on the precise details of the contract as a whole.

For more information on unfair contract terms, including further examples of the kinds of terms that can sometimes have an unfair effect, see our factsheet *Challenging unfair contract terms* available from our Consumer Helpline – see **Useful contacts** on page 35.

# Financial promotions

## What to do if you spot a misleading financial advert.

The FSA's Financial Promotions Department has been set up specifically to try to ensure that firms issuing financial promotions comply with our rules, including the requirement that they are clear, fair and not misleading. Financial promotions include advertising for financial products in newspapers and on television, radio and the internet, as well as literature you receive in the post inviting you to buy the product directly. In this area we actively encourage consumers to complain directly to us, and if you believe a promotion is unfair, unclear or misleading then we want you to tell us about it. Don't assume we've already spotted it – it's impossible for us to monitor all the advertising material that's published.

You can phone our Financial Promotions Hotline on **08457 300 168**. We will ask you over the phone for all the details we need to investigate further.

If you prefer, there is an online reporting form on our website at:

**[www.fsa.gov.uk/consumer](http://www.fsa.gov.uk/consumer)**

or you can send a copy of the promotion to:

**Financial Promotions Department  
Financial Services Authority  
25 North Colonnade  
Canary Wharf  
London E14 5HS**

Please write 'Financial Promotion' at the top of your covering letter and let us know what you think is unclear, unfair or misleading about the promotion. If you can't send us a copy of the promotion, please give us as much detail as you can, so that we can identify it and investigate your report. The kind of details we need are: the type of promotion (eg newspaper advertisement, direct offer pack or internet site), the name of the firm and the product being promoted, and when you saw it.

We would like to hear from you about all types of financial products including mortgages and general insurance but not credit cards and loans. Complaints about promotions for credit cards or loans should be sent to your local Trading Standards Office.

**Please note that we can't tell you what action we have taken as a result of your individual report. So if you have a specific complaint about a promotion which resulted in you being mis-sold a financial product, you should follow the complaints procedure set out in the rest of this booklet, ie complaining to the firm about the mis-selling, as well as reporting the promotion to the FSA.**

If you want more information about the action we can take as a result of your complaint, or more information on any other aspect of how the FSA regulates financial promotions, please visit our website at the address below.

A rectangular graphic with a dark blue border and a light blue background. It contains text and icons. At the top, it says 'FINANCIAL PROMOTIONS' in a smaller font, followed by 'HOTLINE' in a large, bold, dark blue font. Below that is the phone number '08457 300 168' in a large, bold, dark blue font. Underneath the number is the text 'Seen an advert that you think is unclear, unfair or misleading?' in a smaller, dark blue font. Below this is the phrase 'Call us now!' in a large, bold, dark blue font. At the bottom left is a dark blue icon of a telephone handset. At the bottom right is the FSA logo, which consists of a stylized globe icon and the letters 'FSA' in a bold, dark blue font with a registered trademark symbol.

# Protect yourself

## Being prepared will make it easier to complain effectively if problems do arise.

Prevention is always better than cure. Here are a few tips before you commit yourself to a financial product or service. They might avoid the need to make a complaint later on:

- Check that the firm you are dealing with is authorised. Ring the FSA Consumer Helpline on **0845 606 1234** or contact our user-friendly online FSA Firm Check Service at: **[www.fsa.gov.uk/consumer/fcs](http://www.fsa.gov.uk/consumer/fcs)**
- Read all the information you are given, especially the small print.
- Ask questions about anything you don't understand.
- Check carefully any information you get about the benefits of an investment or the rate at which your investment will grow. This is usually just an illustration or prediction, not a guarantee of what you will get back in the future.
- Make sure you understand the nature of any risks involved.
- Make sure you understand the charges involved, especially if you might not be able to keep up the payments.
- If a deal sounds too good to be true, it probably is. Don't sign up.

However careful you are, problems can still arise later on. If you think you have a complaint and you're not sure how to make it, contact the FSA Consumer Helpline, your local Citizens Advice Bureau or legal advice centre for help. See **Useful contacts** on page 35.

# Useful contacts

## How to get in touch with the right organisation, and general matters

### Financial Services Authority (FSA)

Consumer Website:

[www.fsa.gov.uk/consumer](http://www.fsa.gov.uk/consumer)

Consumer Helpline: 0845 606 1234.

Minicom/textphone: 08457 300 104

(Call rates may vary.)

## Independent complaints schemes

### Financial Ombudsman Service

South Quay Plaza

183 Marsh Wall

London E14 9SR

tel: 0845 080 1800

email –

[complaint.info@financial-](mailto:complaint.info@financial-ombudsman.org.uk)

[ombudsman.org.uk](mailto:ombudsman.org.uk)

website –

[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

### Finance & Leasing Association Conciliation and Arbitration Schemes

Finance & Leasing Association

2nd Floor – Imperial House

15-19 Kingsway

London WC2B 6UN

tel: 020 7836 6511

email – [info@fla.org.uk](mailto:info@fla.org.uk)

website – [www.fla.org.uk](http://www.fla.org.uk)

### The Pensions Advisory Service

11 Belgrave Road

London SW1V 1RB

tel: 0845 601 2923

e-mail –

[enquiries@pensionsadvisoryservice.org.uk](mailto:enquiries@pensionsadvisoryservice.org.uk)

website –

[www.pensionsadvisoryservice.org.uk](http://www.pensionsadvisoryservice.org.uk)

### The Pensions Ombudsman

11 Belgrave Road

London SW1V 1RB

tel: 020 7834 9144

e-mail –

[enquiries@pensions-ombudsman.org.uk](mailto:enquiries@pensions-ombudsman.org.uk)

website –

[www.pensions-ombudsman.org.uk](http://www.pensions-ombudsman.org.uk)

## If your complaint is about an authorised firm that has gone out of business

### Financial Services Compensation Scheme (FSCS)

7th floor

Lloyds Chambers

1 Portsoken Street

London E1 8BN

tel: 020 7892 7300

e-mail – [enquiries@fscs.org.uk](mailto:enquiries@fscs.org.uk)

website – [www.fscs.org.uk](http://www.fscs.org.uk)

### **To find your local county court or sheriff court**

Look in the phone book under ‘Courts’.

### **To find a solicitor**

Look in the Yellow Pages under ‘Solicitors’.

#### **The Law Society**

The Law Society’s Hall  
113 Chancery Lane  
London WC2A 1PL  
tel: 020 7242 1222  
e-mail – [infoservices@lawsociety.org.uk](mailto:infoservices@lawsociety.org.uk)  
website – [www.lawsociety.org.uk](http://www.lawsociety.org.uk)

#### **The Law Society of Northern Ireland**

Law Society House  
98 Victoria Street  
Belfast BT1 3JZ  
tel: 028 9023 1614  
e-mail – [info@lawsoc-ni.org](mailto:info@lawsoc-ni.org)  
website – [www.lawsoc-ni.org](http://www.lawsoc-ni.org) *and*  
[www.nilad.org](http://www.nilad.org)

#### **The Law Society of Scotland**

26 Drumsheugh Gardens  
Edinburgh EH3 7YR  
tel: 0131 226 7411  
e-mail – [lawscot@lawscot.org.uk](mailto:lawscot@lawscot.org.uk)  
website – [www.lawscot.org.uk](http://www.lawscot.org.uk)

### **To find your local Citizens Advice Bureau**

Look in the phone book under ‘Citizens Advice Bureau’, or visit [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

#### **Citizens Advice websites:**

[www.adviceguide.org.uk](http://www.adviceguide.org.uk)  
[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)  
(England and Wales)  
[www.cas.org.uk](http://www.cas.org.uk) (Scotland)  
[www.citizensadvice.co.uk](http://www.citizensadvice.co.uk)  
(Northern Ireland)

### **To find a local legal advice centre**

#### **Law Centres Federation**

Duchess House  
18-19 Warren Street  
London W1T 5LR  
tel: 020 7387 8570  
e-mail – [info@lawcentres.org.uk](mailto:info@lawcentres.org.uk)  
website – [www.lawcentres.org.uk](http://www.lawcentres.org.uk)

#### **Community Legal Service**

website – [www.clsdirect.org.uk](http://www.clsdirect.org.uk)  
Or your local council office may have details.

### **To find your local Trading Standards Service**

Look in the phone book under ‘Trading Standards’. Or your local council office may have details.  
website – [www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk)

**For complaints about a contract concerning personal loans, hire purchase, credit cards or other credit products**

**Contract Regulation Unit**

The Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London EC4Y 8JX  
tel: 020 7211 8594  
e-mail – [cru@oft.gov.uk](mailto:cru@oft.gov.uk)  
website – [www.oft.gov.uk](http://www.oft.gov.uk)

**Other regulatory bodies**

**Association of Chartered Certified Accountants (ACCA)**

29 Lincoln's Inn Fields  
London WC2A 3EE  
tel: 020 7242 6855  
e-mail – [info@accaglobal.com](mailto:info@accaglobal.com)  
website – [www.accaglobal.com](http://www.accaglobal.com)

**Banking Code Standards Board**

6 Frederick's Place  
London EC2R 8BT  
tel: 0845 230 9694  
e-mail – [helpline@bcsb.org.uk](mailto:helpline@bcsb.org.uk)  
website – [www.bankingcode.org.uk](http://www.bankingcode.org.uk)

**Institute of Actuaries**

Staple Inn Hall  
High Holborn  
London WC1V 7QJ  
tel: 020 7632 2100  
e-mail – [institute@actuaries.org.uk](mailto:institute@actuaries.org.uk)  
website – [www.actuaries.org.uk](http://www.actuaries.org.uk)

**Institute of Chartered Accountants in England and Wales (ICAEW)**

PO Box 433  
Chartered Accountants' Hall  
Moorgate Place  
London EC2P 2BJ  
tel: 020 7920 8100  
website – [www.icaew.co.uk](http://www.icaew.co.uk)

**Institute of Chartered Accountants in Ireland**

CA House  
83 Pembroke Road  
Dublin 4  
e-mail – [ca@icai.ie](mailto:ca@icai.ie)  
tel: 00 353 1 637 7200  
website – [www.icai.ie](http://www.icai.ie)

**Institute of Chartered Accountants of Scotland**

CA House  
21 Haymarket Yards  
Edinburgh EH12 5BH  
tel: 0131 347 0100  
website – [www.icas.org.uk](http://www.icas.org.uk)

**The Pensions Regulator**

Napier House  
Trafalgar Place  
Brighton BN1 4DW  
tel: 0870 606636  
(available 9am - 5pm Monday-Friday)  
textphone – 0870 243 3123  
e-mail – [customersupport@the-pensionsregulator.gov.uk](mailto:customersupport@the-pensionsregulator.gov.uk)  
website – [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

# Asking the right questions.

Other FSA publications that could help you

April 2005

## Pensions

- FSA guide to pensions 1  
Starting a pension
- FSA guide to pensions 2  
Reviewing your pensions
- FSA guide to pensions 3  
Annuities and income withdrawal
- FSA guide to the risks of occupational  
pension transfers
- Contracting out of the State Second  
Pension
- Stakeholder pensions and decision trees

## Mortgages

- Getting a mortgage – how keyfacts  
can help you
- Choosing a mortgage – taking the right  
steps (pack)
- Your endowment mortgage – find  
out where you stand (pack)
- What to do when you can't meet your  
mortgage payments
- Buy-to-let mortgages

## General

- Introduction to the Financial Services  
Authority (FSA) – information for  
consumers
- You and Your Money – overview of how  
the FSA can help you
- No bank account? Why it could pay you  
to have one
- Buying insurance? How keyfacts can  
help you

## Savings and investments

- Capital at risk products
- With-profits bonds
- Why market abuse could cost you  
money – The Code of Market Conduct  
is here to help protect you

## Financial planning and advice

- FSA guide to financial advice
- Challenging unfair contract terms
- Paying for long-term care

**This is only a selection. You can see our full list and order free copies on our online order form at: [www.fsa.gov.uk/consumer](http://www.fsa.gov.uk/consumer) Or you can ring our Consumer Helpline on: 0845 606 1234 (call rates may vary).**







**The Financial Services Authority (FSA) is the independent watchdog set up by government to regulate financial services and protect your rights.**

We produce a range of user-friendly factsheets and booklets which are available from our website and helpline.

If after reading this booklet, you have any general queries, our helpline will try to clarify things for you.

We can tell you if a firm or individual is authorised and help you if you have a complaint and don't know who to contact. But as the regulator, we can't recommend firms or advisers, or tell you whether a particular investment is right for you.

**Our website, [www.fsa.gov.uk/consumer](http://www.fsa.gov.uk/consumer), aims to help you understand financial services and get a fair deal.**

**Use the site to:**

- shop around with our comparative tables – including mortgages, pensions and ISAs;
- check whether a particular firm or person is authorised – if you use an authorised firm you have access to complaints procedures and compensation schemes if things go wrong;
- order any of our wide range of consumer publications;
- report any misleading financial advertising;
- see explanations of financial products in plain English;
- read recent alerts we have issued.

If you have difficulty with this material in its current format, please call the Consumer Helpline on 0845 606 1234 (call rates may vary).

To help us maintain and improve our service, we may record or monitor calls.