

Appendix 1

Handling Mortgage Endowment Complaints

1.3 Remortgaging

- App 1.3.1** **G** As already noted, the basic objective of redress is to put the complainant, so far as is possible, in the position he would have been in if the inappropriate advice or other breach had not occurred: for their part, the complainants should take such reasonable steps as they can to limit loss once they are informed of the position they are in because of the failure of advice at the time of sale.
- App 1.3.2** **G** In practice, it is likely to be appropriate for a complainant whose complaint has been upheld to convert to a repayment mortgage, whether or not there is financial loss to date. It will normally be possible for complainants to do so without incurring unreasonable cost. Conversion will of course mean that the complainant no longer has a *policy*.
- App 1.3.3** **G** *Firms* should therefore in the case of upheld complaints inform complainants that it is likely to be appropriate and necessary for them to convert to a repayment arrangement.
- App 1.3.4** **G** *Firms* should make it clear that they will bear the costs of conversion if the rearrangement is made with the existing lender and to the equivalent repayment mortgage. If a complainant is not willing to rearrange with the existing lender, then the costs to be paid by the *firm* should normally be limited to those which would have been payable had the rearrangement been made with the existing lender and to the equivalent repayment mortgage. If it is not possible to rearrange with the existing lender, for example, if the lender has a closed book, the *firm* should pay all costs which are not unreasonable in completing the rearrangement with an alternative provider. Such costs might include an administration fee for changing the existing arrangement, redemption penalty, arrangement fee for the new mortgage and the reasonable cost of further advice if necessary.

- App 1.3.5** **G** If the "new" mortgage is, in fact, arranged at a lower interest rate than the existing loan, the benefit to the complainant should usually be disregarded, as it is always open to complainants to change their underlying mortgage arrangements at any time.
- App 1.3.6** **G** If the "new" mortgage is arranged at a higher interest rate than the existing loan, the increased payment should not normally be taken into account in calculating any payment to be made to the complainant.
- App 1.3.7** **G** If the complainant takes the opportunity to increase his loan on the occasion of the remortgage, the expenses which a *firm* pays by way of compensation should be paid by reference to the capital sum due under the "old" loan.
- App 1.3.8** **G** As stated, one aspect of the conversion process is the disposal of the endowment *policy*. The standard approach to assessing loss requires *firms* to calculate loss using the *surrender value*. However, once loss is established on this basis and *firms* move to deal with redress, they may wish to consider whether there is a role for the *policy's* 'market value' within the traded endowment *policy* (TEP) market.
- App 1.3.9** **G** A *firm* may arrange the sale of the endowment *policy* on the traded endowment market, provided the full implications of such a course of action are explained to the complainant and his express consent is obtained for the firm to arrange the sale. This includes informing the investor that he will continue to be the life assured under the *policy*. The complainant should be informed that such an arrangement may reduce or eliminate the amount of redress actually borne by the *firm*, but not so as to affect the amount of redress he receives.
- App 1.3.10** **G** In the event that a complainant is willing to pursue this option, a *firm* should first have assessed the complainant's loss using the approach set out in this appendix, and the minimum amount the complainant should receive under such a sale arrangement is the sum representing the position the complainant should have been in under this appendix together with the reimbursement of remortgaging costs. In order to ensure the process does not delay the provision of redress, the *firm* must pay this minimum sum immediately the complainant agrees to the sale arrangement. To the extent that the net amount realised by the sale of the *policy* on the traded endowment market exceeds the total redress due to the complainant, this greater sum is to be paid to the complainant on completion of the sale. If the amount realised by the sale of the *policy* on the traded endowment market is less than the total redress due to the complainant, the *firm* will be responsible for the amount of the shortfall.

- App 1.3.11** **G** Example of assessment set out at 1.3.10

The following example illustrates the position:

Surrender value	£10,000	TEP value	£16,000
Loss calculated by standard approach	£5,000		
Remortgaging costs	£300		
Total	<u>£15,300</u>		
Complainant receives £16,000 all ultimately funded from the TEP sale.			

The following example illustrates the position:

Surrender value	£10,000	TEP value	£13,000
Redress calculated by standard approach	£5,000		
Remortgaging costs	£300		
Total	<u>£15,300</u>		

Complainant receives £15,300, £13,000 ultimately funded from the TEP sale and £2,300 ultimately funded from the *firm*.