Appendix 1 Handling Mortgage Endowment Complaints

1.2 The standard approach to redress

App 1.2.1 G If there has been a failure to give compliant and proper advice, or some other breach of the duty of care, 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 had not been given, or the other breach had not occurred. In many cases, although it must be a matter for inquiry and assessment in each individual case, this position is likely to have resulted in the complainant taking a repayment mortgage with accompanying life cover, and this is the assumption which underpins the standard approach to redress.

App 1.2.2 G Unless the contrary is demonstrated, it should be assumed that the complainant could have afforded the mortgage on a repayment basis.

App 1.2.3 G The measure of any financial loss suffered by the complainant will be arrived at by:

(1) comparing the complainant's current capital position with the position he would have been in had the loan been a standard repayment mortgage as at the date the *firm* decides to regard the complaint as justified; and

(2) comparing the cost of the complainant's actual monthly outgoings and those he would have made had his loan been on a standard repayment basis as at the date the *firm* decides to regard the complaint as justified.

App 1.2.4 G In some cases other factors may be included in the overall calculation, for example, if mortgage arrangement fees were waived by agreement on the occasion of the endowment *policy* being taken out.

App 1.2.5 G If, on comparing the complainant's current endowment position with the repayment alternative, the *surrender value* of the endowment *policy* exceeds the amount of the capital which the complainant would have repaid through the

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repayment method, then, at the point of the assessment, the complainant has suffered no capital loss (but the complainant may suffer some compensatable consequential loss associated with changing the mortgage arrangements to the repayment basis, see DISP App 1.3). Conversely, if the capital which would have been repaid on the repayment basis exceeds the *surrender value*, there is a capital loss represented by the difference between the two amounts.

App 1.2.6 G If the complainant's endowment mortgage outgoings exceed the equivalent cost for the repayment method, the complainant should be compensated for the higher payments in addition to any loss on the *surrender value* and capital repaid comparison. This means, for example, that if the endowment arrangement has been more expensive, this may result in compensatable loss even though the capital repayment against surrender comparison may be favourable to the endowment.

App 1.2.7 G If the total cost of the outgoings for the endowment calculation is less than that for the repayment calculation, the "savings" should be brought into account in assessing any overall loss unless it is unreasonable to do so.

App 1.2.8 G It is unlikely to be reasonable to bring "savings" into account in circumstances where, at the time of the sale of the *policy*:

(1) the complainant was advised or informed orally or in writing that he would have lower outgoings than would be the case under a repayment mortgage, whether or not the difference was quantified; and

(2) the complainant has dissipated those "savings" on the strength of this advice or information.

App 1.2.9 G The circumstances in which it may be appropriate to take some or all of the "savings" into account are those where, subject to DISP App 1.2.7 G, the complainant is of "sufficient means" so that it is reasonable for a *firm* to assume that the "savings" have contributed to those means.

App 1.2.10 G Where it is otherwise reasonable for "savings" to be brought into account, determining whether or not a complainant is of sufficient means and, if so, to what extent the "savings" are to be brought into account, will have to be based on the facts of each individual case. It will be appropriate to require the complainant to provide adequate information to assist the *firm* in this task. Matters to be taken into account in this assessment may include:

(1) the length of the remaining mortgage term;

(2) the complainant's current and prospective resources;

(3) the amount of the capital shortfall in proportion to the endowment outgoings balance.

App 1.2.11 G *Firms* may adopt streamlined processes to assist them in individual assessments of "sufficient means", but will have to satisfy themselves that the complainant's position is nevertheless protected. *Firms* will need to ensure that the complainant is given an opportunity to make an informed choice whether to accept the streamlined process, that the process itself is transparent, and that the *firm* is satisfied that the outcome would be fair to complainants.

App 1.2.12 G If a *firm* intends to make a deduction for all or any part of the lower endowment outgoings, the *firm* should explain clearly to the complainant in writing both how the 'sufficient means' test has been satisfied, including details of the information taken into account in reaching the decision, and how the deduction has been arrived at. The letter should further inform the complainant that if he is unhappy with the proposal to make a deduction, either in principle or as to the amount, he should give his reasons to the *firm*.

App 1.2.13 G If a complainant puts forward a case that it would be unreasonable for a deduction to be made, the *firm* should reach a fair and objective determination on the facts of all relevant matters including those set out at DISP App 1.2.8 G and DISP App 1.2.9 G.

App 1.2.14 G In recognition that *firms* may not wish, for practical reasons, to make individual assessments of "sufficient means", *firms* may decide not to seek to bring into account any benefit to the complainant in assessing overall compensation.

App 1.2.15 G It would not be unreasonable if a *firm* providing redress in these circumstances were to frame its offer of redress on the assumption that the complainant will agree to surrender the *policy*. However, *firms* should bear in mind that there may be circumstances where it is appropriate for the complainant to retain the *policy*, for example, where it is being retained as a savings vehicle.

App 1.2.16 G If a complainant becomes aware that he has taken out the endowment *policy* on the basis of unsuitable advice and inadequate information, he should if necessary, after taking appropriate advice, take reasonable steps to limit his loss, and may in any subsequent *claim* be unable to recover for losses which are avoidable. The complainant may have to show that he has not delayed unreasonably since becoming aware of his loss. The reasonable costs and expenses the complainant may have incurred in limiting his loss are to be taken into account in assessing his compensation. These costs and expenses are likely to include the complainant taking advice on whether he should convert from an endowment to a repayment mortgage and incurring expenses in doing so, see DISP App 1.3.

App 1.2.17 G The standard approach to redress can be illustrated by the following examples, which show how redress would be calculated in certain hypothetical but typical scenarios. (Because the examples are illustrative, round numbers have been used for 'established facts' in each example. The payments should be taken as being made monthly: *firms* should not approximate by assuming that payments are made annually. If the complainant has benefited from MIRAS, the calculations should allow for the effect of MIRAS both on the endowment mortgage and the repayment comparison.)

App 1.2.18 G Table of examples of typical redress calculations

Example 1	Capital shortfall and higher endowment outgoings

Example 2	Capital shortfall partially offset by lower endowment mortgage outgoings
Example 3	Capital shortfall more than offset by lower endowment mortgage outgoings
Example 4	Capital surplus more than offset by higher endowment mortgage outgoings
Example 5	Capital surplus partially offset by higher endowment mortgage outgoings
Example 6	Capital surplus and lower endowment mortgage outgoings
Example 7	Low start endowment mortgage

App 1.2.19 G Example 1

Example 1	
Capital shortfall and higher endowment mortgage outgoings	
Background	
Capital sum of £50,000	
25 year endowment *policy*	
Duration to date: 5 years	
Endowment *premium* per *month*: £75	
Established facts	
Endowment *surrender value*:	£3,200
Capital repaid under equivalent repayment mortgage:	£4,200
Surrender value less capital repaid:	(£1,000)
Cost of converting from endowment mortgage to repayment mortgage:	(£200)
Total outgoings to date	
Equivalent repayment mortgage (capital + interest + DTA life cover):	£21,950
Endowment mortgage (endowment *premium* + interest):	£22,250
Difference in outgoings (repayment - endowment):	(£300)
Basis of compensation	
In this example, the complainant has suffered loss because the *surrender value* of the endowment is less than the capital repaid and also because of the higher total outgoings to date of the endowment mortgage relative to the repayment mortgage. The two losses and the conversion cost are therefore added together in order to calculate the redress.	
Redress	
Loss from *surrender value* less capital repaid:	(£1,000)
Loss from total extra outgoings under endowment mortgage:	(£300)
Cost of converting to repayment mortgage:	(£200)
Total loss:	(£1,500)
Therefore total redress is:	**£1,500**

App 1.2.20 G Example 2

Example 2	
Capital shortfall partially offset by lower endowment mortgage outgoings	
Background	
Capital sum of £50,000	
25 year endowment *policy*	
Duration to date: 5 years	
Endowment *premium* per *month*: £60	
Established facts	
Endowment *surrender value*:	£2,500
Capital repaid under equivalent repayment mortgage	£4,200
Surrender value less capital repaid under equivalent repayment mortgage:	(£1,700)
Cost of converting from endowment mortgage to repayment mortgage	(£300)
Total outgoings to date:	
Repayment mortgage (capital + interest + DTA life cover):	£21,950
Endowment mortgage (endowment *premium* + interest):	£21,350
Difference in outgoings (repayment - endowment):	£600
Basis of Compensation	
In this example, the complainant has suffered loss because the *surrender value* of the endowment is less than the capital repaid but has gained form the lower outgoings of the endowment mortgage to date. In calculating the redress the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.	
Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings	
Loss from *surrender value* less capital repaid:	(£1,700)
Gain from total lower outgoings under endowment mortgage:	£600
Cost of converting to repayment mortgage:	(£300)
Net loss:	(£1,400)
Therefore total redress is:	**£1,400**
Redress if it is unreasonable to take account of gain from lower outgoings	
Loss from *surrender value* less capital repaid:	(£1,700)
Gain from total lower outgoings under endowment mortgage:	Ignored*
Cost of converting to repayment mortgage:	(£300)
Net loss taken into account:	(£2,000)
Therefore total redress is:	£2,000
* In this example, and also in Examples 3, 7, 8 and 9, the complainant's circumstances are assumed to be such as to make it unreasonable to take account of any of the gain from lower outgoings.	

App 1.2.21 G Example 3

Example 3

Capital shortfall more than offset by lower endowment mortgage outgoings

Background

Capital sum of £50,000

25 year endowment *policy*

Duration to date: 8 years

Endowment *premium* per *month*: £65

Established facts

Endowment *surrender value*:	£7,300
Capital repaid under equivalent repayment mortgage:	£7,600
Surrender value less capital repaid:	(£300)
Cost of converting from endowment mortgage to repayment mortgage:	(£200)

Total outgoings to date:

Repayment mortgage (capital + interest + DTA life cover):	£34,510
Endowment mortgage (endowment *premium* + interest):	£33,990
Difference in outgoings (repayment - endowment):	£520

Basis of Compensation

In this example, the complainant has suffered loss because the surrender value of the endowment is less than the capital repaid but has gained from the lower total outgoings of the endowment mortgage. In calculating redress the gain may be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to take account of the gain.

Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings

Loss from *surrender value* less capital repaid:	(£300)
Gain from total lower outgoings under endowment mortgage:	£520
Cost of converting to repayment mortgage:	(£200)
Net gain:	£20
Therefore, there has been no loss and no redress is payable.	

Redress if it is unreasonable to take account of gain from lower outgoings

Loss from *surrender value* less capital repaid:	(£300)
Gain from total lower outgoings under endowment mortgage:	Ignored
Cost of converting to repayment mortgage:	(£200)
Net loss taken into account:	(£500)
Therefore total redress is:	**£500**

App 1.2.22 G Example 4

Example 4	
Capital surplus more than offset by higher endowment mortgage outgoings	
Background	
Capital sum of £50,000	
25 year endowment *policy*	
Duration to date: 8 years	
Endowment *premium* per *month*: £75	
Established facts	
Endowment *surrender value*:	£7,800
Capital repaid under equivalent repayment mortgage:	£7,600
Surrender value less capital repaid:	£200
Cost of converting from endowment mortgage to repayment mortgage:	(£250)
Total outgoings to date:	
Repayment mortgage (capital + interest + DTA life cover):	£34,510
Endowment mortgage (endowment *premium* + interest):	£34,950
Difference in outgoings (repayment - endowment):	(£440)
Basis of Compensation	
In this example, the complainant has suffered loss because of the higher total outgoings to date of the endowment mortgage but has gained because the *surrender value* of the endowment is greater than the capital repaid. Since the sum of the loss and the conversion cost is greater than the gain, the redress is calculated as the difference between the two.	
Redress	
Gain from *surrender value* less capital repaid:	£200
Loss from total extra outgoings under endowment mortgage:	(£440)
Cost of converting to repayment mortgage:	(£250)
Net loss:	(£490)
Therefore total redress is:	**£490**

App 1.2.23 G Example 5

Example 5
Capital surplus partially offset by higher endowment mortgage outgoings
Background
Capital sum of £50,000
25 year endowment *policy*
Duration to date: 10 years
Endowment *premium* per *month*: £75

Example 5	
Established facts	
Endowment *surrender value*:	£11,800
Capital repaid under equivalent repayment mortgage	£9,700
Surrender value less capital repaid:	£2,100
Cost of converting from endowment mortgage to repayment mortgage:	(£300)
Total outgoings to date:	
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment *premium* + interest):	£47,500
Difference in outgoings (repayment - endowment):	(£700)
Basis of Compensation	
In this example, the complainant has suffered loss because of the higher total outgoings to date of the endowment mortgage relative to the repayment mortgage. However the sum of this and the conversion cost is less than the complainant's gain from the difference between the *surrender value* of the endowment and the capital repaid. Thus no redress is payable.	
Redress	
Gain from *surrender value* less capital repaid:	£2,100
Loss from total extra outgoings under endowment mortgage:	(£700)
Cost of converting to repayment mortgage:	(£300)
Net gain:	£1,100
Therefore, there has been no loss and no redress is payable.	

App 1.2.24 G Example 6

Example 6	
Capital surplus and lower endowment mortgage outgoings	
Background	
Capital sum of £50,000	
25 year endowment *policy*	
Duration to date: 10 years	
Endowment *premium* per *month*: £65	
Established facts	
Endowment *surrender value*:	£10,100
Capital repaid under equivalent repayment mortgage	£9,700
Surrender value less capital repaid:	£400
Cost of converting from endowment mortgage to repayment mortgage:	(£200)

Example 6	
Total outgoings to date:	
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment *premium* + interest):	£46,300
Difference in outgoings (repayment - endowment):	£500
Basis of Compensation	
In this example, the complainant has gained both because the *surrender value* of the endowment is greater than the capital repaid and because of the lower total outgoings of the endowment mortgage. These gains are larger than the cost of converting to a repayment mortgage. Thus no further action is necessary.	
Redress	
As there has been no loss, no redress is payable.	

App 1.2.25 G Example 7

Example 7	
Low start endowment mortgage	
Background	
Capital sum of £50,000	
25 year endowment *policy*	
Duration to date: 10 years	
Endowment *premium* per *month*: starting at £35 in first year, increasing by 20% simple on each *policy* anniversary, reaching £70 after five years and then remaining at that level.	
Established facts:	
Endowment *surrender value*:	£8,200
Capital repaid under equivalent repayment mortgage:	£9,700
Surrender value less capital repaid:	(£1,500)
Cost of converting from endowment mortgage to repayment mortgage:	(£250)
Total outgoings to date	
Repayment mortgage (capital + interest + DTA life cover):	£46,800
Endowment mortgage (endowment *premium* + interest):	£45,640
Difference in outgoings (repayment minus endowment):	£1,160
Of this difference in outgoings, £800 arose in the five year period when the complainant was paying a low endowment *premium*.	
Basis of compensation	
In this example, the complainant has suffered loss because the *surrender value* of the endowment is less than the capital repaid but has gained from the lower total outgoings of the endowment mortgage. As in Example 3, in calculating redress the whole of the gain should be offset against the loss unless the complainant's particular circumstances are such that it would be unreasonable to do so.	

Example 7

However, unlike Example 3, in a low start endowment mortgage the complainant may have chosen to pay a lower than usual *premium* in the early years (this would need to be established on the facts of the case). Where it has been established that the complainant chose to make lower payments, even if it is unreasonable to take account of the whole of the gain from total outgoings, the gain from paying a lower *premium* during the low start period is normally taken into account. In such cases the redress is calculated as the capital loss plus the conversion cost minus the total amount by which repayment mortgage outgoings would have exceeded the actual low start endowment mortgage outgoings during the five year low start period.

Redress if it is not unreasonable to take account of the whole of the gain from lower outgoings

Loss from *surrender value* less capital repaid:	(£1,500)
Gain from total lower outgoings under endowment mortgage:	£1,160
Cost of converting to repayment mortgage:	(£250)
Net loss:	(£590)
Therefore total redress is:	**£590**

Redress if it is unreasonable to take account of gain from lower outgoings

Loss from *surrender value* less capital repaid:	(£1,500)
Gain from total lower outgoings during low start period of endowment mortgage:	£800
Cost of converting to repayment mortgage:	(£250)
Net loss taken into account:	(£950)
Therefore total redress is:	**£950**

Interest rates

App 1.2.26 G In fixing a repayment comparator, it would be appropriate to have regard to the repayment quotation actually provided at the time of sale. If more than one repayment quotation was obtained, the comparison should be with the quotation which approximates most closely to the terms of the endowment mortgage actually taken. If a repayment quotation was not provided, or is not now available, it should be assumed that the interest rate for the repayment comparison is the same as that of the mortgage endowment arrangements. *Firms* will then need to replicate interest rate changes throughout the lifetime of the comparator mortgage.

Life cover

App 1.2.27 G Unless after due inquiry there is clear evidence that the complainant with a mortgage endowment had no foreseeable need for life cover at the time the endowment arrangements were concluded, in the overall comparison between a repayment mortgage and an endowment mortgage the monthly outgoings under the repayment will include the premium for the decreasing term assurance that would have been required. This adjustment for the cost of life cover is only to be made if the *firm* is undertaking a comparison of monthly outgoings. It is not appropriate to deduct the cost of life cover from the capital loss calculation, as this would constitute double counting.

App 1.2.28 G If a deduction is to be attributed to the provision of life cover, the appropriate approach is to assume that the complainant took out the insurance quoted in the alternative repayment quotation provided at the time of the sale. If the quotation is not available, the deduction should be at the rates that would have been quoted at the time.