

Appendix 1

Handling Mortgage Endowment Complaints

1.1 Introduction

- App 1.1.1** **G** This appendix sets out the approach and standards which *firms* should use when investigating complaints relating to the sale of endowment *policies* for the purposes of achieving capital repayment of a mortgage. It is not intended to be comprehensive. It is primarily concerned with the assessment of whether the complainant may have suffered financial loss, and if so, how much that loss is, and therefore what amount a *firm* should consider offering by way of fair and appropriate compensation in circumstances where the *firm's* investigation of a complaint reveals:
- (1) the complainant has received negligent *advice on investments*; and
 - (2) if this advice had not been negligent, either:
 - (a) the complainant would be unlikely to have acquired the endowment policy but instead would have taken out the same amount of loan on a repayment basis; or
 - (b) the complainant would have acquired an endowment mortgage for a shorter term.
- App 1.1.2** **G** There will also be cases where a *firm* will conclude after investigation that, notwithstanding its own failure to give compliant and proper advice, the complainant would nevertheless have proceeded with the endowment policy as sold, in which case no compensation will be due.
- App 1.1.3** **G** This appendix only addresses how *firms* should approach the assessment of loss and compensation where negligence on the part of the *firm* is established.
- App 1.1.4** **G** This appendix is relevant both to the obligations arising under the complaints handling *rules* contained in ■ DISP 1 and to the *FCA's* approach to the supervision of *firms*.

- App 1.1.5** **G** This appendix is also relevant to complaints which the *Ombudsman* may investigate under the Compulsory Jurisdiction or *Voluntary Jurisdiction* of the *Financial Ombudsman Service* established under Part XVI of the *Act* (The Ombudsman Scheme).
- App 1.1.6** **G** Before proceeding to assess the extent of a complainant's financial loss, a *firm* will usually have completed the following stages:
- (1) gathering all relevant facts and information;
 - (2) making a fair and objective assessment whether it has failed to comply with a relevant duty owed to the complainant; and
 - (3) assessing whether any failure of duty by it was in the circumstances a material failure in the sense that if it had not occurred the complainant would have been likely to have acted differently.
- App 1.1.7** **G** If it is concluded that the complainant would have acted differently, the *firm* should proceed to assess any direct or consequential loss.
- App 1.1.8** **G** Nothing in this appendix relieves *firms* of the obligation to consider the particular facts and circumstances of each complaint and to consider whether the assessment of loss and compensation should, in the light of those facts and circumstances, be carried out on a different basis. If, however, the facts and circumstances make it appropriate to do so, the *FCA's* expectation is that *firms* will apply the approach and standards set out in this appendix, and where they do not, the *FCA* is likely to require them to demonstrate the adequacy and completeness of their alternative approach.