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5 Things That Will Improve Your Chances Of A Successful Investment Mis-selling Claim

1 Compile as much evidence as possible

To succeed in a pension or investment mis-selling claim and get your losses back, it is important you have strong written evidence that you have been treated unfairly. This can include emails, letters and notes of telephone calls and meetings and not just the documents from the advisor or financial business you are complaining about.

Many of our cases involve a financial advisor arranging a transfer of a pension, for example, a workplace pension into a self-invested personal pension (SIPP) or into a personal pension. The compensation bodies that deal with most complaints are the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS). They will look at the original "fact find" (normally a questionnaire) to find out what your financial objectives were and your attitude to investment risk.

They will also look at the financial advisor's suitability letter that summarises these objectives and outlines why the recommended investment was suitable.

Most pension and investment mis-selling cases are won because;

1. The pension or savings transfer was unnecessary and the investment was unsuitable i.e. the investment was outside the customer's risk category.
2. The investment was not properly diversified across different asset groups and therefore too risky.
3. The investment was an unregulated collective investment scheme (UCIS). This is where several investors pool their money into a scheme that has not been authorised by the regulator, the Financial Conduct Authority (FCA). It breaks the rules when it is promoted to members of the public that were not (1.) High net worth investors or (2.) Sophisticated investors (this means a history of investing in high-risk investments).

We have seen many cases where fact finds have not been completed correctly by advisors and have been tailored to justify the recommended investment. Where there is no other evidence, many compensation complaints have been rejected on the basis of erroneous information in fact find or suitability letters that were not properly read by customers.

It is often therefore very important to have kept copies of letters, emails and notes of phone calls with the financial business that can demonstrate what the customer's real attitude to investment risk was. The rules require customers to complain directly to the financial company before going to FOS. We think it is important to be legally represented at this stage.

We have seen many cases of financial companies taking further information from customers in the complaint process and using that to support their rejection of a complaint. When customers later complain to FOS, this can prejudice how the complaint is looked at by FOS.

2 Know the time limits

If you have lost money in a pension or investment, the rules require you first complain to the financial advisor who recommended and arranged the investment.

For the reasons outlined in point 1 above, we think it is really important to have legal representation when you first complain.

WHY?

Well because how you present the complaint and what you say (especially answers to questions the financial firm may frame as part of their complaints process) will decide the outcome and may prejudice a later complaint you make to FOS.

When the financial firm who advised and arranged the investment have rejected your complaint, this is known as a "final response" letter. ***The rules specify that you must bring your complaint to the Ombudsman (FOS) within six months of the date of the final response letter.*** FOS apply these rules strictly and there are rare circumstances in which you could bring a complaint after this. If you are outside these six months, your only recourse might be bringing a claim through the Courts which have their own lengthier time limits (see point 4(d) below).

3 Get legal representation

It is so important that complaints are properly framed and presented.

In many cases we see, the fact find questionnaire and suitability letter of the financial advisor often support their defence that the customer's attitude to investment risk was properly considered and the recommended investment was therefore suitable. To counter this, the customer needs their own evidence (emails, letters, notes of phone calls and meetings) to show their attitude to risk might have been mis-categorised AND the investment risk was not properly explained.

As legal representatives, we know the relevant rules and regulations inside out. The important ones are the Financial Services and Markets Act 2001 (FSMA) and the FCA Conduct of Business Sourcebook Rules (known as COBS).

We also know the law of misrepresentation. This is the legal term for false or negligence misleading statements. We often find reassuring statements made by financial advisors in meetings or phone calls are not contained in the documents. As legal representatives, we scrutinise the customer's documents and evidence and present the complaint referring to all possible rule breaches and misrepresentations.

This can be seen in our results. ***We succeed in over 95% of complaints.*** FOS publish complaints to uphold rates and for our largest area of work, pension mis-selling, only 60% of these complaints are upheld by FOS. That is 4 out of 10 that are refused. When some of these refused customers approach us, we see the rejection is often because the complaint was not presented properly.

4 Understand the different forums for mis-selling claims

There are various bodies that pension and investment mis-selling claims can be submitted to.

A) Financial Ombudsman Service (FOS)

This is the FCA's main complaints handling body. They follow the FCA's Principles of Business, especially financial firms' duty to "treat customers fairly". They apply the sub-rules contained in the COBS rules and award compensation to victims if they find rule breaches.

The maximum awards are capped at between £150,000 for older cases and up to £415,000 if the mis-selling and complaint were more recent. For the last 10 years, an accepted award is in final settlement and a customer cannot, for example, go to Court to recover other losses above the cap. FOS requires customers to complain to the financial firm and advisor first and will not consider complaints 6 months after the advisor's final response letter.

It is a free service. Whether they uphold or reject the complaint, the customer does not pay. However, it has drawbacks as described above. There is a maximum cap on compensation, there are time limits and it does not give as much weight to oral evidence (for example, what was said in phone calls and meetings) as opposed to other forums, like the courts (see below). This is particularly true if the documents contradict the oral evidence.

B) The Financial Services Compensation Scheme (FSCS)

This is the compensation body of last resort where the advisor or financial firm is in "default". This means that it is not meeting its regulatory duties and paying its fees. This is usually because it has or is about to cease trading, typically because of financial difficulties. FOS will not consider complaints against such firms, and the FSCS is the correct body to claim against. It will generally apply the same principles and rules as FOS, but compensation is capped at £85,000, even if the customer lost more money.

C) The Pension Ombudsman

Many financial mis-selling claims involve a pension and this body will consider such complaints. However, this is only if it relates to a workplace pension. It will not consider claims for losses arising in a personal or self-invested pension unless the claim arose from advice to transfer out of a workplace pension.

Given its concentration on the rules relating to the administration of workplace pensions, it has been known to take a very narrow interpretation of the rules relating to pension advice or the duties pension operators owe to customers.

We have seen cases where FOS have upheld a claim for pension losses arising from poor financial advice, and the Pension Ombudsman has rejected a very similar complaint. In our opinion, it is a body best avoided for mis-selling claims. It is very important to remember that if one body rejects a complaint, you cannot complain about the same case to another body. However, the Courts are an exception, see below. ***You generally only get one shot at a complaint, and therefore it is important to present the claim as best you can the first time.***

D) The Courts

Aside from the above statutory bodies, customers have an inherent right to pursue a claim for losses in court. This is usually the County Court or High Court in higher value claims. Financial advisors owe customers a legal duty of care to be reasonably competent in their advice, and the documents signed with a financial company amount to a contract. Customers can bring a claim based on misrepresentation (false or negligence statements), negligence advice and/or breach of contract. These are not normally matters considered by FOS and the other statutory bodies. It allows the courts to consider more far-reaching evidence, including witness statements which FOS would not usually consider.

While we pursue most of our claims at FOS, there may be cases where the courts are more appropriate. For example, higher-value cases and those outside FOS's time limits. The courts generally allow 6 years from the transaction to bring a claim. Finally, the courts may be the only option where FOS have rejected complaints based on a narrow interpretation of the rules.

The importance of this last point was highlighted in our recent landmark case of Adams v Options SIPP. We were the lead solicitors acting for Mr Adams, the lead Claimant of hundreds of other pension mis-selling victims. Many of these victims had their claims rejected by FOS, who took a narrow view of the duties owed by Self-invested Personal Pension (SIPP) operators to their customers.

Mr Adams and other clients had no choice but to pursue a court action. We were unsuccessful in the High Court but won in the Court of Appeal. The Court provided a modern interpretation of the rules dating back 20 years and how compensation should be calculated, to the benefit of thousands of pension mis-selling victims, see below. Mr Adams and our group clients were compensated, and FOS and FSCS now have to follow this Court decision and are in the process of awarding compensation to thousands of other SIPP customers.

5 Be aware of the rules

FOS and the other compensation bodies will apply the FCA's Principle of Business "treat customers fairly". However, "fairly" is a broad term and is open to different definitions. Many unrepresented complainants will describe what happened in their case without quoting any rule breaches. This gives FOS a very wide discretion to uphold or reject a complaint.

Many clients will approach us after having their own complaint rejected. It can often be too late to do anything at this stage unless we are able to find new information not previously considered. We also get approaches from clients who have had their failed complaint presented by claims management companies. Unlike specialist solicitors, our experience is they often use boilerplate letters with standard allegations not tailored to what specifically happened to the client.

It is much better to specify in your complaint what went wrong i.e., you lost money because the financial advice was wrong and inappropriate and the investment therefore unsuitable AND to say exactly what rule breaches occurred at each point. It is far better to make a positive case broken down into separate events and rule breach allegations. The fact that FOS have to consider each point and respond to each one only increases your chances of success.

It can only help because if they are to reject your complaint, they would have to give reasons why each alleged rule breach is wrong. As specialist solicitors, we know the rules inside out. We have been arguing these rules for 15 years. Indeed, we have had a say in how they are interpreted. In our landmark case of Adams v Options, the FCA were granted permission to intervene and make representations in Court supportive of our client's case against the SIPP operator.

That case also highlights how FOS are competent at applying the FCA Principles of Business and COBS rules but can have difficulties in interpreting the primary laws such as FSMA. In that case, Mr Adams and hundreds of pension holders were cold-called by unregulated introducers and persuaded to transfer their pensions into SIPPs that were then invested in high-risk investments such as self-storage facilities. Other similar group claims we have dealt with involved SIPPs being invested into high-risk foreign property, carbon offset credits, Australian farmland and South American plantations.

These introducers were not qualified financial advisors and were not authorised by the FCA as they should have been. It is unlawful (known as a breach of the "general prohibition") to advise on or arrange investments without being authorised. Our case against the SIPP operator was that they had not undertaken proper due diligence in dealing with these introducers who sent them business. This facilitated the devastating losses our clients suffered from their entire pensions being wiped out in spite of the FCA reminding SIPP operators for many years to make proper checks on who they were receiving business from and whether the investments being advised were suitable for customers.

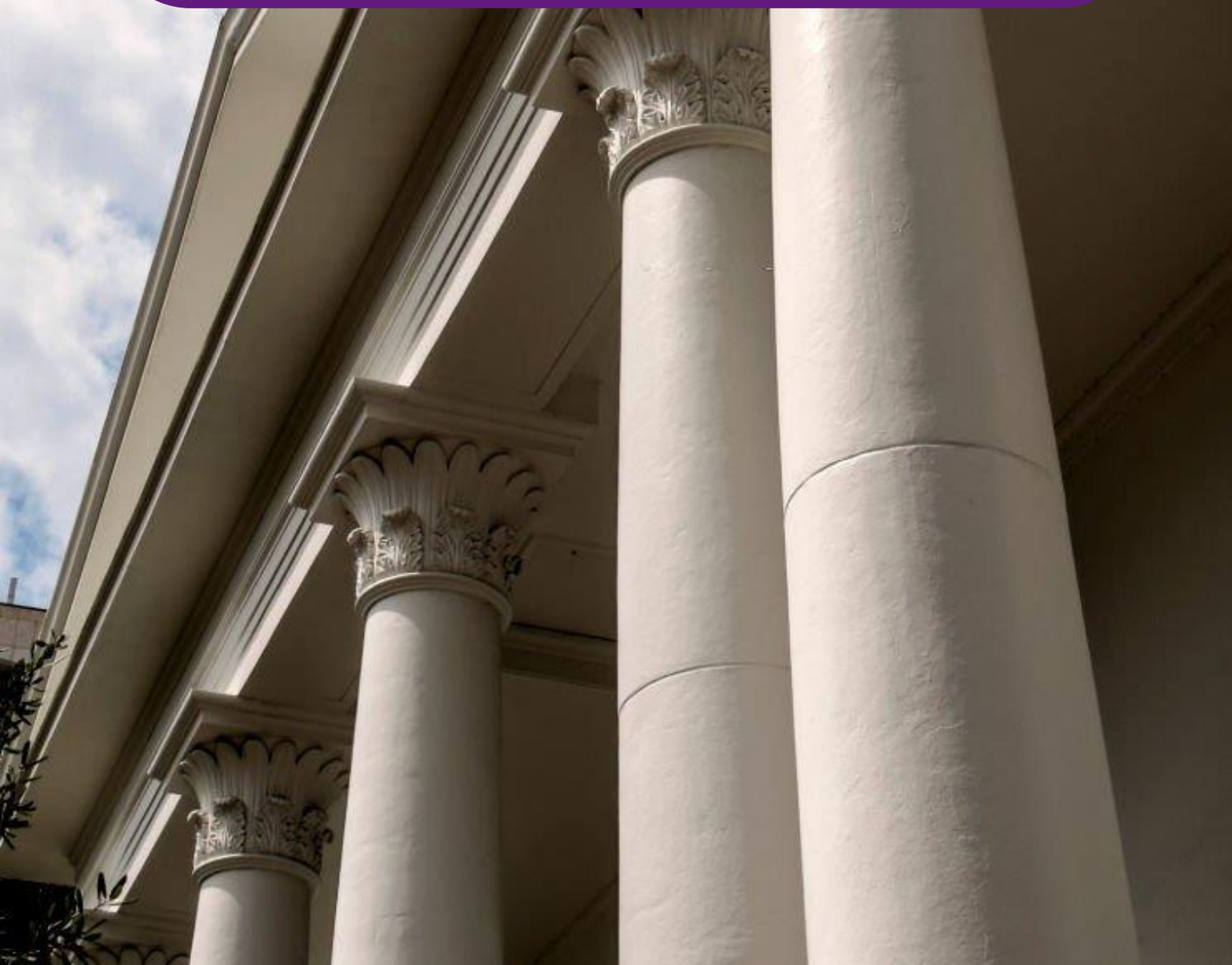
Section 27 of FSMA provides that where there has been a breach of the general prohibition, the investment should be unwound and the customer restored to the financial position they would have been in had the investment not taken place. We argued that the proper application of this rule meant that not only should our clients receive back the lost money they have put into the SIPP but also the lost returns they would have made if their pension had stayed with the original provider in a mainstream pension investment. The Court of Appeal agreed with us, and this ruling has now been followed by FOS and the FSCS. Thousands of mis-selling victims are now being compensated on this new basis.

NEXT STEPS

Please do not hesitate to contact Tim Wixted at Wixted & Co. Solicitors for a free consultation to see if we could act for you on our “no win, no fee” basis.

5 minutes of your time spent now could make a huge difference to your future financial security.

ACT FAST, DO NOT DELAY. PROTECT YOUR FINANCIAL SECURITY FOR TOMORROW BY ACTING TODAY.



ABOUT THE AUTHOR

Tim Wixted is a solicitor with over 27 years qualification who specialises in litigation. Since founding Wixted & Co in 2001, the practice has recovered over £100 million in compensation for thousands of clients. Tim has focused on Financial Services professional negligence since 2008, handling and overseeing hundreds of cases, including notable group actions against pension operators, banks and financial advisors, and the landmark Adams v Options Court of Appeal case.

A regular contributor to the press and radio on pension and investment mis-selling, Tim has also given conferences presentations on the subject. He is a part-qualified IFA (Independent Financial Advisor) which provides him greater insight into financial services negligence and mis-selling. He is also a qualified New York State lawyer, currently non-practising.

For a free initial discussion, please email **twixted@wixtedandco.co.uk** or call **0808 164 6696** and ask to speak to **Tim Wixted** in relation to a new financial mis-selling claim.