

IT'S OVER

Financial advisers are feeling a lot more confident following a landmark ruling in the Court of Appeal. This event is centred around a case which involved advice given by In Focus Asset Management and Tax Solutions to their clients Mr and Mrs Clark. The crux of the complaint to the Financial Ombudsman was that the adviser gave unsuitable advice. The Court of Appeal ruling brought clarity to the issue of whether a consumer can accept a FoS award and then try to sue in court for additional redress. This now means that for consumers they have a clear-cut choice.

They can either accept an award from the FoS or reject it and bring court proceedings. For advisers this means greater certainty on the extent of their liability claims. It appears that if the judgement had gone against the advisory firm, this would mean all such firms could face open ended compensation claims which would in turn impact on their professional indemnity insurance. The judge confirmed that the case hinged on “a doctrine of merger”, a legal principle which holds that a person cannot receive more than one judgement for the same case. The lesson here is that when responding to complaints from customers, advisory firms should ensure their decision letters cover all relevant complaints involved, to reduce the risk of customers bringing subsequent court proceedings. This is obviously good news for financial advisers, as the last thing they need right now is for professional indemnity insurance premiums to rise dramatically because of an open cheque-book policy authorised by the courts. The other good news for advisers is that once a complaint has been determined by the FoS, accepted by the customer and compensation paid, then the case is over!

Clearly this judgement means that a client cannot enact fresh proceedings if they are based on the same cause of action, so a complainant cannot use proceedings to top up his award for that same claim. Insurers will be relieved by the decision also, as it will now make it prohibitively expensive for investors to pursue claims through the courts, as there would have to be quite substantial cases to warrant the litigation costs.

There are likely to be future cases of dispute however this ruling gives a clear steer to advisory firms as to the requirement to ensure they cover all relevant issues in their response to FoS over any complaints to reduce the risk of customers bringing such subsequent court proceedings after the FoS ruling. If they attend to this, it is then very difficult to go to court with additional claim on the same facts giving the advisory firm an element of finality to the complaint procedure.

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