ombudsman news

essential reading for people interested in financial complaints
– and how to prevent or settle them

Natalie Ceeney, chief executive and chief ombudsman

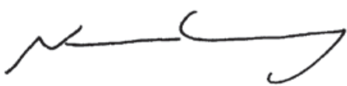
welcome to our
100th issue

Even before I joined the ombudsman service I was aware of *ombudsman news* and – through reading it – gained a fair idea of what the organisation does and how it does it.

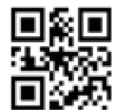
Since then I've continued to be struck by just how many people I meet – from all walks of life – who tell me they know of the ombudsman service because they are avid readers of *ombudsman news*.

The case studies, once described to me by the chief executive of a large financial services business as '*a window on the real world*', have always been particularly popular. They offer snapshots of the broad range of financial disputes we deal with – and of the many different types of businesses and consumers involved. They indicate our general approach. They also present – in a concise and easily digested format – a wealth of practical information that can help businesses and consumers avoid complaints altogether, or at least settle them effectively themselves without needing our direct involvement.

This 100th issue has four guest editors. We asked them to share their views on complaints-handling in the wider context of customer service in the financial services sector. We also invited each of them to choose their personal favourites from all the case studies we have published in *ombudsman news* over the years.



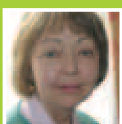
Natalie Ceeney
chief executive and chief ombudsman



scan for our previous 99 issues

Financial Ombudsman Service

our guest editors for this special 100th issue:



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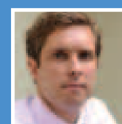

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a mistake put right at once isn't a complaint ...

by **Diana Wright**

Previously editor of the *Sunday Times* money section for ten years, **Diana Wright** is a freelance personal finance journalist. She now writes a regular column – *A Question of Money* – for the paper, dealing with readers' financial problems.

'*Please help, I am desperate and at the end of my tether.*'

I must have read those words a dozen times a week, every week, in all the years that I have been the financial agony aunt of the *Sunday Times*.

What follows has changed over the years. In the early years of this century it was endowment mortgages failing to meet their target. Today it's more likely to be problems with online banking, with money going 'missing' en route from one cash ISA provider to another, with failed or botched insurance claims, or lost or inadequate pension or assurance plans.

I try to resolve them, and usually do. But the column wouldn't be complete without a mini-sermon to the perpetrator of the crime. As the great-granddaughter of a Methodist lay-preacher, I have clearly found my vocation. The sermon changes very little. It's a challenge to find different words sometimes. But it's depressing in the extreme that I don't need to. It can be summed up maybe in one word: THINK.

If organisations genuinely thought first about the needs of their customers, and about the reasonable abilities of their customers to run their financial affairs and to understand the products and services offered, then at least half the problems I see simply wouldn't exist.

And organisations need to think about their own capabilities too. It's worse than useless setting up a 24/7 telephone helpline if the staff are underpaid, under-trained, in some cases have inadequate command of English and – as so often – have little or no power to sort matters out on their own. Equally, it's worse than useless to have sympathetic and friendly branch staff if they don't understand their own products or their own head-office systems for directing and resolving complaints.

And it can also be worse than useless to have a slick complaints procedure that kicks in at the slightest hiccup, but delays yet further the actual resolution of the problem.

Back in the pre-dawn of financial regulation, Professor Jim Gower started his first report on the regulation of financial markets with a single underlying principle: that consumers should be allowed to make fools of themselves but should not be made fools of by the financial services industry.

Much has changed since those days and that one-liner now seems woefully inadequate. But when you consider the big mis-selling scandals – from endowments, credit card and bank charges, personal pensions all the way through to PPI – and when I think of the thousands of problems, large and small, which cross my desk every year – a financial services industry that genuinely accepted and acted upon that one sentence would have avoided just about every single problem.

Mistakes will always happen, sure. But a mistake put right at once isn't a complaint. And the Financial Ombudsman Service – and I – and all those other financial journalists – would be out of a job. Just think!

'Asking me to pick out just three favourite case studies from ten years of *ombudsman news* is the modern equivalent of *peine forte et dure*.'

Asking me to pick out just three favourite case studies from ten years of *ombudsman news* is the modern equivalent of *peine forte et dure*.

Admittedly, the ombudsman service isn't attempting to crush me with heavy stones – only with copies of *ombudsman news*, almost all of which, sad to say, I have kept, since the first issue back in January 2001, featuring a fresh-faced first chief ombudsman, Walter Merricks, on the cover.

My choices of case studies are from the byways rather than highways of the publication. The first two are, frankly, elderly. But they are as relevant today as they were when first published. And every year I am able to help readers to a fairer settlement thanks to their publication. In some cases, I haven't needed to do anything at all except say: '*Go back to your provider and tell them to look at* ombudsman news *issue number so and so, case number whatever.*' And sure enough, I have shortly thereafter received a delighted email from my reader saying all has been satisfactorily resolved.

The first case study I've selected concerns the insurance settlement offered for antique jewellery after loss or theft. Offering vouchers to replace cherished and unique antique items at some modern store – or taking a 20% reduction if the insured insists on cash – is just not on, as this case study makes clear.

This topic actually featured in that very first issue, but case study 75/10 from January/February 2009 neatly encapsulates the issues. It is, of course, depressing that insurers are still trying it on – so I reckon this case study is due for another outing.

75/10

policyholder told by insurer to replace stolen antique jewellery by selecting new items from a limited list of high-street retailers

Mrs W returned home from work one evening to find that someone had broken in and stolen some of her possessions, including several small items of antique jewellery.

When she rang her insurer, it confirmed that it would meet her claim.

She told the insurer that she was particularly distressed over the loss of the antique jewellery. She was aware that the individual items were not especially valuable in themselves. However, they were unusual pieces that had been passed down in her family over four or five generations.

A few days later the insurer wrote to Mrs W about her claim. She was very upset when she read the letter, which listed a couple of well-known high-street jewellers and a department store. The insurer told her to obtain replacements for the stolen jewellery at any of the shops on the list.

Mrs W told the insurer that its response to her claim was unacceptable. She said it was '*ludicrous*' to suggest that the retailers it had listed could supply suitable replacements for her antique jewellery.

Initially, the insurer refused to change its stance. Mrs W said she wanted a cash settlement, so that she could choose where to shop. She said this was the only way she would have any chance of finding jewellery of a similar style and quality to the stolen items.

Eventually, the insurer agreed to her request. However, it said the amount would be 20% less than the amount it had already agreed her claim was worth. This was because its initial offer reflected the preferential terms it could obtain from the suppliers on its list. Mrs W then referred her complaint to us.

complaint upheld

We told the insurer we were surprised to learn of the approach it had taken in this case. Our views on what is reasonable – where an insurer has to decide whether to repair or replace an item, or offer a cash settlement – are well established. Indeed this topic featured in an *ombudsman news* article as long ago as October 2001.

We upheld Mrs W's complaint. We told the insurer to pay her a cash settlement equal to the full cost of replacing the jewellery. We said it should not deduct the 20% discount that it could get from its preferred suppliers. We said it should also pay Mrs W a modest sum to reflect the distress and inconvenience she had been caused by its poor handling of her claim.

ombudsman news 75/10
(January/February 2009)

> 'I've had four readers contacting me about such a scenario just in the last week.'

The second case study relates to unit-linked whole-of-life plans. Again, this may not be one of the big hitters of the ombudsman's case studies. Last year only a couple of thousand such complaints were received, as against tens of thousands of PPI cases. But I know from first-hand experience how many (now often elderly) readers have found to their dismay that what they thought was a rock-solid cornerstone of their financial planning turned out to be built on sand.

Hoping to leave decent sums to their children they find – after many years of diligently paying premiums – that the insurer suddenly demands massively increased payments – double, triple, quintuple. In many cases, this makes the policy simply unaffordable and certainly makes a mockery of their careful plans. Case study 39/3 relates one such tale and its outcome – dating back to 2004 – but I don't think this is a topic that has now faded from the scene. In fact, I have had four different readers contacting me about such a scenario just in the last week.

39/3

as a result of review, business tells customer to double his contributions to his whole-of-life policy – or accept reduced benefits

Mr B took out a whole-of-life policy from the business, as he wanted life assurance to help provide for his wife and family after his death. Ten years after the start of his policy, the business contacted Mr B to say that it had reviewed the plan and that he would have to double his contributions – or accept a significant reduction in the amount of life cover that the plan provided.

Mr B was shocked by this and he wrote to the business to complain. He said that when the business sold him the policy, it had not given any indication that it might subsequently reduce the amount of cover unless he paid increased contributions. The business rejected Mr B's complaint, telling him that the possibility that the plan would be reviewed was outlined in the plan's terms and conditions.

complaint upheld

When Mr B brought his complaint to us, we found that he had been given several confusingly similar sets of product literature, only one of which applied to his particular plan. Some of the literature he had been given referred to the fact that premiums would be 'level' in the future and suggested that they could not be altered.

The possibility of plan 'reviews' was mentioned in one of the booklets that Mr B had been given. However, the information was not given any particular prominence and the significance of the reviews was not explained in any detail, or in what we considered to be a very understandable manner.

At the time of the sale, the business's representative had written to Mr B, setting out why the whole-of-life plan had been recommended and giving a broad description of how the plan worked and of the benefits it provided. However, the letter did not mention that benefits could be altered in future or that increases in contributions were possible.

We therefore upheld Mr B's complaint. We said the business should refund the contributions he had made, and pay him an additional sum (less the cost of the life cover he had received) to compensate him for the loss of investment opportunity.

ombudsman news 39/3 (August 2004)

'The ombudsman has long history of *upholding* as many complaints as it *rejects*.'

For my third choice, I have decided to go for balance: a case that was not upheld. Some readers are convinced the Financial Ombudsman Service is '*useless*' and '*in the pockets of the industry*' (just as some finance professionals no doubt assert the precise opposite). The reality is, of course, that the ombudsman service has a long history of *upholding* as many complaints as it *rejects*. But the cases it *doesn't* uphold are just as important. If the ombudsman's not impartial, it's nothing.

Have a look at case study 72/1, regarding motor insurance. It does not make for comfortable reading. There is too much between the lines. The case may have been written up with superhuman tact, but it doesn't hide one aspect of the ombudsman service's work that I suspect most people simply aren't aware of – that its decisions can, frankly, cause significant upset among family members. How tempting, it seems to me, it must be to go for the friendly option of upholding such a complaint and hence avoid causing the family ructions you just know will otherwise ensue.

If any proof were needed that the Financial Ombudsman Service is impartial – which I simply believe, no matter what brickbats are thrown at it, from both sides – it is cases like this that I would hold up as the ultimate proof.

■ **72/1**

motor insurer declines claim for theft of car on grounds that car could not have been taken without the use of the programmed key

Mrs D's teenage son arrived home one afternoon and said her car was missing from the spot where she always left it, just outside her house. Not long afterwards the car was discovered a short distance away. It was badly damaged and appeared to have been driven off the road and to have caught fire.

The insurer turned down Mrs D's claim. It said its loss adjusters had noted that the car could only have been operated

by someone using an 'intelligent' (programmed) key. The key had not been left in the car and Mrs D had not reported that either of her two keys had been lost or stolen. When asked to produce the keys, she had at first been able to find only one of them, although she later found the other key.

Mrs D challenged the insurer's insistence that the car could only have been taken by someone who had the programmed key. In response, the insurer cited a report from motor vehicle security experts, which it said supported its view.

The insurer also suggested that the only other way in which the car could have been moved was by means of a transporter or tow-truck. Either of these would have caused the car's alarm to sound, alerting Mrs D to the theft. But in any case, as far as the insurer was concerned, the fact that the car had been driven off the road immediately before the fire indicated that a key must have been used.

complaint not upheld

Mrs D then referred her complaint to us. She said she had been extremely distressed by the insurer's stance and by its implication that she – or someone in her family – had taken the car and caused the accident. She produced evidence from the original dealer to support her argument that the car's security could be by-passed, and that the car could be operated without the use of the programmed key.

It was clear that the incident had caused Mrs D much distress and we did not doubt her honesty. However, we did not uphold the complaint. We noted that the technical evidence Mrs D produced, supplied by the original dealer, was of a very general nature. It did not make any specific reference to the make and model of Mrs D's car. By contrast, the technical evidence produced by the insurer referred very specifically to the exact make and model that Mrs D had owned.

We also took account of the particular circumstances of the case and the possible alternative explanations for what had happened. We concluded, on a balance of probabilities, that the insurer had sufficient reasons to refuse to pay the claim.

ombudsman news 72/1
(September/October 2008)

claims managers aren't the only ones who need to clean up their act ...

by Paul McMillan

Paul McMillan is the editor of *Money Marketing*, a weekly newspaper and website for independent financial advisers (IFAs). He has won a number of industry awards, including *HeadlineMoney trade journalist of the year*.

Branded '*claims chasers*', '*claims farmers*', '*claims churners*' and plenty of other names unrepeatable in the 100th edition of *ombudsman news*, claims-management companies have long been the scourge of independent financial advisers (IFAs).

With financial businesses currently charged a £500 case fee for the fourth and every subsequent complaint referred to the ombudsman service each year – no matter if the complaint is later rejected – and with network members being charged for every complaint, there is understandable frustration over the tactics sometimes employed by claims managers to garner complaints.

Journalists often have a love-hate relationship with claims-management companies. Even though claims managers are universally loathed by readers, they can provide great examples of poor behaviour by product providers for industry trade titles to expose. For journalists working in the consumer press, claims managers can also provide sparkling case studies to liven up a spread – even though editorial policy, quite rightly, is to suggest that consumers complain direct to the ombudsman service, rather than incurring claims-management costs that can be up to 30% of the potential payouts.

In defence, claims managers say that certain people don't have the time or confidence to pursue complaints themselves. But judging by my mailbag of angry complaints over the sharp practice that continues to be deployed by some claims managers, there is still plenty to be done to clean up their sector.

However, it's interesting to note the low numbers of complaints about IFAs that reach the ombudsman service as a result of claims-management companies. With most endowment complaints now resolved or time-barred, claims managers haven't found the IFA sector to be a profitable hunting ground of late.

Of the 3,000 or so complaints referred to the ombudsman service about IFAs last year, around a quarter were brought by third parties on behalf of consumers. Of these, 30% were brought by claims managers, compared to 20% brought by other IFAs. As the complaints generated by claims-management companies were skewed during the year by a small number of companies focusing on Keydata and Arch Cru-related issues, we could soon have a situation where *more* complaints about IFAs are generated by *other* IFAs than by claims managers.

The growing number of IFAs complaining about their peers – perhaps when advisers take on new client-books – adds a new dynamic to the usual debate around claims generation. The Ministry of Justice, which regulates claims-management companies, does not provide a figure for the number of IFAs authorised to provide claim-management services – but it says that 210 claims companies are also FSA-regulated.

Money Marketing readers often argue for the introduction of a small upfront refundable fee to ward off spurious complaints – especially those triggered by claims-management companies. In an ideal world, this proposal has considerable merit. But the obvious concern is ensuring consumers with *valid* complaints aren't discouraged from taking cases to the ombudsman.

While the behaviour of certain claims managers in churning inappropriate complaints continues to create justifiable anger, the poor claims-handling procedures of many larger institutions must also be taken into account.

The continued unacceptably high uphold rates seen in the ombudsman's published complaints data suggests that too many bigger businesses are simply fobbing off valid complaints – and banking on the fact that a certain proportion of these consumers won't bother going to the ombudsman. Their rejection letters are often designed to dent the consumer's confidence to pursue their complaint any further.

Claims managers aren't the only ones who need to clean up their act.

'Looking back through the archive, a selection of case studies from *ombudsman news* caught my eye.'

A perceived lack of transparency and of consistency in the decision-making processes of the Financial Ombudsman Service are two common complaints I hear from *Money Marketing* readers. An adjudication process that rules on complex investment advice – based on very personal individual circumstances – will always lead to charges of inconsistency.

The proposal is that the ombudsman will begin publishing all its decisions on its website – to shine a greater light on the cases it decides. But over the years, case studies in *ombudsman news* have offered a useful guide both to advisers and consumers on the thinking behind the big complaints issues.

Looking back through the archive, a selection of case studies from *ombudsman news* in 2005 – based around what makes an investor 'experienced' – particularly caught my eye, as they clearly emphasised the *individual* nature of many complaints.

The case studies include *upheld* complaints where the financial adviser had suggested that owning 'windfall' shares, or inheriting a share portfolio, was proof of being an experienced investor. The case studies also include a *rejected* complaint – involving a lottery-winning couple who believed they should not have been recommended *any* risk-based products due to their '*inexperience*'.

After reviewing the file in this case, the ombudsman decided that the couple *did* understand and have tolerance for the risk involved. This case study emphasises the need for advisers to keep well-documented evidence of the advice they are giving – to guard against speculative complaints triggered simply by stock market falls.

48/15

when investments decline in value, investors complain that advice has been unsuitable as they were '*inexperienced*' investors

After Mr and Mrs D won £1m on the lottery, they were introduced to an adviser who arranged a portfolio of investments for them. Unfortunately the stock market fell and the portfolio declined in value.

The couple complained, saying that as they were '*inexperienced*' investors, the adviser should not have recommended any risk-based products. They thought that he should instead have arranged for their money to be left in savings accounts.

complaint not upheld

Mr and Mrs D had not had money to invest in the past and were inexperienced investors. However, we were satisfied that the adviser had carried out a proper review of their circumstances and had explained the investment risk. We agreed with his assessment that Mr and Mrs D had been prepared to tolerate a low to medium level of risk when investing the money they had won. We therefore rejected the complaint.

ombudsman news 48/15 (August 2005)

Case studies relating to the fall-out of the 2008/2009 credit crisis also stood out. In particular, I noticed a selection of cases relating to commercial property funds that had introduced deferral periods or market value reductions (MVRs) to stop the rush of people wanting to exit funds that invested in illiquid investments.

These funds were heavily marketed by asset managers, even when it became apparent that the top of the market had been reached. However, just because an MVR is inconvenient to an

investor does not automatically mean the investor should be compensated for actions that have been put in place to safeguard the future of the fund.

A complaint from an investor who had extensive knowledge of the commercial property market, and who was warned by his adviser against too concentrated a property portfolio, was rejected by the ombudsman – as was a complaint from a consumer who claimed he hadn’t been made aware of a possible deferral period.

However, an eye-catching case was upheld by the ombudsman where someone approaching retirement was advised to borrow money against his property and invest in a property fund.

84/7

consumer complains about advice to borrow money and invest it in a property fund

Mr J complained that he had been wrongly advised to invest in a property fund bond. At the time he was given this advice, Mr J was 59 and had a £3,000 repayment mortgage with 18 months left to run. He was advised to borrow a further £50,000 from his mortgage lender, over an 11-year term, and to invest this money in a property fund.

He said he was told the investment would have done so well by the time he was 65 that, as well as being able to repay the £50,000, he would also have a ‘*healthy surplus*’ for his retirement. However, the value of his investment fell considerably, leaving him with the prospect of still having to meet his mortgage repayments after he had retired.

The business told Mr J that the poor performance of his investment was the result of the ‘*difficult economic climate*’. It said it had given Mr J all the relevant paperwork before he proceeded with the investment. In its view, it was therefore entirely his responsibility that he had gone ahead with an investment that he had later found unsuitable. Unable to reach agreement with the business, Mr J referred the complaint to us.

complaint upheld

We pointed out to the business that it was responsible for ensuring the advice it gave Mr J was suitable for his needs and circumstances. The fact that it had sent him some written information about the property fund did not mean it had fully discharged that responsibility.

There was nothing to indicate that the adviser had considered the suitability of the advice he had given to Mr J. In addition to the risks normally associated with an investment in a property fund, the proposed course of action required Mr J to borrow the money before he could invest it.

We said it should have been evident that the property fund investment needed to provide an above-average return just to cover the mortgage interest costs and allow Mr J to break even. If the investment fell in value, then Mr J would find himself having to repay the loan (and meet the monthly payments) after he had retired, when his income would be much reduced.

We thought it very unlikely that Mr J would have been prepared to follow the adviser's recommendation if those risks had been explained to him. We said the advice had been unsuitable and that the business should put Mr J back in the position he would have been in if he had not been wrongly advised.

This meant providing him with a sum equivalent to the amount he needed to pay off his mortgage (including any fees and charges), as well as reimbursing him for any additional costs he had incurred while servicing the new mortgage. The business could then deduct the amount realised by the surrender of the bond.

We said the business should also pay Mr J £250 in recognition of the distress and inconvenience it had caused him.

ombudsman news 84/7 (March/April 2010)

The fall-out of the 2008/2009 credit crisis prompted plenty of other complaints, as heavy stock market falls exposed poor industry behaviour, which often goes unnoticed in rising markets. One major issue we focused on in *Money Marketing* was the number of elderly people who were advised by their bank out of low-interest deposits into more complex investments.

With interest rates lingering at 0.5%, it was an easy sell for many bank branch staff to move people into corporate bonds promising high yields. However, the risks of such complex investments were often not explained – and many customers had no desire to put their capital at risk.

A case study from *ombudsman news* in 2009 paints a familiar picture of this type of behaviour.

■ **80/6**

consumers seeking regular income are advised to re-invest proceeds of a fixed-rate savings bond in a corporate bond fund

Mr and Mrs D consulted an adviser at their bank about re-investing the proceeds of a fixed-rate deposit-based bond that had recently matured. They had been very pleased with the income they received from their bond, so they said they would like to invest in '*something similar*'.

They later told us that the adviser had said they would get '*a much better return – with no risks*' from a plan that invested in a corporate bond fund. As it was important to the couple to get as much income as possible from their money, they agreed to put £40,000 in the plan.

> 'A case study from *ombudsman news* in 2009 paints a familiar picture of this type of behaviour.'

The couple soon found that the income they were getting was nowhere near the amount they felt they had been led to expect. They said they waited for a while '*to see if things picked up*' but eventually decided to cash-in the bond. They were then '*dismayed*' to find they got back a smaller sum than they had paid in.

Mr and Mrs D complained to the bank that they should never have been advised to '*move away*' from the type of bond they were used to. When the bank turned down their complaint, they came to us.

complaint upheld

We noted that, at the time of the advice, Mr and Mrs D already had some longer-term investments where the capital sum was not guaranteed and the income was variable. This might have indicated that they were experienced investors who would have understood the risks presented by the corporate bond fund.

However, we discovered that the couple had not selected their existing investments themselves but had inherited them from Mrs D's brother, who had died several years earlier.

In view of their circumstances, and the fact that a significant proportion of their money was already tied up in medium- to longer-term investments, we concluded that the bank's advice had been inappropriate. Mr and Mrs D were relatively unsophisticated investors and we thought it unlikely that they would have accepted the adviser's recommendation if the risks had been explained to them.

We thought it most likely that, if they had been properly advised, they would have re-invested in a fixed-rate deposit-based bond. So we told the bank to calculate and pay redress that put the couple in the position they would have been in if they had put their money in a fixed-rate deposit-based bond over the same period.

***ombudsman news* 80/6**
(October/November 2009)

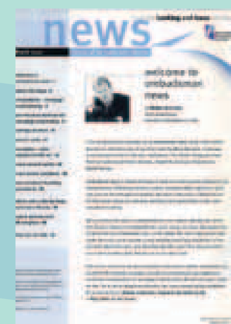
Until the sales culture within high-street banks is dramatically restructured – so that branch staff are truly thinking of their customers' needs, rather than their own monthly targets for high-margin products – we are unlikely to see an end to the large numbers of complaints about advice given by banks.

January 2001

January 2001

Walter Merricks, first chief ombudsman, launches *ombudsman news*: 'I am delighted to introduce this first issue of *ombudsman news*. It is aimed primarily at firms and professionals working in the relevant areas of financial services, and at consumer advice agencies, but it may also be of more general interest. We hope you will find it a helpful source of information about our activities.'

February 2001
Focusing on mortgage endowment complaints – 'which now account for approximately 50% of all new investment-related cases'.



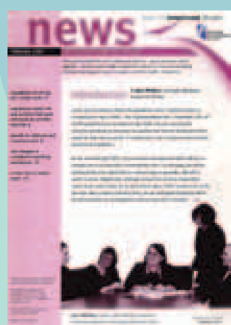
March 2001
'Dissatisfaction with interest rates on savings accounts is not confined to TESSAs. Customers should keep a careful eye on the rate of interest they are getting and on what they could get elsewhere.'

January 2002

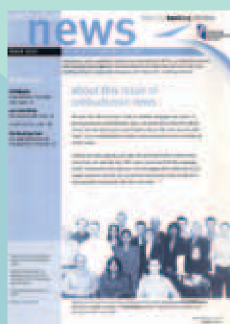
'This was scarcely a case of damage caused by a badly house-trained animal. The dog was dead when the accidental damage occurred. It did not seem reasonable to apply the exclusion in these circumstances and we required the insurer to meet the claim in full.'

December 2001
A banking-related issue covering complaints involving:
- TESSAs
- mortgages
- credit-card fraud and the role of the 'merchant acquirer'
- using a credit card abroad.

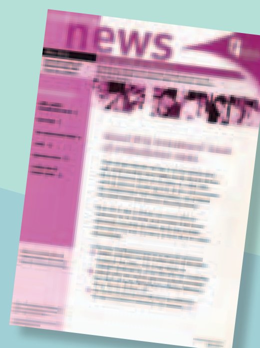
November 2001
Marks the launch of our new leaflet, *your complaint and the ombudsman* – in use from 30 November 2001 (the date called 'N2') under the new FSA rules that come into force on that date.



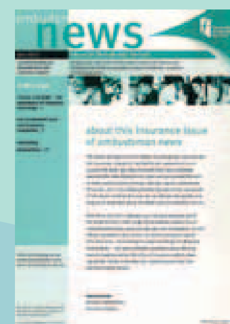
February 2002
Setting out our approach to awarding compensation to consumers for distress and/or inconvenience.



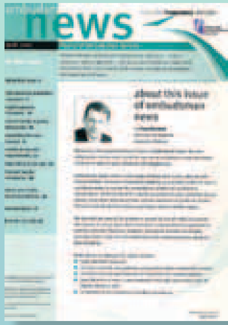
March 2002
Summarises the 'lead case' ombudsman decisions in relation to Mr & Mrs J's, Mr & Mrs L's and Mr & Mrs N's complaints about mortgage lenders with dual-variable-interest rates.



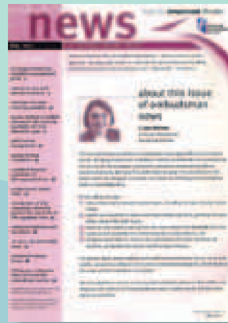
May 2002
'There has been extensive coverage in the press recently about split-capital investment trusts ("splits"). To date, we have received few complaints about these complex products, but we believe they could impact on our work over the coming months.'



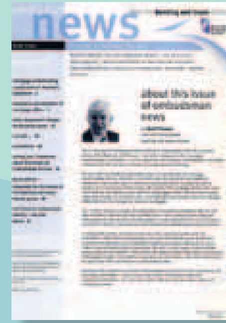
July 2002
'Whether a baby quad-bike was a motor vehicle or a mechanically propelled vehicle was debatable. However, we did not need to decide that point. There was a clear contradiction between the policy exclusion and the wording of the leaflet.'



April 2001
Writing about payment protection insurance (PPI), Tony Boorman, principal ombudsman, says: ‘Complaints reaching us show that sufficient care is not always taken to ensure the suitability of policies for prospective policyholders. Restrictions which significantly limit the cover available are not always made clear before purchase.’

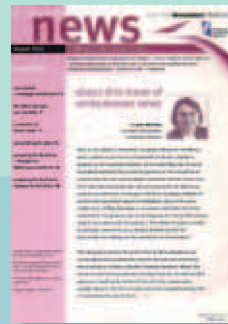


May 2001
An investment-related issue covering complaints involving:
- managed portfolios
- spread-betting
- the treatment of ‘demutualisation windfalls’ in redress calculations
- Equitable Life complaints.

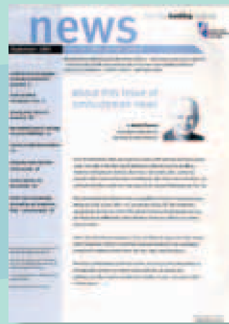


June 2001
David Thomas, principal ombudsman, introduces a banking-related edition, looking at:
- early repayment charges on business loans
- signing and retaining mortgage offers
- compensation for mortgage underfunding
- proposals for external liaison with banks and building societies.

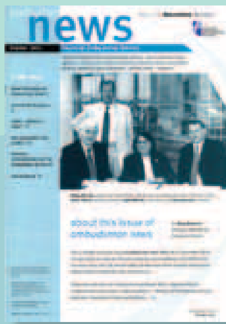
July 2001
‘For many customers, travel insurance is perhaps the most complex financial product they purchase during the year.’



August 2001
Case studies show the detailed calculations involved – following ‘regulatory update 89’ (‘RU89’) – to work out the financial redress due to Mr & Mrs L and Mr & Mrs D, who had complained about being mis-sold mortgage endowments.



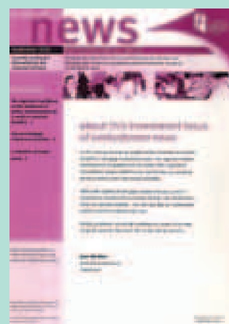
September 2001
‘The problem was that his branch was in England – but the cheque had been drawn on a bank in Scotland.’



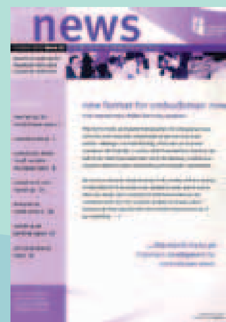
October 2001
With the *Financial Services and Markets Act 2000* shortly to come into force – and new complaints-handling rules for businesses and the ombudsman service – Tony Boorman, principal ombudsman, confirms that: ‘The general approach to resolving disputes under the new Financial Ombudsman Service jurisdiction will remain much as before, with the emphasis on what, in our opinion, is fair and reasonable in all the circumstances of the case.’

... the dog was dead when the accidental damage occurred.

August 2002
Focusing on situations where lenders increase customers’ credit limits without any further assessment of their creditworthiness.



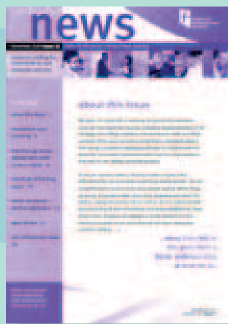
September 2002
‘We found it hard to accept that a consumer would continue paying premiums for 31 years without question, when there was so little paperwork to prove the existence of a policy.’



October 2002
Launching a page for readers’ questions – with answers to queries about:
- tax payable on mortgage endowment compensation
- re-opening a complaint after the file is closed
- help for an adviser receiving a complaint for the first time in 20 years.

November 2002

November 2002



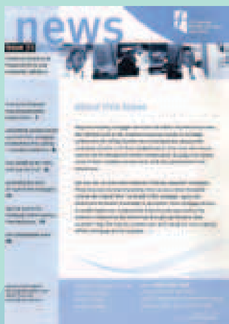
November 2002
'Transferring money abroad is not a straightforward process and can give rise to complaints. Many of these complaints are about delays. But some are about money that has gone completely astray.'

December 2002
'We rejected the complaint about pensions advice on the grounds that the customer, a teacher, presented contradictory and unreliable evidence.'

January 2003
'The policyholder blamed the firm for "tipping-off" his estranged wife that his pension policy had matured.'

... the complexity of these products means there's a danger of mis-selling.

January 2004
Covering complaints involving:
- insurance claims relating to 'unoccupied' properties
- mortgage endowments
- cheques and 'cheque clearing'
- single-premium investment bonds.

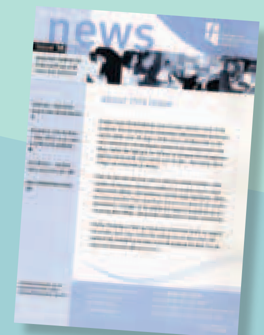


February/March 2004
Launching a series of roadshows around the UK for mortgage and insurance intermediaries – ahead of their coming under the ombudsman's remit when statutory regulation began in less than a year.

November 2003
'There is a kind of mistake that can make some customers happy. This is where a firm mistakenly credits a customer's account with money that the customer is not entitled to.'

April 2004
Includes our approach to travel insurance complaints where an insurer has excluded from cover *not only* any medical conditions that the customer suffered from before they took out the policy, *but also* any medical conditions arising between the start of the policy and the start of the holiday.

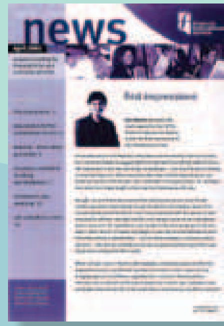
May/June 2004
Setting out our approach to:
- motor insurance disputes involving keys left in cars
- complaints about discrimination – and making sure all customers receive fair and equal treatment
- calculating redress for 'loss of investment opportunity'.



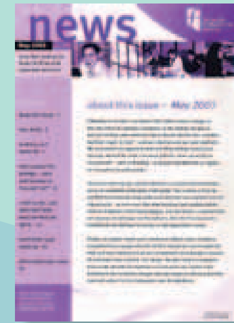
July 2004
A reader writes in to ask whether the ombudsman would accept as evidence recordings that a consumer had made of phone conversations they had with a business – which they had taped without the business knowing.

February 2003
Focusing on complaints involving:
- disputed cash withdrawals – over the counter and at cash machines
- the requirement to disclose spent motoring convictions to the insurer.

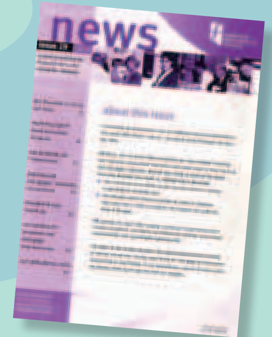
March 2003
An update on complaints about so-called 'precipice bonds' – following regulatory concerns that 'the complexity of these products, and the fact that investors may not understand that their capital is at substantial risk, mean there is a danger of mis-selling'.



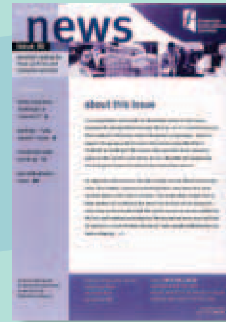
April 2003
Sue Slipman, the newly appointed chair of the ombudsman service, writes about the need 'to create sufficient flexibility to cope with the wide-ranging and unpredictable levels of external demand'.



May 2003
'Given the absence of stormy weather on or around the period claimed for, we concluded that the dominant cause of the damage to the roof was lack of maintenance, rather than storm. Even light rainfall would have caused the roof to leak.'

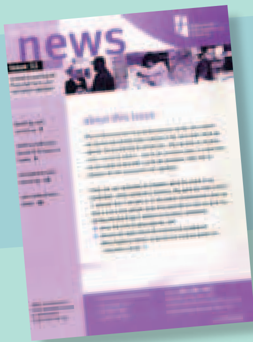


July 2003
Focusing on the two issues that stand out in travel insurance complaints:
- whether or not a travel policy covers particular events
- the impact of exclusions for pre-existing medical conditions.

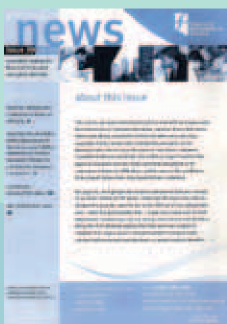


August 2003
'The increasing popularity of laminate wooden flooring has led to a number of disputes about whether it is covered by the buildings or contents policy.'

September 2003
'The fact that he had left his car and car keys in the care of the woman indicated that he trusted her. It never occurred to him that there was a risk of the car being stolen while he went to buy her some chocolate.'



October 2003
'Our jurisdiction is a broad one – but not quite as broad as some consumers believe.'



August 2004
'Some aspects of insurance law are generally considered rather harsh when strictly applied to private individuals.'

September/October 2004
'When she discovered what had happened, Mrs B was extremely upset because it meant she had to tell her father about her financial problems. This was not only an embarrassment for her – it became a serious worry for her father.'

November 2004
The chief ombudsman welcomes mortgage-broking firms to the ombudsman's remit, recognising that, for many of them, 'this will be the first time that they have had to comply with the procedures and time limits in the complaints-handling rules'.

January 2005

ombudsman news
welcome to insurance intermediaries

December 2004/ January 2005

With insurance intermediaries coming under the ombudsman's jurisdiction for the first time from January 2005, the chief ombudsman focuses on the importance of helping to 'identify and reduce problems that might otherwise lead to expensive and time-consuming disputes'.

ombudsman news
about this issue

February 2005
Clarifying the general principles relating to the tax treatment of compensation awarded by the ombudsman.

ombudsman news
about this issue

March 2005
'The coroner concluded that the cause of death was haemorrhaging from a vertebral artery. When the insurer rejected the personal accident claim brought by Mr T's widow, she complained to us.'

ombudsman news
leaving it too late...

August 2006
'With a stolen, cloned vehicle, if the policyholder clearly took all reasonable steps to ensure the authenticity of the vehicle they were buying, they have a "defeasible title" to the vehicle and should receive the full market value of a similar vehicle with an unblemished history.'

ombudsman news
funding matters

June/July 2006
Launching a review of how the ombudsman service is funded, chief ombudsman, Walter Merricks, admits that 'some might think we've taken leave of our senses – and that we'll simply be unleashing a bout of special pleading, madcap ideas and general disarray'.

ombudsman news
who do they think we are?

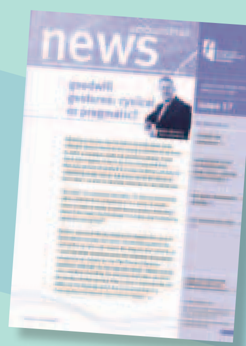
May 2006
'With online insurance, the fact that the insurer may refuse to meet a claim on the basis of information that the policyholder did (or didn't) give in their application raises particular problems – we are applying 18th-century law to 21st-century technology.'

ombudsman news
a quarter-century of ombudsmen

March/April 2006
Celebrating a quarter-century of ombudsmen – on the 25th anniversary of the Insurance Ombudsman Bureau (IOB) opening its doors in April 1981.

ombudsman news
challenging times

September/October 2006
Sir Christopher Kelly, chairman of the ombudsman board, self-deprecatingly describes himself as 'just a man in suit who's been a civil servant for 30 years' – as he tells *ombudsman news* about the importance of understanding the impact a dispute can have on the life of both sides involved.


ombudsman news
goodwill gestures: cynical or pragmatic?

October/November 2006
An insurer writes in to ask: 'Should satnav equipment be considered as personal possessions under a domestic contents policy – or as a vehicle tool under a motor policy?'

ombudsman news
confidence building

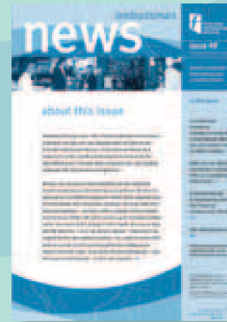
December 2006
Reporting back from recent ombudsman-hosted seminars on travel insurance complaints and disputed card transactions.

April 2005
'From time to time mistakes happen and – for whatever reason – banks end up releasing information they should have kept secret. Sometimes the resulting breach of confidentiality is little more than technical, but occasionally it can have major consequences.'

May/June 2005
Covering complaints involving:
- disputed card transactions, where the card was used as what the *Consumer Credit Act* calls a 'credit-token'
- situations where a consumer fails to reveal a relevant fact when applying for, or renewing, an insurance policy
- mortgage endowment complaints referred to the ombudsman service after the consumer has accepted an offer of redress.

July 2005
'Miss C's former partner stole a cheque from her cheque book when he moved out of her flat. After he forged her signature on a cheque for £1,000, the bank refused to refund the money, saying she should have kept her cheque book locked up.'

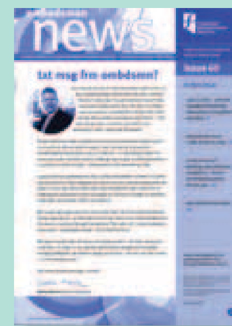
August 2005
Focusing on what makes an investor '*experienced*'.



September/October 2005
Announcing that National Savings & Investments (NS&I) are covered by the ombudsman service from 1 September 2005.

January/ February 2006
A new look to mark five years of *ombudsman news* includes a new interview slot – launched by lead ombudsman, Jane Hingston, who looks at debt problems and financial hardship.

November/December 2005
'Our experience, and that of insurance ombudsmen over the last 20 years, is that payment protection insurance (PPI) is often sold by people who have little knowledge of the extent of the cover. Sometimes it is sold to people who wouldn't even be eligible to claim. With both the FSA and the OFT now on the case, and the publicity this will attract, it is possible that we may see a short-term rise in the number of PPI complaints reaching us.'



March/April 2007
The Q&A page helps an independent financial adviser (IFA) with their first-ever complaint.

January/ February 2007
The chief ombudsman reflects on disputes that involve life's tragedies: 'People turn to us in the most difficult and distressing of circumstances. Of course, our natural instinct is to want to reach out and sympathise. But we have to decide cases on a dispassionate analysis of facts and set aside our emotions.'

news
open for credit

April/May 2007
The chief ombudsman welcomes 80,000 businesses who came under the ombudsman service's remit for the first time from 6 April 2007 – when the ombudsman's jurisdiction was extended to cover consumer credit complaints.

news
pensions progress

June/July 2007
'We decided that the bank's sales process in this case had been flawed, and that the bank had failed to bring significant features of the payment protection insurance (PPI) policy to Mr F's attention.'

news
the young ones

July/August 2007
Focusing on financial complaints involving young consumers – including a gap-year student robbed while travelling across New Zealand in a camper van, and a 19-year-old plumber's apprentice sold an inappropriate investment.

news
subject to scrutiny

September/October 2007
'The credit-card statement that Mr L received soon after returning home from a stag weekend in Spain included several transactions he did not recognise – made at a gentlemen's club in Barcelona.'

… openness about the ombudsman's approach is the way forward.

news
74
the single-issue issue
in this issue

December 2008/ January 2009
'Mr and Mrs B – who ran their own small company from home, trading collectibles on the internet – complained that their bank's "inflexible attitude" to lending was damaging their business.'

news
73
turbulent times

October/November 2008
'The legal issues on unauthorised-overdraft charges are still being argued in the courts. Meanwhile, what the media describes as a national "reclaim" exercise has led to a growing number of empowered and experienced consumers – ready, willing and able to engage in the complaints process.'

news
72
the remittance men
in this issue

September/October 2008
'We understood Mr K's disappointment at not having been consulted about his late father's decision to release some of the equity in his home – but the business produced clear evidence that his father had not wanted to involve family members and had decided to proceed alone.'

Ombudsman news
A sombre outlook

January/February 2009
The Q&A page includes a reader's question asking what impact the recession will have on the ombudsman's plans for its expected future complaints workload.

Ombudsman news
The price of cut-backs in customer service

March/April 2009
The chief ombudsman observes that: 'Regrettably we are seeing a growing number of cases where customers who have complained to a financial business appear to have experienced treatment that is nothing short of dismal.'

ombudsman news
ombudsman international
issue 65

October/November 2007
'Mr and Mrs J's dog, Ruby, responded well to the hydrotherapy treatment after she suffered a prolapsed disc. But when they submitted a claim under their pet insurance policy, the insurer refused to meet it.'

ombudsman news
not a rock in sight
issue 66

December 2007/ January 2008
Focusing on disputes about the valuation of motor vehicles by insurers – after a vehicle has been written-off in an accident.

news
67
holding our nerve

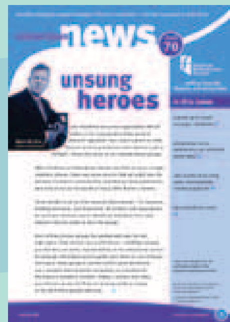
February/March 2008
Case studies involving investment-related complaints – including stockbroking and spread-betting.

news
68
fair's fair

March/April 2008
Covering complaints involving:
- bank accounts
- consumer credit
- building insurance.

news
71
opening up, reaching out

August 2008
Focusing on banking complaints involving safe-deposit boxes.


news
70
unsung heroes

June/July 2008
'Many of the complaints we see involving mortgages have arisen because of a difference between how customers expect their mortgage to work – and how it works in practice.'

news
69
hunting season opens

April/May 2008
The chief ombudsman writes: 'Openness about the ombudsman's approach, the relationship between the ombudsman and the regulatory system, and the performance of individual businesses in handling customer complaints is the way forward.'

Ombudsman news
'consumer responsibilities'

May/June 2009
Including internet-related complaints and a selection of cases involving private medical insurance.

Ombudsman news
redress, politics and proposals

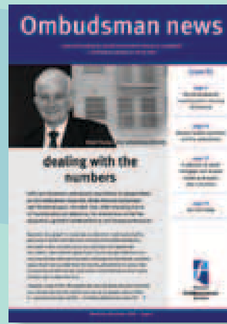
July/August 2009
'We pointed out to the credit-card provider that Mr M had no legal obligation to take proceedings against the furniture showroom before making a claim against them under *section 75*.'

Ombudsman news
Motor Man

September/October 2009
A motor special – covering complaints about car finance and motor insurance disputes over the quality of repairs and vehicle modifications.

October/November 2009

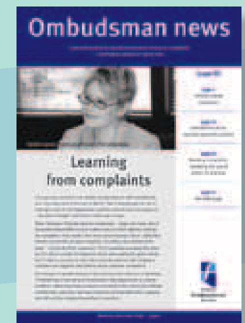
October/November 2009
'The insurer said his condition did not fall within the definition of multiple sclerosis, as set out in the policy.'



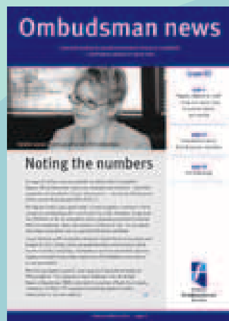
November/December 2009
Focusing on complaints involving:
- debt-collecting businesses
- money-transfer operators
- mortgages and property valuations.

December 2009/ January 2010
Lead ombudsman for banking, credit and mortgages, Jane Hingston, talks about her work on complaints involving consumer-credit businesses.

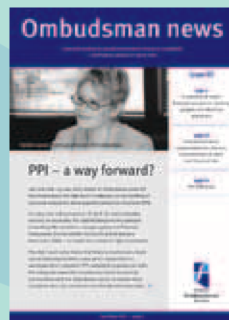
December 2010/ January 2011
With a focus on financial complaints involving family disputes and difficulties in close personal relationships.



November/December 2010
'We explained to Mr Y that the evidence he had produced did not constitute proof of his car's value – and reflected asking prices rather than actual selling prices.'



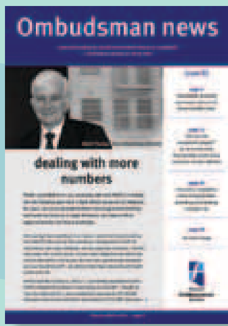
February/March 2011
'Mr G thought the insurer had seriously under-estimated the value of a set of football programmes. He had been collecting programmes from his favourite team's games for over 50 years. More than half of this collection was destroyed in the fire.'



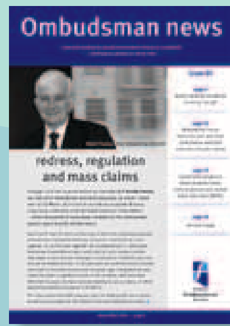
April/May 2011
'In a very clear ruling issued on 20 April, Mr Justice Ouseley rejected, on all counts, the legal challenge on the approach to handling PPI complaints, brought against the Financial Ombudsman Service and the FSA by the British Bankers Association (BBA) – on behalf of a number of high-street banks.'

June/July 2011
'It is understandable that consumers can sometimes be uncertain whether or not they were ever sold PPI in the past. In this instance, however, we noted that the loan provider had given the claims-management company clear evidence that it had never sold PPI to Mr G. We did not uphold the complaint.'

July/August 2011
Showing how we dealt with a variety of financial disputes involving consumer credit, mortgages and insurance – in connection with buying, refurbishing or furnishing a home.



February/March 2010
'Waste water had leaked through the bathroom floor to the sitting room below – and the smell was so unpleasant that Mrs D had been unable to stay in the house. On her neighbour's advice, she rang the insurer again to explain what had happened.'



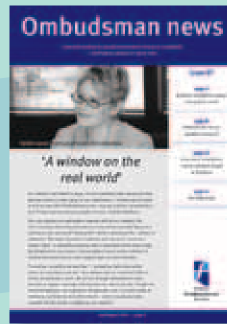
March/April 2010
'Given that Mr A had not been properly informed about market value reductions – and their potential effect on his investment – we did not accept the point made by the business that he had "brought on the problem himself" by withdrawing his investment at that particular time.'

April/May 2010
A special focus on the ombudsman service's consumer-outreach work – and on complaints from consumers living in remote rural communities.

June/July 2010
Looking at a selection of recession-related insurance complaints.

October/November 2010
'The insurer turned down Mr B's legal expenses claim on the grounds that the proposed action – against his wife's solicitor for professional negligence during their divorce settlement – had little prospect of success.'

August/September 2010
Confirming the ombudsman's longstanding approach to complaints about mortgage underfunding – involving shortfalls after a mortgage lender has told a consumer to make monthly payments that are too low.

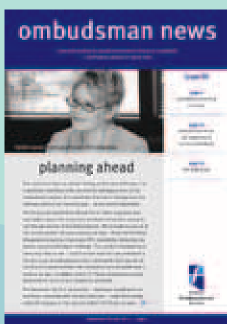


July/August 2010
The head of a financial business describes *ombudsman news* case studies as "a window on the real world", helping him "better understand the customer's viewpoint."

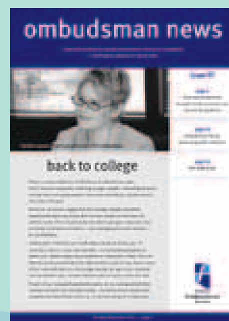
January/February 2012

As well as updating on the latest quarterly complaints figures, issue 99 focuses on:

- proposed new arrangements for charging businesses case fees
- disputes involving personal accident insurance
- debt-related complaints.



September/October 2011
'Access to his e-money account had been restricted for up to 180 days while security checks were carried out.'



October/November 2011
'In many of the complaints referred to us by younger people, we see others involved such as student reps, campus advisers and, of course, mum and dad.'

November/December 2011
'In the last couple of months the number of new PPI cases referred to us has climbed steeply – from fewer than 1,000 a week to over 3,000. This means we'll soon be getting our 300,000th PPI complaint.'

joining the dots between the myths and the evidence ...

by Sue Anderson

Sue Anderson is the head of external affairs at the Council of Mortgage Lenders (CML), where she has responsibility for the CML's relationships with CML members, external stakeholders, the media and parliamentarians.

I was asked recently by a national journalist to come up with some springtime 'reasons to be cheerful' in the mortgage market. In these days of economic gloom, that felt like a tough call. Yet, hidden like a rose among thorns, the ombudsman's data on mortgage complaints is a quiet reminder that all is not wrong with the mortgage market.

It's easy to get sidelined into believing that mortgage customers have much to complain about. There is a popular narrative of mis-selling, over-lending, self-certificated borrowing by borrowers with fairytale incomes, and interest-only loans whose repayment is predicated on a hope of inheritance upon Great Aunt Mildred's eventual demise. But real experience looks rather different.

Mortgages accounted for 3.5% of all new complaints to the ombudsman service in the 2010/11 financial year – amounting to just over 7,000 cases, with administrative errors representing the largest area of complaint. A 0% share of complaints would obviously be even better. But in the context of an industry with around 11 million active mortgage accounts, an annualised 'ombudsman referral rate' of 0.06% – or fewer than 1 in every 1,500 borrowers – doesn't look too bad. And when you consider that only 38% of complaints were resolved in favour of the consumer, the proportion of justified complaints looks lower still.

None of that means that lenders can afford to take their eye off the ball – especially in the current environment, where consumer trust and confidence in retail financial institutions is not exactly brimming over. It is more important than it has ever been for lenders to put right wrongs where they do occur.

But it's also important to recognise that lenders need to be able to refine and change their practices without being deemed to concede that previous practice, suitable in the past but no longer regarded as optimum now, was somehow deficient. This is particularly important in a landscape that to some extent encourages 'give-it-a-go' complaints from consumers who have no real gripe, but nothing to lose by complaining.

Businesses in many sectors (and the mortgage sector is not immune) worry about being vulnerable to the opportunistic antics of some less-than-scrupulous claims-management companies – which have the potential to be a frustrating distraction not only for businesses but also for the ombudsman service itself.

It would be nice, just occasionally, if commentators and journalists could join the dots between the urban myth of the universally exploited mortgage borrower and the evidence of an industry that tries to do the right thing by its customers – and by and large manages to do so pretty well most of the time, with the Financial Ombudsman Service as a helpful backstop to ensure the system works.

‘My first two favourite case studies – perhaps not surprisingly – involve mortgages.’

I’ve chosen my first case study from the *ombudsman news* archive as just one example of a complaint where everyone can have some sympathy for the borrower – but also for the lender.

The case study relates to a couple who wanted to refinance their existing mortgage with their existing lender into a new tracker rate. When they tried to do so, they were quoted a higher interest rate than they were expecting – due to the fact that the loan-to-value ratio, based on the lender’s valuation, was higher than they had expected. They felt that the lender should refund their application fee, but the ombudsman did not uphold the complaint.

Valuations are a classic example of a situation where the ‘right’ value will be different in different market conditions and at different times, and it is hardly surprising that consumers are disappointed when a valuation does not match their expectations.

Equally, the fact that the value is lower than the borrower would like is not actually the fault of the lender – and it is enlightening to note that the ombudsman takes the same view. It is reassuring to see that there have to be *errors*, rather than simply misfortunes, for the lender to be found at fault on valuation-related complaints.

■ **81/11**

consumers complain that the lender based its mortgage interest-rate offer on an inaccurate valuation of their property

Mr and Mrs B wanted to transfer their existing mortgage to a tracker arrangement, and applied to do this online, on their lender’s website.

When the lender subsequently got in touch with them, it quoted a higher interest rate than they had been expecting. It told them the reason for this was that they were borrowing more than 60% of the value of their property. ▸

After the couple complained about this, the lender arranged for the property to be revalued. However, the outcome of the valuation did not alter the position. Mr and Mrs B then questioned the accuracy of the valuation, saying it differed considerably from the value that another lender had placed on their house earlier that year.

They provided details of what they said were the sale prices of similar properties that had been on the market recently in their area. They also asked the lender to refund the mortgage application fee that they had been required to pay as part of their online application.

complaint not upheld

We noted that the lender had obtained a professional valuation of the couple's house and we saw no reason to conclude that it could not rely on that valuation.

The information provided by Mr and Mrs B related to the prices at which similar properties were being advertised – not the actual sale prices. The valuation figure used by the lender was supported by such information as was available about the sale prices for similar properties in the same area.

We understood Mr and Mrs B's disappointment that they had not been able to obtain the interest rate they had applied for. However, we did not agree that the lender had treated them unfairly or that it had failed to process their application correctly.

And we did not agree that the lender should refund the couple's application fee. The lender's terms and conditions, which the couple had seen before paying the fee, made it clear that the fee was not refundable. We did not uphold the complaint.

ombudsman news 81/11 (November/December 2009)

The next case study I've chosen was upheld by the ombudsman – and involved an incident where the borrowers wanted to redeem their mortgage but were subject to an early redemption charge. Because the lender could not produce a copy of the offer – and asked the ombudsman to rely on the documents that '*would have been given*' rather than those it could *actually evidence* as having been given – the case against the lender was upheld.

I think this case, even though it is a decade old, illustrates the ongoing problems that arise from poor record-keeping. It happens to be a mortgage case, but really it could be any number of financial services products that trigger the same concern. Mortgages that have been held for a long period are probably particularly vulnerable, simply by virtue of their longevity, although this case does not relate to a particularly long-standing customer.

‘Even though it’s a decade old, this case illustrates the ongoing problems that arise from poor record-keeping.’

6/1

the signature and retention of mortgage offers

When Mr and Mrs A applied for a mortgage, the lender gave them a detailed two-page mortgage illustration, produced by its computer system. Mr and Mrs A proceeded with the mortgage, but decided to repay it after a couple of years. The lender then claimed that since they were repaying the mortgage within five years, they would have to pay an early repayment charge.

The lender said the early repayment charge was explained in the mortgage offer, and in its instructions to the conveyancer. However, the lender did not have a copy of either document. It asked us to rely on the documents it said its computer would have produced in respect of the particular product code.

Mr and Mrs A said they had not expected to receive any documents other than the illustration, and that they had not, in fact, received a mortgage offer.

The conveyancer still had a copy of the lender’s instructions on file and provided us with a copy. This document explained the early repayment charge, but we were not satisfied that the conveyancer had explained the charge to Mr and Mrs A. That failure counted against the lender, rather than the borrowers. In completing the mortgage, the conveyancer was acting for the lender. Indeed, the lender’s instructions to the conveyancer specifically said ‘*please act for us in the transaction*’.

The lender asked us to assume that Mr and Mrs A must have received a mortgage offer, and that (like the instructions to the conveyancer) that offer must have referred to the early repayment charge. We were not prepared to make that assumption.

The offer should have been produced by the same computer system that produced the detailed illustration. But the illustration did not mention the existence of an early repayment charge. So the system was not infallible. Or did the lender want us to assume its computer was designed to produce detailed illustrations that did not mention the early repayment charge that would suddenly appear in its mortgage offers?

ombudsman news 6/1 (June 2001)

Cases like this one leave me with mixed feelings. On the one hand, good record-keeping seems to be a simple enough expectation, and means that subsequent disputes can be judged appropriately. How difficult can it be to keep good records?

On the other hand, in these days of merger, acquisition, de-merger, divestment, broker channels versus direct – with different record-keeping required by the various parties, and the rest of it – I do have a certain degree of sympathy for the possibility of cases occurring where the trail of 'what *would have* happened' is entirely clear, even if the specific customer record is not.

And as a complete aside, when it comes to transparency and record-keeping, I have always failed to understand why the requirement under the old *Mortgage Code* – for mortgage customers to receive a letter confirming whether or not they had been given advice, and what the reasons were for any product recommendation – was not translated into statutory mortgage regulation when the FSA took this over in 2004. Sometimes we seem to go backwards as we move forwards!

'I've chosen a pet-insurance case study – partly because these are a cracking read.'

My final choice relates to pet insurance. What does this have to do with mortgages, you may well ask? Absolutely nothing, I would have to concede.

I wanted to include a pet-insurance story partly because they're a cracking read. The cockatiels, Rosie and Jim, with their sore skin; Mrs F's arthritic dog, Herbie; Acorn the horse with colic; Jasper the beagle with his dislocated kneecaps; and my own special favourite, Ruby, the dog with her hydrotherapy regime – they're all painted clear as day in my mind's eye.

■ **65/3**

pet insurer refuses to meet hydrotherapy claim because treatment not carried out by a vet or registered member of a relevant association

Mr and Mrs J's dog, Ruby, was very fit and active until November 2003, when she suffered a prolapsed disc. Her veterinary surgeon recommended a course of hydrotherapy. This would help Ruby to regain the use of her hind legs as well as assisting with her rehabilitation in general.

Mr J told us that he had checked the proposed treatment with the insurer and was told it would be covered. Ruby responded very well to the hydrotherapy. However, when Mr and Mrs J submitted the claim, the insurer refused to meet it.

It said that – unless the treatment was carried out by a vet or a member of the Canine Hydrotherapy Association (CHA) or other relevant association – the policy specifically excluded '*the cost of hiring a swimming pool,*

hydrotherapy pool or any other pool or hydrotherapy equipment'.

The insurer said that although it had previously paid similar claims, it would not do so in this case as neither the hydrotherapist nor the veterinary nurse were members of the CHA.

complaint upheld

We understood why the insurer did not routinely approve all hydrotherapy claims. However, we noted that Ruby's treatment had been recommended by a qualified veterinary surgeon. The clinical evidence made it clear that the hydrotherapy had contributed to her recovery and that she had derived significant benefit from it.

We also noted that the therapy had been administered by an experienced veterinary nurse – the only qualified hydrotherapist within some hours' travelling time from Mr and Mrs J's home.

It was true that the veterinary nurse was not a member of the CHA. However, we were satisfied that she was sufficiently well qualified and experienced to provide an appropriate level of treatment.

We believed that the fair and reasonable outcome in this case was for the insurer to act as if the treatment had been carried out by a member of the CHA. So we instructed the insurer to meet Mr and Mrs J's claim.

ombudsman news 65/3 (October/November 2007)

More importantly, however, I think these pet-insurance cases illustrate the spread of different products and issues – some of which seem far, far removed from our own parochial concerns – on which the ombudsman service is required to take a view, and to adjudicate on the basis of full and fair consideration.

It's all too easy, working in one particular sector, to fix only on those aspects that relate to one's own neck of the woods. But as the pet-insurance stories remind me, the ombudsman net is spread far and wide.

And the ombudsman service does a good job in making sure that all sorts of complaints about financial products – from the life-changing to the fairly modest – get a fair review, from the perspective of both the consumer and the product provider. Long may that continue.

turning a bad experience into a good one ...

by James Daley

James Daley is the editor of *Which? Money* and is the key spokesman for Which? on all areas of personal finance. He was previously the personal finance editor at the *Independent*.

If you buy a new TV, computer – or just about anything at all in a high-street shop – it's unlikely you'll have too many problems getting a replacement if you find that it's damaged once you take it out of the box.

Although it's quite possible that you took your TV home and dropped it while you were unpacking it, the shop will almost always take your word for it that the product was already damaged when you picked it up.

By giving their customers the benefit of the doubt, the retailer may of course lose out. Once in a while, they may replace a product where, rightfully, they had no need to. But in retailing, the general principle that 'the customer is always right' remains at the heart of the business model. Retailers understand that it's better to give their customers the benefit of the doubt – and risk being taken for a ride once in a while – than to alienate those customers who *do* have a valid complaint by treating them with suspicion.

Sadly, however, when it comes to financial services companies, the benefit of the doubt is rarely given – a fact that is evidenced by the ever-increasing caseload that ends up at the Financial Ombudsman Service.

The root of this problem lies in the lack of genuine competition within parts of the financial services sector. If retailers treat customers with suspicion when they make a complaint, they may never shop there again. But when it comes to banking, customers will put up with an awful lot before they will consider switching as they fear – first – that all banks are the same, and secondly – that the process will be too difficult.

In fact, not all banks *are* the same. But the hassle of switching means that most people never find out there are better alternatives – as they stick with the same old provider, no matter how badly they're treated.

There may be some hope on the horizon, however. The draft *Financial Services Bill* proposes that the new Financial Conduct Authority should have a mandate for promoting competition – which may well prove the necessary catalyst for a change. Perhaps when banks and insurers are forced to fight tooth and nail for customers' loyalty, they will begin to consider giving them the benefit of the doubt when they complain.

In an efficient market, complaints are an opportunity to increase a customer's loyalty – to turn a bad experience into a good one. But each complaint that makes it to the ombudsman is an opportunity missed.

I look forward to the day when the Financial Ombudsman Service starts to announce record *lows* in its caseload, rather than record *highs*. That's when we'll know the market is finally working in the interests of customers, and not just its shareholders.

'In both cases someone was defrauded by a family member.'

Two particular cases from *ombudsman news* stand out for me – both dealing with unusual situations where someone was defrauded by a family member.

Since 'chip & PIN' was introduced a few years ago, most banks have taken the view that if you claim to have been defrauded in a situation where your card was used with the correct PIN, then you must have been negligent and not taken adequate care to protect your card and code. Yet these two cases demonstrate the flaw in the banks' position.

In the first case (*ombudsman news* 68/2) an elderly lady kept her card and PIN hidden away in a box at home and – somewhat distressingly – these were stolen by her grandson while an ambulance was arriving to take her to hospital with a stroke. She could hardly have been said to have been negligent. She took considerable care to keep her card and PIN safe, which is why the ombudsman told the bank to refund the money.

The second case tells the story of a mother who had her card stolen by her son. Although the mother was deemed by her bank to have been negligent in the way she had protected her card, the ombudsman upheld her complaint because it involved a credit card – and under the terms of the *Consumer Credit Act*, you can't be held liable beyond the first £50 for fraud caused by negligence.

The two cases are good examples of where the banks involved should have paid out immediately and not disputed the transaction. I have chosen the second of these two cases to illustrate this point.

■ **46/2**

disputed cash machine withdrawals – plastic card used as 'credit token'

Mrs A was very unpleasantly surprised when her statement showed that – over a two-week period – withdrawals totalling £5,000 had been made from local cash machines. She knew that she had not made the withdrawals herself. She rarely used her credit card, which she kept in a desk drawer at home – together with the details of her PIN that the firm had sent her.

Mrs A contacted the firm to say that she had not made the withdrawals. She also reported the matter to the police – adding that she thought her teenage son might have been responsible.

The police later charged Mrs A's son, and he was convicted of offences under the *Theft Act*. He did not suggest in his defence that his mother had allowed him to use the card.

The firm told Mrs A that she was liable for the withdrawals because she had been grossly negligent in the care of her card and PIN. It cited the card terms to support its view. Unhappy with the firm's stance, Mrs A came to us.

complaint upheld

We were satisfied that the withdrawals had been made *without* Mrs A's authority. We thought that if she had authorised the withdrawals:

- it was unlikely that she would have told the police that she suspected her son; *and*
- it was likely that her son would have mentioned it in his defence.

The card had been used as a 'credit token', so it did not matter that the card terms said that Mrs A would be liable if she failed to take reasonable care of her card and PIN. This was because the provisions of the *Consumer Credit Act* take precedence.

We agreed with the firm that Mrs A had been negligent in the care of her card and PIN. So she was made liable for the first £50 of the losses. We required the firm to refund the rest.

ombudsman news 46/2 (May/June 2005)

The *Payment Services Directive*, which came into force in November 2009, is quite clear that if someone is a victim of fraud, the bank must refund them immediately – unless it has good grounds to suspect that the cardholder has been negligent or acted fraudulently. It also expressly states that use of the correct PIN is not evidence of negligence.

'This is a typical example of an insurer looking for any excuse not to pay out a claim.'

I've picked my second case because it highlights another common complaint we regularly hear at *Which?* – consumers having insurance claims rejected for spurious reasons. In this instance, a gentleman was forced to cancel his holiday after coming down with a chest infection.

His travel insurer rejected his claim on the grounds that he had been suffering from a mild cough at the time he had taken out his policy – and so must have known of the illness.

Clearly, none of us are in a position to know when a mild cough is going to turn into something more serious – and this is a typical example of an insurer looking for any excuse not to pay out a claim.

■ **76/10**

travel insurer refuses to pay claim for cancellation of holiday on ill-health grounds

On 10 September, three weeks before he was due to go on holiday to Greece, Mr C phoned an insurer to arrange some travel insurance.

During that call, the insurer read out a list of medical conditions and asked Mr C if he had ever suffered from any of them. It also asked if he was aware '*of any condition that could reasonably be expected to affect your health during the period of the policy?*' Mr C answered '*no*' to both questions and the insurer issued him with a travel policy.

Unfortunately, a week before his holiday was due to begin, Mr C had to cancel it. He did this on the advice of his GP – as he had developed a severe chest infection.

However, the insurer rejected Mr C's claim. It said he must have been aware he had the illness that led to the cancellation at the time he applied for the policy – but he had failed to disclose it.

Mr C thought the insurer was being unreasonable. At the time he bought the policy, he had a mild cough. This was not one of the medical conditions in the list that the insurer had read out to him over the phone. And he did not agree that he should have known – at the time of his call – that it might develop into a more serious condition that would affect his holiday.

When the insurer refused to reconsider its position, Mr C came to us.

complaint upheld

We established that Mr C's cough began a day or two before he phoned the insurer to arrange his travel policy. ▸

However, it had not at that time seemed to him to be anything worth worrying about.

It was only around a week later – on 17 September – that Mr C decided to see his GP, as his cough was not getting any better. The GP prescribed medication and said he expected Mr C's condition would start to improve within a few days.

However, on 26 September Mr C went back to his doctor and reported that he was still feeling far from well. The doctor prescribed stronger antibiotics and arranged for Mr C to have a chest x-ray. He also suggested that it might not be a good idea for Mr C to travel. Mr C cancelled his trip later that day.

In our view, there was no reason why, at the time he applied for the policy, Mr C should have told the insurer about his cough. He would only have needed to mention it if he knew there was a realistic possibility that the cough would develop into something serious enough to threaten his holiday plans. The evidence did not suggest that this was the case.

We also questioned whether it would have made any difference to the cover the insurer provided if Mr C *had* mentioned his cough when he applied for the policy. We thought this unlikely, as there had been nothing at that stage to indicate that Mr C was suffering from anything more than a minor seasonal ailment.

We therefore upheld the complaint and told the insurer to deal with Mr C's claim – adding interest to any payment it made.

ombudsman news 76/10 (March/April 2009)

'I hope that we'll never see a repeat of the PPI scandal.'

Finally – how could I guest-edit an edition of *ombudsman news* and *not* mention payment protection insurance (PPI)?

I've chosen a case study that's typical of someone who was automatically opted into taking out PPI when he applied for a credit card. In my opinion, these are among the worst PPI cases. The reason that PPI continues to take up such a huge amount of the ombudsman's time and resources is that so many people never even knew they'd been sold it – and that's exactly why claims-management companies are drumming up business by contacting anyone who ever took out credit, to see if they might have a PPI complaint.

PPI was the financial services industry at its worst. I hope that in today's world, with a more proactive and interventionist regulator, we will never see a repeat of this kind of scandal.

71/1
customer says he was never told that a payment protection policy was optional when he took out a credit card

A trainee chef, Mr A, complained about the way in which he was sold a payment protection policy when he applied for a credit card. He said he had understood he was being insured, but had not been told that the policy was optional.

He said he was not given any information about the cost or benefits of the policy. And he stated that a representative of the credit-card company had simply filled in the application form for him, written a small 'x' at the bottom of the form, and then asked him to sign his name next to the 'x'.

The credit-card company rejected his complaint. It said it was clear from the application form that the insurance policy was optional and that Mr A had chosen to take it. The company also said that the insurance premiums were itemised on Mr A's credit-card statement each month, so he must have been aware that he was paying for an additional – optional – product.

complaint upheld

We asked the credit-card company to send us Mr A's application form. We noted that on the final page, close to the space for the customer's signature, there was a 'tick box' next to a statement that the customer wanted payment protection insurance. This had been ticked.

The tick in the box, the written details entered on the form, and the small 'x' placed next to the signature all appeared to have been written in the same handwriting, using a ballpoint pen. However, the signature itself looked markedly different and had been written with a thick, felt-tipped pen. This tended to support Mr A's account of events.

We also noted that Mr A had been 19 years of age at the time of the sale. This was the first time he had applied for any financial product or service other than a basic bank account.

We did not agree with the credit-card company that it was clear from the application form that the insurance cover was optional. Nor did we agree that, by signing the form, Mr A had clearly indicated his wish to buy the policy. There was no evidence that he had been told anything about the cover at the time of the sale. And the fact that Mr A's statement showed that the premium was collected monthly did not mean he must have been aware the insurance was optional.

We upheld the complaint and told the company to return to Mr A all the premiums he had paid to date, plus interest.

ombudsman news 71/1 (August 2008)

the Q&A page

featuring questions that businesses and advice workers have raised recently with the ombudsman's technical advice desk – our free, expert service for professional complaints-handlers

10 most popular Q&As

We launched our first page for readers' questions in October 2002. We answered queries about tax payable on mortgage endowment compensation and on re-opening a complaint after the file had been closed. Since then, the Q&A page – known as '*ask ombudsman news*' until December 2008 – has covered several hundred questions and answers from businesses and consumer advisers.

Many of the questions have related to specific issues relevant at that particular time. Others cover topics that we regularly return to – enabling us to recap for new readers as well as updating existing readers on popular issues.

In this special 100th edition we list the ten most-frequently downloaded questions from the online Q&A pages of *ombudsman news*. We don't have the space here to publish the answers as well. But given the popularity of these top ten Q&As, readers might know the answers already!

1 'As a small business, it looks like our first-ever complaint might be coming the ombudsman's way. What do we need to do?'
issue 51, January/February 2006

2 'When and how does the ombudsman add interest if it decides that a business should pay compensation to a consumer?'
issue 77, May/June 2009

3 'What impact will the recession have on the ombudsman's plans for its expected future workload?'
issue 75, January/February 2009

4 'Why don't you have a hearing in every case? I thought this was necessary to comply with human rights law.'
issue 95, July/August 2011

5 'How will the ombudsman fit into the government's new plans for consumer credit?'
issue 54, June/July 2006

6 'What's the latest on the judicial review on payment protection insurance (PPI) complaints – brought by the British Bankers Association (BBA) against the FSA and the ombudsman?'
issue 91, December 2010

7 'Why doesn't the ombudsman service restrict itself to dealing only with the specific arguments that a consumer raises when making a complaint?'
issue 89, October/November 2010

8 'What approach does the Financial Ombudsman Service take in cases involving *section 75* credit-card claims for overseas transactions?'
issue 43, February 2005

9 'Should sat-nav equipment be considered as personal possessions under a domestic contents policy – or as a vehicle tool under a motor policy?'
issue 57, October/November 2006

10 'As a consumer champion, shouldn't the ombudsman be doing more to support ordinary people in their disputes with big business?'
issue 44, March 2005

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