… resolving complaints can only be more difficult in an atmosphere of suspicion and distrust

Natalie Ceeney, chief executive and chief ombudsman

ombudsman news

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

what to take at face value

Over the last few weeks, a lot of people have been asking me what I make of the recent media reports of serious failings in the handling of PPI complaints by a major financial institution.

Well, some consumers have been telling us that they can barely believe what they've heard – and wanting to know how it will affect their PPI complaint.

And we're hearing more consumers saying "this just proves that banks can't be trusted. Surely that means I'll win my complaint, doesn't it?"

We're also finding that some consumers – who had been pretty phlegmatic about the possibility of having been mis-sold PPI in the first place – are now reacting with anger to reports that their *complaint itself* may have been handled badly.

Some claims managers too have responded angrily. Sensitive to recent criticism from some financial businesses about claims-management companies bringing claims "fraudulently", they have been swift to point out the "glass houses" irony here.

Financial Ombudsman Service

scan for previous issues

in this issue

So where does all this leave us? I've talked before about trust in financial services being at a low point. I had thought things could only get better, and it's really unhelpful to have another damaging episode like this. The job of resolving many thousands of complaints can only be more difficult when there is an atmosphere of universal suspicion and distrust. It will undoubtedly affect our ability to handle complaints as quickly and smoothly as we would like.

So what do I make of the claims and allegations now being made on all sides? To be honest, they're distractions that don't affect the fundamentals of what the ombudsman is here to do. We take nothing at face value. We'll continue to challenge bad practice in complaints handling. And we'll continue to focus on the specific facts of each individual complaint – and to approach things problem by problem, case by case.

It may sometimes seem laborious and time consuming. But it's the only fair way of doing it.

Natalie Ceeney
chief executive and
chief ombudsman

... we'll continue to challenge bad practice in complaints handling

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

switchboard 020 7964 1000

consumer helpline
extended opening hours
Monday to Friday 8am to 8pm *and*
Saturday 9am to 1pm
0800 023 4567 or **0300 123 9 123**

technical advice desk
020 7964 1400
Monday to Friday 9am to 5pm

investments case studies

Over the last ten years or so we have usually seen the performance of the stock market broadly reflected in the number and type of investment-related complaints we have received.

When markets have fallen, we have usually seen more complaints from consumers unhappy about investments losing value. However, over the last year or so, even though stock markets have generally risen, we have not seen the fall in complaints that we might have expected.

We still see a significant number of complaints where an investment product was recommended that carried a level of risk that was not appropriate for the consumer. As the following case studies illustrate, these disputes often involve disagreement between the business and the consumer about the consumer's attitude to investment risk at the point of sale.

In cases involving investments, where we decide that a business has done something wrong, calculating redress can be complicated. We usually tell the business to put the consumer – as far as possible – in the position they would now be in if the problem hadn't happened in the first place. We follow this principle when we recommend compensation.

If we can't identify exactly what the consumer would have done if they hadn't received the inappropriate advice, we may still be able to identify some qualities of the investments they *might* have taken out. In cases like this, we tell the financial business to compare what the consumer *actually* got with a benchmark that would broadly reflect those qualities.

We have chosen the following case studies to illustrate how we go about calculating redress – which is why most of the cases are "*complaint upheld*". The case studies show that when we are deciding on a fair benchmark, we will look carefully at a consumer's individual circumstances – and what they had wanted when they first took out the investment.

In some of the cases we have referred to "the average rate for one-year fixed-rate bonds". The source we use for this rate is the Bank of England one-year fixed rate bond IUMWTFA series. In other cases we have referred to the APCIMS Income index. The source we use for this is FTSE International Limited (2013).

Our online technical resource – available on our website – has more detailed information about our approach to investment-related complaints, including sample calculations.

Financial Ombudsman Service

case study
110/01

consumers complain that they had only wanted a low-risk investment – but were advised to invest in high-risk funds

Mr and Mrs A had a dog grooming business. They were both in their late sixties and wanted to retire – so they had a look at their finances to see whether they could afford to stop working.

They decided that they needed to find a way of topping up their pensions – and that one way of doing it was to release some equity from their house. So they sold their house and bought a smaller one – and still had £75,000 left over. They got in touch with a financial adviser to get some advice on what to do with the money.

They told the adviser that they only wanted to take a small amount of risk – and that they wanted to use the growth from their investment to supplement their income.

The adviser agreed that Mr and Mrs A should be cautious with their money. She advised them to put the money into a range of investment funds – with two thirds invested in company shares on the stock market and the other third in gilts issued by the government.

A couple of years later, Mr and Mrs A received a statement about their investment. They were worried when they saw that their investments had lost a lot of their value – and they got in touch with their financial adviser to find out what had happened.

The adviser said the investment had lost value because the value of shares on the stock market had fallen. She pointed out that Mr and Mrs A had been looking to get enough regular growth out of their investment to supplement their income.

This meant that they had needed to invest a large proportion of the money in funds that invested on the stock market. The adviser said that this had given them the best chance of getting the return they were looking for.

Mr and Mrs A were not convinced by the adviser's response – so they asked us to look into it.

complaint upheld

When we assessed the evidence, we noted that Mr and Mrs A had been looking for fairly significant growth from their investment to supplement their income. We concluded that to achieve this sort of return, they would probably have needed to take on more risk than they had told the adviser they were prepared to take.

We took the view that the adviser should have explained this more clearly to Mr and Mrs A from the beginning. And we did not think it justified putting two thirds of Mr and Mrs A's money in stock market funds – which had put their investment at greater risk overall than they had been prepared to take.

We agreed that Mr and Mrs A needed to invest cautiously. So we told the adviser to look at what *would* have happened if half their money had got the same return as the APCIMS Income Index – and half had got the same return as the average rate for one-year fixed-rate bonds as published by the Bank of England.

We decided that this calculation would take into account both Mr and Mrs A's desire for a degree of security – and their willingness to take a small risk. It would also allow for the fact that even with appropriate investments, Mr and Mrs A could have made losses as well as gains.

... they wanted to use the growth from their investment to supplement their income

... he had pointed out that "the risk to your capital is high"

case study 110/02

consumer complains he was wrongly advised to invest in high-risk funds

Mr B had recently inherited £150,000. He got in touch with a financial adviser because he wanted to invest some of the money.

The financial adviser asked Mr B some detailed questions about his personal circumstances and his attitude to investment risk.

On the basis of the answers that Mr B had given, the adviser told him that his attitude to risk had been categorised as "*adventurous*". The adviser recommended that he invest £50,000 in an Open-Ended Investment Company (OEIC) split between three funds – 10% in "*cautious*", 20% in "*moderate*" and 70% in "*dynamic*" funds.

But when the funds did not perform as well as he had hoped, Mr B complained to the financial adviser. He said he was concerned that the funds were too risky – and that he had made it clear that he had a "medium" attitude to investment risk.

When the financial adviser rejected Mr B's complaint, he decided to refer it to us.

complaint not upheld

We looked carefully through the financial adviser's paperwork.

We noted that the adviser had asked Mr B about his attitude to risk. He had given Mr B a series of statements and asked him to respond to them. His response to the statement "*I am willing to take substantial financial risk to earn substantial return*" was "*strongly agree*". And he had put "*strongly disagree*" in response to the statement "*when it comes to investing I'd rather be safe than sorry*".

We also looked at Mr B's responses to the questions about his personal circumstances – and he had confirmed that he was self-employed, single and that he didn't have any dependants.

The adviser had also written to Mr B explaining that investments that match an "*adventurous*" attitude to risk were speculative. He had pointed out that "*the risk to your capital is high*".

Finally, we noted that Mr B had told the adviser that he had previous experience of investments – and that Mr B himself had initially suggested a portfolio involving funds in China, India, Latin America and Africa.

Taking everything into account, we were satisfied that Mr B had been prepared to take a high level of risk with his money – and that his financial circumstances meant he was in a position to do so. In these circumstances, we concluded that Mr B had not received inappropriate advice – and we did not uphold the complaint.

case study
110/03

consumer complains that he was advised to take out higher-risk investments than he had wanted

Mr C had built up £65,000 in savings from buying and selling vintage cars.

When he mentioned to his sister that he wanted to invest some of the money, she gave him the phone number of a financial adviser she had used in the past. Mr C got in touch with the adviser and made an appointment to meet her.

During the meeting the adviser asked Mr C how he felt about taking a risk with his money. She explained that if he was willing to take some risk he might have a chance of getting more growth on his money.

Mr C told the adviser that he *was* interested in getting more growth, but he said that he wasn't too sure because he hadn't invested any money before. He agreed to answer some more questions about his attitude to investment risk to help the adviser work out which investments might be right for him.

When Mr C had answered the questions, the adviser told him that based on the answers he had given, she rated his attitude to taking risk with his money as "*between three and four on a seven-point risk scale*" – on which seven was the highest level of risk and one was the lowest level.

The adviser recommended that Mr C invest £30,000 in a range of investment funds. She explained that the funds would be chosen using a computer-based tool designed to "*select and blend*" investment funds.

Mr C went ahead with the investment. More that three quarters of the £30,000 was invested in shares on the stock market in the UK and overseas. Most of the rest was put into commodity funds investing in oil, gold and agriculture.

Each year, Mr C received an annual statement for his investments. By the fourth year, his statement showed that their value had dropped considerably. Mr C was concerned that he had made a serious mistake, and he complained to his adviser.

The adviser told Mr C that he shouldn't do anything at this stage – because they were supposed to be long-term investments and there was still a chance that they would perform better in the future. But Mr C was still concerned by the drop in value, so he brought his complaint to us.

complaint upheld

When we spoke to the adviser, she pointed out that Mr C had been prepared to take some risk to get a better return on his money. However, when we looked at the detail of the investments – and compared them with the adviser's notes about Mr C's attitude to risk – we were satisfied that the adviser had taken more risk with Mr C's money than he had told her he wanted to take.

We accepted that the computer-based selection tool the adviser had used was standard across the investment world. But we took the view that the adviser had still been responsible for making sure the funds she had advised Mr C to invest in were appropriate for his particular circumstances.

So we told the adviser to work out how Mr C's money would have done if it had been invested in line with the FTSE APCIMS Stock Market Income Index.

Mr C had wanted his investment to produce a reasonable return – and had been prepared to take some risk with his capital. While the FTSE APCIMS Stock Market Income Index includes UK and overseas shares, it does not include as many as there had been in the funds the adviser had selected for Mr C. It also has a mixture of other investments that are usually thought to be safer – for example, UK government gilts. We decided that by comparing Mr C's actual investment with this index, the adviser could compensate him fairly.

... he could have used some of his savings if he had wanted to reduce his debts

case study 110/04

consumer complains he was wrongly advised to invest in a portfolio bond

Mr S was in his early sixties and had been retired for two years. He was receiving a pension income of around £10,000 a year. He had some savings in various building society accounts, but he wanted to get more out of his money. So he spoke to his bank, and he was advised to invest £10,000 in a portfolio bond – which he did.

A few months later, Mr S was concerned that the bond wasn't performing as well as he had hoped. He complained to his bank, saying that he had been badly advised, and that the adviser should have recommended that he pay off some of his existing debts before he invested in anything.

When the bank said it hadn't done anything wrong, Mr S referred the matter to us.

complaint not upheld

When we looked at the bank's paperwork, we saw that the adviser had noted that Mr S wanted to move some of his money from a savings account in the hope of a better return. The adviser had noted down that Mr S had a "*cautious*" attitude to risk – and that he wanted a product that would guarantee the return of his capital after a five-year period.

The bond that the adviser had recommended *had* provided that guarantee – and we concluded that it had been appropriate for Mr S's cautious attitude to risk.

When we tried to establish how much debt Mr S had been in at the time he had taken out the bond, the bank's own records weren't entirely clear. But the adviser had recorded that Mr S had around £55,000 in savings – and given that he was investing just £10,000 of that, we concluded that Mr S could have used some of his savings if he had wanted to reduce his debts. We also concluded that he would have had money to fall back on if the investment did not perform as he had hoped.

Taking everything into account, we were satisfied that Mr S had not received inappropriate advice – and we did not uphold the complaint.

case study 110/05

consumer complains that he lost money on a savings policy – and that he didn't need the life cover that was included

Mr V worked in a large department store. He had been working there for four years, and over the past few months he had been finding he had some money left over from his pay. He decided to put it somewhere out of reach – so that he wouldn't be tempted to spend it.

Mr V already had a savings account with a building society. His parents had opened the account for him when he was a child. So when he decided to save money more regularly, the building society was his first port of call.

He phoned customer services to ask for some advice about investing his money. The adviser he spoke to recommended a regular savings policy – which included life assurance cover.

The department store that Mr V worked for was run as a co-operative – and it gave everyone who worked there life assurance as part of their benefits package. So Mr V wondered whether he needed the life cover the savings policy included.

He phoned customer services back to check this – and an adviser told him that the life cover included in this particular policy would pay out a lump sum tax-free. Mr V thought that sounded good, so he took out the policy.

When the policy matured, Mr V was shocked to find that he got back a lot less than he had paid into the policy. He rang the building society to find out what was going on – and was told that it was because of poor stock market performance during the period that he had been paying into the policy.

Mr V complained to the building society. He said he didn't even know his money had been invested on the stock market. He said that he hadn't wanted to touch his money and had been happy to wait for the policy to mature – but he pointed out that he had wanted a safe investment, and that he had not understood that it could lose money.

When the building society rejected his complaint, Mr V asked us to investigate.

complaint upheld

When we looked at the evidence, we established that Mr V's money had been invested in very cautious funds – and in fact, had not been affected much by fluctuations in the stock market. However, the building society *had* used money from the policy to cover the cost of the life cover it had provided.

Although the policy would have paid out a lump sum tax-free if Mr V had died, the cost of the life cover – and other charges that had applied to the policy – had made it very difficult for Mr V to get a decent return on his investment.

... he didn't even know his money had been invested on the stock market

… he should only have been recommended a product that did not pose any risk to his capital

The building society's records showed that "*safety and security of capital*" were important to Mr V. And we saw no other evidence to suggest that Mr V had been willing to run the risk of losing any money.

We were satisfied that Mr V had wanted to keep his money safe, and that he should only have been recommended a product that did not pose any risk to his capital. We also concluded that Mr V should not have been sold a policy with expensive life cover that he clearly did not need.

We told the building society to pay Mr V the difference between what he got back from the policy and what he *would* have got if his money had got the same return as the average rate published by the Bank of England for one-year fixed-rate bonds.

By coming to this decision, we weren't saying that Mr V *would* have invested in a fixed- rate bond. But the return on fixed-rate bonds was a fair and reasonable measure of what Mr V might have got back if he had put his money into a risk-free investment over the same period.

The building society asked us whether the compensation was subject to income tax. We pointed out that this was compensation for investment loss. This kind of compensation *isn't* usually subject to income tax, even if it is calculated by referring to an interest rate.

However, we also explained that in certain circumstances, a consumer may be liable to pay capital gains tax on compensation – but that the law does not require financial businesses to deduct this from the compensation they give.

case study 110/06

consumers complain they were advised to cash in a with-profits bond and invest in a high-risk fund

Miss G's parents were retired, and had a comfortable income from their pension. Every year or so, they met up with an adviser at their bank to review their finances. At one of these meetings, Mr and Mrs G told the bank that they wanted growth and income from their savings, with some capital security. The bank identified that Mr and Mrs G had a "*cautious*" attitude to risk.

The adviser recommended that Mr and Mrs G cash in one of their with-profits bonds and invest £20,000 in a property fund. This fund invested in office blocks and retail parks across the UK – and had borrowed money from a number of banks to fund its investment activity. Mr and Mrs G followed the bank's advice and took out the investment.

The value of the fund rose steadily, but Mr and Mrs G started to worry when it began to go down rapidly.

Miss G complained to the bank on her parents' behalf. She asked whether it had been right to tell her parents to cash in their with-profits bond to invest in a fund that could go down so quickly.

When the bank rejected her complaint, she decided to refer it to us.

complaint upheld

The bank did not have any record of having advised Mr and Mrs G to cash in their with-profits bond. But its records did show that the with-profits bond had been in place when its adviser had first met the couple – and we noted that the adviser himself had completed some of the paperwork to cash it in.

Mr and Mrs G told us that the bank's adviser had said that their existing bond was not performing and had helped them to cash it in – and had advised them to invest the proceeds into the property fund two months later.

In these circumstances, we decided it was likely that Mr and Mrs G had cashed in their with-profits bond on the advice of the bank.

We asked the bank why it had recommended that the couple invest their money in a fund that was using borrowed money to invest in property. The bank could not give us a reasonable explanation.

The business that had provided Mr and Mrs G's with-profits bond was willing to restart the bond with the value it would have had if it had not been cashed in – as long as the cost of restarting it was covered. So we told the bank to pay for Mr and Mrs G's bond to be put back in place.

... the adviser himself had completed some of the paperwork to cash it in

... he had been working extremely hard to put the money away – and had been expecting a far better return

case study 110/07

consumer complains about unexpectedly low returns on his policy

Mr F had a full time job, but over the past ten years he had been working part time as a dance teacher to supplement his income. He had been putting some of his extra earnings into a savings policy.

When the policy matured, Mr F complained to the policy provider that he had only got back £100 more than he had paid in. He said that he had been working extremely hard to put the money away – and had been expecting a far better return on his investment.

The business rejected Mr F's complaint, saying that the returns on the policy were not guaranteed. Mr F didn't feel that the business had considered his complaint seriously, so he decided to get in touch with us.

complaint upheld

We looked carefully at the details of Mr F's policy. We noted that the charges the company had applied meant that the policy would have needed to have grown quite significantly each year just to return what Mr F was paying in. It would have needed to grow even more if it was going to give him a worthwhile return.

So there was a very good chance that Mr F would get little or no return on the money he paid into the policy. In these circumstances, we concluded that Mr F should not have been advised to put his savings into this policy.

The business's records showed that Mr F had not wanted to take any risk with his money. In cases like this, we would usually tell a business to carry out a comparison with the average rate for one-year fixed-rate bonds. However Mr F had taken out his savings policy before the Bank of England started to compile this rate.

So as an alternative, we decided that it was reasonable for the business to compare what Mr F had received from the policy with what he would have got if the money had grown at the same rate as the Bank of England base rate.

ombudsman focus: first quarter statistics

a snapshot of our complaint figures for the first quarter of the 2013/2014 financial year

Since September 2009 we have been publishing complaints data on our website every six months about named individual businesses. The data shows the number of new complaints – and the proportion of complaints we upheld in favour of consumers – for businesses that have 30 or more new cases (and 30 or more resolved cases) in each six-month period.

We also publish updates in *ombudsman news* on a quarterly basis – showing what kind of financial products people have complained about, and what proportion of complaints about different products we have upheld in favour of consumers.

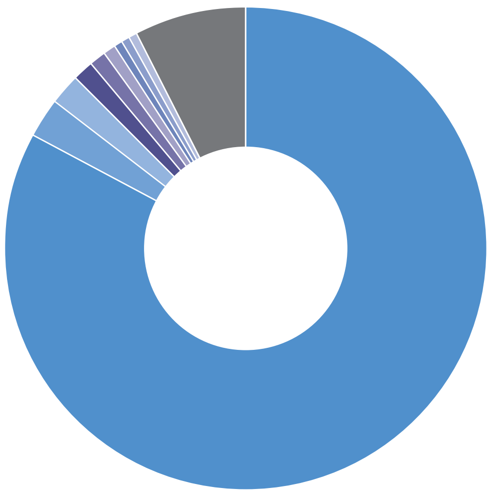
In this issue of *ombudsman news* we focus on data for the first quarter of the financial year 2013/2014 – showing how many new complaints we received, and what proportion we resolved in favour of consumers, during April, May and June 2013. During these three months:

- Consumers referred 159,197 new complaints to us – an increase of 179% on the same period last year, when we received 57,076 new complaints.
- 83% of these new complaints were about payment protection insurance (PPI) – up from 56% during the same period last year. We continue to receive around 2,000 new PPI complaints each day.
- The proportion of complaints we upheld in the consumers' favour ranged from 1% (for complaints about SERPs) to 78% (for complaints about PPI).
- Overall, we found in favour of the consumer in around seven out of ten cases during the 13 weeks from 1 April 2013.

payment protection insurance (PPI)
current accounts
house mortgages
credit card accounts
car and motorcycle insurance
overdrafts and loans
buildings insurance
mortgage endowments
deposit and savings accounts
term assurance
packaged bank accounts
travel insurance
whole-of-life policies
contents insurance
income protection
hire purchase

Financial Ombudsman Service

the financial products that consumers complained about most to the ombudsman service in April, May and June 2013



- payment protection insurance (PPI) 83%
- current accounts 2.5%
- mortgages 2%
- credit card accounts 1.5%
- car and motorcycle insurance 1%
- overdrafts and loans 1%
- buildings insurance 0.5%
- mortgage endowments 0.5%
- deposit and savings accounts 0.5%
- complaints about other products 7.5%

number of new cases			
Q1 (Apr to Jun) 2013/14	full year 2012/13	full year 2011/12	full year 2010/11
132,152	378,699	157,716	104,597
3,873	18,868	14,057	19,373
2,941	11,915	9,530	7,060
2,599	19,399	18,977	17,356
1,708	7,785	7,264	5,784
1,607	7,791	6,239	5,805
1,038	4,611	4,556	3,469
920	4,657	3,267	3,048
846	4,512	3,734	4,326
777	3,572	1,432	926
736	1,629	–	–
531	2,715	2,400	2,503
499	2,239	1,828	1,444
431	2,027	2,089	1,697
362	1,461	950	702
350	1,621	1,545	1,395

% resolved in favour of consumer			
Q1 (Apr to Jun) 2013/14	full year 2012/13	full year 2011/12	full year 2010/11
78%	65%	82%	66%
31%	33%	31%	27%
27%	26%	28%	36%
28%	33%	54%	61%
40%	46%	49%	45%
34%	34%	38%	43%
46%	48%	50%	42%
27%	25%	28%	31%
42%	42%	44%	42%
12%	12%	23%	27%
66%	–	–	–
53%	49%	52%	42%
21%	23%	32%	33%
43%	40%	52%	41%
28%	30%	41%	42%
43%	43%	43%	43%

* Complaints involving home emergency cover, card protection insurance and mobile phone insurance were previously categorised under "specialist insurance" – and were not shown separately in previous years.

"point of sale" loans
home emergency cover
personal pensions
portfolio management
critical illness insurance
debit and cash cards
private medical and dental insurance
card protection insurance
secured loans
investment ISAs
inter-bank transfers
unit-linked investment bonds
catalogue shopping
pet and livestock insurance
payday loans
warranties
endowment savings plans
credit broking
share dealings
legal expenses insurance
debt collecting
self-invested personal pensions (SIPPs)
commercial vehicle insurance
cheques and drafts
commercial property insurance
debt adjusting
annuities
electronic money
direct debits and standing orders
specialist insurance

number of new cases				% resolved in favour of consumer			
Q1 (Apr to Jun) 2013/14	full year 2012/13	full year 2011/12	full year 2010/11	Q1 (Apr to Jun) 2013/14	full year 2012/13	full year 2011/12	full year 2010/11
347	1,939	2,247	2,765	**43%**	43%	45%	36%
341	1,284	1,473	*	**55%**	61%	69%	*
330	1,808	1,496	1,126	**25%**	32%	35%	36%
313	1,449	1,152	1,148	**63%**	54%	63%	67%
274	1,370	817	528	**20%**	21%	31%	31%
274	1,285	836	878	**43%**	45%	40%	41%
259	949	513	506	**38%**	38%	46%	50%
247	*	*	*	**76%**	*	*	*
228	925	–	–	**28%**	21%	–	–
210	1,528	904	824	**33%**	30%	51%	48%
172	1,036	688	529	**32%**	41%	42%	43%
172	1,030	856	849	**43%**	46%	64%	72%
170	950	695	582	**53%**	58%	60%	66%
167	830	554	438	**36%**	52%	40%	31%
160	542	296	59	**72%**	71%	81%	64%
157	903	881	895	**54%**	62%	63%	61%
155	973	875	924	**17%**	21%	33%	33%
155	711	627	697	**59%**	64%	68%	63%
154	609	549	979	**42%**	42%	50%	62%
150	882	779	619	**39%**	37%	26%	21%
137	817	576	512	**35%**	44%	38%	42%
132	620	499	417	**55%**	61%	61%	46%
128	599	436	317	**42%**	43%	38%	36%
126	686	670	691	**38%**	45%	47%	47%
125	720	629	429	**39%**	41%	34%	31%
122	484	462	302	**74%**	69%	63%	54%
120	624	511	423	**31%**	29%	35%	37%
120	400	403	369	**37%**	29%	33%	36%
118	651	538	571	**41%**	45%	47%	45%
116	825	791	1,791	**63%**	66%	53%	51%

* Complaints involving home emergency cover, card protection insurance and mobile phone insurance were previously categorised under "specialist insurance" – and were not shown separately in previous years.

** This table shows all financial products and services where we received (and settled) at least 30 cases. This is consistent with the approach we take on publishing complaints data relating to named individual businesses. Where financial products are shown with a double asterisk, we received (and settled) fewer than 30 cases during the relevant period.

mobile phone insurance
roadside assistance
state earnings-related pension (SERPs)
store cards
personal accident insurance
"with-profits" bonds
guaranteed bonds
occupational pension transfers and opt-outs
OEICs (open-ended investment companies)
hiring/leasing/renting
merchant acquiring
business protection insurance
guaranteed asset protection ("gap" insurance)
(non-regulated) guaranteed bonds
credit reference agency
home credit
safe custody
debt counselling
spread betting
unit trusts
total
other products and services

number of new cases				% resolved in favour of consumer			
Q1 (Apr to Jun) 2013/14	full year 2012/13	full year 2011/12	full year 2010/11	**Q1 (Apr to Jun) 2013/14**	full year 2012/13	full year 2011/12	full year 2010/11
114	615	599	*	**72%**	71%	63%	*
114	490	364	300	**38%**	42%	49%	40%
112	476	294	196	**1%**	2%	2%	7%
110	650	476	480	**52%**	51%	67%	70%
106	495	322	304	**38%**	39%	47%	49%
105	675	542	683	**21%**	20%	27%	37%
88	580	352	408	**20%**	28%	35%	40%
83	399	331	281	**34%**	51%	43%	49%
79	370	141	140	**27%**	47%	47%	76%
75	304	240	221	**42%**	38%	46%	43%
70	235	206	110	**28%**	23%	21%	15%
64	261	160	204	**34%**	44%	27%	22%
53	309	213	182	**20%**	28%	44%	46%
43	336	484	430	**42%**	40%	46%	40%
42	109	69	40	**43%**	41%	37%	43%
30	98	41	34	**37%**	31%	47%	33%
30	120	70	63	**49%**	50%	51%	51%
**	126	124	155	**	56%	57%	53%
**	148	165	219	**	40%	23%	21%
**	165	138	125	**	40%	52%	65%
158,367	507,901	262,488	204,091	**69%**	49%	64%	51%
830	980	1,887	2,030	**42%**	48%	45%	34%
159,197	**508,881**	**264,375**	**206,121**	**69%**	**49%**	**64%**	**51%**

wear and tear in motor insurance

As we noted in our recent *annual review*, we have continued to see an increasing number of complaints involving motor insurance. During the last financial year complaints were up 7% on the previous year – following a 26% rise the year before that.

We continue to see problems arising from disagreements about the *cause* of the damage to a vehicle – particularly in those cases that involve accidents. We often see consumers and insurers disagreeing about whether all the damage had been caused by the accident – in which case it is the usually the insurer's responsibility to sort it out – or whether some of the damage had been caused by "wear and tear". When we look into complaints like this, we need to examine the evidence to decide what was *most* likely to have caused the damage.

As the following case studies show, sometimes problems arise during the *settlement* of claims – once the insurer has accepted that a claim is covered under the consumer's policy. We sometimes see problems where damage has been caused by wear and tear over a number of years, but the consumer has only had the car for a short time – and they were expecting their vehicle to be worth more than their insurer is prepared to offer.

In these cases, we look at the facts carefully to establish what exactly the insurer is liable for under the policy. We sometimes need to explain to the consumer that their insurer is aiming to put them – as far as possible – in the position they would now be in if the accident hadn't happened.

The following case studies illustrate some of these problems, and how we approach them in different circumstances.

Financial Ombudsman Service

... the corrosion damage would need to be repaired at the same time

case study
110/08

consumer complains that insurer will not repair her car because damage was already there

Mrs M's car was parked at the side of the road when another car drove into the side of it. The other driver and their insurer accepted full liability for the damage straight away – and Mrs M claimed against her own insurance.

After the car had been inspected, Mrs M's insurer told her that it was not willing to pay to have her car repaired. The insurer said that her car was badly corroded in certain places – and that for the damage caused by the accident to be repaired, the corrosion damage would need to be repaired at the same time. The insurer said this would cost £3,000.

The insurer said that its responsibility was to pay for repairing the damage caused by the accident – and not the damage caused by the corrosion. It said that if all the repair work was carried out, the car would be returned to Mrs M in a better condition than before the accident.

Instead of repairing the car, the insurer offered Mrs M a cash settlement of £500 – to cover the cost of repairing the damage caused by the accident. But Mrs M was not happy with this offer. From her point of view, she had done nothing wrong and was now being asked to pay a lot of money for her car to be repaired.

When the insurer refused to change its offer, Mrs M made a complaint. She said that the corrosion had not caused her any problems before the accident.

And she pointed out that it only needed to be repaired *because* of the accident – so the insurer should pay for all the repairs.

When her insurer rejected her complaint, Mrs M asked us to look into it.

complaint not upheld

We looked carefully at what Mrs M's insurer had offered – and checked whether it was in line with the details of the her policy. The policy document said that the insurer could settle a claim by repairing the damage, or replacing the vehicle, or offering a cash settlement.

The corrosion damage had been caused by wear and tear – and not by the accident. In this case, we thought it was reasonable for the insurer to offer Mrs M a cash settlement for the damage caused by the accident, rather than having all the repairs carried out. After all, it would not have been able to repair the damage caused by the accident without the corrosion damage being repaired as well.

In these circumstances, we concluded that the insurer's offer of £500 was fair – and we did not uphold the case.

... she was not convinced that her car had any existing problems

case study 110/09

consumer complains that her car was damaged while being repaired – but her insurer insisted there were existing problems

Ms H was driving home from her partner's house when she ran into the back of another car. She phoned her insurer straight away, and the insurer arranged for her car to be assessed at a garage.

The engineer who examined the car found that the accident *had* caused some damage – and Ms H's insurer arranged for her car to be repaired.

The car was repaired and delivered back to Ms H. But when she started the engine, it seemed to be making far more noise than usual.

Ms H phoned her insurer to tell them about the noise. A customer services adviser explained that all the damage caused by the collision had been repaired. But he also told her that the engineer's initial assessment had identified "*other issues*" with the car – that had probably been there before the accident had happened.

Ms H was surprised to hear about these other problems. She said that she hadn't noticed anything before the accident – and asked what she was supposed to do now that the engine was making such a noise.

The insurer's adviser arranged for a different engineer to check Ms H's car. When he inspected the car, he reported that none of the issues that had recently come to light had been caused by the accident.

The insurer told Ms H that it was not liable for these problems – and that they had probably been caused by "*the oil being over-filled before the accident*".

Ms H complained to her insurer. She said that she hadn't put too much oil in her car – and that she was *not* convinced that her car had any existing problems. She said that the problems must have been caused by the accident or the subsequent repairs.

In response to Ms H's complaint, the insurer arranged for the car to be inspected again. The engineer who carried out the inspection noted that the engine *was* making a lot of noise, but confirmed that it was probably caused by a pre-existing problem – and had not been caused by the accident or the repairs.

Ms H was not happy with this response. She took the car to her local car workshop, who found that there was a loose bolt in the oil pump. A mechanic fixed the problem – but Ms H had to pay for the work. Although her car was now fine, she decided to bring her complaint against the insurer to us.

complaint upheld

Ms H showed us the invoice from the car workshop. The invoice showed that the oil pump failure had been caused by a loose bolt.

The insurer had said all along that the problem had been caused by the oil being over-filled before the accident but it did not provide any persuasive evidence of this. However, the invoice from the car workshop showed that this was *not* the issue – and that the problem was a loose bolt in the oil pump.

We decided that, on balance, the problem with the car's oil pump was likely to have been caused by the accident or during the initial repairs.

In these circumstances, we told the insurer to refund Ms H the cost of fixing the loose bolt. We also told it to pay her £150 to compensate her for the time and trouble she had been put to.

... it didn't make any difference how long he had actually owned the car

case study 110/10

consumer complains that insurer will only pay a reduced cash settlement – because of existing damage to his car

Mr C bought a used car from a private owner. Four months later he was involved in an accident on the way to work. He phoned his insurer – and an adviser arranged for the car to be inspected at a local garage.

The engineer who carried out the inspection said that the cost of the actual repairs would be far greater than the value of the car. His report also showed that there was some damage to the car that had *not* been caused by the accident. This included some scratches on the doors and a large dent in the front bumper.

On the back of the report, the insurer decided to settle Mr C's claim by a cash settlement. It wrote to Mr C to tell him that her car had been valued at £3,000 – but that it had deducted £350 for "*pre-existing damage*". The insurer pointed out that this damage had affected the value of his car.

Mr C was not happy with this settlement. He had only had the car for four months – and he thought the insurer should pay him the car's full value.

He complained to the insurer – but when it refused to reconsider its position, he asked us to look into his complaint.

complaint resolved

We asked the insurer for a full explanation of how it had arrived at its valuation of Mr C's car. We were satisfied that it was a fair reflection of the car's market value.

As part of our consideration of the engineer's report, we also took into account the fact that the engineer was appropriately qualified to carry out this sort of work – and we could see no reason to doubt his findings.

Having satisfied ourselves that the insurer had followed its own procedures correctly, we got in touch with Mr C. We explained to him that it didn't make any difference how long he had actually owned the car – or whether the damage had occurred before or after he had bought it. We pointed out that the insurer was aiming to put him – as far as possible – in the position he would now be in if the accident hadn't happened.

In cases like this, where the repairs would cost more than a car is worth, insurers usually pay a cash settlement. We explained to Mr C that an insurer will usually come up with a figure by assessing the value of the car *before* the accident happened. In Mr C's case, the scratches on the doors and the dent in the bumper would have affected the value of his car before the accident – and so the insurer had reflected that in its settlement figure.

Once we had explained this to Mr C, he was happy to let the matter go.

... he hadn't expected to have so many problems with a premium-brand car

case study
110/11

consumer complains that finance company will not cover the full cost of repairs to his car

Mr W bought a used premium-brand car from his local dealership. The car had 90,000 miles on the clock and came with a one-month warranty. Mr W signed up to a finance agreement to pay for it.

Just before the warranty ended, Mr W took the car back to the dealership for a maintenance check – and a mechanic said that everything was fine.

A month later, Mr W phoned the dealership again. He said there was a problem with the car's clutch. The salesman at the dealership told him to get in touch with his finance company – who was responsible for the car from now on under Mr W's finance arrangements.

Mr W phoned the finance company. He explained that he had been having trouble with the car's clutch since the day he bought it. The adviser asked Mr W whether he had raised this with anyone at the dealership. Mr W said that he hadn't. The adviser suggested that Mr W was probably having problems because he wasn't used to the type of clutch in his new car.

Mr W wasn't convinced. He thought there must be something wrong with the clutch. So he took his car back to the dealership and asked for them to look into it. A mechanic examined the car and confirmed that the clutch *was* faulty.

By this time the car's warranty had ended – and the dealership was no longer responsible for it. It said it would cover the cost of the labour as a gesture of good will, but it wouldn't cover the cost of the parts – and that Mr W should get in touch with his finance company about that.

Mr W did not think that he should have to pay for the parts, and he complained to the finance company.

But the finance company said there was no evidence that the clutch had been faulty when the car was sold – and that the maintenance check a month later hadn't found any problems either.

The finance company also pointed out that the car had a lot of miles on the clock. It said that Mr W had covered a lot of miles in a short space of time, and that might have contributed to the problem. The company concluded that in these circumstances, the problems with the clutch had probably been caused by wear and tear.

Mr W wasn't happy with the finance company's response. He hadn't expected to have so many problems with a premium-brand car – and he decided to ask us to investigate.

complaint not upheld

We asked the finance company to send us the paperwork relevant to this case. There was no record of any problem with the clutch – either when the car was sold, or at the check that had taken place a month later. From this, we concluded it was likely that the car hadn't had a faulty clutch when Mr W had bought it.

A car's clutch is particularly susceptible to wear and tear – especially when the car has high mileage. In this case, the car already had 90,000 miles on the clock before Mr W had bought it. We could see from the dealership's records that Mr W had driven a further 5,000 miles during the short time he had owned it.

We decided that this amount of use – on top of the existing high mileage – had probably caused the damage to the clutch.

In these circumstances, we concluded that the finance company should not be held responsible for covering the cost of the repairs.

... Mr T was clearly a low-mileage driver, and he had only owned the car for just over a year

case study 110/12

consumer complains that he was sold a car that had a poor service history

Mr T had recently retired. He thought he would probably be doing less driving now that he wasn't working, so he decided to sell his car and buy a smaller one. He paid for the car by taking out a hire purchase agreement with a finance company.

For just over a year, everything was fine with the car. But when the engine started making strange noises, Mr T took the car to his local garage straight away. The mechanic explained that the problems were being caused by traces of metal in the engine oil – and that the entire engine would now need to be replaced.

When Mr T asked how metal could have ended up in the oil, the mechanic said it was probably because the car hadn't been serviced properly for a number of years.

To find out when the car had last been serviced, Mr T looked for the log book that would show its service history. But he couldn't find it, so he phoned the dealership to ask whether they still had it. The salesman at the dealership told Mr T that the car didn't have a log book – so there hadn't been one when he had bought it. The salesman said that if Mr T was having problems, he should take it up with the finance company.

So Mr T phoned the finance company to complain about what had happened. He faxed them a letter from the mechanic who had inspected the car – and asked them to cover the cost of the repairs. But the finance company said it was not willing to pay.

The reason it gave was that there was no evidence to suggest the car had been faulty when Mr T had bought it. It said it was too late for him to report the problem anyway – because he had bought the car over a year ago. And it pointed out that the car had been fine for a year, so any problems had clearly arisen since Mr T had bought the car.

Mr T wrote back to the finance company. He pointed out that he had only driven just over 2,000 miles in the car during the year – and that it was very unlikely he was responsible for the problems with the engine.

When the finance company refused to reconsider its position, Mr T brought his complaint to us.

complaint upheld

We asked the finance company to send us the information they had about this case. From the paperwork that related to the dealership, we noted that the car's "*pre-delivery check*" showed the wrong registration number – and appeared to relate to an entirely different car.

They had no paperwork about Mr T's car – and so there was no evidence to show that his car had been through proper checks or serviced properly before it was sold to him.

The mechanic who had inspected Mr T's car had said in his letter that the engine trouble was probably caused by a lack of maintenance over a number of years. We noted that Mr T was clearly a low-mileage driver, and he had only owned the car for just over a year.

In these circumstances, we concluded that the damage was likely to have been caused before Mr T had bought the car. So we told the finance company to pay for the engine to be repaired.

MIX
Paper from responsible sources
FSC® C001785
FSC www.fsc.org

Printed on Challenger Offset paper made from ECF (Elemental Chlorine-Free) wood pulps, acquired from sustainable forest reserves.

100% of the inks used in *Ombudsman News* are vegetable-oil based, 95% of press chemicals are recycled for further use, and on average 99% of waste associated with this publication is recycled.

Q? &A

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

no ads – no promises

Every day I see adverts on TV for claims companies about mis-sold PPI. I've been getting text messages and calls about it too. If the ombudsman wants people to know that they can make a complaint themselves for free, why don't you advertise in the same way?

The ombudsman service looks at each problem individually. We make decisions based on the individual facts and circumstances of a complaint. We "uphold" some complaints, but where we decide that the business hasn't done anything wrong, we explain that to the consumer.

There is no guaranteed outcome – so it would be wrong for us to advertise in a way that made consumers think that they'll definitely "win" their complaint.

However, we do lots of different things to spread the word about how we can help. Whether it's through our pages; on Twitter and Facebook, displays on buses or meeting people face-to-face at events, we are working hard to let people know that when it comes to PPI complaints, you can do it yourself. And it won't affect the outcome at all.

paper trail

I'm a retired IFA and my business closed several years ago. Yesterday I received a letter from a claims management company saying that I mis-sold one of my clients a PPI policy in summer 2005. I know I've done nothing wrong, but I destroyed most of my files when my business shut down. Can the ombudsman service consider this complaint – and will I be penalised because I have very little documentary evidence to defend myself?

Even though your business is no longer running, we may be able to investigate a complaint about activities that you carried out in the past. And because you were authorised by the Financial Services Authority to sell a regulated product, this complaint is likely to fall within our jurisdiction – so we probably can look into it.

However, we will consider the complaint impartially – and we won't automatically decide that you did something wrong just because you don't have a full file.

As well as considering any information that you do still have, we will also ask the claims manager for the consumer's side of the story. Evidence might include signed documents, verbal statements or notes made by either party during the sale.

It might also be helpful for you to show us copies of your standard terms and conditions, although any documents relating specifically to this particular sale will of course be the most relevant.

If this is the first complaint you have received you might want to have a look at our quick guide for businesses. Our online PPI resource also gives more detail about how we approach this type of complaint. And for general queries about the complaints process or how we work you can always call our technical advice desk on 020 7964 1400.

ref: 775

Financial Ombudsman Service