ombudsman news

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

in this issue

Financial Ombudsman Service

for better or worse

Considering events within the financial services sector in the last few years, it's understandable that the sector's relationship with its customers is still a work in progress.

Perhaps that wouldn't be so important if financial services didn't matter so much. If someone's toaster broke down after a few years – and it couldn't be fixed – they would probably just buy a new one. On the other hand, if someone's *mortgage* went wrong in some way, it's unlikely that things would be so straightforward.

As our case studies highlight, even an issue that on the face of it seems relatively minor can put someone's home and lifestyle at risk. And the attachment people have to where they live – because they've saved hard to buy it or because of happy times it's seen – means problems have an emotional, as well as a practical impact.

Mortgages are just one example of how integral financial services are to the course of people's lives. Think about a teenager insuring their first car, a new grandparent opening a child's savings account, or a couple taking out travel insurance for their honeymoon. Or perhaps someone paying a few pounds every month to ease the burden on their family if the worst should happen.

In fact, it's hard to think of an event or rite of passage that doesn't have some kind of financial product associated with it – whether the commitment is substantial or small, long-lasting or temporary.

And whatever the level of public trust in the financial services sector over the years, individual people have still had to trust businesses to protect and support them through different stages of their lives.

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meet us

in July we're in:

- Crewe
- Chester

for more events see page 19

scan for previous issues

Caroline Wayman

Inevitably, at the ombudsman we often see those situations where trust has broken down – leaving customers frustrated, disappointed and stressed. In many cases this is because, whatever the specific "rights and wrongs" of a complaint, the business hasn't appreciated the link between the service they're providing and their customer's life – and all the emotions that go with it.

And where emotions are running high, it's also likely that jargon and inflexible terms, conditions and procedure will feel particularly cold, unhelpful and unfair.

But we also see examples of how a business's care and expertise have made all the difference to someone at a significant point in their life. That could be as simple as recognising a bereaved customer's loss. It could be giving the tailored advice that allows someone to enjoy their retirement where things haven't always been so certain. Or it could be reaching the fair, pragmatic solution that means someone can stay in their home.

It's hard not to notice that sharing customers' milestones – in good times and bad – has been a common theme of financial advertising in recent years. Thinking about how the financial services sector can continue to strengthen trust, I think ensuring it's living up to this picture is a good place to start.

Caroline

... we also see examples of how a business's care and expertise have made all the difference

Financial Ombudsman Service
Exchange Tower
London E14 9SR

switchboard 020 7964 1000

consumer helpline
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

mortgages

Taking out a mortgage is one of the most expensive financial commitments most people will ever make – and is tied up with their home and family life. So it isn't surprising that these complaints can be hard-fought and upsetting for the people involved, whatever our decision about what's happened.

Over the last few years we've continued to receive high numbers of complaints about mortgages. As we explain in our *annual review*, a disappointing proportion of these involve administrative or communication errors – which, with care and pragmatism, could have been sorted out without our involvement.

But complaints that are, on the surface, about simple administrative issues may be rooted in something more serious. For example, complaints about the suitability of interest-only mortgages tend to arise towards the end of a mortgage term – when someone recognises they don't have a way of repaying the capital.

As our case studies highlight, we continue to receive a small number of complaints from people who believe their mortgages aren't valid because of some legal loophole relating to their mortgage terms and conditions. People generally seem to have heard about this in online forums – and use very similar arguments when they contact us.

We're aware that using arguments like these in an attempt to get a mortgage written off is often a sign that someone is struggling financially. While the legal validity of a mortgage is ultimately something for a court to decide, we can look into whether a lender has treated their customer fairly – as well as signposting the consumer to sources of free support for their financial troubles.

Since April 2014, new, tighter requirements have applied to mortgage lending. Since then we've received complaints that lenders have applied new rules too rigidly – in some cases leading to outcomes that are unfair on customers.

In particular, many of the complaints we've seen about "porting" – transferring a mortgage to another property – stem from the way lenders are applying the new rules. For example, we hear from people who'd previously been told they could port their mortgage – but who have since been told that new lending requirements mean they can't.

While a business's lending criteria isn't something we can change, we know from the cases we see that inflexible processes and "box-ticking" don't always lead to a fair outcome for the customer involved.

So we've been clear that – while a business's overall lending criteria is a matter for them – the new rules *don't* mean that lenders shouldn't consider their customers' individual circumstances when making decisions about lending.

There's more information about our approach to complaints involving mortgages – with more examples – on our website.

Financial Ombudsman Service

... the adviser had told him there was a six-month deadline for porting, and it had been only two months since the meeting

case study 126/1

consumer complains that bank's delays meant he couldn't port mortgage and incurred extra interest

After his children had moved out from the family home, Mr P decided to look into moving to a smaller house.

Satisfied with the interest rate on his tracker mortgage, he met an adviser at his bank to find out how to port the remaining debt to another house.

Mr P filled in some application forms. And after the meeting, he sent some information to the bank to support his application.

While he was waiting to hear from the bank, Mr P started to make arrangements for selling his house. When he hadn't heard anything a few weeks later, he contacted the bank to see what was happening – and was told that the "window" for porting his mortgage had "closed".

Mr P told the bank he was very surprised to hear that – as the adviser had told him there was a six-month deadline for porting, and it had been only two months since the meeting.

The bank explained that the adviser had given Mr P incorrect information – and that a change in their terms and conditions meant that the deadline for porting was actually only a month, which had now passed.

By this time, Mr P had already sold his house. Unable to port his original mortgage, he took out a different mortgage to buy the new house he'd found.

Mr P then complained to the bank. He said that because of their mistake, he'd run up unnecessary fees and was on a higher interest rate than he'd been initially offered. He told the bank that he thought they should compensate him for the extra money he'd already paid, and would have to carry on paying into the future.

But the bank said they were just following their terms and conditions – and didn't uphold the complaint. Unhappy with this response, Mr P contacted us.

complaint upheld

Mr P sent us emails he'd exchanged with the bank shortly after he'd met with the adviser. We could see that he'd responded quickly to all of the bank's requests for information – and in their last email, the bank had said they'd get back to him.

We asked the bank why it had taken them so long to look at Mr P's application. They explained that the person who'd advised Mr P had gone on holiday – without leaving instructions for anyone else to move the application forward.

The bank also confirmed their adviser had forgotten to mention recent changes to their lending criteria. These charges meant Mr P's mortgage now had to be ported within one month – rather than the six months it had been when he first took it out.

But even though the bank acknowledged these mistakes, they said they still didn't think it would have been fair to allow Mr P to port his mortgage after a month had passed – as the new terms and conditions didn't allow it.

We explained that, in our view, what had happened wasn't fair on Mr P. Not only had the adviser given him the wrong information, the bank had also taken two months to tell him what had happened.

And given Mr P had been prompt in replying to the bank, we thought that if he'd known about the shorter deadline, he would have met it.

In light of everything we'd seen, we decided that the bank was responsible for the fact that Mr P had needed to take out a different mortgage with a higher interest rate.

After reviewing the terms and conditions of Mr P's old mortgage with the bank, we thought it was likely that the balance would have been ported on his existing interest rate.

We told the bank to pay Mr P the fee he'd been charged for his unsuccessful porting application – as well as the fees he'd paid to his new mortgage provider.

We explained to Mr P that we didn't think it was fair to tell the bank to compensate him for the extra interest he'd pay over the whole life of his new tracker mortgage. Interest rates were unlikely to stay at their current rate in the long term – and he might remortgage in years to come.

Instead, we told the bank to pay the difference for the next seven years – which we thought was a reasonable time into the future.

The bank also offered to pay Mr P £500 to recognise the stress and worry they'd caused – and both we and Mr P felt this was fair in the circumstances.

… Mrs H told us she couldn't find a way of making up the difference on her wages alone

case study
126/2

consumers complain that bank hadn't collected mortgage payments – and expected increased payments

When Mr and Mrs H were looking over their bank statements, they noticed that the direct debit for their mortgage hadn't been taken for several months.

When the couple contacted the bank to see what had happened, they were told that the missed payments were down to a "system error". The bank agreed to extend Mr and Mrs H's mortgage term – so that they wouldn't have to pay more each month to make up for the missed payments.

A few years later the same thing happened again – and Mr and Mrs H again contacted the bank. The bank found that same "system error" had happened. But this time, the bank said that they wouldn't extend the couple's mortgage term. They said that without a "full assessment" of Mr and Mrs H's finances, it would "breach regulatory obligations".

In the meantime, Mr H had been unwell and had given up work – and part of the couple's mortgage payments were being paid for by the benefits they received.

Mr and Mrs H explained that, because of this, they couldn't now afford to increase their repayments to make up the money they hadn't paid.

When the bank wouldn't change their position, the couple complained – saying they didn't understand why the mortgage term couldn't be extended like it had been before.

But the bank told Mr and Mrs H that they should have realised sooner that the payments weren't being taken. Mr and Mrs H didn't think this was fair – and asked us to look into their complaint.

complaint upheld

We asked Mr and Mrs H why they hadn't noticed straight away that their mortgage repayments had stopped. Mrs H told us that ever since part of their mortgage payments had been covered by the DWP their own contribution had reduced. So their bank balance had increased only slowly during the time the direct debit wasn't being taken.

Looking into the increased repayments the bank was now suggesting, we found that not extending the term meant the couple's monthly payments would triple. Mrs H told us she couldn't find a way of making up the difference on her wages alone. She sent us bank statements showing the couple's income now only just covered their daily bills and essentials.

The bank had accepted that their own system error had been to blame on both occasions that payments had been missed. And it was clear to us that Mr and Mrs H had been open with the bank about their difficult financial position.

In the circumstances, we told the bank to extend the mortgage term again for as long as necessary to make the repayments affordable for Mr and Mrs H.

We also told the bank to pay £400 to make up for the unnecessary worry and upset they'd caused by not treating the couple sympathetically – or extending the mortgage term straight away.

... in not taking any action at all – the mortgage company was responsible for the delay in selling Mr and Mrs A's home

case study 126/3

consumers complain that lender applied interest to a mortgage after "voluntary surrender" – and told them to pay shortfall

When Mrs A hurt her back, she had to take some time off working as a warehouse assistant. Relying on Mr A's wages alone, the couple started to fall behind on their mortgage payments.

After a few months, Mrs A was given medical advice that she shouldn't return to work at all. She and Mr A contacted their mortgage company to explain the position – and to talk about their options.

Because there was no prospect of Mrs A returning to work, Mr and Mrs A agreed to a "voluntary surrender" of their home. They then moved in with Mr A's sister.

A year later the mortgage company contacted Mr and Mrs A at Mr A's sister's address. They said they'd written to the couple several times because they hadn't received the forms relating to the voluntary surrender.

Mr and Mrs A replied that they'd sent off the forms a year ago. They said that as they hadn't heard anything since then, they'd assumed everything was fine.

The mortgage company sent Mr and Mrs A a new set of forms to complete – and took ownership of the house. When the sale price didn't cover the outstanding amount of the mortgage, the mortgage company told Mr and Mrs A they'd need to make up the shortfall.

Mr and Mrs A complained, saying there wouldn't have been a shortfall if an extra year's interest hadn't been applied to the loan. But the mortgage company argued that Mr and Mrs A hadn't returned their forms the first time – and that Mr and Mrs A were responsible for the year's delay.

At this point, Mr and Mrs A asked us to step in.

complaint upheld

We couldn't say for sure what had happened with the forms. We explained that, as they hadn't heard anything at all, it might have been a good idea for Mr and Mrs A to have double-checked with the mortgage company that everything had gone through.

But in our view, the mortgage company should have checked that they'd received what they needed to take ownership of the house. If the forms hadn't been received, the house was still technically owned by Mr and Mrs A. And in that case, it wasn't clear why the mortgage company hadn't followed their process for collecting arrears.

Either way, we decided that – in not taking any action at all – the mortgage company was responsible for the delay in selling Mr and Mrs A's home. As a result of the delay, a full year's interest had been added to the mortgage balance – increasing the shortfall.

From the records we saw of the mortgage company's contact with Mr and Mrs A, it seemed the couple had provided their new address at the time they moved in with Mr A's sister. But the mortgage company had continued to write to the old address for nearly a year. So it wasn't Mr and Mrs A's fault they hadn't received the letters that would have alerted them far earlier to the problem.

In the circumstances, we told the mortgage company to recalculate the shortfall balance, removing the interest applied from the date Mr and Mrs A should have originally gone through the "voluntary surrender" process. We also told them to pay Mr and Mrs A £200 to recognise the upset caused by the mistake.

... Mr and Mrs J said they remembered being told that the term could be extended "subject to their financial ability"

case study 126/4

consumers complain that advice to take out an interest-only mortgage was unsuitable

Looking to make some home improvements, Mr and Mrs J took out an interest-only mortgage on their house.

The interest-only mortgage had a five-year term. Just before the end of the term, the mortgage company contacted Mr and Mrs J to remind them to arrange to pay off the mortgage.

When Mr and Mrs J asked to extend the term, the mortgage company said they'd need to carry out a full assessment of the couple's finances – including checking their current income and expenditure – before they could agree to an extension.

Mr and Mrs J complained to the mortgage company – saying they'd thought the term could just be extended automatically.

The mortgage company said Mr and Mrs J could have some time to think about their options – but the checks would still need to be carried out.

Unhappy about this, Mr and Mrs J contacted to us.

complaint not upheld

With the money the interest-only mortgage had given them, Mr and Mrs J had repaid their existing repayment mortgage, paid off a loan and extended their home to make office space for running their event-planning business.

However, they told us that since taking out the new mortgage, their business hadn't been doing so well. Their financial circumstances had changed considerably – and they were worried about the assessment the mortgage company now wanted to do.

When we asked the mortgage company what they knew about the change in the couple's circumstances, they told us they had been aware of what had happened.

They said they'd asked Mr and Mrs J if they wanted to talk about their options – but Mr and Mrs J had refused.

Mr and Mrs J told us they'd made it clear from the start that they'd always wanted a longer mortgage term. When we asked the mortgage company for the fact-find, this confirmed that Mr and Mrs J had said their preferred mortgage term would be 20 to 25 years. The mortgage company told us that they very rarely set up such long terms – and that five years was standard for this type of agreement. This had been explained to Mr and Mrs J.

Mr and Mrs J said they'd discussed extending the term in their initial conversations with the mortgage company. They remembered being told that the term could be extended "*subject to their financial ability*".

We didn't doubt that these conversations had happened. But we pointed out to Mr and Mrs J that they hadn't been told that the term would *definitely* be extended.

We looked carefully at all the documents Mr and Mrs J had been given about the mortgage – and the mortgage company's records of their contact with the couple. In our view, the mortgage company had been clear about the mortgage term – and the process for extending it – from the beginning.

We explained to Mr and Mrs J that although they'd said they would have *preferred* a longer term, they'd been given enough information to understand what they were agreeing to.

We also looked into whether the mortgage company had ensured that Mr and Mrs J had a suitable way of repaying the mortgage at the end of the term.

Both the fact find and the suitability report indicated that Mr and Mrs J would repay the mortgage through the sale of their business. And Mr and Mrs J told us that this was still what they were eventually planning to do.

Based on the information we'd seen, we didn't think this arrangement was unsuitable for them. But clearly, for it to work, Mr and Mrs J would have to be prepared to sell their business at the end of the mortgage term.

We were sorry to hear about Mr and Mrs J's financial troubles. But we felt the mortgage company had acted fairly in offering them more time to sort things out before a full assessment took place.

We didn't uphold Mr and Mrs J's complaint – but encouraged them to discuss their options with the mortgage company.

case study 126/5

consumer complains that mortgage company said they're too old to port mortgage

Mr K was 70 and had recently retired – and Mrs K was in her early sixties and still working. They took out an interest-only mortgage on their home to make some improvements, including a new kitchen.

A few years later when Mrs K retired, the couple decided to downsize. They'd already found a buyer for their existing house – and applied to port their remaining mortgage to a flat they'd found, which they understood was allowed under the terms and conditions of their mortgage.

However, their mortgage lender explained that porting a mortgage would involve making a new mortgage application. They said that because of new mortgage rules, they wouldn't lend to over 75s. And because Mr K had recently turned 75, they couldn't agree to transfer the mortgage.

... they both had good pensions – and had in fact been making overpayments on the mortgage for some time

Mr and Mrs K complained – arguing that they had the means to pay the mortgage. They said that they both had good pensions – and had in fact been making *over*payments on the mortgage for some time. They also pointed out that they had an endowment policy, which was due to mature in a year.

The lender still refused to port the mortgage – but offered Mr and Mrs K £500 to recognise their "disappointment".

Mr and Mrs K said they just wanted to be able to port the mortgage as they'd planned – and asked us to look into the situation.

complaint resolved

We looked at the terms and conditions of Mr and Mrs K's mortgage – in particular, what was said about porting. We also looked at the lender's current lending criteria, including the age restrictions.

We could see that the terms and conditions clearly said that Mr and Mrs K could apply to "port" their mortgage. But the lender would still have to consider the application under their lending criteria at the time. And looking at the lender's current criteria, it seemed that they wouldn't usually approve mortgages for people aged over 75.

But in our view, taking into account the couple's financial situation, we didn't think it was fair to refuse their mortgage application on the basis of Mr K's age alone.

After we spoke to the lender, they offered to individually underwrite the couple's application. Unfortunately, by the time they did this, Mr and Mrs K's buyers had pulled out.

While it couldn't make up for losing out on what they'd planned, we explained to Mr and Mrs K that we felt the lender's offer of £500 compensation was fair. We also told the lender to make sure the couple would be allowed to make another individual application in the future.

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case study 126/6

consumer complains that mortgage provider wouldn't reinstate reduced payment agreement

One January, Mr W was made redundant after his employer – a local council – outsourced some of their back-office work. By March, he still hadn't found other work and was worried about how he'd pay his mortgage.

Mr W had a repayment mortgage on the home he'd lived in for the last 19 years – and had paid back a significant amount of what he'd originally borrowed. He got in touch with his mortgage provider and explained that he was living off his savings – but knew this wasn't a long-term solution.

Mr W and the mortgage provider came to a "reduced payment agreement", which meant he would only need to pay the *interest* on his mortgage each month. They also put Mr W in touch with the Department for Work and Pensions (DWP) – and he successfully applied for help with part of his mortgage costs.

... his repayments in June and September would have been received late because there hadn't been a 31st day

Once these arrangements were put in place, Mr W had expected his monthly repayments to be around £20. But when his next repayment was taken out, he noticed that the mortgage provider had taken the same amount as usual from his bank account.

After Mr W told the mortgage provider, they refunded the money and apologised for what had happened. But worried it could happen again, Mr W talked to the bank and changed his mortgage payments from a direct debit to a standing order.

Mr W didn't hear from the mortgage provider again until several months later – when he received a letter saying he'd "broken" his reduced payment agreement. The mortgage provider said that, because of this, he now had to start making both capital and interest repayments again – or his home would be repossessed.

The letter also showed Mr W's outstanding mortgage balance to be much more than he had thought it was.

Confused, Mr W phoned his mortgage provider. After looking into what had happened, they agreed they'd got the balance wrong – and offered to pay £50 for the worry they'd caused.

But the mortgage provider insisted that Mr W had been making payments late – and said they hadn't been receiving payments from the DWP. So they refused to reinstate the reduced payment agreement.

Feeling increasingly distressed, Mr W asked for our help.

complaint upheld

We asked the mortgage provider for more information about the payments they were saying were late or missing.

They said that Mr W had made late payments in June and September, breaking the terms of the agreement he'd made with them. They also showed us evidence that they hadn't been receiving payments from the DWP.

We asked Mr W to tell us what had happened from the time he'd first told the mortgage provider he needed help. We established that when he'd cancelled his mortgage direct debit, he'd set up his standing order for the 31st of each month.

So his repayments in June and September would have been received late because there hadn't been a 31st day.

We asked the mortgage provider for their records relating to the missing DWP payments. We found that the mortgage provider had sent an updated balance statement to the DWP – but had got one digit wrong when they gave the mortgage account number.

This meant the DWP's payments had been going into someone else's account for months. But the mortgage provider hadn't noticed that the payments hadn't gone into Mr W's account – so had not looked into what might have gone wrong.

On the other hand, we were encouraged that the mortgage provider had recognised the urgency of Mr W's problems when he first got in touch with them. They'd clearly made efforts to help him as soon as they could – as well as pointing him in the direction of other support.

But it seemed to us that after this initial contact, the same care and empathy hadn't continued.

We explained to the mortgage provider that, in our view, they shouldn't have allowed Mr W to set up the standing order for the 31st of each month. Mr W said that someone he'd spoken to at the mortgage provider had recommended that date. The mortgage provider didn't comment on this.

Either way, once the first repayment had gone wrong, we thought the mortgage company could have warned Mr W that the date wasn't suitable – as it would mean that at least five repayments every year would be late.

We were also concerned that the mortgage provider had told Mr W that he had broken the reduced payment agreement – when in fact it was *their* error with the account number that meant that they hadn't been receiving the amount they'd agreed.

We pointed out to the mortgage provider that businesses have a duty to treat all their customers fairly – and take particular care when people are experiencing money problems. This duty doesn't just apply to decisions about things like repayment plans, but also to how they administer their customers' accounts.

And from everything we'd seen, we didn't think the mortgage provider had administered Mr W's account fairly.

We told the mortgage provider to reinstate Mr W's reduced payment agreement – and to recalculate the outstanding balance as if the missing DWP payments had been applied to his mortgage.

We also told the mortgage provider to make sure Mr W's credit file didn't show that he'd failed to make any payments or broken the agreement. And given the unnecessary upset and distress – including the threat of repossession – that their errors had caused Mr W, we told them to pay him £400 compensation.

case study 126/7

consumer complains mortgage agreement wasn't valid after lender started possession order

Mr B had been in and out of employment for almost a year and was struggling to meet his monthly mortgage repayments. He contacted the lender to explain his situation – and between them they came to a reduced repayment plan.

Mr B soon realised he needed more help making the repayments. He applied for part of the amount to be covered by the Department for Work and Pensions (DWP).

But the DWP's contribution wasn't as much as Mr B had hoped – and the lender eventually contacted him to say they would be starting action to possess his home.

Mr B explained that he hadn't managed to find another full-time job. He asked if the monthly payments could be reduced further. But the lender pointed out that significant arrears and charges had built up on Mr B's account already – and so they wouldn't accept the amount he suggested.

Mr B complained to the lender. He said that he'd looked into the terms and conditions of his mortgage. He thought the contract suggested that the lender had to invoke a power of attorney. As the lender hadn't invoked a power of attorney, Mr B didn't think his mortgage contract was valid. He also told the lender that the threat of court proceedings had caused him a lot of stress.

The lender told Mr B that there was no need for a power of attorney, and apologised that their letters about court action had worried him. But they said that since there didn't seem to be any prospect of his position changing, they felt it was appropriate to begin court proceedings as soon as possible.

... as soon as Mr B told the lender that he was struggling, they'd worked with him to find a suitable repayment plan

Unhappy with this response – and anxious about losing his home – Mr B asked us to step in.

complaint not upheld

Mr B told us he'd read in online forums that some mortgage contracts weren't actually valid – and if they weren't, then lenders couldn't take action. He believed his own arrangement was invalid because the lender hadn't invoked a power of attorney.

We looked at the terms and conditions carefully. They explained that a power of attorney *could* be invoked if the lender ever needed to take action relating to the property – like selling it – on the mortgagor's behalf.

We told Mr B that it wasn't unusual to see powers of attorney mentioned in mortgage terms and conditions. But it didn't mean a mortgage was invalid if the power wasn't invoked.

We also discovered that Mr B had already been to court to try to question the validity of his mortgage – so it didn't seem appropriate for us to look into this issue any more.

However, aside from the issue of the validity of the mortgage, we could still look into whether the lender had treated Mr B fairly. So we asked the lender for the records of all the contact they'd had with Mr B so we could look into this aspect of the case.

From these records, we could see that the lender had been having ongoing conversations with Mr B about his circumstances. As soon as he'd told them he was struggling, they'd worked with him to find a suitable repayment plan. And they'd stopped applying interest while he checked the benefit amount with the DWP.

The lender explained that they wouldn't offer an interest-only mortgage if a customer had no way of repaying the capital at the end of the term. They said that if they think a customer is unlikely ever to return to making full repayments, their usual procedure is to begin possession action – so there are fewer charges and arrears for the customer to pay in the long run.

Mr B didn't have any investments, endowment policies or savings. In our view, it would have been irresponsible for the lender to carry on with an interest-only arrangement when there didn't seem to be any way that Mr B could ever repay his mortgage.

While we were sorry to hear about the trouble Mr B was having, we didn't think the lender had acted unfairly in the circumstances.

We explained to Mr B that we couldn't uphold his complaint. But we put him in touch with a free debt advice charity so he could get the support he needed to sort out his financial difficulties.

... Ms R seemed to be quoting the same legal arguments that we've seen a number of people use before in similar complaints

case study 126/8

consumer complains that mortgage wasn't valid – and claimed back mortgage payments

Some years after taking out her mortgage, Ms R told her bank that the mortgage contract with her lender wasn't valid and that she'd never authorised the mortgage direct debit.

Acting on Ms R's instructions, her bank made a claim against her mortgage lender under the "direct debit indemnity" and Ms R was refunded just over £25,000. This meant that Ms R's mortgage account was now in arrears by this amount.

The lender told Ms R that if she didn't pay back the money she owed they would have to take legal action. But Ms R insisted that the mortgage contract she'd signed was invalid so she wouldn't be making any more payments towards her mortgage.

When the lender said they would begin court proceedings, Ms R contacted us.

complaint resolved

The lender agreed to put their legal action on hold while we looked into Ms R's complaint.

Ms R explained that she'd been told by a friend about a so-called legal loophole that allegedly meant many mortgage contracts weren't technically valid.

Looking at the letters she'd sent to the lender, Ms R seemed to be quoting the same legal arguments that we've seen a number of people use before in similar complaints. We explained to Ms R that some of these arguments weren't relevant to mortgages. And we didn't think any of them would have a bearing on the validity of her mortgage agreement – although if she disagreed, it would be more appropriate for a court of law to decide this issue.

Because of the level of Ms R's arrears, the matter was likely to reach the courts soon – which would give her the opportunity to raise her arguments.

As we talked things through with Ms R, she eventually told us she'd lost her job and had taken out several short-term loans to cover her outgoings. She said she'd planned to pay off her other loans with the direct debit payments that had been refunded – and sort things out with the mortgage lender later on.

We were sorry to hear that Ms R was in such a difficult situation and we put her in touch with a free debt advice service.

... they told her that since she was over 65, there wasn't anything they could do for her

case study 126/9

consumer complains that bank communicated poorly about extending mortgage term – and discriminated against her because of her age

A few months before Mrs N's interest-only mortgage reached the end of its term, she arranged a meeting with her bank to discuss extending it.

However, a week before the meeting the bank phoned Mrs N to say they'd cancelled the appointment. They told her that since she was over 65, there wasn't anything they could do for her – and she'd have to pay off the balance of her mortgage.

Mrs N explained that the funds she had earmarked for repaying the mortgage couldn't be released for another year. The person she spoke to over the phone agreed that the mortgage term could be extended for twelve months.

After two weeks, Mrs N still hadn't received confirmation of the new arrangement through the post. When she phoned the bank, she was told that the offer to extend had been withdrawn – because she'd already extended the mortgage term once before.

Mrs N accepted she'd previously extended the term. But she said she hadn't known this could only happen once – and would now need time to sort out the money to pay the shortfall.

However, the bank said that because the mortgage had now expired and Mrs N hadn't paid it off, they'd have to pass her account to their debt collection department.

Mrs N still managed to pay the full mortgage balance within two weeks of the term ending. Once she'd done this, she complained to the bank about what had happened.

She said they should have told her immediately that the mortgage term couldn't be extended – and should have given her extra time before passing her account to the debt collection department. She also said she felt she'd been discriminated against because of her age.

In response, the bank said there was nothing they could do now because everything had been paid and dealt with.

Feeling the bank hadn't recognised the upset they'd caused, Mrs N asked us to look at her complaint.

complaint upheld

Mrs N told us she hadn't known her mortgage term could only be extended once. She said if the bank had told her sooner – and been willing to discuss other options –she would have paid off the mortgage in time.

When we asked the bank about what had happened, they didn't deny that Mrs N had been told it wasn't worth meeting an adviser because she was over 65. But the bank told us a customer being over 65 would only be relevant to a mortgage if that was their planned retirement age.

It wasn't clear to us why the meeting had been cancelled. It was possible that the person who'd made the decision had simply been misinformed – but we could understand why Mrs N felt discriminated against.

Mrs N had sent us copies of documents she'd received from the bank about her mortgage. The documents said that the earlier a customer contacted them, the earlier the bank could help with repayment options.

So we thought it was reasonable for Mrs N to expect that, when she'd first approached the bank about extending the term, they would have wanted to discuss her options with her – and in time to arrange something that suited both of them.

We also didn't think it was fair that the bank hadn't told Mrs N sooner that her mortgage term couldn't be extended again. And it was only when she contacted *them* – two weeks after agreeing an offer – that they told her the offer had been withdrawn.

Given everything we'd seen, we decided that it was the bank's failure to communicate with Mrs N that led to her not paying off her mortgage in time. We also thought that once it had become clear that Mrs N needed more time, the bank could have worked with her to agree a repayment plan – rather than simply demanding the money and passing her account to their debt collection department.

The bank's poor communication and customer service had clearly caused Mrs N a lot of unnecessary upset, stress and inconvenience. While it was too late for her to repay the money in smaller amounts, we told the bank to pay Mrs N £500 compensation.

case study 126/10

consumers complain that bank said they're too late to extend interest-only mortgage term

A year before Mr and Mrs D's interest-only mortgage reached the end of its term, they wrote to their building society to ask if they could extend it. The building society confirmed that they could and sent an application form in the post.

A week after Mr and Mrs D returned the form, they were told their request had been turned down. The building society explained that new mortgage rules had led to them changing their policy – meaning they no longer offered extensions on interest-only mortgages.

Mr and Mrs D made a complaint – saying they didn't think it was fair for the building society to go back on an agreement. They said they'd made plans for their money based on extending the mortgage term but would now have to rethink.

The building society apologised for the couple's disappointment – but wouldn't change their decision. Frustrated, Mr and Mrs D contacted us.

complaint not upheld

Mr and Mrs D sent us all the letters they'd exchanged with the building society. We saw that in a letter from the building society, that they'd told Mr and Mrs D that, "*Your mortgage term can be extended until you are 75*" – and had asked them to fill in a form.

... they accepted that not extending the term wouldn't cause them any trouble

But the building society told us they didn't receive the completed form back until five months later – after the new rules, and their new policy, had come in. When we asked Mr and Mrs D about this, they confirmed they'd taken this long – because they'd wanted a bit more time to think about their options.

We explained to Mr and Mrs D that, in our view, the building society's letter hadn't been an agreement. The building society was just replying to their question – saying that, at that time, it was possible to extend the term.

We didn't think it was unreasonable that the building society had looked into the request only after the couple had sent back their completed application form.

We asked the building society for a copy of their policy on term extensions. This confirmed that their decision about Mr and Mrs D's mortgage term was in line with their new policy for interest-only mortgages.

When we asked Mr and Mrs D about their arrangements for paying off their mortgage, they accepted that not extending the term wouldn't cause them any trouble. They said they could pay the balance with their savings. They were just disappointed that they couldn't use the money for other things.

So in this case – given their building society's decision wouldn't cause Mr and Mrs D financial difficulties – we didn't think it was unfair for the building society to act in line with its policy.

We were sorry that Mr and Mrs D were disappointed – but we didn't uphold their complaint. We suggested that, as their mortgage still had a year to run, there was still some time to think about their options.

case study 126/11

consumers complain that bank gave incorrect information about porting time-limits

When Mr and Mrs E wanted to move house, they approached their bank to ask about porting their mortgage.

Having discussed their situation with one of the bank's advisers, they put their house on the market. Once they got an offer on their house, they checked with the bank how long they'd have to be able to port their mortgage to a new house.

When they were told they had eight weeks, Mr and Mrs E queried this with the bank – saying the adviser had said they'd have at least six months.

... the adviser thought he'd said the timeframe was either eight weeks or twelve months

After the bank confirmed that the maximum time was eight weeks, Mr and Mrs E took their house off the market – as they didn't think they'd be able to find a new house in that time. They then complained to the bank, saying the adviser's mistake had cost them over £2,000 in professional fees.

The bank told Mr and Mrs E that the adviser would have given the correct time limit. Mr and Mrs E disagreed and brought their complaint to us.

complaint upheld

The bank told us the adviser wouldn't have said six months because there were only two possible porting periods – eight weeks for newer mortgages or twelve months for older mortgages.

On the other hand, Mr and Mrs E told us the adviser had said that because their mortgage was an older one, the porting period definitely wouldn't be eight weeks – but that he couldn't remember whether it would be six or twelve months.

Mr and Mrs E also said they remembered the adviser saying he could find out which time limit applied to their mortgage. But they'd said there was no need – because they'd thought six months would be plenty of time to move into a new home.

Mr and Mrs E showed us the email they'd later sent the adviser the day they'd received an offer for their house – asking him to confirm one way or the other whether the timeframe was six or twelve months. The adviser had replied that the timeframe was eight weeks.

We found an email from the adviser to the person dealing with Mr and Mrs E's complaint. In this email, the adviser had explained that he thought he'd said the timeframe was either eight weeks or twelve months.

He said that the bank's computer system had been down that day – but he'd offered to check the time limit with the bank's "mortgage centre". He remembered Mr and Mrs E seeming quite relaxed about this.

Looking at the evidence that Mr and Mr E sent us, it was clear they had acted based on information the adviser had given them. They'd put their house on the market the day of their meeting with the adviser – committing them to a range of professional fees.

It was also clear that they'd taken their house off the market immediately after receiving the email saying that the timeframe was in fact eight weeks.

Given everything we'd seen, we came to the view that it was more likely than not that the couple had been told they had at least six months to port their mortgage.

The bank accepted this. But still argued that it was Mr and Mrs E's fault that they'd committed to fees – as they shouldn't have put their house on the market without a full mortgage offer in place.

However, we pointed out to the bank that this isn't an unusual thing to do. So, in the circumstances, we told the bank to pay Mr and Mrs E's estate agent's fees – adding 8% interest.

... she remembered explaining to her lender that she would probably move again

case study 126/12

consumer complains that lender wouldn't allow her to port mortgage

Ms G was planning to move house. She approached her mortgage lender to ask about arrangements for porting her mortgage.

The lender told Ms G that porting wasn't an option because her mortgage loan was four and a half times her salary. They said that under new rules, they couldn't now agree to lend on those terms unless she could come up with an alternative way of repaying the mortgage.

Ms G told the lender she was surprised to hear this. She said that at the time she took out the mortgage, she remembered explaining to her lender that she would probably move again in a couple of years' time to be closer to her elderly parents.

She felt that since her lender had always known she'd planned to port her mortgage, it wasn't fair that they were now "trapping" her where she was.

When Ms G made a complaint, the lender said they'd look at her request. But they told her they wouldn't be able to process the application without carrying out a full affordability check – which they thought she might fail.

Frustrated, Ms G complained to us.

complaint upheld

The lender told us that they were concerned about the affordability of Ms G's mortgage. They said lending four and a half times someone's salary was far more than they'd usually offer.

We were concerned that the lender hadn't taken into account the "transitional" provisions of the new mortgage rules – intended to make sure problems like this didn't arise. The provisions explained that:

"*if a borrower asked for a new mortgage on the same terms as those already in place, then pr ovided there is no change in risk, the lender should not refuse the request*".

We pointed out to the lender that they weren't being asked to do anything they hadn't already – nor to put Ms G in a situation she wasn't already in.

We appreciated that processing Ms G's request might be a manual process for the lender rather than something they could run through their computer. But in our view – given Ms G's circumstances and the transitional provisions – this was something they should have done.

We explained to Ms G that the lender might not agree to her mortgage once they'd considered her request in their usual way. If she wasn't happy with the outcome of her application, she could complain – and if necessary, ask us to look into whether the lender had considered it fairly.

Ms G had gone to the stress and inconvenience of making a formal complaint to get her request dealt with – when it should have been considered in the first place. So we also told the lender to pay her £200 compensation.

upcoming events ...

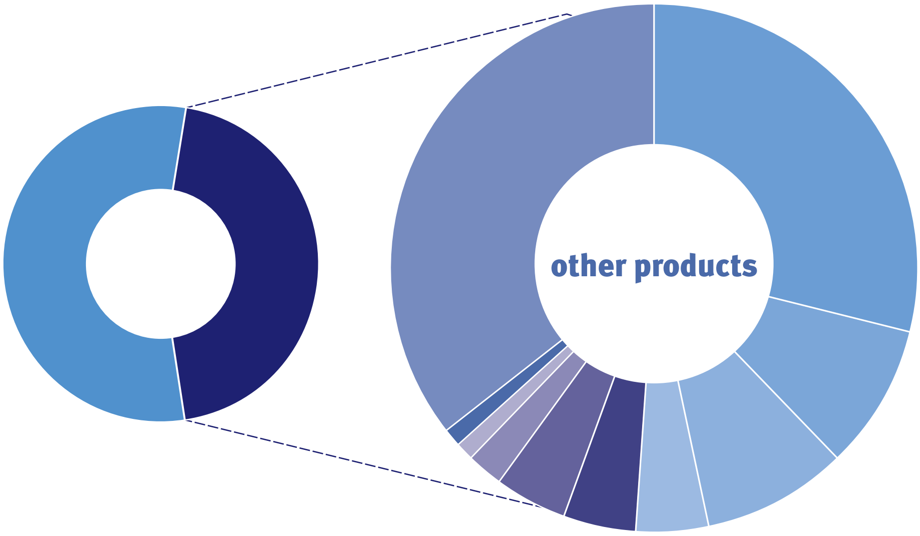
for smaller businesses		
meet the ombudsman roadshow	28 July	Crewe
for consumer advice workers		
working together with the ombudsman	21 July	Liverpool
	22 July	Chester

For more information – and to book – go to *news and outreach* on our website.

the financial products that consumers complained about most to the ombudsman service in April, May and June 2015

- payment protection insurance (PPI) 55%
- complaints about other products 45%

- packaged bank accounts 13%
- current accounts 4%
- house mortgages 4%
- credit card accounts 2%
- car and motorcycle insurance 2%
- overdrafts and loans 2%
- buildings insurance 1%
- mortgage endowments 0.5%
- hire purchase 0.5%
- complaints about other products 16%



	in Q1 April – June 2015			
	enquiries received	new cases	ombudsman	% of cases upheld
payment protection insurance	62,105	49,377	3,152	74%
packaged bank accounts	13,768	12,119	606	10%
current accounts	6,944	3,667	570	36%
car and motorcycle insurance	6,263	2,037	358	32%
house mortgages	4,136	3,338	710	32%
credit card accounts	3,425	2,017	401	32%
overdrafts and loans	2,614	1,696	373	35%
buildings insurance	1,800	1,142	235	34%
hire purchase	1,570	660	129	37%
payday loans	1,278	452	152	68%
personal pensions	1,206	294	74	23%
mortgage endowments	1,082	608	104	20%

ombudsman focus: **first quarter statistics**

A snapshot of our complaint figures for the *first quarter* of the 2015/2016 financial year.

We regularly publish updates in *ombudsman news* about the financial products and services people have contacted us about.

In this issue we focus on data for the first quarter of the financial year 2015/2016 – showing how many enquiries and new complaints we received, the numbers of complaints passed to an ombudsman for a final decision and what proportion we resolved in favour of consumers.

During April, May and June 2015:

- Consumers referred a total of 89,935 new complaints about financial businesses – of which 49,377 were about payment protection insurance (PPI).
- This meant we continued to receive around 4,000 new PPI complaints each week. Bank accounts and mortgages were the next most complained-about financial products.
- Over the quarter, the overall proportion of complaints we upheld in favour of consumers was 51% – ranging between 74% (for PPI) and 2% (for complaints about SERPs).
- The PPI uphold rate over the whole of the last financial year was 62%.

in the whole of 2014/2015 April 2014 – March 2015			
enquiries received	new cases	ombudsman	% of case upheld
274,517	204,943	23,771	62%
32,018	21,348	562	33%
31,483	13,455	1,780	37%
25,140	7,361	1,512	35%
19,970	12,286	3,012	33%
15,770	8,115	1,342	33%
11,971	6,255	1,346	38%
9,087	4,510	925	37%
4,949	1,784	377	40%
5,111	1,157	222	64%
3,067	1,161	334	27%
5,353	2,573	438	24%

in the whole of 2013/2014 April 2013 – March 2014			
enquiries received	new cases	ombudsman	% of case upheld
533,908	399,939	14,904	65%
7,403	5,668	94	77%
33,411	13,676	2,255	33%
27,425	7,190	1,136	38%
22,125	12,598	2,795	29%
20,446	10,120	1,622	30%
13,381	6,306	1,661	35%
10,340	4,095	901	44%
4,260	1,511	368	42%
5,378	794	128	63%
3,432	1,320	471	31%
7,531	3,573	861	28%

	in Q1 April – June 2015			
	enquiries received	new cases	ombudsman	% of cases upheld
credit broking	1,005	235	78	69%
travel insurance	996	614	213	49%
"point of sale" loans	938	567	114	43%
debt collecting	824	278	35	36%
inter-bank transfers	820	470	60	38%
deposit and savings accounts	742	506	106	36%
term assurance	717	603	138	28%
home emergency cover	700	506	74	50%
contents insurance	629	379	77	32%
derivatives	604	120	20	38%
whole-of-life policies	603	412	9	18%
warranties	574	222	35	29%
electronic money	524	146	24	31%
catalogue shopping	485	217	38	53%
debit and cash cards	461	244	52	41%
pet and livestock insurance	456	265	53	23%
secured loans	442	311	56	24%
investment ISAs	438	409	51	35%
portfolio management	416	368	147	48%
cash ISA – Individual Savings Account	403	228	31	40%
self-invested personal pensions (SIPPs)	390	261	89	51%
commercial vehicle insurance	380	156	35	34%
share dealings	361	197	59	34%
mobile phone insurance	359	148	18	46%
card protection insurance	358	211	7	68%
income protection	346	250	56	26%
roadside assistance	301	195	29	44%
private medical and dental insurance	285	212	40	39%
critical illness insurance	277	205	51	24%
specialist insurance	269	141	13	69%
annuities	265	245	49	20%
legal expenses insurance	260	187	48	26%

in the whole of 2014/2015 April 2014 – March 2015				in the whole of 2013/2014 April 2013 – March 2014			
enquiries received	new cases	ombudsman	% of case upheld	enquiries received	new cases	ombudsman	% of case upheld
19,266	1,213	326	64%	6,376	649	256	56%
4,371	2,307	426	46%	4,574	2,247	563	53%
3,841	1,582	345	39%	3,658	1,418	295	38%
3,434	843	100	33%	3,088	557	68	39%
2,844	1,323	179	45%	2,113	952	199	36%
3,582	1,971	400	39%	4,714	2,515	737	41%
3,592	2,644	483	21%	4,836	3,426	767	19%
2,397	1,298	218	43%	2,637	1,387	163	49%
3,134	1,436	273	34%	3,968	1,771	392	39%
361	197	60	31%	134	81	33	25%
2,674	1,587	331	23%	3,135	1,808	453	21%
2,341	777	89	39%	2,368	754	93	48%
2,173	491	61	42%	1,899	435	43	32%
2,314	882	107	55%	2,411	792	114	56%
2,432	1,043	160	43%	2,719	1,177	221	41%
1,645	790	153	28%	1,537	720	123	31%
1,931	1,070	222	36%	1,874	1,053	248	32%
1,619	1,006	216	42%	1,385	929	243	43%
1,763	1,236	494	51%	1,653	1,166	457	61%
1,290	746	88	45%	1,448	842	94	45%
1,467	951	497	60%	1,480	969	255	63%
1,653	514	122	36%	1,799	561	112	41%
1,366	689	172	36%	1,449	694	203	36%
1,575	536	45	51%	1,681	551	92	69%
2,886	1,401	33	85%	2,180	1,118	38	77%
1,676	1,146	239	35%	2,175	1,421	385	30%
1,389	733	107	37%	1,288	668	97	43%
1,194	786	201	36%	1,629	988	294	40%
1,268	791	169	24%	1,470	906	301	26%
1,009	350	51	53%	1,456	406	55	59%
1,149	776	148	20%	912	601	157	32%
1,131	672	354	34%	1,218	691	229	42%

	in Q1 April – June 2015			
	enquiries received	new cases	ombudsman	% of cases upheld
credit reference agency	221	72	13	48%
debt adjusting	214	125	45	61%
merchant acquiring	213	115	19	29%
direct debits and standing orders	212	132	18	37%
cheques and drafts	208	138	31	46%
commercial property insurance	208	180	53	37%
store cards	191	127	23	52%
guaranteed bonds	158	195	34	19%
personal accident insurance	154	148	25	28%
unit-linked investment bonds	154	161	45	39%
occupational pension transfers and opt-outs	141	128	34	43%
hiring/leasing/renting	138	138	18	35%
state earnings-related pension (SERPs)	134	106	3	2%
business protection insurance	121	74	20	26%
"with-profits" bonds	116	79	9	23%
endowment savings plans	109	87	25	22%
interest rate hedge	104	122	32	47%
guaranteed asset protection ("gap" insurance)	98	55	10	11%
building warranties	82	64	16	49%
debt counselling	77	60	12	34%
conditional sale	70	75	45	46%
home credit	67	50	13	38%
income drawdowns	43	42	16	47%
(non-regulated) guaranteed bonds	–	–	–	–
caravan insurance	–	–	–	–
children's savings plans	–	–	–	–
film partnerships	–	–	–	–
foreign currency	–	–	–	–
FSAVC – free standing additional voluntary contributions	–	–	–	–
investment trusts	–	–	–	–

in the whole of 2014/2015 April 2014 – March 2015				in the whole of 2013/2014 April 2013 – March 2014			
enquiries received	new cases	ombudsman	% of case upheld	enquiries received	new cases	ombudsman	% of case upheld
792	189	38	36%	629	131	26	39%
1,441	508	112	62%	1,458	530	185	74%
908	367	84	23%	912	352	72	19%
1,210	541	86	41%	1,285	534	104	41%
1,055	563	100	51%	1,242	569	131	45%
1,079	645	181	38%	1,173	740	215	43%
1,140	450	63	37%	1,105	466	79	45%
870	555	55	13%	579	419	82	22%
681	422	96	31%	760	477	136	31%
739	560	261	47%	1,005	791	327	46%
661	457	186	49%	627	428	162	44%
921	333	72	35%	907	291	51	35%
525	436	17	2%	621	527	33	2%
540	253	59	35%	597	274	57	38%
454	260	54	32%	493	304	86	30%
707	509	119	19%	962	655	179	19%
498	287	100	65%	297	135	121	80%
423	206	35	26%	540	247	28	25%
422	299	130	58%	516	384	87	64%
621	140	27	46%	395	95	15	54%
385	290	90	41%	317	225	69	44%
287	136	35	36%	270	138	29	33%
184	180	92	42%	224	169	103	49%
272	149	28	33%	270	122	30	34%
280	98	26	39%	256	81	18	34%
72	50	3	34%	–	–	–	–
216	174	195	6%	224	201	34	18%
166	74	14	30%	191	94	20	31%
191	142	59	48%	303	172	38	38%
154	71	22	30%	–	–	–	–

	in Q1 April – June 2015			
	enquiries received	new cases	ombudsman	% of cases upheld
money remittance	–	–	–	–
OEICs (open-ended investment companies)	–	–	–	–
pensions mortgages	–	–	–	–
PEP – personal equity plans	–	–	–	–
premium bonds	–	–	–	–
safe custody	–	–	–	–
savings certificates/bonds	–	–	–	–
SCARPs – structured capital at risk products	–	–	–	–
spread betting	–	–	–	–
unit trusts	–	–	–	–
sub total	126,052	89,388	9,328	51%
other products and services	14,783	547	259	32%
total	**140,835**	**89,935**	**9,587**	**50%**

in the whole of 2014/2015 April 2014 – March 2015				in the whole of 2013/2014 April 2013 – March 2014			
enquiries received	new cases	ombudsman	% of case upheld	enquiries received	new cases	ombudsman	% of case upheld
262	109	9	52%	308	117	15	46%
154	118	83	48%	256	219	72	32%
125	94	35	46%	155	95	29	54%
96	63	14	22%	–	–	–	–
187	72	15	29%	124	55	13	36%
119	81	28	48%	165	105	36	57%
157	51	11	33%	–	–	–	–
59	37	31	33%	–	–	–	–
196	98	45	19%	183	126	71	49%
174	93	30	49%	139	109	40	34%
542,626	328,895	45,230	55%	783,792	511,420	74,690	58%
60,769	614	151	38%	78,474	747	314	24%
603,395	**329509**	**45,381**	**55%**	**863,266**	**512,167**	**38,397**	**58%**

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Q? &A

A lot of people are approaching my community advice centre with problems involving credit brokers. I've been referring them to you – but some are in a really desperate position, and the broking fees have made a bad situation worse. How quickly can you help at the ombudsman?

In the last *ombudsman news*, we highlighted that the people who contact us with credit broking problems had often been charged multiple fees. We know that many people simply can't spare the money that's been taken – and may experience other problems as a result.

In general, we're able to resolve these types of complaints very quickly. By talking things through over the phone with the broker and their customer, we can get to the heart of what's happened and how to sort things out. In many cases, we can put things right in a few days – and it's sometimes a matter of hours.

And where it's clear someone's financial difficulties won't be resolved by our involvement alone, we'll signpost them to appropriate types of support.

Does it matter if someone doesn't have much paperwork relating to a complaint?

Under the rules about complaining, people can complain to us about things that happened up to six years ago (or sometimes longer – depending on when they knew there could be a reason to complain).

Even if it was more recent, daily life inevitably involves dealing with all sorts of information – both offline and online – about different products and services.

So it's understandable that someone might not be able to lay their hands on every letter or document relating to a complaint. That goes for customers of businesses and businesses alike.

Of course, it's helpful to have all the facts and paperwork upfront – but people shouldn't worry if something's not immediately available. We can generally still look into a complaint by working together with both sides to bring together the information we need.

For example, the business involved may be able to help with things like records of correspondence – if their customer can't find these. Or if a business can't locate the "fact find", there are other sorts of evidence we can consider to find out about a particular customer's circumstances.

We'll reach our answer based on what we think is most likely to have happened – given everything we've seen *and* heard from the people involved.

If someone's concerned about the sorts of questions we might ask, we're here to talk things through – either on our consumer helpline or our advice desk for businesses.

Financial Ombudsman Service

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