ombudsman news

Financial Ombudsman Service

August 2002

Financial Ombudsman Service

essential reading for financial firms and consumer advisers

bringing you news from the Financial Ombudsman Service and focusing each month on complaints about investment, insurance or banking & loans

in this issue

Edited and designed by the communications team at the Financial Ombudsman Service

about this banking & loans issue of *ombudsman news*

Recent issues of *ombudsman news* have focused on the work of our assessment teams. In this edition we look at the work of the banking and loans investigation teams. We also:

- provide the usual summary of recent cases;
- welcome the Business Banking Code, which came into force on 31 March 2002; and
- look at the situation where firms increase customers' credit limits without any further assessment of their creditworthiness.

The more that firms and consumer advisers understand how we work, the more effective we can be. That is the background to the *working together* series of conferences that we are running from July to December this year, at venues across the country. Among other things, the conferences give firms the opportunity to learn more about our approach to assessing compensation for distress and inconvenience, and to discuss sample cases. You will find more details on the inside back cover, and on our website at www.financial-ombudsman.org.uk

In addition to the large number of 'dual' variable mortgage rate cases that continue to reach us, the period from January to May 2002 saw a significant increase in the number of 'ordinary' banking and loans cases we received – although numbers started to fall back somewhat in June.

This may simply be the result of the time limits laid down in the complaint-handling rules of the Financial Services Authority, which mean that firms must now issue a final response letter on a complaint within eight weeks and that customers can refer the matter to us after that time if they remain dissatisfied. A number of firms tell us they are receiving about the same number of complaints as before, but are issuing more final response letters.

But if firms do see an increase generally or in some particular area we hope they will forewarn us so we are prepared. We appreciate that an increase does not necessarily mean there are more problems. Firms may simply be publicising their complaint procedures better.

David Thomas
principal ombudsman
banking & loans

... if firms see an increase in complaints Ð generally or in some particular area Ð we hope they will forewarn us, so we are prepared.

1 casehandling – the investigation teams

In the last banking & loans edition of *ombudsman news* (March 2002) we looked at the work done by the banking & loans assessment team, and examined how the caseworkers in that team approach their work. This time, and to complete the picture, we turn the spotlight on the investigation teams looking into banking & loans complaints.

where do the investigation teams 'fit in'?

As we explained in the March 2002 edition, about three quarters of the cases that come to the banking & loans division are resolved by the caseworkers in the assessment team. Those cases are generally either mediated or subject to *early termination*. However, some cases cannot be settled at the assessment stage – for example where mediation will not work because:

- there is a dispute about what actually happened;
- the parties are just too far apart; or
- their positions have become firmly entrenched.

And sometimes, of course, our mediation attempts fail. There are also some cases where we can tell that we're not going to reach an early settlement – no matter what we do.

who works in the investigation teams?

Our investigation teams each comprise a small group of *adjudicators*. The teams are headed by *casework managers* – in some instances, helped by *assistant casework managers*. Some of our adjudicators have a legal background – either as law graduates or as fully-fledged solicitors or barristers. Before joining the Financial Ombudsman Service they may have worked in private legal practice or for agencies such as the Crown Prosecution Service. Other adjudicators have worked in the financial services industry, or as regulators or members of the Civil Service. And several of our adjudicators are part-time – combining their work at the Financial Ombudsman Service with complementary careers. For example, one of our longest-serving adjudicators is also a chairman of Social Security appeal tribunals.

what do the investigation teams do?

Because our emphasis is very much on settling as many cases as possible before they get to the investigation stage, the cases that do get this far are usually the most complex ones, involving the thickest files. So the papers that make up these complaints often require a great deal of close study and the sifting of a large volume of evidence.

Generally speaking, the adjudicators settle cases by issuing:

- an *initial view*; or
- an *adjudication*.

The complaints that are not settled by either of these routes end up being passed to an ombudsman for a final decision.

initial view

Even after cases have reached the investigation teams, there can still be opportunities to resolve cases in a less formal way.

Sometimes, the adjudicator may feel that there is little that any further investigation will add to the situation, and that the main problem is stubbornness on the part of one or both of the parties in not accepting what we have already told them. Or the adjudicator may think that if only a little more information were available, it might still be possible to settle the case without the need for an investigation. In such instances, once the adjudicator has asked one or two finely-focused questions – or gathered any further details that might just make a difference – he or she will write an *initial view* of how the complaint should best be resolved.

Essentially, this is a 'short-form' adjudication, written (to begin with, at least) just to the party who needs 'persuading' – either the consumer or the firm. We often find that, even if the adjudicator is not really saying anything different from what both parties have been told already, the parties will by now have a more realistic view of the situation and will agree to settle, rather than opting to drag things out further.

adjudication

But where this does not happen, or if the adjudicator feels that a complaint needs to be fully investigated before a proper conclusion can be reached on it, then we proceed to a full investigation. This can be a lengthy and rigorous process for all concerned. Investigations are inquisitorial, with adjudicators asking searching questions of both parties and testing the evidence carefully before coming to a reasoned conclusion and issuing an adjudication.

This will outline the background to the complaint, covering the relevant arguments of the opposing parties and explaining why the adjudicator has reached a particular conclusion. If the adjudicator recommends the payment of compensation, then that – too – will be clearly explained. Over half our adjudications recommend some form of payment – although this sometimes involves our telling the firm to repeat an offer it made at a much earlier stage (perhaps even one that was on the table when it issued its *final response* letter, before the complaint ever reached us).

ombudsman's final decision

But some consumers – and some firms– find they are not prepared to accept the adjudicator's views, whether expressed through an initial view or by adjudication. If so, they can appeal to have the case reviewed by an ombudsman. Currently, one party or the other does this in about a third of the cases that reach adjudication. However, if an appeal is made against an adjudicator's initial view, the complaint will pass directly to an ombudsman for a final decision. We do not issue adjudications as an interim stage for such cases. If a case gets as far as an ombudsman, then the ombudsman will review all the papers. He or she

will take particular note of any fresh evidence or arguments that either party has put forward after receiving the initial view or adjudication. If the ombudsman comes to broadly the same conclusions as the adjudicator, then the ombudsman will go straight to issuing a final decision. But if the ombudsman comes to a materially different view, he or she may sometimes decide to issue a *provisional decision*. This gives the parties a specified period in which to make any final submissions before the ombudsman issues a final decision.

Contrary to apparent belief in some quarters, this review process is a very real one – ombudsmen certainly don't just 'rubber stamp' what has gone before. If the consumer accepts the final decision before the date specified – usually a month after it is issued – then the final decision becomes binding on the firm. But if the consumer rejects the ombudsman's final decision, or does not accept it before the specified date, then the final decision lapses. But either way, a final decision brings our complaint-handling process to an end.

what's the caseload like?

Inevitably, it comprises a broad cross-section of the complaints we receive – ranging from cases about a single issue to those involving a series of complex issues that have arisen over an extended period of time. Business banking complaints, for example, often fall into the second category.

Between them, our adjudicators have a great deal of specialist knowledge and experience. So, for example, an adjudicator who is particularly knowledgeable about insolvency and bankruptcy will generally deal with cases that centre on the financial failure of a business. And of course there is a very strong culture of sharing experience among all the teams, which helps staff to further develop their expertise.

At the time of writing, the investigation teams are – between them – looking into more than 1,000 cases.

how firms can help

As we have stressed, we always look for opportunities to resolve complaints as early as possible in the process. It's important for firms to understand this. If, for example, something comes to light during an adjudicator's enquiries that makes the adjudicator think the complaint should be settled sooner rather than later, then doing that saves time and has to be best for everyone. It's not always necessary to wait until we have issued the adjudication.

In the course of our investigations we are particularly dependent on the cooperation of firms, especially when the adjudicators ask for information. We try to keep our requests for information down to a reasonable minimum. And indeed, if a firm has considered the complaint properly before allowing it to reach us, then it should already have most information readily to hand. Yet there can frequently be surprisingly long delays when we ask for papers that – to us – appear central to the dispute.

Our **technical advice desk** will be happy to answer any general questions that firms may have about the investigation and final decision process.
phone: 020 7964 1400
email technical.advice@financial-ombudsman.org.uk

but what's life like as an adjudicator?

Nicola Stowe has been an adjudicator for about two years. She says that the ombudsman service attracted her because there's a real sense of being able to do something for the public good. That's very important to her.

After what she describes as a 'mid-life career change' she qualified as a solicitor and joined the ombudsman service from the Crown Prosecution Service. Before that Nicola had spent 12 years or so as a casehandler in a variety of different organisations, including the Health Services Ombudsman's office.

She organises her week so as to set aside quiet time, to concentrate on things that are difficult or complex. That means making other times more flexible so that she can deal with anything urgent that might crop up.

A key task is the initial study of new cases she has received. After that, she might spend a fair amount of time on the phone – talking to the parties about those cases that could be settled straight away. That often means asking firms to pay compensation.

Most firms are amenable to this. But some can be reluctant. They should not be – because she will have assessed the case carefully before phoning them, and any settlement proposal will have been carefully thought through.

For other cases – where it's pretty obvious, even at first reading, that they'll have to go the 'whole way' – a different approach is needed. She works out what additional information she needs, and asks the customer or firm as appropriate.

There's a very strong culture of sharing experience across the teams. So, if Nicola is unsure about some obscure point, she can ask others who are expert in that area. Others, in turn, ask her about areas where she has more experience.

That culture extends across the whole ombudsman service. Nicola is a designated 'liaison' person, whom our casehandlers, dealing with complaints about investment and insurance, can consult on any banking issues that arise in those complaints.

Nicola tries to keep her initial views and adjudications crisp and clear, which means spending a fair amout of time refining them to ensure they're really focused. It's better not to go into a lot of irrelevant detail, but to concentrate on the handful of key points on which the case turns. Nicola says this makes the reasoning clearer. And it avoids some customers, and some firms, fastening on details that make no real difference to the outcome of the case. She believes that is why fewer of her cases are 'appealed' to an ombudsman than average.

2 a selection of recent cases

Here is a selection of cases our investigation teams have dealt with recently. Some of them could have been resolved at the assessment stage if the customer or the firm, or both, had not been intransigent.

■ 19/01

When Mr R paid £2,500 to a time-share company, he used a credit card cheque that the firm had issued for use with his credit card account. He said he specifically used this type of cheque because he wanted the 'backing of the refund service if anything went wrong'.

Only a few weeks later, the time-share company went into liquidation. Since it therefore breached its contract with Mr R, he approached the firm for a refund. But the firm refused to give Mr R his money back. It explained that the Consumer Credit Act does not give credit card cheques the same protection as ordinary credit card transactions.

Mr R then brought his complaint to us. We concluded from the terms and conditions of his credit card account that it was reasonable of him to have thought his transaction *would* be protected, in the same way as an ordinary credit card transaction. We wrote to the firm to outline our view. In response, it offered to meet Mr R's claim in full, and to pay him an extra £100 for inconvenience. Mr R accepted that offer.

■ 19/02

Mr and Mrs G were the joint executors of Mr G's father's estate. Although the estate was fairly straightforward, the couple opened an executors' account with the firm in order to keep things clear and above-board. They gave the firm a mandate that said they would both sign any cheques on the account.

Mr and Mrs G sent a cheque to Mr G's sister, Mrs H, for her share of the estate – about £80,000. Mrs H lives in America and paid the cheque into her American bank account – where it was converted into US dollars at the then going rate. But when the cheque was presented to the firm for payment, it sent the cheque back to the American bank. It said the cheque only bore one signature – and had therefore not been drawn in accordance with the account mandate.

When the American bank received the cheque back, it took no action for about four months. By the time it debited Mrs H's account (and told her it had done so) – the exchange rate had moved significantly against her. That meant she lost about £16,000.

Both Mr and Mrs G and Mrs H complained to the firm, saying it should have honoured the cheque because they *had* both signed it. However, in the meantime the American bank had lost the original cheque. Oddly enough, the firm's copy of it appeared to bear only one signature. So on the face of it, the firm had been right to bounce the cheque.

When we started to look into the complaint, we noted apparent discrepancies between Mr and Mrs G's copy of the cheque and those held by the firm and by the American bank. We discovered that the American bank's UK clearing agents had attached a white sticky label to the cheque, masking the second signature.

We felt that, despite this, the firm should have realised that the second signature was likely to have been on the cheque. It should at least have contacted Mr and Mrs G to check things out. After all, it was a high-value cheque – and one that was always going to take a lot longer than usual to get back to the bank where it had been paid in.

However, we felt it would be wrong to hold the firm responsible for any exchange loss arising from the American bank's delay. We calculated that, without the delay, Mrs H would have lost only around £3,000 as a result of exchange rate differences. So we suggested the firm should offer Mrs H that sum, together with a further £500 for inconvenience. We also suggested that it should offer Mr and Mrs G £500 for *their* inconvenience. The firm agreed, and the offers were accepted. Mrs H then used our findings to make a claim on her American bank – which, she's since told us, has been successful too.

■ 19/03

Mr P frequently visited casinos and, rather than using his own chequebook to buy gambling chips, he signed the casino's 'special' cheques (which are processed outside the normal clearing system).

Mr P occasionally tried to stop the casino cheques by phoning the firm – but sometimes he was too late. These transactions were usually for large amounts of money and the firm was not happy with the time it often took to sort them out. So, in early 2000, the firm asked Mr P to stop using these casino cheques. It also told him that, from then on,
it would only accept written instructions to stop a cheque – although it would accept these instructions by fax.

Later that year, Mr P's assistant, Miss M, phoned the firm on his behalf. There is a dispute about what precisely was said during that conversation. But the end result was that a cheque for £100,000 was paid when Mr P claims the firm was told to stop it.

After Mr P brought the dispute to us, we told him, in an 'initial view' letter, that it was very unlikely we would be able to uphold the complaint. The firm had made it clear to him that it was not prepared to accept a phone call to stop a cheque – it wanted the instruction in writing. But perhaps more importantly, it was not clear that – even if the firm had failed to carry out an instruction – Mr P had suffered loss as a result. Presumably, he had received gambling chips to the value of £100,000,

so he had received goods or services to the value of the cheque he had issued, irrespective of how lucky he had been on the night.

Mr P's legal representatives rejected the adjudicator's initial view, and asked for an ombudsman to review the case. But before the ombudsman could complete her review, Mr P withdrew the complaint. He said he intended to take legal action against the firm. Although the ombudsman had not yet issued her decision, she had taken the view that it would probably only be by his going to court that the case could be decided. This was because the claim centred on the undocumented phone conversation between the firm and Mr P's assistant, Miss M. We cannot compel third parties, such as Miss M, to give evidence – and we cannot take sworn evidence.

■ 19/04

In 1998 Mr W and his two sisters, Miss W and Mrs J, were given power of attorney over their mother's affairs. However, some family members made accusations that some of their mother's money had 'gone missing'. Mr W therefore contacted the solicitor who had drawn up the power of attorney and asked how he might get access to his mother's money to 'keep it safe'. Mrs W was, by this stage, unable to look after her affairs.

The solicitor told Mr W that the power of attorney his mother had signed allowed two of the three named attorneys to operate her accounts. So Mr W and Miss W opened a joint account with the firm and transferred all their mother's money into it.

A year later, the police approached Mr and Miss W after other members of the family reported 'fraudulent transactions' on their mother's account. The pair were arrested and charged with theft, although the Crown Prosecution Service decided not to pursue the case.

Shortly afterwards, the firm wrote to Mr W and to Miss W, demanding repayment of £5,500 – the amount they had transferred from their mother's account. The firm had by then refunded the money to their mother's account, after the other attorney – Mrs J – complained that the firm should not have allowed the transfer without the authorisation of all three attorneys.

We felt that because the firm had refunded the money to Mrs W's account, Mr W and Miss W were probably not entitled to keep it – even though they were adamant that they had done nothing wrong and they had checked the position with their solicitor and with the firm.

We approached the firm to try to find a compromise solution. The firm said it would accept £4,000 of the £5,500 it had originally claimed from Mr W and Miss W and the pair eventually decided to accept the firm's proposal.

■ 19/05

D Trust Ltd is a local branch of a national charity. A couple of years ago, the Trust discovered that its treasurer had been defrauding it over a number of years. More than £80,000 was involved.

Every so often, the treasurer had asked the trustees to sign a small number of blank cheques to pay specific invoices, which he showed them. But he then drew cash on just one of the cheques to pay all the invoices, making out the remaining cheques either in favour of himself, or for cash.

The treasurer died shortly after the fraud came to light. The trustees who had signed the blank cheques resigned. The new trustees claimed that the firm had assisted the fraud by failing to spot some obvious signs, and by acting outside the Trust's mandate. But the firm said that, as the cheques had been properly signed, there had been no obvious signs that anything was amiss. However, it did accept that it should not have granted the Trust short-term overdrafts solely at the treasurer's request. The mandate specifically said that at least two trustees had to authorise any overdraft requests. The firm offered the Trust £1,000 compensation for that breach of the mandate.

In response, the Trust took the view that the granting of the overdraft had masked the position. The fraud would otherwise have come to light very much earlier. So it rejected the firm's offer and brought the whole matter to us.

Most of the fraudulent cheques were for less than £1,000. We concluded that they had not been drawn in a way that would reasonably have raised the firm's suspicion that something was amiss. The over-riding factor was that the treasurer would not have been able to commit the fraud if the trustees had not signed so many blank cheques. So we did not uphold this aspect of the complaint.

The firm had granted short-term overdrafts to the Trust, over a period of about three years. The amount borrowed at any one time was modest – no more than £1,500. This was a small sum compared with the total amount of the fraud. But we did not think that the fraud would have been prevented, even if the firm had bounced the Trust's cheques and refused the overdrafts. The treasurer was clearly a skilled fraudster. And since he was the firm's point of contact at the Trust, it seemed unlikely that the trustees would have found out what was happening. Furthermore, although the treasurer had apparently had the Trust's accounts audited by an independent auditor, it later came to light that the auditor knew nothing of the Trust's affairs and had never seen its accounts.

We decided that the Trust's losses were not the firm's fault; the trustees had not only placed too much faith in the treasurer, but had facilitated the fraud. However, there had been some maladministration by the firm – both in the granting of overdrafts contrary to the mandate, and in the way in which it dealt with the complaint. So we told the firm to pay the Trust £1,200 for that maladministration.

.....

■ 19/06

Mr and Mrs T had a savings account with the firm for many years. After Mrs T's death, Mr T kept the account open as a memorial to her – even though the firm kept on encouraging him to transfer his money into other accounts that paid higher rates of interest.

After a while, Mr T decided that the firm should pay him the higher interest rate that it offered on other accounts. But he did not think it should require him to transfer to one of those different accounts. In his view, since he was a long-standing customer, the firm should understand why he did not want to close the existing account, and should 'do the decent thing'.

We understood Mr T's sentiments. But we did not feel that the firm was under any obligation to make such an exception. It was neither practical nor cost-effective for it to do so and we did not uphold Mr T's complaint.

■ 19/07

Mr C had a business account with the firm. To secure his business borrowing, he and his wife mortgaged their (otherwise unmortgaged) home with the firm. Unfortunately, things rapidly went from bad to worse with Mr C's business, and about a year later the firm called in his borrowing. Mr C was unable to repay, so the firm began proceedings to get possession of his house. Mr C then abandoned his family home, leaving his wife to deal with everything.

Mrs C complained to us about the way the firm had lent money to her husband, and about how it had gone about getting the mortgage. Since we are unable to look into complaints if they are the subject of court proceedings, the firm agreed to delay proceedings until we had finished dealing with the matter.

From the papers provided, we took the view that the firm had obtained its mortgage (in part at least) because Mr C had 'undue influence' over his wife, or had misrepresentated the financial status of his business to her. It was also clear that the firm had been alerted to the possibility of this and that it knew, or should have known, that there was a high risk it would have to call in the mortgage. Despite this, the firm had not insisted on Mrs C taking independent legal advice, and the mortgage form had been signed during a very short meeting at the branch.

We concluded that it was right for the firm to release Mrs C from the mortgage. She had made some payments to the firm to try to make inroads into the debt, so we recommended that the firm should, in addition:

- repay this money to Mrs C;
- give her a further £2,000 to take into account the distress and inconvenience she had experienced; *and*
- make some contribution towards her legal costs.

Initially, the firm refused to accept this and said it was going to appeal. However, it eventually offered to settle the matter with Mrs C on the basis of our recommendations.

■ 19/08

In 1994, Mr and Mrs E paid off their mortgage with the firm. The firm's central mortgage unit sent Mr and Mrs E's deeds to its local branch for them to collect. Mr and Mrs E claimed they never collected them; the firm disputed this – but no one now knows where they are.

The firm had no evidence that the deeds were ever collected from the branch. And it had no record of having arranged with Mr and Mrs E to keep the deeds in safe custody for them. Back in 1994, it levied an annual charge of £10 for keeping deeds but it never claimed any charges from the couple.

We thought it likely that the local branch *had* received the deeds but that it had never given them back to Mr and Mrs E. In order to re-constitute the couple's absolute title to their property, the Land Registry required a statutory declaration of loss. So we recommended that the firm should arrange this and that it should meet any other costs that Mr and Mrs E might incur in sorting things out – together with another £300 to compensate them for the inconvenience they experienced. The firm agreed to this.

.....

■ 19/09

A Ltd is a small firm of plumbers and heating engineers. It works mostly as a sub-contractor to large and medium-sized house-builders – installing plumbing and heating in their developments.

Last September, A Ltd told NL, the developer it was then working for, that if it didn't pay at least some of the money it owed, its men would walk off site and take all their materials with them. It had always been difficult to get money out of the developer. But it had never been a question of cheques bouncing; rather just of A Ltd having to keep on reminding the developer to pay the invoices.

On 5 September 2001, NL gave A Ltd a cheque for just over £6,000, expecting the men to return to the site straightaway. But that wasn't all of the money that NL owed. So A Ltd said its men would only return once the cheque had been cleared. A Ltd had no reason to expect the cheque to bounce; it was simply signalling to NL that it expected to be treated in a business-like way.

A Ltd's Company Secretary got in touch with her regular contact at her branch of the firm and asked about the quickest way to get the developer's cheque cleared. As a result, A Ltd decided to 'specially present' the cheque – on the basis that it would then find out within 24 hours if the cheque had been paid.

'Special Presentation' cheques are sent by first class post to the branch they're drawn on. So A Ltd expected everything to have been sorted out by the following day – 6 September. But the cheque was delayed in the post. It didn't arrive until 7 September (the day it would have arrived if had it been paid in through the clearing system in the normal way).

First thing that same day, NL phoned its bank to say it was going into liquidation. So A Ltd's cheque was returned unpaid – marked '*account stopped, liquidators appointed*'. Had that not happened, the cheque would probably have been paid, because NL had over £200,000 in its account on the morning of 7 September.

A Ltd complained to the firm, saying that it hadn't made it clear that 'specially presented' cheques were sent through the post. It might well not have decided to follow that route, if it had known. But the firm said it believed it had made everything clear, so it refused to meet A Ltd's claim – the value of the unpaid cheque.

We decided the firm had probably *not* explained that the cheque would be posted. But the real question we had to consider was what difference that failure had made. If A Ltd had decided not to have the cheque specially presented, what else could it have done? It wanted to get its men back on site as quickly as possible because keeping them off site was costing it money.

Perhaps the most obvious answer was that A Ltd could simply have paid in the cheque in the normal way. But things then would have been no different. By the time the cheque arrived in the clearing at NL's bank, it would have been too late anyway.

We felt we also had to consider the precise question A Ltd had asked – which was 'what is the quickest way to get a cheque cleared?' In the particular circumstances of this case, the correct answer would have been for A Ltd to present it at NL's own bank. A Ltd was given the cheque at NL's office – just round the corner from NL's bank. A Ltd's branch was over 50 miles away and it took the person who collected the cheque almost two hours to get back there to pay in the cheque. He risked a speeding fine in the process, to make sure of getting to the branch before it closed.

If A Ltd had paid in the cheque at NL's own bank on 5 September, it would probably have been paid that day. There was plenty of money in NL's account. So we decided that the firm's failure to answer A Ltd's question properly or completely amounted to a breach of duty. And that breach of duty was the direct cause of A Ltd's loss. As a result, we told the firm to pay A Ltd the value of the cheque, plus another £350 for inconvenience. That all came to just over £6,500.

■ 19/10

Mr Y was wealthy but in poor health. He set up a joint account at the firm with his friend, Mr N. The idea was that Mr N would have ready access to funds to help him care for Mr Y. Mr Y transferred £50,000 into the account.

Some months later, Mr N – who lived at the same address as Mr Y – transferred £30,000 from the joint account into another account with the firm, in his own name. Soon after that Mr C, another friend of Mr Y, phoned the firm. He said that Mr N had tricked Mr Y into opening the joint account and was not entitled to any of the money in it.

The firm immediately froze Mr N's account. Mr N only found out when he tried (and failed) to draw £50 from a cash machine. And when he returned to Mr Y's house, Mr C had changed the locks so he couldn't get back in.

After complaining unsuccessfully to the firm about the freezing of the account, Mr N brought his complaint to us. The firm maintained that its actions had been correct, in the light of the information it received from Mr C. It also said that if Mr N had contacted the firm and asked for the money that was in his account *before* the transfer from the joint account, it would have been prepared to let him have it. The firm was only interested in the 'disputed' £30,000.

Mr N supplied us with lots of information to try to demonstrate the true intentions of the various parties. But the only question for us to address was whether the firm had reacted appropriately to the information it received, and whether it had breached any duty it owed to Mr N when it froze his account.

We concluded that the firm **had** acted properly and responsibly in freezing Mr N's account. A local solicitor had backed up Mr C's allegation. The alternative of not freezing the account would have been a much less satisfactory and responsible option for the firm. Its actions ensured that the money was 'safe' until its true ownership had been decided.

We did not uphold Mr N's complaint. But Mr N voluntarily returned most of the money to Mr Y.

■ 19/11

Miss K's complaint against the firm had two distinct aspects. First, she claimed that the firm had wrongly entered an adverse entry on to her credit history that prevented her from obtaining a mortgage to buy a property. Second, she considered that, by offering credit card facilities at 0% interest to new customers only, the firm was discriminating against existing customers and acting in contravention of the Banking Code. Miss K claimed compensation for the 'excess' interest she had paid on her credit card, and £50,000 for the lost capital appreciation on the property she had been unable to buy.

After our caseworker mediated between Miss K and the firm, the firm offered to write off her then outstanding credit card balance of £500, and to pay a further £200. Miss K refused this offer. It was clear that further mediation was unlikely to succeed, so the case was passed to an adjudicator.

The adjudicator felt that neither aspect of Miss K's complaint had any reasonable prospect of success. He thought the actions the firm had already taken were perfectly sufficient and that the compensation it had offered was generous, in the circumstances. The adverse credit entry amounted to little more than £200. It had come about because Miss K had not settled her credit card account when it was due. So, in large measure she had brought the problem on herself. Moreover, it was far from certain that she would have gone ahead to buy the property – and the losses claimed were entirely speculative.

As to the second aspect of Miss K's complaint, the adjudicator concluded that there was nothing wrong with what the firm had done, and that it had not contravened the Banking Code.

Miss K reacted very angrily to this and asked us to pass on her complaint to an ombudsman for a final decision. When the ombudsman upheld the views already expressed to Miss K, she complained to our Independent Assessor. The Independent Assessor does not act as a final 'court of appeal' on the merits of any decision we make on a complaint. The final decision in such matters lies with the ombudsman. The Independent Assessor's role is to look into complaints about the level of service we provide – for example, if someone thinks we have treated them rudely or unfairly, failed to explain things properly or caused delays.

The Independent Assessor did not find anything to criticise in the way in which the Financial Ombudsman Service handled Miss K's complaint.

■ 19/12

Mr S had a business account with the firm. His business was in difficulties, not helped by the fact that he suffered from ill-health, although his wife, who had three small children to look after, took on a part-time job to help out where she could.

The firm would not lend him any more money. In fact, it was bouncing his cheques and eventually it concluded that it could no longer provide Mr S with business banking facilities. It asked him to repay what he owed, and to close his business account. However, there was some confusion about this request. Mr S had still not realised what the bank wanted him to do, even after the notice period that the firm said it had given him had run out.

After giving up on the business, Mr S put in a large claim against the firm. He did this on the grounds that:

- its failure to support him and lend him the money he needed had effectively led to his business 'going under'; *and*
- it had not given him enough time to close the account and try to find alternative banking facilities.

The complaint was eventually referred to us. We explained to Mr S we could not deal with the main part of it. We do not normally interfere with firms' legitimate commercial decisions – and it was purely a commercial decision not to lend Mr S more money.

However, there had clearly been some confusion about how the firm had told Mr S to close his account, mainly because it had not put its requirements in writing. Its records showed that it had intended to give him a month in which to do this, but it did not appear to have made things that clear.

We considered that this constituted 'maladministration' on the part of the firm, and we recommended that it should pay Mr S £400 compensation.

The firm accepted our recommendations but Mr S did not. He asked for his case to be reviewed by an ombudsman, but he did not add any fresh evidence. The ombudsman

had considerable sympathy for the difficulties both Mr and Mrs S had faced. But she confirmed the adjudicator's recommendation.

■ 19/13

Mr L sold some goods to a new customer and paid his cheque for £7,500 into his account with the firm. However, it transpired that his 'customer' was not genuine; the cheque had been stolen and the name of the payee fraudulently altered.

Mr D, who had actually written the cheque, found out it had been stolen the day after Mr L received it. This was *after* Mr L had paid it in to his account, but before it was presented to Mr D's bank. When the cheque was presented for payment the following day, Mr D's bank phoned him to check whether to send it back. It couldn't get hold of him – so held the cheque over until the following day – Friday. It was then sent back as a 'late return'.

On the Monday, Mr L phoned the firm and it gave him a cleared balance of his account. This indicated that the cheque had been paid. He therefore released the goods to his 'customer'. The next day he received a letter from the firm telling him that the cheque had bounced.

The 'late return' system requires a bank which is sending back a large cheque (such as Mr L's) to phone the bank where it was paid in. Mr D's bank said it had done so, and provided evidence to back up its story. But the firm said it had not received such a call. Setting aside whether or not the cheque should have been sent back as a late return (because the complaint had not been made against Mr D's bank) we thought, on the balance of probabilities, that the late return phone call *had* been made. However, we didn't think the firm had followed its procedures properly when it received the call. Had it done so, it would have updated its computer system on the Friday. And had that happened, then when Mr L got his balance on the following Monday he would very probably have realised that something was amiss and made some enquiries.

So we concluded that Mr L's loss had arisen through the firm's failure to follow its own procedures. We recommended that the firm should pay Mr L the £7,500, together with a further £100 for the inconvenience he experienced.

The firm was very unhappy. It said that the adjudicator had failed to understand how late return cheques were processed. And it felt that the evidence pointed to Mr D's bank not having phoned.

But the ombudsman to whom the case was then referred took the view that, even if that had been the case (which she considered unlikely) the firm hadn't followed its procedures properly on the Monday anyway. So the ombudsman came to the same conclusion as to liability as the adjudicator had done. However, she felt that £100 was on the light side as far as Mr L's inconvenience was concerned – so she upped that figure to £250.

3 credit cards

increases in credit limits without further credit assessment

It's a familiar story. Your monthly credit card statement arrives and you realise just how much you've actually spent over the past few weeks. But after checking off all your transactions (in the faint hope that at least some of them aren't really yours), you read something like:

'GOOD NEWS!! – your credit limit has just been increased to £XXX'. So with summer just around the corner, why don't you treat yourself to ….'

But is it really such '*good news'* for the customer? Should credit card companies increase card limits without even asking? And how do they go about deciding what the new limits should be?

Of course, these questions are not just confined to the UK. A couple of months ago, the Australian Banking Ombudsman issued a bulletin on the subject, in which he said:

'Often the increase in credit limit is based on an assessment of the repayment history on the account. As a result, a customer who has managed consistently to meet the monthly minimum payment may be offered a limit increase, notwithstanding the fact that the customer has no capacity to repay the whole increased amount.

This office takes the view that increases in credit card limits ought to be assessed in the same manner as the initial granting of credit. Accordingly, if no assessment of the capacity to repay is undertaken and it is found in an investigation that the customer could not do so, we may reach a view that there has been maladministration.'

Back here, the Task Force on Tackling Overindebtedness – set up by the Department of Trade and Industry (DTI) and including representation from, among others, the Office of Fair Trading – expressed concern last year about a number of consumer credit marketing techniques. An apparently overt trend towards emphasising the ease, speed and scale of credit available seemed to run counter to messages about responsible lending.

The DTI then set up a working group to examine these issues in more depth. By the time this edition of *ombudsman news* goes to print, the working group will probably have reported back to the Task Force. We have not seen the working group's report but we believe it is likely to include a number of recommendations relating to unsolicited overdraft offers, as well as to increases in credit card limits. In particular, it may well suggest that these should only be made after pre-screening customers each time an increase is proposed, and that customers should be made aware of their right to reduce or refuse an increase.

4 the Business Banking Code

The Banking Code has been around now for just over ten years and has reached its fifth edition. It has been open to criticism from some quarters – not least because it is both written and approved by the industry itself. But it has undoubtedly played a significant part in improving standards.

The Code is reviewed regularly and we published our submission to the current review in the March 2002 edition of *ombudsman news*.

In previous submissions, the former Banking Ombudsman Scheme had suggested that a similar code be set up to protect the interests of its small business customers.

There seemed no good reason to us for not having such a code – particularly bearing in mind that when the Banking Ombudsman Scheme was set up in 1986, it was open to sole traders and partnerships right from the start. And nearly ten years ago it was widened to cover small companies.

So we welcome the new Business Banking Code – which came into force on 31 March. We have already started to apply it where it is relevant to the cases we receive.

We also welcome the Business Banking Code's similarity to the Banking Code. This will facilitate promotion of the Code principles, staff training and customer protection.

But there is one significant area where the new Business Banking Code goes further than the Banking Code. The new Code covers *merchant services* (sometimes called *merchant acquiring*). *Merchant services* are the facilities a bank provides to allow its business customers to accept debit and credit cards for paying goods and services.

We were anxious for merchant services to be covered by the new Business Banking Code. It's often a difficult area, and we receive a disproportionate number of complaints from business customers about problems with their merchant services facilities (the December 2001 edition of *ombudsman news* gives some typical examples). So, not only have our views on this point been taken into account in the drafting of the new Code, but we're now able to look to it to help us resolve this type of complaint.

Copies of both the Banking Code and the Business Banking Code are available from www.bankingcode.org.uk

working **together**

our new series of conferences for firms

This year we are running a unique series of conferences in various centres around the UK, featuring:

- presentations by our ombudsmen and senior adjudicators
- workshops and case studies
- first-class conference venues
- refreshments, including buffet lunch
- value for money Ð no more than £100 plus VAT per person.

Places are limited. For more information and a registration form, please complete the form below, ticking the event(s) you are interested in. Then send the form (or a photocopy) to: Graham Cox, Liaison Manager, Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London E14 9SR or email the details to: conferences@financial-ombudsman.org.uk

Each conference focuses on a specific area of complaints; investment (including life assurance) **or** insurance **or** banking and loans Ð except in Belfast, where the conference will cover ***all*** these areas.

Please send information about the *working* **together** conferences to:

name(s)

firm

phone

email

office address

please tick

	July 3	Bristol	JuryÕsHotel	banking and loans
	July 25	London	British Library	investment and life assurance
☐	August 14	London	British Library	insurance
☐	August 22	Manchester	Conference Centre	investment and life assurance
☐	August 28	Belfast	Europa Hotel	all
☐	September 18	Leeds	Royal Armouries	banking and loans
☐	October 2	Leeds	Royal Armouries	insurance
☐	October 17	Edinburgh	Edinburgh Balmoral Hotel	banking and investment
☐	December 4	London	British Library	banking and loans

services for firms and consumer advisers

our external liaison team can

- visit you to discuss issues relating to the ombudsman service
- arrange for your staff to visit us
- organise or speak at seminars, workshops and conferences.

phone 020 7964 0132
email liaison.team@financial-ombudsman.org.uk

our technical advice desk can

- provide general guidance on how the ombudsman is likely to view specific issues
- explain how the ombudsman service works
- answer technical queries
- explain how the new ombudsman rules affect your firm.

phone 020 7964 1400
email technical.advice@financial-ombudsman.org.uk

The technical advice desk is happy to provide informal guidance on how the ombudsman is likely to view specific issues. But it does not decide cases.

Its informal guidance is based on information provided by only *one* of the parties to the dispute – and it is not binding if the case is subsequently referred to the ombudsman service. So when they write to or telephone consumers, firms or advisers should not refer to any informal guidance the technical advice desk has given them.

to get our publications

- see the publications page of our website www.financial-ombudsman.org.uk
- call us on 020 7964 0092 to request additional copies or join our mailing list

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

0845 080 1800

switchboard 020 7964 1000
website www.financial-ombudsman.org.uk
technical advice desk 020 7964 1400