ombudsman news

from the **banking and loans** division

Financial Ombudsman Service

March 2001 | Financial Ombudsman Service

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Reference number NEWS 067

welcome to ombudsman news

by **Walter Merricks**
chief ombudsman
financial ombudsman service

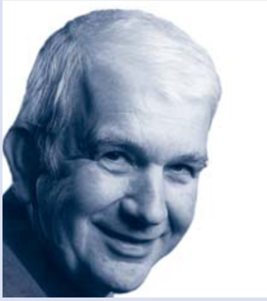
I am very pleased to welcome you to ombudsman news which, each month, focuses on news from one of our three case-handling divisions. In January it was insurance and in February, investment. This month brings you news from our banking and loans division, headed by principal ombudsman, David Thomas.

ombudsman news is aimed primarily at firms and professional advisers in the relevant areas of financial services, and at consumer advice agencies, but it may also be of more general interest. We hope it will prove a helpful source of information about our activities and that it will assist firms in their own complaint-handling.

We are well on the way in preparing for the new regime that will start when the Financial Services and Markets Act 2000 comes into force. We expect this to be by the end of November 2001, at the latest. The new single set of rules under which we are to operate is now available and if you would like to find out more about the rules, and how they will affect your firm, please contact our technical advice desk. Details are on the back cover.

One of our tasks is to secure a consistent outcome for similar complaints and, as part of this process, on page 3 we launch an important consultation on assessing compensation for mortgage underfunding. We welcome your views on this. So as not to delay unnecessarily the cases already being considered by us and by firms, **please send your response to reach us by 1 May 2001 at the latest**.

about this issue of ombudsman news



by **David Thomas**
principal ombudsman
banking & loans division

This is the first ombudsman news to focus on the work of the banking and loans division, and we start with a bumper edition. Future banking and loans editions will appear every three months. We hope that banks and building societies (which will have to get used to being called 'firms' – the term used in the new rules) will find ombudsman news a useful source of reference – not only on how to handle complaints but also on how to avoid complaints arising.

The banking and loans division currently resolves cases in the names, and under the rules, of the Banking Ombudsman Scheme and the Building Societies Ombudsman Scheme. So far as rule differences allow, we aim to harmonise the treatment of complaints – to ensure consistent protection for consumers and a level playing field for the industry.

At present, the Financial Ombudsman Service is receiving over 5,500 banking and loans enquiries each month, and handling 2,000 new banking and loans complaints.

At present, the Financial Ombudsman Service is receiving over 5,500 banking and loans enquiries each month, and handling 2,000 new banking and loans complaints. Over 40% of the complaints currently relate to mortgages – principally early repayment charges, pre-Financial Services Act mortgage endowments and mortgage underfunding. Over 20% of the complaints currently relate to savings accounts – a proportion swollen by the recent focus on TESSA interest rates.

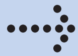
This issue of ombudsman news reflects these concerns, concentrating mainly on mortgages and savings accounts. We also look at a range of other matters including:

- account mandates – and what happens when joint signatories fall out;
- some issues relating to the use of plastic cards; and
- cross-border complaints and complaint-handling.

In addition, we summarise the modifications we are making to our case-handling procedures as we prepare for the new regime.

I am sure you will appreciate, as I do, the hard work which members of the banking and loans division and the communications team have put into preparing this publication. Please let us know if you have any suggestions about how we could make it even more useful.

1 mortgage underfunding – a common approach on compensation?



consultation
Please reply by 1 May 2001

what is mortgage underfunding?
Each year we receive several hundred complaints where the lender calculated the mortgage repayment incorrectly. The borrower paid the amount quoted by the lender, and is shocked to discover later that the outstanding balance of the loan is more than it should be. The repayment has to be increased, or the term of the mortgage extended. We call these *mortgage underfunding* cases.

Sometimes the problem arose because the lender quoted the wrong repayment from the outset – typically, quoting the amount of an interest-only payment on a repayment mortgage. Sometimes the problem arose because the lender quoted the wrong repayment in a notice telling the borrower about an interest-rate change.

Occasionally, a mistake in a notice about an interest-rate change may artificially extend the term of the mortgage. This may not be obvious from the notice. When the interest rate changes again, future repayment changes may be calculated on the basis of the extended term. Borrowers who think they are near the end of the term may find that in fact there are still 10 or more years left to go.

When such cases come to light, borrowers are faced with a sharp increase in repayments in order to pay off the mortgage within the original term, or the need to go on paying off the mortgage for extra years – perhaps into retirement. This paper deals with the calculation of the appropriate level of compensation in cases where we decide that the lender was 100% to blame.

Examples are given, based on a case where:

- the loan was intended to be a £50,000 repayment mortgage over a 25 year term
- the monthly payments were of interest only, because of a mistake by the lender
- the mistake is discovered after 5 years, with 20 years of the term left
- at that stage, the mortgage debt is £3,836 higher than it should have been.

... each year we receive several hundred complaints where the lender calculated the mortgage repayment incorrectly.

building societies

The Building Societies Ombudsman Scheme has, for many years, had a published approach to compensation in these cases. Building societies are familiar with this, and (where they accept they are at fault) offer to settle in accordance with this approach. So the approach affects cases that never get as far as the ombudsman scheme.

The approach is that borrowers have lost nothing, because they will eventually have to repay the amount first borrowed. But they will suffer the inconvenience of a sharp rise in future repayments. So the society is ordered to write off half the amount by which the outstanding balance exceeds what it should have been.

In the example case, this means that the society would be required to write off £1,918 – half the difference between what the mortgage debt is and what it should have been.

banks

The Banking Ombudsman Scheme has for many years had a (different) published approach to compensation in these cases. Banks are familiar with this, and (where they accept they are at fault) offer to settle in accordance with this approach. So again, the approach affects cases that never get as far as the ombudsman scheme.

The approach is that borrowers have incurred a loss – to the extent that their additional future payments exceed savings made in the past as a result of reduced payments – and they have also suffered inconvenience. Typically, the award for inconvenience may vary between £250 or less (where the bank accepted the error fairly quickly) and £1,000 or more (where the bank threatened court proceedings for mythical arrears).

The loss is calculated as follows:

- Work out the present-day value of the future additional payments the borrower will have to make. The present-day value involves applying a discount, because the compensation will be a lump sum payable now to cover payments to be made gradually over future years.

- Deduct the present-day value of any notional past savings in outgoings. The present-day value of these notional past savings is calculated by adding notional interest.

exceptional cases

Both schemes have been faced with exceptional cases – for example, a borrower who discovers the problem shortly before retiring and has no reasonable prospect of meeting the increased future expenditure.

In such cases, depending on the circumstances, we might award increased compensation or tell the lender to leave some or all of the amount outstanding interest-free until the borrower dies or sells the house.

In the example case, this means that the bank would be required to pay the borrower £1,778 – calculated as shown below – plus appropriate compensation for inconvenience (likely to be between £250 and £1,000).

A	Amount actually owing on the mortgage following the mistake	£50,000
B	Amount that should have been owing if the mistake had not been made	£46,164
C	Extra amount owing [A – B]	£3,836
D	Extra amount owing [C] plus interest [at 8½%] as it is paid off over the remaining term	£7,990
E	Future loss [D] discounted [at 4%] because it will be paid now in one lump sum	£5,494
F	Past monthly payments which should have been made	£24,417
G	Past monthly payments which were actually made	£21,054
H	Notional past saving [F – G]	£3,363
J	Current value of notional past saving [H] after applying notional interest to it [at 4%]	£3,716
K	Estimated extra cost of paying off loan [E – J]	£1,778

consistency with mortgage endowment cases

There is a connection with the recent consultation by the Financial Services Authority (FSA) about compensation in relation to complaints about regulated mortgage endowments – because that canvassed a possible approach to the treatment of notional past savings:

- *Ordinarily*, notional past savings would not be taken into account. Borrowers would probably have spent these savings unknowingly on normal expenditure. Borrowers should *not* have to account for past savings and should be compensated for the full shortfall to date.
- *Exceptionally*, borrowers would be of sufficient means that it is reasonable to assume that the notional past savings actually increased their means. In such cases, borrowers should have to account for past savings to that extent (*eg* if they enhanced a deposit account balance).

Arguably, it would be logical and consistent to adopt a similar approach in relation to past savings when dealing with complaints about mortgage underfunding.

towards a common approach

The Financial Ombudsman Service will need to adopt a single consistent approach to mortgage-underfunding complaints by “N2” (the date when it acquires its powers under the Financial Services and Markets Act) at the latest. It could adopt either of the existing approaches, or an entirely new approach. This is likely to involve a substantial change for banks or building societies, or for both. It would clearly be advantageous to foster a consistent approach, and for lenders and borrowers to know where they stand as soon as possible. The Financial Ombudsman Service has decided to consult now – so that it can make, and publish, an early decision about what its approach will be from “N2”.

In the light of that decision, the Building Societies Ombudsman Scheme and the Banking Ombudsman Scheme will consider whether to adopt that common approach in advance of “N2”. **The existing published approaches to mortgage underfunding by both the Building Societies Ombudsman Scheme and the Banking Ombudsman Scheme are therefore suspended with immediate effect.**

timing of consultation

There are significant numbers of mortgage-underfunding cases and those currently being dealt with by lenders or by the current ombudsman schemes will have to be put on hold temporarily – until the outcome of the consultation is known. Since it is desirable to keep this delay to the absolute minimum, the consultation period expires on 1 May 2001.

To ensure that consultation with the industry and with consumer bodies is as quick and effective as possible, the Council of Mortgage Lenders and the Financial Services Consumer Panel have agreed to help speed and coordinate responses from their respective constituencies. We are grateful for their assistance in this.

possible common approach

For cases where the firm is 100% to blame, we are considering the following possible approach, reflecting current views of good practice.

- Ordinarily, lenders should write off the entire shortfall that has built up to the date when the mistake is sorted out.
- Where appropriate, lenders should also pay compensation for past inconvenience (*eg* where the lender was slow to accept/correct the error).
- Ordinarily, notional past savings should not be deducted.
- Exceptionally, notional past savings (without interest) should be deducted if the borrowers are of sufficient means that it is reasonable to assume their means were actually increased by the notional past savings.
- Ordinarily, there should be no compensation for the future inconvenience of having to make the increased payments, since these are payments the borrowers should have been paying from the start.
- Exceptionally, there would continue to be cases where the approach would need to be modified in the light of circumstances. For example:

  — If the borrowers were approaching retirement and could not afford the future payments, even if the whole shortfall to date were written off, they might also get some compensation in respect of the future additional payments.

  — If the borrowers could not have afforded to take out the mortgage at all at the correct repayment figure, they might be put in the position they would have been in if, at the outset, they had been told the correct figure.

  — If the borrowers could have afforded the correct repayment at the outset, but later ran up arrears by failing to pay all of the incorrect lower repayment, compensation might be reduced accordingly.

Ordinarily, in the example case, this approach would require the lender to write off £3,836 – and pay appropriate compensation for inconvenience (likely to be between £250 and £1,000). Exceptionally, if the borrower were of sufficient means, notional past savings of £3,363 would be deducted from this.

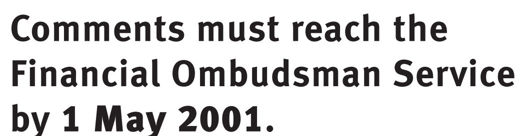
your comments

- Anyone can submit comments direct to the Financial Ombudsman Service through:

  Brenda Costello
  Banking and Loans division
  Financial Ombudsman Service
  South Quay Plaza
  183 Marsh Wall
  London E14 9SR
  (*e-mail* brenda.costello@financial-ombudsman.org.uk)

- Alternatively, lenders can coordinate comments by submitting them through

  Kate Main
  Policy Adviser
  Council of Mortgage Lenders
  3 Savile Row
  London W1S 3PB
  (*e-mail* kate.main@cml.org.uk)



Comments must reach the Financial Ombudsman Service by 1 May 2001.

Unless they are marked confidential, we will assume they can be published.

and finally

Not unnaturally, customers expect financial firms to calculate figures accurately. Mortgage underfunding complaints would not arise if firms had simple checks in place, to ensure the initial calculation was right. But, regrettably, the number of mortgage underfunding cases we receive is not diminishing.

2 pre-Financial Services Act mortgage endowments

was advice given after 29 April 1988?

The rules under which we deal with complaints about mortgage endowments sold by banks and building societies will differ, depending when any advice was given.

- If advice was given by a bank or building society *before* 29 April 1988 – the date when the Financial Services Act 1986 came into force – our banking and loans division deals with these complaints under Banking Ombudsman Scheme or Building Societies Ombudsman Scheme rules.

- If advice was given *after* 29 April 1988, our investment division deals with them, usually under Personal Investment Authority Ombudsman Scheme rules.

The distinction is important because the record keeping and "best advice" requirements introduced by the Financial Services Act only apply where advice was given after 29 April 1988. This is often overlooked in media reports, which usually focus on policies covered by the Financial Services Act.

Financial Ombudsman Service briefing note

The Financial Ombudsman Service produced a briefing note about its treatment of mortgage endowment complaints. There is a link to it on our website at www.financial-ombudsman.org.uk/news/index.html. The final section deals with cases before 29 April 1988 – and says:

The position is somewhat different for endowment contracts where advice was given before 29 April 1988. The regulatory requirements governing the conduct of investment business (introduced under the Financial Services Act 1986) did not apply. So complaints where the advice was given before 29 April 1988 have to be dealt with according to general legal principles.

The principal issues are likely to be:

- did the firm promise that a specified sum would be produced?
- was any advice given?
- if so, was the advice negligent?
- if not, was the position misrepresented?
- was there full and fair disclosure?

... misrepresentation can include only giving partial disclosure of the material facts.

If the firm gave what amounted to a contractual commitment that the policy would produce a specified sum (*eg* sufficient to pay off the associated mortgage loan), it is likely to be held to be binding. As evidence of such a binding commitment would be required, this is likely to apply in only a small minority of cases.

Neither the lender nor the policy provider was under a duty to volunteer advice, even if the firm's advertising said that financial advice was available. But if the firm actually gave advice (either voluntarily or on request) it was under a duty to give that advice with reasonable care and skill. That is to be judged in the light of the circumstances as they were known or should have been known at the time, without applying the benefit of hindsight. If advice was requested on a particular issue, it does not necessarily mean the firm was obliged to volunteer advice on other issues relating to the same investment.

Where advice was given, it will be material to consider whether or not the customer was told that there was a risk that the policy might not produce sufficient to pay off the mortgage. And in the absence of such a warning, a further consideration will be what the customer would have done if the extent of the risk had been made clear.

Where advice was given and the customer is unable to continue paying the policy premiums for the full term of the policy (in order to obtain the full benefit of the terminal bonus), it will be material to consider whether or not the advice took into account affordability and the holder's likely ability to continue paying the policy premiums. If the policy term runs into retirement, the ability to fund the premiums after retirement may have been a material consideration.

Even if the firm did not give advice, it will be liable if it misrepresented the position. Misrepresentation can include only giving partial disclosure of the material facts. The law requires that the consumer be put in the position that he or she would have been in if the misrepresentation had not been made – not the position he or she would have been in if the misrepresentation had been true.

... we would not necessarily investigate a mortgage endowment complaint where there was no loss for which we could award compensation.

jurisdiction and compensation

The normal Banking Ombudsman Scheme and Building Societies Ombudsman Scheme jurisdiction rules apply. So we would not necessarily investigate a mortgage endowment complaint where there was no loss for which we could award compensation. With pre-1988 policies this is often the case.

This begs the question of how we calculate whether there has been any loss. We do this in the same way as our colleagues in the investment division. If the firm were at fault, compensation would be calculated in order to put the borrowers in the position they would have been in if they had not acted on the bad advice or misrepresentation. Usually this will involve comparing the borrowers' actual position, now, with what it would have been if they had taken out an equivalent repayment mortgage.

- We look at the present surrender value of the borrowers' mortgage endowment policy (the amount they would get if they cashed it in). We compare this with the amount of capital they would have paid off by now if they had taken a comparable repayment mortgage instead, and we calculate if they are better or worse off.

- We also look at the borrowers' mortgage outgoings. We compare the payments they have made until now on the endowment mortgage with the payments they would have made until now if they had taken a repayment mortgage instead. In doing this, we total the monthly payments, without applying any notional interest or discount.

- When we calculate the outgoings on a repayment mortgage, we assume the borrowers would have taken decreasing term life cover – unless we are satisfied that they did not need life cover (*eg* where they had no dependants or already had plenty of life cover).

If the borrowers are worse off as far as capital is concerned, but better off on outgoings, we have to consider whether to take into account the notional past saving in outgoings.

- *Ordinarily*, notional past savings are *not* taken into account. The borrowers will probably have spent them unknowingly on normal expenditure. The borrowers should *not* have to account for such past savings.

- Exceptionally, the borrowers will be of *sufficient means* that it is reasonable to assume the notional past savings actually increased their means. In such cases, the borrowers should have to account for past savings to that extent (*eg* if they enhanced a deposit account balance). This could mean that it will only be reasonable to take part of the past savings into account.

This produces a variety of results:

- **Borrowers better off as far as both capital and outgoings are concerned. There is no loss. The borrowers are better off overall.**

For example

Mr and Mrs A's endowment policy has a surrender value of £11,000.

The capital that would have been repaid on a repayment mortgage is £10,000.

They are £1,000 better off on capital.

The total payments to date on their endowment mortgage are £30,000.

The total payments to date on a repayment mortgage would have been £31,000.

Mr and Mrs A are £1,000 better off on outgoings.

They are £2,000 better off overall.

- **Borrowers better off on capital and worse off on outgoings, and their gain on capital is *more* than their loss on outgoings. There is no loss. The borrowers are better off overall.**

For example

Mr and Mrs B's endowment policy has a surrender value of £12,000.

The capital that would have been repaid on a repayment mortgage is £10,000.

They are £2,000 better off on capital.

The total payments to date on their endowment mortgage are £30,000.

The total payments to date on a repayment mortgage would have been £29,000.

Mr and Mrs B are £1,000 worse off on outgoings.

They are £1,000 better off overall.

- **Borrowers better off on capital and worse off on outgoings, and their gain on capital is *less* than their loss on outgoings. The borrowers have lost the amount by which the outgoings loss exceeds the capital gain.**

For example
Mr and Mrs C's endowment policy has a surrender value of £11,000.

The capital that would have been repaid on a repayment mortgage is £10,000.

Mr and Mrs C are £1,000 better off on capital.

The total payments to date on their endowment mortgage are £30,000.

The total payments to date on a repayment mortgage would have been £28,000.

Mr and Mrs C are £2,000 worse off on outgoings.

They are £1,000 worse off overall.

- **Borrowers worse off on capital and worse off on outgoings. They have lost the total of the capital loss and the outgoings loss.**

For example
Mr and Mrs D's endowment policy has a surrender value of £10,000.

The capital that would have been repaid on a repayment mortgage is £11,000.

Mr and Mrs D are £1,000 worse off on capital.

The total payments to date on their endowment mortgage are £30,000.

The total payments to date on a repayment mortgage would have been £29,000.

Mr and Mrs D are £1,000 worse off on outgoings.

They are £2,000 worse off overall.

- **Borrowers worse off on capital and better off on outgoings, and the loss on capital is *more* than the gain on outgoings. The borrowers have suffered the capital loss. The outgoings gain is deducted only if the borrowers are of sufficient means.**

For example
Mr and Mrs E's endowment policy has a surrender value of £10,000.

The capital that would have been repaid on a repayment mortgage is £12,000.

Mr and Mrs E are £2,000 worse off on capital.

The total payments to date on their endowment mortgage are £30,000.

The total payments to date on a repayment mortgage would have been £31,000.

Mr and Mrs E are £1,000 better off on outgoings.

Ordinarily, they would be treated as having incurred a loss of £2,000.

Exceptionally, if they were of *sufficient means*, they would be treated as having incurred a net loss of between £1,000 and £2,000, depending on how much of the past savings it would be reasonable to take into account.

- **Borrowers worse off on capital and better off on outgoings, and the loss on capital is *less* than the gain on outgoings. The borrowers have suffered the capital loss. The outgoings gain is deducted only if the borrowers are of sufficient means.**

For example
Mr and Mrs F's endowment policy has a surrender value of £10,000.

The capital that would have been repaid on a repayment mortgage is £11,000.

Mr and Mrs F are £1,000 worse off on capital.

The total payments to date on their endowment mortgage are £30,000.

The total payments to date on a repayment mortgage would have been £32,000.

Mr and Mrs F are £2,000 better off on outgoings.

Ordinarily, they would be treated as having incurred a loss of £1,000.

Exceptionally, if they were of sufficient means, they would be treated as having incurred either a loss or a net gain – ranging from a £1,000 loss to a £1,000 gain, depending on how much of the past savings it would be reasonable to take into account.

3 savings accounts

Where the borrowers have incurred a loss, and the firm was at fault, compensation would comprise the total of:

- the amount of the loss; and
- the cost of swapping to a repayment mortgage (assumed to be £250 unless some other figure is demonstrated); and
- any appropriate amount for inconvenience.

tax exempt special savings accounts (TESSAs)

From August 2000 we started receiving thousands of enquiries from customers who were dissatisfied with TESSA interest rates where these compared unfavourably with the rates available on other savings accounts, such as ISAs (Individual Savings Accounts).

In September 2000 we published a briefing note with the aim of helping firms and their customers resolve such complaints between them – by indicating the approach we were likely to take on those complaints that reached us. The briefing note included the following extract:

In relation to a complaint about the interest rate on a variable rate TESSA, we will consider two questions:

- Did the bank or building society pay a "fair" rate of interest on the TESSA?

  For this purpose, we will treat the effective interest rate on the TESSA as "fair" if it is at least as good as the interest rates available on any other accounts with less onerous features in that bank or building society's current range.

  We regard TESSAs as five-year accounts. So we will include any bonus payable at the end of the

five years when we calculate the effective rate of interest on the TESSA, before comparing it to the other rates.

- If the bank or building society did not pay a "fair" rate of interest on the TESSA, did it tell the investor by 5 May 1999 that that the TESSA could be moved freely?

  Because of government tax changes, TESSAs could not be opened after 5 April 1999. From that date they became "superseded" accounts. We consider that, within 30 days (by 5 May 1999), the bank or building society should have told the investor that the account was superseded – but could be transferred to another bank or building society without any notice period or additional charge.

We are unlikely to award compensation if the answer to either of these questions is "yes".

If we award compensation, it is likely to be assessed on the basis of the "lost" interest – plus any amount appropriate for inconvenience.

It is likely that we would calculate the "lost" interest as follows:

- It would be based on the difference in interest rates between the TESSA and the other account with less onerous features in the bank or building society's range.
- It would run to the date the investor was told that he/she was free to transfer the money without notice or charge.
- If any bonus is lost because the TESSA is transferred, we would exclude the bonus in calculating the rate of interest paid on the TESSA.

... The Banking Code has special provisions about superseded accounts.

This approach is based (amongst other things) on our interpretation of the law, the principles of the Banking Code and good industry practice.

It takes into account the following special features of TESSAs:

- They have special tax advantages, which depend on leaving the money in for five years. So TESSAs are effectively five-year accounts.
- But, unlike most ordinary five-year accounts, TESSAs can usually be transferred from one bank or building society to another – without losing the favourable tax treatment.
- Some banks and building societies do not emphasise this transfer option to their existing TESSA account holders.

The Banking Code has special provisions about superseded accounts.

("Superseded" accounts are ones closed to new customers or which the firm no longer promotes).

The Code requires a bank or building society to either:

- keep the interest rate on a superseded account at the same level as another account with similar features (if the bank or building society has one in its current range); *or*
- switch the superseded account to another account with similar features (if the bank or building society has one in its current range).

This means the interest rate on a superseded account will be at least as good as the interest rate on an account with similar features in the bank or building society's current range, if there is one. But there is unlikely to be an account with similar features to a TESSA. Overall the features of a mini cash ISA are different.

... dozens of new cases continue to come in each week, principally in relation to building societies.

If a superseded account should pay interest which is at least as good as an account with similar features (where the bank or building society has one), we consider it follows that a superseded account such as a TESSA should not pay worse interest than any accounts in the bank or building society's current range with less onerous features.

Features to be taken into account include any term or notice period. But the other accounts need not be term or notice accounts. Comparisons can be made with an instant access account if it pays a higher rate of interest. A mini cash ISA may or may not have less onerous features than the TESSA – it all depends on the account conditions.

Where a bank or building society has no account with similar features to an account which becomes superseded, the Code requires it to:

- contact the investor within 30 days
- tell the investor the account is superseded
- tell the investor about its other accounts; *and*
- help the investor switch accounts (without any notice period and without any additional charge).

We consider it follows that the bank or building society should, at the same time, remind the investor that the TESSA can be transferred to another bank or building society – and indicate that this can be done without any notice period or additional charge. It is then up to the investor, not the bank or building society, to review what alternative competitive rates of interest are available in the market.

what has happened since

We have received TESSA complaints about twelve banks. After we spoke to them, seven agreed to settle with their customers. We are still talking to two banks and we are investigating test cases in respect of the remaining three.

We have received TESSA complaints about 17 building societies, but almost all of these complaints related to just five societies. None of the five has settled with its customers, so they are all the subject of test cases. Four have reached the preliminary conclusion stage and each of these has thus far gone against the society concerned, but a final ombudsman decision has not yet been issued.

Meanwhile, dozens of new cases continue to come in each week – principally in relation to building societies.

... dissatisfaction with interest rates on savings accounts is not confined to TESSAs.

where interest on a savings account is cut

Dissatisfaction with interest rates on savings accounts is not confined to TESSAs. We receive a significant number of complaints about downgraded savings accounts – where the customers were attracted into the account by a good interest rate, but find after some years that they are now receiving what they consider to be a poor interest rate.

whose job is it to keep an eye on the account?

If a firm actually gives advice, it is liable if the advice is wrong. But (outside the realm of regulated investment business) the firm is under no obligation to offer or give advice. In particular, a firm is not usually required to tell customers when it would be in their interests to switch to another savings account.

So customers need to be vigilant. They should keep a careful eye on the rate of interest they are getting and on what they could get elsewhere. And they should carefully check any paperwork the firm sends them, not assume it is all simply marketing information.

... customers should keep a careful eye on the rate of interest they are getting and on what they could get elsewhere.

we don't control interest rates

General interest rates are affected by:

- the Bank of England rate;
- competitive market forces; *and*
- the need for firms to generate whatever margin is required to maintain their business.

As explained in the 1994-95 annual report of the Building Societies Ombudsman Scheme, the Building Societies Ombudsman Scheme may consider it to be unfair treatment if a building society pays a lower rate of interest on term or notice accounts than on another account, with the same society, which has similar or less onerous terms.

Banking Ombudsman Scheme rules do not allow us to consider a complaint that concerns a bank's general interest rate policy. We can't act just on the basis that a particular bank interest rate appears unfair. But we can consider the following points in respect of both banks and building societies.

terms of the account

We can consider whether the terms of the account allow the firm to reduce the interest rate. It is reasonably certain that they will do. If the account was opened after 1 July 1995, we can consider whether the term used to vary the interest rate complies with the Unfair Terms in Consumer Contracts Regulations.

... the firm had misled the saver into believing that he did not need to monitor the interest rate himself.

These only allow us to assess the fairness of the term against the circumstances when the account was opened, without the benefit of hindsight about what happened later.

The interest rate variation term may well be unfair unless:

- it links the interest rate on the savings account to another rate that the firm does not control; *or*
- it says the firm can only alter the interest rate for a valid reason which is specified in the contract; *or*
- the term:
  - only allows the firm to alter the interest rate for a valid reason (even if not specified in the contract); *and*
  - requires the firm to tell the customer of the alteration at the earliest opportunity; *and*
  - allows the customer to close the account without notice or penalty when the interest rate changes.

If the customer shows us promises in the marketing literature they received, we can consider whether those promises became part of the account terms or induced the customer to open the account on a false basis.

example

Mr G put £150,000 into a savings account. He later complained that base rate had gone up, but the interest rate on his savings account had gone down.

We decided that the firm had misled him into believing that he did not need to monitor the interest rate himself. The account literature said "if you ... are worried about interest rates" the account "offers you peace of mind" and "you benefit whatever happens to interest rates."

We awarded Mr G compensation of £1,500.

was the customer told about the interest rate cut?

If it was a postal account which could not be operated at a branch, the firm should have sent the customer individual notice of the interest rate reduction. If not, the customer may have a valid claim.

If it was an ordinary account, which could be operated at a branch, the firm did not have to send the customer individual notice of the rate change. The Banking Code says it is enough if the firm put notices in branches and in newspapers. We would prefer it if the Code required individual notices about rate cuts to be sent to customers for all kinds of accounts, but we don't write the rules.

If the firm only put notices in branches and in newspapers, normally it should have sent the customer a list of its interest rates once a year. However, this didn't apply:

- before 31 March 1999, if the account had a passbook;
- before 31 December 2000, if the account had a passbook and less than £100 in it;
- from 1 January 2001, if the account had less than £100 in it.

was it a "superseded" account?

As we have already mentioned in the section about TESSAs, from 31 March 1999 the Banking Code introduced new rules about accounts that were "superseded" (before or after 31 March 1999). "Superseded" accounts are ones closed to new customers or which the firm no longer promoted. We apply these rules as follows:

- The interest rate on a superseded account has to be kept up to the rate on an account in the firm's current range which has similar or less stringent features – relating to, for example, notice periods, types of withdrawals, number of free withdrawals and how the account is accessed.

  The comparison has to be based on the terms which applied to the superseded account at the time the customer took it out – not on any terms which were subsequently relaxed.

- If there was no account with similar features, the firm should have written to the customer within 30 days to say that the account was superseded and to offer to help the customer switch accounts.

If the firm failed to follow these rules, the customer may have a valid claim for the consequent loss of interest, but only for the relevant period after 31 March 1999.

4 plastic cards

... what the Banking Code fails to say, and what some firms appear to overlook, is that using a card to create or increase an overdraft makes it a credit token for the purposes of the Consumer Credit Act 1974.

credit tokens

Under the provisions of the Banking Code, a customer is liable for unauthorised withdrawals where they result from the customer's gross negligence. An example is where the customer keeps a note of the PIN (personal identification number) with the card, both are stolen and the thief cleans out the account. The onus of proving gross negligence falls on the firm.

What the Banking Code fails to say, and what some firms appear to overlook, is that using a card to create or increase an overdraft makes it a credit token for the purposes of the Consumer Credit Act 1974. This means that the customer's liability for unauthorised withdrawals is limited to £50, even if the customer was grossly negligent.

case study

Miss H's purse was stolen. It contained her card and an undisguised note of her PIN. The thief drew £750 from the account, taking it from a credit of £250 to an overdraft of £500.

The firm held Miss H liable for the full £750, because of her gross negligence in keeping an undisguised note of the PIN with the card.

We agreed she had been grossly negligent. That meant she had to stand the £250 credit drawn from the account. After that, as it was used to run up an overdraft, the card became a credit token. So Miss H only had to stand £50 of the £500 overdraft.

chargeback

Customers often misunderstand how credit cards work. If they use a credit card in a shop, they think the firm which issued the credit card (*the card provider*) then pays the shop. That is not how it works. Outlets where credit cards can be used are signed up by a separate firm (*the merchant acquirer*).

This is how it works:

- The firm which provided the cardholder with the credit card is known as the *card provider*. It belongs to a credit card network such as Mastercard or Visa.
- The shop or the business is known as the *merchant*. It has signed up with a *merchant acquirer* which belongs to the same credit card network as the *card provider*.
- The *merchant* claims its money from the *merchant acquirer*. The *merchant acquirer* claims its money from the *card provider*.

Effectively, each credit card network is an electronic form of clearing system – coupled with a delay before the cardholder has to settle up with the card provider.

If the card provider (on behalf of the customer) claims the money back from the merchant acquirer (on behalf of the merchant), that is called *chargeback*. The rules of the credit card networks lay down when and how this can be done.

... the firm had not previously told him about the time limit, so we decided he was not bound by it.

There is no express contractual obligation imposed on a card issuer to exercise chargeback rights on behalf of an account-holder. However, industry acceptance of the custom of processing all disputed transactions as chargebacks, where a chargeback right exists, is so common that the ombudsman has determined that it is good practice to chargeback.

Therefore, our view is that if an account-holder disputes a transaction and chargeback rights exist under the relevant card scheme operating rules, the card issuer is required to:

- Process all disputed transactions as chargebacks, where chargeback rights exist.
- Take care in exercising any chargeback right. This would include using the most appropriate reason code for the chargeback, so that the account-holder's reasons are properly represented, and properly completing chargeback documentation under the relevant card scheme.
- Satisfy itself that the response to the chargeback, given by the merchant acquirer, is a proper response to the situation.

case study

Mr J ordered goods, to be charged to his card. The goods did not arrive, and he asked the firm to make a chargeback. The firm told him he was out of time. The supplier went out of business, so Mr J pursued a claim against the firm.

Mr J had contacted the firm outside the firm's own time limit. But the firm had not previously told him about the time limit, so we decided he was not bound by it. Mr J had contacted the firm within the relevant card scheme's chargeback time limit, but the firm had not tried to make a chargeback. It argued that there was no reference to chargeback in the account terms, and that Mr J had no contractual right to a chargeback.

We agreed that there was no contractual right. But chargeback was a matter of public knowledge and it was maladministration for the firm not to attempt one. We awarded Mr J compensation to cover the cost of the goods, plus his inconvenience in having to pursue the complaint to us.

This is what the Australian Banking Industry Ombudsman said in his September 2000 bulletin. It is interesting to note that, independently, he has come to the same view as us.

5 mandates – when signatories fall out

... the law requires that an onerous term be fairly brought to the attention of the person who is to be bound by it.

As the following two case studies show, some couples enter into banking arrangements that they later regret.

Miss K and her partner, Mr L, had a joint current account. Each of them had a cheque guarantee card. The mandate they signed when they opened the account said:

- each of them was jointly and individually liable for any overdraft, *and*
- the mandate could not be cancelled unless the cheque guarantee cards were returned.

Miss K and Mr L fell out. Miss K asked the firm to freeze the account, but could not return Mr L's cheque guarantee card. Mr L went on writing cheques using the cheque guarantee card, running up an overdraft.

When Mr L's card was about to expire, the firm automatically sent him a new one. Miss K said she should not be liable for the overdraft. The firm said she *was* liable. It was compelled to pay Mr L's cheques because they were supported by the cheque guarantee card. Miss K had agreed to the issue of the card, and had agreed to be liable until it was returned.

Miss M had a credit card account, and nominated her partner, Mr N, as an additional cardholder. The application Miss M signed said that she would be liable for anything incurred by Mr N until he cancelled the arrangement and Mr N's card was returned.

Miss M and Mr N fell out. Miss M asked the firm to cancel her former partner's card, but was unable to return it to the firm. Mr N continued to use the card. Miss M said she should not be liable for these transactions. The firm said she should be liable, because she had agreed to remain liable until the card was returned.

how do we approach such cases?

First – we consider the contractual position. Is the firm right in saying that the wording makes Miss K or Miss M liable? The obligation is irrevocable unless they can get the card back from their former partners, which seems unlikely if they have fallen out. So the term is an onerous one.

The law requires that an onerous term be fairly brought to the attention of the person who is to be bound by it (often known as the *Interfoto* test, because of a court case of that name). So the term must be reasonably prominent, and not hidden away.

Next – we consider what good industry practice would require. If Miss K or Miss M asks the firm to freeze the account or put a

... the firm was slow in taking reasonable steps to keep her liability to a minimum.

stop on the card, Miss K or Miss M should take reasonable steps to recover the card. But the firm should also take any reasonable steps available to it to keep Miss K's or Miss M's liability to a minimum.

In the case of a credit card, the firm can reduce the credit limit to £1 and put a marker on the account so that Mr N's card is captured if he uses it for a transaction that requires authorisation. All traders have a *floor limit* below which authorisation is not required, however, so this will not stop every smaller transaction.

Miss K or Miss M will have to stand the cost if:

- they are contractually liable;
- the firm has taken any reasonable steps that good industry practice requires; *and*
- (despite that) the former partners are able to enter into transactions that the firm is obliged to honour.

In Miss L's case, we decided the relevant term was sufficiently clear, though it could have been clearer. Miss L was liable for the cheques her former partner wrote using the original cheque guarantee card, because the firm had no choice but to pay these.

But the firm should not have issued a replacement card, and Miss L was not liable for the cheques he wrote using the replacement.

In Miss M's case we decided the relevant term was clear and unambiguous. So she was contractually bound.

But the firm was slow in taking reasonable steps to keep her liability to a minimum. Some of the transactions, which required authorisation, could have been prevented if the firm had acted sooner. Miss M should not be liable for those.

But some of the transactions would have gone through anyway, because they did not need authorisation. Miss M *was* liable for those.

6 some general points

unfair terms

We have already mentioned the Unfair Terms in Consumer Contracts Regulations in the context of downgraded savings accounts. But they apply to all consumer contracts entered into from 1 July 1995.

Some firms seem not to understand how these regulations work. If a contract term does not comply with the fairness test in the regulations, it is not binding on the consumer at all – even if the firm later offers a concession that, if it had been in the contract, would have made the term fair.

example

Mr P took out a mortgage. The interest rate was fixed for five years. In return, Mr P was required to pay an early repayment charge if he paid off the mortgage within five years. When, within the five years, Mr P did try to pay off his mortgage, the firm demanded a charge of £25,000. After much furore the firm offered to cap the charge at £12,000.

The charge was to be calculated by reference to movements in market interest rates. But it was described in terms that a customer could not understand. It was said to cover the firm against any adverse movement in interest rates, but it actually produced an early repayment charge even if interest rates did not move at all.

Our adjudicator thought the early repayment charge was unfair under the regulations. In view of this, the firm allowed Mr P to repay the mortgage without charge, rather than push the issue to an ombudsman's final decision.

... some firms seem not to understand how these regulations work.

... if something goes wrong (even if the lender was at fault), the lender then says the solicitor should have sorted things out.

blaming the solicitors

When a customer takes out a new mortgage at the same time as buying a house, the lender usually asks the customer's solicitors to act for the lender as well. The solicitors undertake some obligations to the lender, including confirming to the lender that the legal title is all right. The solicitors have two clients – the customer and the lender – and can only go on acting if there is no conflict of interest between them.

Some lenders seek to overcome deficiencies in their documentation or procedures by including a catch-all clause in their mortgage instructions, making the solicitors responsible for explaining everything and for making sure everything is done. If something goes wrong (even if the lender was at fault), the lender then says the solicitor should have sorted things out – and the customer should claim against 'his' solicitors rather than against the lender.

But that does not actually get the lender off the hook. In fulfilling the mortgage instructions, the solicitors are acting as the firm's solicitors, not the customer's solicitors. And, as far as we are concerned, this does not absolve the firm from deficiencies for which it was actually responsible.

dealing with advisers

If a customer submits a complaint through an adviser, firms rightly insist on written authority from the customer before discussing confidential information with the adviser. But they do not always think ahead to what the position will be if they issue a final response or deadlock letter.

example

Mr Q complained to the firm. After a while, his accountant took over the correspondence. The firm refused to correspond with the accountant until Mr Q gave written authority. That authority simply said that the firm could disclose information to the accountant. It did not make the accountant Mr Q's agent for all purposes.

Eventually, the firm issued a deadlock letter – which it sent to the accountant. The accountant did not pass it on or tell Mr Q about it. So Mr Q was not out of time when he presented his complaint to us a month after the expiry of the six-month time limit quoted in the deadlock letter.

7 cross-border complaints

... looking at the internet site on their own computer screens, customers may not think about where the firm is actually based.

deposit-taker's European "passport"

The European Second Banking Coordination Directive helps foster the creation of a single European market in financial services.

A firm that is authorised as a deposit-taker in one European Economic Area state (its home state) can deal with business from any other European Economic Area state (a host state), without requiring additional authorisation from the host-state regulator.

It can provide its services

- *into* the other state, (cross-border – by post or internet) or
- *in* the other state (by establishing a branch).

European Economic Area

The European Economic Area comprises the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and the United Kingdom) plus the European Free Trade Area (Iceland, Liechtenstein, Norway).

But the Isle of Man and the Channel Islands are not part of the United Kingdom or of the European Economic Area.

how it works

A French deposit-taker, authorised by the Commission Bancaire, does not require authorisation from the Financial Services Authority to operate in the UK. It simply asks the Commission Bancaire to notify the Financial Services Authority that it is already authorised in France but intends to do business in the UK. Similarly a UK deposit-taker, authorised by the Financial Services Authority, does not require authorisation from the Commission Bancaire in order to do business in France.

internet banking

One way in which firms are exploiting these rights is through cross-border internet banking. Firm A (a UK bank) already markets itself in Spanish into Spain over the internet – and plans to market itself in the local languages into France, Italy and Germany. Firm B (a French bank) already markets itself in English into the UK over the internet. The internet is not a place, it is a means of communication (like the post or the phone). But, looking at the internet site on their own computer screens, customers may not think about where the firm is actually based.

complaints

This can cause problems if there is an unresolved complaint. Wherever the customer lives, we can deal with complaints about

... the European Commission helped us get together with financial sector ombudsman and complaint-handling schemes from 15 other countries.

services provided in or from a branch in the UK (whether the firm itself is from the UK or abroad). So, to its surprise, Firm A found that complaints by its Spanish customers would fall within our jurisdiction. But we cannot deal with services provided from a branch outside the UK, even if the customer lives in the UK. So, to its regret, Firm B found that its UK customers fell outside our jurisdiction.

why this is so

The policy of the UK government, and of the European Commission, is that it would be simpler to enforce compensation awards if complaints were dealt with by the ombudsman or other complaint-handling scheme where the firm is based.

A firm in Greece (for example) is more likely to comply with an award by the Greek ombudsman than it is to comply with an award by the UK ombudsman, and it would be difficult to enforce the UK ombudsman's award if the Greek firm has no presence in the UK.

Fin-Net (financial redress network)

To deal with this situation, the European Commission helped us get together with financial sector ombudsman and complaint-handling schemes from 15 other countries to create a Europe-wide network. This was launched on 31 January 2001 under the unlovely title of Fin-Net. If a financial services customer in country A contacts an ombudsman in country A about a complaint covered by an ombudsman in country B, the ombudsman in country A will refer the complaint on – and help the ombudsman in country B with any required information about local law and conditions in country A.

EEJ-Net (European extra-judicial network)

In due course, Fin-Net will become part of EEJ-Net, a more ambitious network covering ombudsmen and complaint-handling schemes in all consumer sectors. As part of EEJ-Net, each state will establish a national clearing house.

Consumers will be able to approach the clearing house through their Citizens' Advice Bureau or local authority trading standards office. The clearing house will tell them if there is an ombudsman or complaint-handling scheme, at home or abroad, which can deal with their complaint.

The UK clearing house, funded by the Department of Trade and Industry, should be established later this year. It will be run by the National Association of Citizens' Advice Bureaux – supported by LACOTS, the association of local authority trading standards departments.

8 our complaint-handling procedures – some modifications

towards a common process

The ombudsmen for the different financial sectors have now been together under one roof for nearly a year. All now work for the Financial Ombudsman Service – but continue to operate in the names, and under the rules, of the original schemes until the Financial Ombudsman Service's own rules come into force at the date we call "N2". The government has said that this will be no later than the end of November 2001.

Our *customer contact* division is the common point of entry for all customers, whether their complaint concerns a bank or building society or an investment or insurance firm. There are then three casework divisions. The *banking and loans division* carries out casework for the Banking Ombudsman Scheme and Building Societies Scheme. The *insurance division* and the *investment division* carry out casework for the other schemes.

As part of our preparations for the new regime, we are introducing common case-handling procedures, and common terminology, throughout the Financial Ombudsman Service, supported by 'Croesus' – a new software system. The banking and loans division will probably transfer to this new process in early May 2001 and, although some of the changes will not come into effect immediately, we will be working in accordance with the new procedures wherever they are consistent with the existing rules of the Banking Ombudsman Scheme and the Building Societies Ombudsman Scheme.

We have discussed with the Office of the Data Protection Commissioner the arrangements for holding data from different existing ombudsman schemes within a single computer system.

aimed at early resolution

We outline below the main consequences of the changes but, as you will see, most things will remain the same. Our aim remains to resolve complaints at the earliest possible stage that is compatible with fairness and correctness. This approach will be familiar to both banks and building societies. It minimises the overall cost to firms of complaints-handling, and provides certainty at an early stage. If an amicable agreement can be reached before attitudes have become entrenched, it may restore customer goodwill and confidence.

Our procedures are designed to be flexible, not process-driven, and we intend to maintain an active dialogue with both firms and customers to keep the procedures under review.

... our aim remains to resolve complaints at the earliest possible stage compatible with fairness and correctness.

outline of the process

Here is a summary of the overall process and terminology. We have highlighted in the blue boxes the principal changes from the process that banks and building societies are used to already.

firms' internal complaint-handling procedures

From "N2", FSA rules will require firms to send the customer a final response within eight weeks of the date when the complaint first reached the firm (whether it arrived at the branch, head office or elsewhere within the firm). The final response must say that the person making the complaint can refer the complaint to the ombudsman within six months. If the firm cannot send a final response within eight weeks, it will still have to tell customers that they can refer the complaint to the ombudsman.

Until "N2", the eight-week limit will not be binding. And we recognise that there are considerable process and resource implications for firms. But we will encourage them to work to the new timescales wherever practicable. This will give them an opportunity to gear themselves up in readiness for "N2".

In some cases, eight weeks will not be sufficient for firms to resolve the complaint. In such instances, the person making the complaint does not have to bring the complaint to us immediately. It will be up to the firm to convince the person making the complaint that it is taking the matter seriously and that it really does need extra time.

Where a person making a complaint has not received a final response after eight weeks and insists on referring the complaint to us, we may decline to look at it immediately if we are satisfied that it has special features which mean the firm really does need more time. But we would not expect a firm to seek such extensions of time as a matter of routine.

- **For both banks and building societies**
  The eight-week time limit is the principal change. The Banking Code Standards Board has recommended that firms convered by that Code should aim to start following the new time limits now.

  Existing scheme rules do not actually require a final response (or deadlock) letter. They only require that enough time is given for senior management to consider the complaint. In most cases, eight weeks will usually be enough, if the complaint-handling department is adequately resourced. But we encourage firms to issue a final response (or deadlock) letter, even though it is not a requirement, as it lets us know the firm's position in relation to the complaint.

... we will want to send as much as possible of this early information electronically.

if the person making the complaint comes to us first

We will continue to encourage anyone making a complaint to complain first to the firm. But if they bring their complaint first to us, our customer contact division will refer the complaint on to the firm.

If the complaint is one that the firm has not already received, the eight weeks will start when it receives the complaint from us. If the firm resolves the complaint, that is the last it will hear from us about it. We will log the complaint, but will not follow it up unless the customer comes back to us to say the complaint is unresolved.

If we receive the complaint in writing, we will copy it to the firm. If we receive it by phone, we will note the identity of the person making the complaint and the general nature of the complaint – and pass on those details on to the firm. It is then up to the firm to try and resolve the complaint. We will want to send as much as possible of this early information electronically, and we will contact firms individually about this in due course.

- **For both banks and building societies**
  We already refer written complaints to them if anyone brings complaints to us first. But if someone making a complaint phones us, we currently require them to put their complaint in writing before we pass it on. However, just as firms now allow customers to do business by phone, we will allow people to complain by phone. We will then send the details to the firm, in writing or electronically.

our customer contact division

Once the firm has issued a final response letter, or the eight weeks have passed, the person making the complaint can ask us to look at the complaint. Our customer contact division ensures the details are entered on our complaint form and signed by the person making the complaint. It will not investigate the complaint, but will check whether it is one that can be resolved immediately.

Where there appears to be a good chance of resolving the complaint immediately, the customer contact division will phone the firm. In other cases, where it is immediately obvious that the complaint falls outside our jurisdiction, the customer contact division will let the person making the complaint know this. Otherwise, the customer contact division will pass on the complaint to the banking and loans division as a new case.

... giving these tasks to a specialist caseworker will enhance the chances of resolving some complaints early.

Our assessment team

The banking and loans division's assessment team identifies cases that can be resolved without the need for a full investigation. They will deal with any outstanding *subjective jurisdiction* issues (those that involve weighing the issues and reaching a subjective judgement). This includes identifying cases where the firm has clearly already offered enough to meet the complaint described by the person making the complaint.

The aim of the assessment team is to resolve as many cases as possible, consistent with the overriding principles of fairness and correctness. This may involve a caseworker seeking to broker a settlement by mediation, or perhaps taking a firmer approach and giving the person making the complaint or the firm (or sometimes both) a written initial view of the complaint and its likely outcome.

Settlement by mediation can only occur where both parties agree. An initial view is not binding – either party can ask for a full investigation. However, we may decline this request if the initial view is referred to an ombudsman and the ombudsman considers that it is correct.

- **For banks** – They will already be used to dealing with the caseworkers in our assessment team. And they already take full advantage of the opportunity of resolving complaints by mediation. This is based on our assessment of the compensation that would be payable if the complaint were fully upheld. The initial view is an additional method – where the caseworker estimates how far the complaint would be upheld if it went on to investigation.

- **For building societies** – At present the adjudicator deals with any subjective jurisdiction issues and any mediation, as well as dealing with the investigation. Giving these tasks to a specialist caseworker will enhance the chances of resolving some complaints early. Banks already take full advantage of this – with two cases settled by mediation for every case that goes on to investigation. The change will be introduced gradually for building societies after May.

Investigation

If the complaint is within our jurisdiction, and it has not been possible to settle it by mediation or following an initial view, it will be passed to one of our adjudicators for investigation. If the investigation brings circumstances to light that are likely to foster a settlement, the adjudicator will explore the possibility of settlement by conciliation.

Otherwise, the adjudicator will prepare a report, summarising the complaint and the outcome of the investigation. The report will include the adjudicator's conclusions about whether the complaint should be upheld and (where appropriate) a recommendation for compensation or other redress.

As now, either party can ask for a review of the adjudicator's conclusions. If so, the matter will be reviewed and an ombudsman will issue a final decision.

- **For banks** – Only the terminology will change. The present *adjudication* becomes the *adjudicator's report.*

- **For building societies** – At present, only the terminology will change. The present *preliminary conclusion* becomes the *adjudicator's report.* Until "N2", this will continue to be the adjudicator's report of the ombudsman's preliminary conclusions. After "N2", the report will represent the adjudicator's own conclusions, with the ombudsman involved directly only at final decision stage.

who's who in the banking and loans division

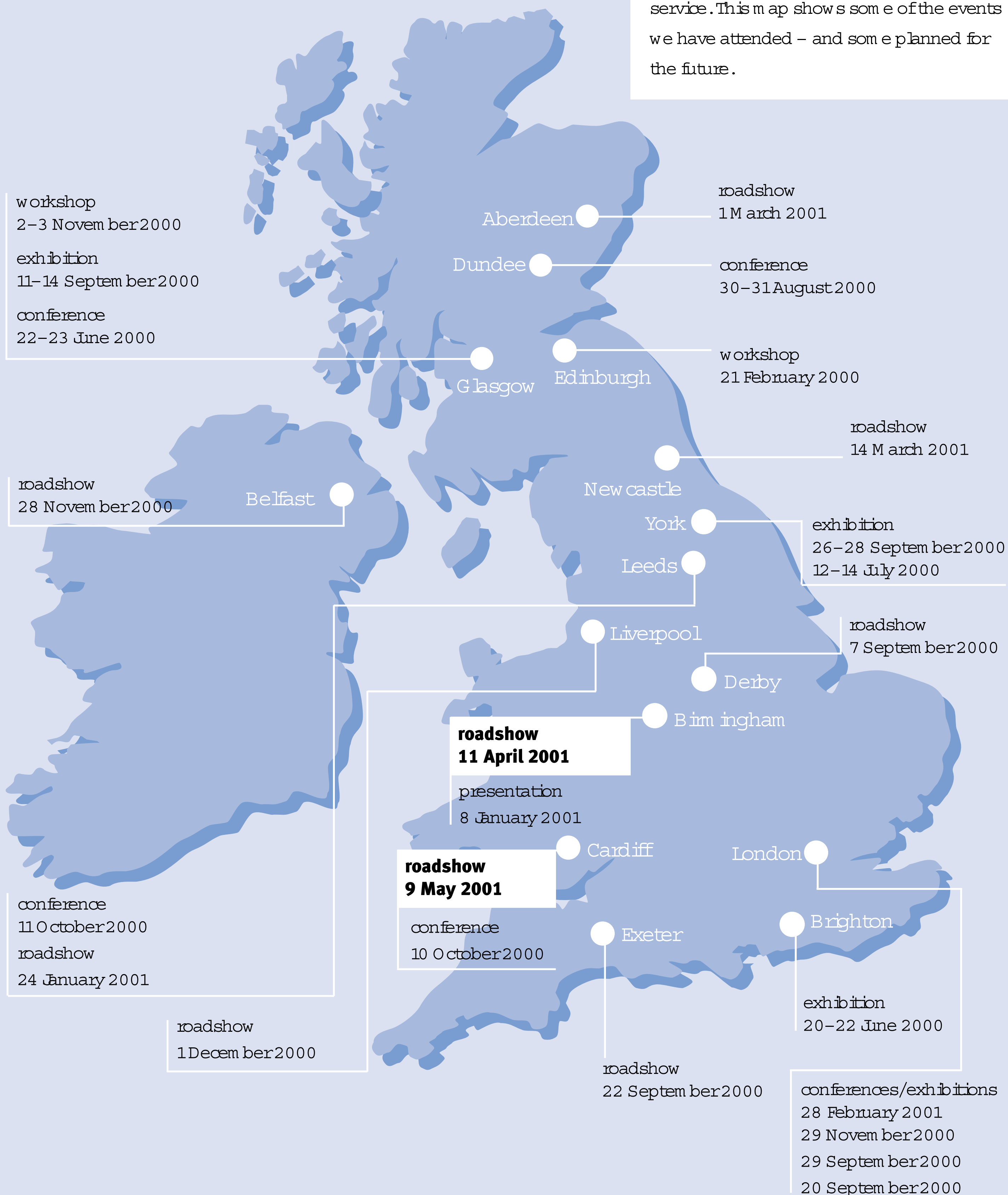
principal ombudsman	ombudsmen	casework managers
David Thomas* also the Banking Ombudsman	**Jane Hingston †**	**Tanya Humphrey** assessment team 1
	David Millington *	**Clare Mortimer** investigation team 2
	Sue Wrigley *	
	Roger Yeomans † also Building Societies Ombudsman	**Felicity Mitchell** and **Annabelle Cyprys** investigation team 3
		Deborah Marson investigation team 4

* also authorised as ombudsmen by the Banking Ombudsman Scheme

† also authorised as ombudsmen by both the Building Societies and Banking Ombudsman Schemes

the financial ombudsman service – out and about

By taking part in exhibitions, workshops and roadshows all over the country, we meet consumers, consumer advisers and people working in financial services – and spread the word about the new ombudsman service. This map shows some of the events we have attended – and some planned for the future.



See the back cover for details of our next event.

Call in and see us in Birmingham on Wednesday 11 April 2001

On Wednesday 11 April we will be at the Britannia Hotel, New Street, Birmingham, from 10.00am to 2.00pm to answer your questions and tell you more about the new service.

There's no need to register in advance – just call in.

If you can't come but want more information, please contact us on 020 7964 1400 or email technicaladvice@financial-ombudsman.org.uk And for up to the minute information about us and our activities – check our website www.financial-ombudsman.org.uk

we provide a number of useful services

how we can help

technical advice desk

guidance on ombudsman practice and procedures – for professional complaints handlers and consumer advisers

We can:

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

technicaladvice@financial-ombudsman.org.uk
phone 020 7964 1400

external liaison

We can:

- visit you to discuss issues relating to the ombudsman service
- arrange for your staff to visit us.

Contact graham.cox@financial-ombudsman.org.uk

phone 020 7964 0132

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