



... settling financial disputes, not taking sides

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Walter Merricks  
chief ombudsman

## opening up, reaching out

Maybe a suggestion in early August that readers of *ombudsman news* should study our two recently-published policy statements on accessibility and transparency is not particularly well-timed.

My more cynical friends tell me such documents are never going to make a tempting holiday read. But even if I can't persuade you to download them off our website and read them, let me explain why we've produced them.

For some organisations, an accessibility policy might be about little more than putting in wheelchair ramps. But for an organisation like ours, where our users rarely physically visit us, an accessibility agenda is much wider, and covers all aspects of the service we offer to our users – from our opening hours to the way our complaint-investigation process works. And when we have implemented it all, the result should be a really improved, more modern, experience for those who interact with us.

The transparency agenda marks a significant shift in our practice as it includes publishing complaint-data about individual businesses – something we have not done before but which we have now decided to do. ▶



Next month we'll publish a discussion paper on how we'll implement the decision.

Lord Hunt titled his recent review of our service '*Opening Up, Reaching Out, Aiming High*' – and this suggested a full programme of action. Our policy statements setting out the decisions of principle we have made on accessibility and transparency issues certainly flag the way towards a new-look, new-style Financial Ombudsman Service in a couple of years' time. So why not read all about how we intend to get there?

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# complaints about payment protection insurance

This year we have been receiving significant numbers of complaints about the sale of payment protection insurance. Sometimes called ‘loan protection’ or abbreviated as ‘PPI’, this type of insurance covers loan or debt repayments in certain circumstances, for example if the policyholder is unable to work because of illness or if they are made redundant. How these policies work – and the range of benefits they offer – can vary considerably from policy to policy.

This selection of recent case studies indicates the approach we are likely to take when considering individual complaints about the sale of payment protection policies.

As we explained in our *annual review* for 2007/08 (published in May this year), when considering complaints about payment protection insurance we continue to apply our long-standing approach to the sale of insurance products. The complaints we have settled have raised very few new issues. Applying the standards set by the law, by good industry practice since the 1990s, and in recent times by the FSA, enabled us to be clear about the approach we take to the selling of insurance – and to follow this approach consistently in these cases.

As the cases show, the details of the particular policies sold, and the sales practices of the businesses concerned, can make a significant difference to the outcomes of these cases – as can the circumstances of the individual customer. ▶

■ 71/1

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

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

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

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

**... he had understood he was being insured, but had not been told the policy was optional.**

**complaint upheld**

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

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

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

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

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

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■ **71/2**  
**couple in financial difficulties take out a succession of loans and are sold a new single-premium payment protection policy each time, adding to their outstanding debt**

Mr and Mrs J had been experiencing financial difficulties for some while and their situation worsened in early 2005, after Mrs J gave up work to look after their children. Finding it difficult to meet the monthly repayments on their loan, they approached a different lender to see if it could help. ▶

The lender offered them a new loan of £18,000. This allowed them not only to settle their existing loan (for around £11,000) but also to clear the overdraft on their current account and settle several credit card debts and sizeable bills. In order to keep their monthly repayments as low as possible, the couple chose to take the new loan over 10 years.

Unfortunately, Mr and Mrs J's financial problems did not resolve themselves and within 18 months they again approached the lender for help. It agreed a new and higher loan. This was spread over 15 years and was secured by a second mortgage on the couple's home.

Some time later, a friend pointed out to them that each time they had obtained a new loan they had also been sold a new payment protection policy. So they asked the lender if it would refund their insurance premiums, as part of a wider settlement of their continuing debt problems. The lender said it would arrange a small, partial refund if the couple cancelled their policy. Unhappy with this, the couple referred their dispute to us.

### **complaint upheld**

We noted that each time Mr and Mrs J had taken out a loan they had been asked to pay for the insurance by means of a single premium. This was added to the underlying loan and repaid (plus interest) over the entire length of the loan, even though – in each case – the policy itself only provided cover for 5 years.

There was nothing to suggest that the lender had explained to Mr and Mrs J the significance of this arrangement – particularly the fact that they would still be paying for the policy for some time after the cover had ended.

Although the lender told us it did not offer advice, it was clear that it had actively encouraged the couple to buy the policies. In view of the couple's financial circumstances, we did not consider the sale of these policies to have been appropriate.

Flexibility was an important consideration, as it seemed likely the couple would need to restructure the loan at a later date. They would not wish to incur significant costs in doing this.

**... he was self-employed and entitled to only a limited number of benefits under the policy.**

However, the policies they were sold lacked flexibility and, because of the limitations on the refund of premiums, were particularly costly if they were cancelled after a relatively short period.

In our view, the lender should not have encouraged the couple to buy these policies, and the couple would not have wanted the policies if the business had explained matters more fully.

We said the lender should re-calculate the amount outstanding on the couple's loan account, putting them in the position they would have been in if they had *not* bought the policies. We said the business should also pay the couple back the amount they had paid for the policies, plus interest on these amounts.

We had some concerns about the way in which the lender had dealt with Mr and Mrs J, given their overall financial difficulties. We therefore suggested it

should look at ways of assisting them with a wider settlement of the debt, including waiving the fees it had levied in recent months in connection with several overdue loan repayments.

#### ■ 71/3

**consumer says he was not told his payment protection policy offered only limited benefits to the self-employed**

Mr D had a small shop specialising in interior design. His complaint concerned the single-premium payment protection policy he had been sold when he took out a personal loan. He thought the business concerned should have realised the policy was unsuitable for him, as he was self-employed and therefore entitled to only a limited number of benefits under the policy.

When the business refused to refund all the premiums he had paid, plus interest, Mr D brought his complaint to us. ▶

... the business had effectively understated the true cost of the policy.

### complaint upheld

We noted that the benefits available to self-employed policyholders were more limited than those available to employees. In particular, the redundancy benefit was only available to policyholders if their employer had ceased trading or had been declared insolvent. We accepted Mr D's view that these terms were likely to make the policy less attractive to someone who was self-employed.

In this particular case, although the business clearly knew that Mr D was self-employed, it had not mentioned that this would limit the benefits he could get under the policy. The business *had* given him a written summary of the policy benefits. However, we did not consider that this leaflet adequately highlighted the limited cover he would get from the policy.

We concluded that the business had not given Mr D sufficient information to enable him to make an informed choice.

We upheld the complaint. We told the business to put the loan back where it would have been if he had not taken the policy, and to refund all of his payments for the policy, with interest.

### ■ 71/4

**consumer in financial difficulties complains about sale of a payment protection policy that she considered unsuitable for her needs and too expensive**

Miss A did not earn a great deal from her job in a local bookshop and as well as having a large overdraft, she was close to her spending limit on several credit cards. Despite this, she felt she had been managing her finances reasonably well.

After she split up with her partner, however, she realised that she had become increasingly reliant on his help to meet the household bills and other expenses.



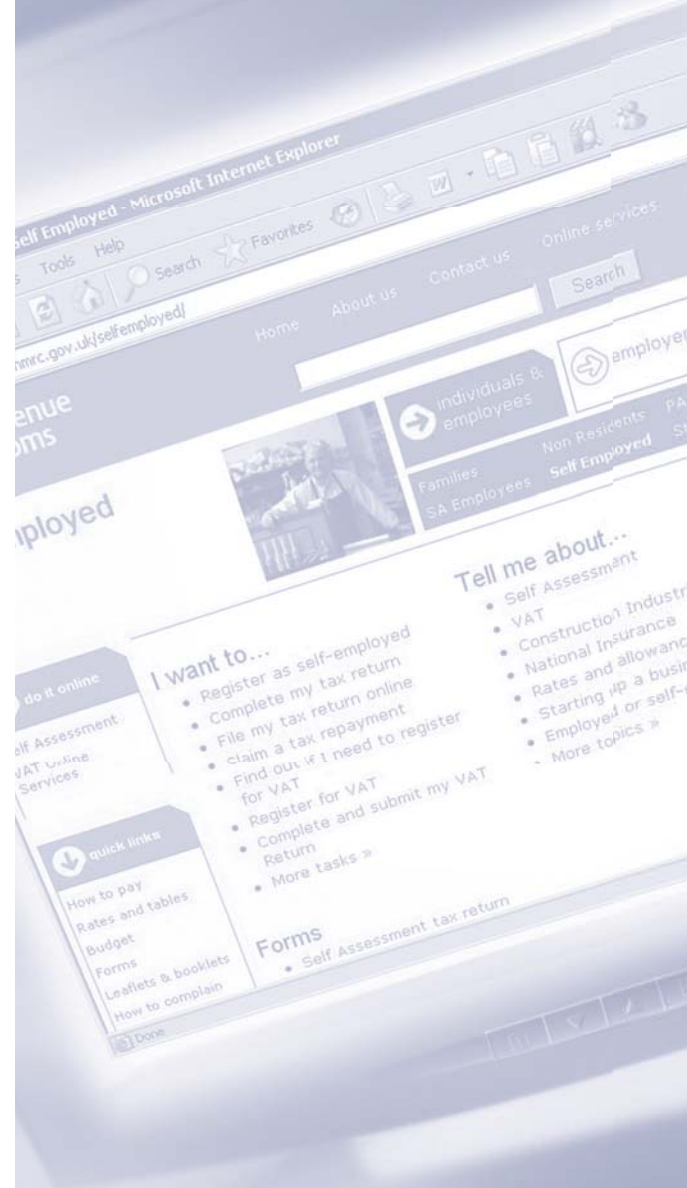
Alarmed by the extent of her financial difficulties, she applied to the business for a loan. It agreed a sum of £20,000, to be repaid over 15 years and secured by a second mortgage on Miss A's flat. The business also sold her a payment protection policy.

Some time later, Miss A complained about the sale of this policy, saying it was too expensive and she had never been told that it was optional.

#### complaint upheld

We had significant doubts about the sales practices of the business concerned. However, we accepted that the business might reasonably have believed Miss A had a need for a payment protection policy. And we thought Miss A should have been aware, from the written information she was given, that the policy was optional. However, the business only offered its loan customers one type of payment protection policy – and we did not think that particular policy was suitable in this case.

Moreover, despite being well aware that Miss A needed to reduce her outgoings, the business had effectively understated the true cost of the policy. It had not explained exactly how much she would pay for it, but had simply told her that the premiums would 'increase the ▶



*monthly payments by only £47 a month*'. The policy offered cover for five years and had a single premium of over £5,000.

This sum was added to the loan and spread over the loan's 15-year lifetime, plus interest. Miss A was therefore paying a total of nearly £8,500 for the policy.

We looked at the restrictions placed on the sickness and unemployment benefits available under the policy. If a policyholder made a successful claim, their loan payments would be covered for up to 12 months. But the policyholder would then need to have returned to work for a minimum of three months before they could make any subsequent claim.

We calculated that in order to recoup the total amount she was paying for the policy, Miss A would need to make three separate claims, each for 12 months' worth of benefits, during the five years that the policy was in operation.

The business disputed our calculations, pointing out that there was no limit on the number of claims that could be made. It also noted that we had not taken account of the death benefit, which would pay off the loan in full if Miss A died while the policy was in force.

However, we said the policy was expensive and inflexible and we remained unconvinced that it had been suitable for Miss A. If she had needed life cover, she could have obtained it at a very modest cost.

We thought it unlikely that, in practice, the value of any benefit payments she received from the policy would exceed the amount she was paying. We told the business to put Miss A's loan back as it would have been without the payment protection policy. We said it should refund all the payments she had made for the borrowing on the policy premiums – and pay her a modest sum for distress and inconvenience.

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■ **71/5**  
**consumer complains about sale of payment protection policy after he repays his loan early and gets only a partial refund of the amount he paid for the policy**

Mr K applied to the business for a loan so that he could buy a car for his daughter, who had just started at university. His finances were under some pressure at the time. Not only was he committed to paying part of his daughter's course fees, but the firm he worked for had recently made significant cut-backs in its bonus payments.

For some while, Mr K had relied on these payments as a very welcome supplement to his income.

The business arranged to lend him the sum he needed, over 30 months. It also offered him a payment protection policy, covering the same period as the loan. Mr K paid for the policy with a single premium and the cost was added to the loan.

Unfortunately, Mr K's daughter found it difficult to settle at university and after six months she gave up her course and took a temporary job abroad. So Mr K asked the business if he could settle his loan early and cancel the policy.

Surprised to learn that only a very small proportion of the premium he had paid for the policy would be refunded to him, Mr H complained to the business. He said it should not have sold him an expensive policy that he did not need – and that represented very poor value for money.

### **complaint not upheld**

The evidence suggested that Mr H had been given adequate opportunity at the time of the sale to consider the details of the policy. The literature set out the policy's key features – and its costs – very clearly.

We did not think the literature explained the conditions regarding the refund of premiums as well as it should have done. But in view of his circumstances at the time of the sale, we thought that however clearly these conditions had been stated, Mr H would still have bought the policy. He had a clear need for insurance to cover his loan repayments. The loan was for a modest amount and for a relatively short period. And Mr H had no particular need at the time to ensure the loan arrangement was flexible. We did not uphold the complaint.

**... he had been given adequate opportunity to consider the details of the policy.**

**■ 71/6****insurer suspends payment of unemployment benefit under payment protection policy, saying there was insufficient proof he was looking for work**

Mr B was made redundant from his engineering job at a local factory. He took some comfort from the fact that a year earlier, when he had taken a loan to buy a car, he had also taken a payment protection policy.

For five months Mr B received unemployment benefit under the policy, to cover his loan repayments. But the insurer then suspended his benefit. It expressed some surprise that he had not yet obtained employment, and said it needed proof that he was still actively looking for work before it could reinstate his payments.

Mr B complained to the insurer, saying that he attended the jobcentre every week and had also registered his details with an internet employment agency. He thought it unreasonable of the insurer to expect him to send written evidence of every job application he had made. It was rare for companies to acknowledge receipt of an application or to write to tell him if he was thought unsuitable.

The insurer then said it would be prepared to accept instead a letter from Mr B's jobcentre, confirming that he was actively seeking work. But when he provided this, the insurer wrote to tell him it was unable to pay him any further unemployment benefit, as there was insufficient proof that he was looking for work. Mr B then referred his complaint to us.

#### **complaint upheld**

We were not surprised that Mr B had been unable to obtain a new job immediately. His job had been fairly specialised and his skills were not readily transferable to other areas of work.

Neither were we surprised that Mr B had been unable to produce many letters acknowledging – or rejecting – his applications for particular jobs. It is relatively common these days for companies to contact only those job applicants who are shortlisted for an interview.

The insurer did not dispute that it had originally agreed to reinstate Mr B's benefit payments if he provided a letter from his jobcentre confirming that he was still looking for work. It was unable to explain why it had then gone back on its word. And we could see nothing in the terms and conditions of the policy that might justify its refusal to pay the unemployment benefit in this case.

We looked at the dates on the few letters of acknowledgment or rejection that Mr B had been able to supply – and checked these against the information provided by the jobcentre. We concluded that Mr B had been looking for work for a period of eight months from the date when the insurer had stopped paying him any benefits.

We said it should pay him the amount he had been entitled to under his policy during that period. We said it should also make a small additional payment in recognition of the inconvenience and distress it had caused.

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## compensation for **distress, inconvenience or other non-financial loss**

Where we uphold a complaint – whether wholly or in part – we will require the business concerned to recompense the consumer for any financial loss it has caused. In certain situations, we may consider that the business has also caused the consumer such a degree of distress, inconvenience or other non-financial loss that it should pay an additional amount as compensation.

The approach we follow when considering whether such compensation may be warranted in a particular case is set out in our technical note, *compensation for distress, inconvenience or other non-financial loss*, available on the publications page of our website ([www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)).

This note covers a number of issues including:

- what is meant by ‘distress’, ‘inconvenience’ and ‘pain and suffering’;
- whether this was the fault of the financial business;
- the types of situations where we consider compensation for distress or inconvenience;
- whether the degree of distress or inconvenience was material; *and*
- how we assess any compensation.

The following examples reflect some actual decisions made in cases referred to us – and provide a broad illustration of our approach. Further examples are given in the technical note on our website. Assessing the appropriate amount to be awarded in any particular case depends on the individual circumstances of that case.

### **cases where the ombudsman awarded *modest* compensation (less than £300)**

- Mrs G contacted her bank to say it had made an error when transferring funds into her current account. The bank apologised and said it would put things right immediately, but the problem persisted. Mrs G had to phone the bank on a number of occasions, and to write twice to the head office, before the mistake was finally sorted out.
- After a fire caused serious damage to their house, Mr and Mrs N and their young family moved into alternative accommodation, paid for by the insurer. Unfortunately, the insurer gave the contractors inaccurate information about the extent of the repair and redecoration work needed on the house. As a result, the family had to stay in the alternative accommodation, paid for by the insurer, for three weeks longer than should have been necessary.

### cases where the ombudsman awarded *significant* compensation (£300 – £999)

- Mr B's spending on his credit card was well within his credit limit. So when he tried to use the card in his local supermarket, he was surprised to learn that the payment had not been approved. The card company apologised for the '*technical error*' – and told him the problem had been put right. However, Mr B continued to have difficulties with his card, causing him repeated embarrassment in local shops, over several months.
- Mrs D was caused considerable distress when her insurer persisted in addressing all its queries to her deceased husband – not to her. Mr D had died in a car accident only a couple of days after he had submitted a claim for flood damage under their buildings insurance. When she received an acknowledgement of the claim, Mrs D phoned the insurer to let it know her husband had died. However, the insurer continued to address all letters about the claim to Mr D. It even rang Mrs D at home on one occasion and asked to speak to her husband about the claim.

### cases where the ombudsman awarded *exceptional* compensation (£1,000 or more)

- Mr J owned a small factory that was one of the main employers in the town. The bank wrongly 'bounced' a cheque he had sent to one of his chief suppliers. The cheque was eventually paid, several weeks later. By then, however, Mr J had been caused a great deal of embarrassment within the local community. He spent a significant amount of time contacting his suppliers and customers – to try to stop the adverse effects of a whispering campaign.
- Mr T had only recently retired when it came to light that the investment business had made a significant error in connection with his pension policy. He had to consider starting work again to make up for the resulting shortfall in his personal pension.
- When Miss J left her partner, Mr C, who had a history of violent behaviour, she moved to a different town and asked her bank not to let Mr C know where she was living. The bank was fully aware of her difficult circumstances and assured her it would keep her details confidential. However, it disclosed her new address to Mr C. He subsequently broke into her home and assaulted her, causing her to spend several days in hospital. ★

# banking complaints involving safe deposit boxes

Some customers still use the safe deposit facilities provided by their bank – and we continue to receive complaints relating to these facilities. The complaints usually involve allegations that jewellery or documents that were deposited with a bank for safekeeping have gone missing.

When dealing with such complaints, we expect – as a matter of course – that the bank will be able to provide a proper audit trail, with details of when anyone had access to the box. Such information may, however, be of only limited help to us. The main difficulty – particularly in cases involving jewellery – can be deciding exactly what the box contained in the first place.

Most banks specify that customers must insure any items deposited with them. But in the cases we see, few customers have actually arranged such insurance. They are therefore unlikely to be able to provide the types of documentary evidence that an insurer would require, such as photographs, verified schedules and regularly updated valuations, that would help us establish exactly what was kept in a safe deposit box. We may have only the customer's word for it that a valuable item was once in the box but has now gone missing.

The situation is made more difficult by the fact that, in many of the cases we see, the customer had not looked at the contents of their box for many years (sometimes even decades) before a problem was spotted. And a customer's recollection of what they kept in their deposit box may not be as accurate as they believe it to be.

Matters can be complicated still further if a safe deposit box was held jointly and there is a lack of agreement between the joint customers about the contents (as in case 71/7). During our investigations we can require the customer bringing the complaint, and the bank about which the complaint is made, to answer our questions. However, we cannot require third parties to cooperate with our enquiries.

This can also be an important factor where (as in case study 71/10) detailed evidence from third parties appears to be central to the issue.

As some of these cases illustrate, even where we are unable to uphold the broader claim, we often find that failings in the bank's safe deposit service have caused a customer significant distress and inconvenience, for which they should receive fair compensation.



■ **71/7**  
**consumer complains that jewellery disappeared from the bank safe deposit box she held jointly with her husband**

Mrs G complained that jewellery worth £20,000 had gone missing from the bank safe deposit box in which she and her husband had kept a number of items for some years.

After she and her husband had separated, she visited the bank in order to remove some of his valuables from the box and return them to him. During that same visit she informed a member of the bank's staff that she and her husband were getting divorced. She said the bank assured her that until there was a formal agreement about the distribution of their assets, neither of them would be allowed further access to the box without the other's knowledge and agreement.

**... jewellery worth £20,000 had gone missing.**

Six months later, Mr and Mrs G went to the bank together to remove all the contents of the box for valuation, in connection with their divorce settlement. Mrs G said that items of jewellery worth £20,000 had disappeared from the box since her last visit.

She subsequently discovered that around three months earlier the bank had allowed Mr G access to the box. The bank accepted that this should not have happened without her agreement, and it offered her £250 for the upset this had caused her. However, when it refused to accept responsibility for any other loss, Mrs G referred the dispute to us.

**complaint upheld in part**

Mrs G told us that her husband had denied removing anything from the box during the visit he had made on his own. However, as he was not a party to the complaint, he was not under any obligation to participate in our investigation and we were unable to discuss the matter with him.

Mrs G said that not long after she and her husband had separated, she had placed jewellery worth around £20,000 in the box. She was unable to provide any evidence confirming exactly what these items were, nor could she establish that she was the sole owner. ▶

In the circumstances, we did not think there was sufficient evidence for us to be able to reach a conclusion in this case. We suggested to Mrs G that it might be more suitable for her to include her claim for this jewellery as part of the divorce settlement. Both she and Mr G could then be required by the court to provide evidence, and the court could allocate assets between them – something we had no power to do.

However, we agreed that the bank had caused her significant distress and inconvenience by allowing Mr G sole access to the box when it knew the couple were divorcing. We said the bank should pay Mrs G £400 in recognition of this, as we thought its initial offer of £250 was insufficient.

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■ **71/8**  
**consumer inspects his bank safe deposit box for the first time in nearly forty years and complains that rare and valuable stamps have gone missing**

Shortly after leaving university in 1968, Mr Y inherited his grandfather's collection of stamps. Aware that the collection included some rare and valuable items, Mr Y wrapped four albums of stamps together in a brown paper package and placed this in a safe deposit box at his bank.

Mr Y did not look at the stamps again until February 2007, when he was considering selling them. By that time the package containing the albums had been moved to a different branch of the bank, as the original branch had closed down. Mr Y said that when he looked through the albums, he noticed that a number of valuable stamps were missing. He reported this to a member of the bank's staff and decided not to remove the package from the bank, as he had originally intended.

Mr Y visited the branch again a couple of months later, in April 2007. He said he was surprised on that occasion to find that some of the missing stamps had been replaced. He concluded that a member of the bank's staff must originally have taken the stamps. He thought this person must then have replaced some of them in a panic, after Mr Y visited the bank in February 2007.

Mr Y asked the bank to compensate him for those stamps which were still missing – and which he estimated to have a present-day value of around £30,000. The bank said there were no grounds for his allegations that stamps had been stolen from the safe deposit box. Mr Y then came to us.

**complaint not upheld**

We established that the bank operated ‘dual control’ of all items deposited with it. In other words, no member of staff was allowed access to these items unless they were accompanied by another member of staff.

The bank’s records showed that during a routine branch inspection of deposited packages in 1970, staff had noticed that the wrapping around Mr Y’s albums had started to come undone. The staff had re-sealed the package, witnessed by members of the inspection team.

It seemed to us that if Mr Y’s view of events was accurate, it would have been necessary for a number of members of staff, probably employed in two different branches, to have colluded on at least two occasions. This would need to have happened in order for certain stamps to be removed at some time between September 1968 (when the albums were first deposited) and February 2007 (when Mr Y next had access to the box.). Collusion would have been required again at some time between February and April 2007, in order to replace some of the stamps. In the light of the evidence, this seemed improbable. ▶

... from the information available,  
we were unable to uphold the complaint.

Mr Y produced a list of stamps which he said represented an inventory of everything he had deposited with the bank. However, we were not persuaded that it represented an accurate record of what had actually been in the albums. Nearly forty years had passed since Mr Y had last looked at the stamps. In all the circumstances, we thought it unlikely that he still had a clear recollection of exactly which stamps he had left at the bank.

We also thought it unlikely that any stamps had, in fact, been missing when Mr Y visited the bank in February 2007. He had told us that, before he got as far as looking at any of the stamps on that occasion, he had been surprised by the appearance of the wrapping around the albums. He said this was substantially different from the original packaging. It had immediately aroused his suspicions that some of the contents might have

been removed. However, the bank's records confirmed that their staff had done no more than reseal the original packaging – they had not removed or replaced it.

We fully accepted that Mr Y had brought his complaint in good faith and in the honest belief that stamps had been stolen from his albums. However, from the information available we were unable to uphold the complaint.

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■ **71/9**

**bank sends customer the wrong documents when asked to return house deeds deposited for safe-keeping, then denies ever having had the deeds**

Mr and Mrs V's complaint concerned several documents relating to their house, including the deeds, which they said they had always kept at the bank.

They had asked the bank to return the documents to them because they were in the process of selling their house and moving to a new property. To their surprise, however, the bank sent them deeds and other papers relating to someone else.

The bank apologised for its mistake and said it would send the correct documents within the next few days. The couple heard nothing more until the bank wrote to them. It said it had been in touch with the solicitors who acted for the couple when they bought the house to which the deeds related. The solicitors had confirmed that they never sent the deeds to the bank but had given them to Mr and Mrs V – although the solicitors were uncertain about the date when this had happened.

Mr and Mrs V strongly disputed this version of events and they eventually referred the matter to us.

#### **complaint upheld**

With Mr and Mrs V's consent, we contacted their solicitors. We asked to see their file with details of all the work they had done in connection with the couple's house purchase. We discovered from this that the solicitors had been mistaken when they said they had never sent the deeds to the bank. The solicitors' records showed they had sent the deeds to the bank on or around 14 June 2002.

The bank's deed centre had written to Mr and Mrs V on 26 June 2002, confirming receipt of (unspecified) documents. And we established that the documents sent to Mr and Mrs V in error, belonging to another customer, had originally been deposited with the bank on 14 June 2002. We concluded that the bank *had* received Mr and Mrs V's house deeds and had then lost or permanently mislaid them.

The Land Registry had supplied Mr and Mrs V, at no additional cost, with copies of some of the information they had needed in order to complete the sale of their house. However, the couple showed us evidence that they had been obliged to spend a total of £514 to replace other important documents. We said the bank should reimburse those costs in full and pay the couple £250 for the inconvenience they had been caused.

#### ■ **71/10**

#### **customer complains that items of jewellery are missing after bank mistakenly released contents of deposit box to a different customer**

In 1976 Mr and Mrs T placed a number of items of family jewellery in a safe deposit box at their bank. ▶

Another family with the same name (but which for the sake of clarity we will call the 'E' family) banked – and used a safe deposit box – at the same branch.

Following Mr E's death in 2002, the bank sent various items that had belonged to him to the E family's solicitors. By mistake, the bank also sent Mr and Mrs T's deposit box, with all its contents.

This did not come to light until 2006. The bank then wrote to the E family's solicitors to explain what had happened and ask for the return of everything sent in error. When Mr and Mrs T checked through what was returned, they said that a number of items of jewellery were missing.

#### **complaint upheld in part**

As part of our investigation, we contacted the E family and their solicitors. They willingly cooperated with our general enquiries, although we had no power to make them answer questions, as they were not a party to the complaint.

The E family said they had been unaware that the contents of the box in question had not belonged to the late Mr E. But they said the box had been held in storage and they had not looked at it before the error came to light.

Their solicitors said that at the time the box was returned to the bank it had been virtually full, and had appeared to contain a large amount of jewellery.

Mr and Mrs T had no evidence of what they had deposited in the box, other than a typed list which they submitted with their complaint. And since the E family, whose evidence was central to the case, was not a party to the complaint, we were limited in what we could investigate.

We accepted that Mr and Mrs T had brought their complaint in good faith, but we said there was insufficient evidence for us to uphold their complaint about the items they said were missing.

The bank's mistake in releasing the box, and the circumstances in which this had come to light, had caused the couple an exceptional amount of distress and inconvenience. The bank offered to pay them £1,000 compensation for that, together with a further £100 for their expenses. We obtained the bank's agreement that Mr and Mrs T would only accept that offer if it was clear to all concerned that it was not a settlement of the full claim. Mr and Mrs T therefore remained free to pursue the claim for the jewellery in court, where all the parties involved, including the E family and its solicitors, could be questioned.

.....

**... she said a member of the bank's staff must have made a false entry in the log book.**

■ **71/11**  
**consumer complains that jewellery is missing from her bank deposit box**

Mrs D had inherited a considerable amount of family jewellery, most of which she kept in a safe deposit box at her bank. She visited the bank quite frequently to take out – or return – individual items that she wore for special occasions, or lent to close family members for events such as family weddings.

She said that on one of her visits she noticed that a valuable necklace and earring set was missing from the box. She complained to the bank, suggesting that a member of its staff had taken the items and made a false entry in the bank's log of visits. The bank denied that any of its records had been falsified and it said nothing could have been removed from the box without Mrs D's knowledge and authority.

**complaint settled**

Mrs D remained adamant that a false entry must have been made in the bank's log book, enabling a member of the bank's staff to gain access to the box and take the jewellery that she said was missing.

As part of our investigation, we therefore asked her to check carefully through the copy of the log book that we sent her. This gave details of every visit to her deposit box. We asked her to identify any visit that did not appear to coincide with an occasion on which she, or a family member, would have worn jewellery normally kept in the bank.

Mrs D came back to us a little later to say she was withdrawing her complaint. She said she had used family photographs as an aid to checking the dates of her various visits to the box. A couple of these photographs showed one of her daughters-in-law wearing the 'missing' necklace and earrings.

The pictures had been taken not long after that daughter-in-law had moved to Canada with her husband. Mrs D recalled, with some embarrassment, that before the couple had left the UK she had given them the jewellery as a gift.

**forms and more forms***a consumer adviser emails ...*

**Q** You recently upheld my client's complaint against an investment company. He signed the settlement form you sent him in connection with the money the company has to pay him.

However, that company has said he must now complete and sign its own agreement before it will release any money. Is this right?

**A** In issue 59 of *ombudsman news* (January/February 2007) we answered a very similar question. The position hasn't changed.

Once a consumer has accepted an ombudsman's decision, it is binding in law on both parties. No further formalities are required. Consumers do not need to sign any further agreement forms and businesses should not ask them to do so.

**responding to complaints via email***a banking firm asks ...*

**Q** Increasingly, our customers are using email to get in touch with us, and there's a growing tendency for complaints to be made this way – rather than by letter.

If we send a final response to a consumer's complaint by email, what do we do about the ombudsman's leaflet? Do we still need to put a hard-copy version of the leaflet in the post to these customers?

**A** Under the complaints-handling rules, businesses must give consumers our leaflet at the appropriate stage in the complaints procedure.

This means that businesses covered by the ombudsman must send our consumer leaflet:

- when they send a consumer their final response to a complaint *or*
- if they are not yet in a position to send a final response, but have run out of time.

In the situation you outline, where the consumer has referred their complaint to you by email, and you are sending your final response by email, you may include within that final response a hypertext link to the version of the consumer leaflet that is on our website.

If you do this, you should mention in your response that you will also send the consumer a hard-copy version of the leaflet, if the consumer requests one.

**dealing with consumer-credit complaints***the manager of a jewellery shop emails ...*

**Q** Ours is a small family-run business, selling jewellery. We have a consumer-credit licence issued by the Office of Fair Trading, as we offer customers a credit facility for more expensive items.

I know that we're now covered by the ombudsman service for any complaints about the consumer credit we provide. However, I must admit I'm not as aware as I should be about what we should do if we ever got a complaint of this sort. We'd like to be properly prepared, just in case. Can you help?

**A** You will find all the information you need in our online consumer credit resource, listed under '*technical notes*' on the publications page of our website ([www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)).

*ombudsman news* gives general information on the position at the date of publication. It is not a definitive statement of the law, our approach or our procedure. The illustrative case studies are based broadly on real-life cases, but are not precedents. Individual cases are decided on their own facts.