

# Ombudsman news

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



chief ombudsman, **Walter Merricks**

## The price of cut-backs in customer service

One of the common features of all ombudsman schemes is that we are – and should be – the last resort for people’s dissatisfaction, not the first one. In the first instance, consumers should make their complaint direct to the organisation about whose services they are unhappy.

So the complaint of every consumer whose grievance we investigate here at the Financial Ombudsman Service will already have been through the complaints procedure of the financial businesses concerned. And the size of our workload is very largely influenced by how well – or badly – that procedure has been operated.

Many businesses take their complaints-handling responsibilities seriously – and clearly do their best to resolve their customers’ complaints promptly and professionally. Regrettably, however, we are seeing a growing number of cases where customers who have complained to a financial business appear to have experienced treatment that is nothing short of dismal. ▶

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Financial  
**Ombudsman**  
Service

The way some businesses are handling these complaints suggests that a weary cynicism is setting in. Some in the financial services industry – currently facing significant business challenges – appear to be taking the jaundiced view that having a large number of complaining customers is just an unfortunate fact of life. So they seem to be geared up simply to dispose of complaints at minimum cost – and with minimal attention to the individual facts and circumstances.

Inevitably, when some of these consumers then turn to us, they feel angry, ignored and let down by the financial institutions they have dealt with. And we find ourselves having to play the part of emotional shock absorbers.

Poor complaints-handling by businesses can also mean that a case may not even be properly looked through until it reaches the ombudsman service. This is clearly not how things should be. We are caused additional work when we have to spend time and resources chasing files and gathering information that the business itself should have put together and considered when it first became aware of the complaint.

And of course, other unhappy customers never make it through the complaints-procedures of the businesses concerned. Our research suggests that almost half of consumers who had an unresolved complaint against a financial business were deterred from pursuing it further by the fact that the business had such an unhelpful approach.

In the current climate, high standards of customer service may not seem the top priority to businesses battenning down the hatches. But when markets pick up and these same businesses look to attract new customers, they may well discover that consumers have long memories of how well – or otherwise – they were treated in the past.



**Walter Merricks**, chief ombudsman



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Ombudsman  
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183 Marsh Wall  
London E14 9SR**

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**020 7964 1000**

consumer helpline

**0845 080 1800 or 0300 123 9 123**

open 8am to 6pm Monday to Friday

technical advice desk

**020 7964 1400**

open 10am to 4pm Monday to Friday

**[www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)**

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*Ombudsman news* is not a definitive  
statement of the law, our approach or our  
procedure. It gives general information on  
the position at the date of publication.

The illustrative case studies are based broadly  
on real-life cases, but are not precedents.  
We decide individual cases on their own facts.

## Case studies involving the transfer of money abroad – and associated currency exchange

In these days of instant electronic communication, it is tempting to suppose that it will be a quick and simple matter to send money round the world. The reality, though, is often rather different and we regularly receive complaints that centre on the transfer of money abroad, often with associated currency problems.

Consumers generally assume that transferring money abroad is very much like sending money to another bank account within the UK. The expectation is that the money will go straight to the account of the person the money is intended for (the ‘beneficiary’). However, the process is more complicated, particularly when money is being sent outside the European Union. The time and complexity involved in these transactions can sometimes take the consumer unaware. In all probability, the UK bank will have to send the money via one or more intermediary banks abroad (sometimes called ‘correspondent’ banks) before it reaches its final destination – the beneficiary’s account.

So there is often considerable scope for misunderstandings to arise – and it is not only consumers who can find all this confusing. Bank employees, particularly those who are not experienced in handling foreign transactions, can also sometimes get into difficulties. If a mistake has been made and a transfer needs to be recalled, it is usually possible to put things right. However, quick action is needed to ensure the money is retrieved before it reaches the beneficiary’s account. ▶

- ◀ Some of the complaints we see have come about because of basic misunderstandings about currency conversion rates. Unlike other sorts of financial deals that consumers may have arranged through their bank, such as a fixed-interest rate on a new mortgage product or savings bond, currency conversion rates will fluctuate throughout the day. So the rate that applies at the point when a transaction takes place may differ from the one the consumer had expected. And quite small differences in the rate can make an appreciable difference to the value of the money, particularly when large sums are involved.

Given that we covered issues relating to money transfer and currency exchange in issue 64 of *ombudsman news* (September/October 2007) in the article '*banking disputes related to foreign travel*', we are surprised that some firms are still not handling complaints of this type in the way we would expect.

At the moment, we are only able to deal with complaints about money transfers where the transfer was made through a bank or building society, or through some other type of business that we currently cover. However, building on the considerable experience we have already gained in dealing with complaints of this type, from November 2009 we will be able to consider complaints against *all* businesses in the United Kingdom that provide consumers with payment services.

■ **76/1**  
**consumer complains about bank's failure to successfully recall a payment made by money transfer**

After agreeing to buy a second-hand car from a Mr K, who lived in Hungary, Mr N contacted his bank to arrange payment. He instructed the bank to send £8,600 by electronic transfer from his current account to Mr K's account in Hungary.

Shortly afterwards, Mr N phoned his bank and asked it to recall the transfer. He had just received information that showed Mr K had substantially misrepresented the age and condition of the car.

The following week, Mr N contacted the bank for confirmation that the transfer had been recalled. He was very surprised when the bank said that its 'recall request' had not been successful. The bank told him that by the time the request arrived at the Hungarian bank, the money had already reached Mr K's account and he had withdrawn it.

Mr N had acted very swiftly in asking his bank to try and recall the transfer. He therefore found it hard to believe that the bank had not been able to stop Mr K from getting the money. However, when he raised the matter with the bank, it simply said it had done its best and was unable to discuss the transaction further. Mr N then complained to us.

**complaint upheld**

We studied the audit trail for the electronic transfer and for Mr N's subsequent request for it to be recalled. One hour and seventeen minutes after the money had left his bank, Mr N had asked the bank to recall it. The bank sent its recall request to the Hungarian bank two days later. The money reached Mr K's account at the Hungarian bank the day after that, and Mr K had withdrawn it that same day.

We asked the bank why it had taken so long to send the recall request. Initially, it denied that there had been any delay. However, it later admitted that it had been very busy on the day in question. It said Mr N's request might therefore '*not have been processed as quickly as normal*'.

After looking at the evidence, we were unable to find any reason why the bank could not have ensured that Mr N's request was dealt with promptly. We thought the recall request would very probably have been successful, if the bank had not waited so long before sending it.

So we said the bank should pay back the £8,600 to Mr N, together with interest on the money for the time he had been without it. We said it should also pay him £200 for the upset and inconvenience he had been caused. ■

■ **76/2**  
**money transfer carried out incorrectly**  
**when inaccurate information was**  
**entered on the transfer form**

Mr G went to the local branch of his bank and arranged to transfer £6,000 to his wife. She was visiting Moscow at the time, on business, and had contacted him to say she needed the funds urgently. The transfer was made on a 'pay on application' basis. This meant that the money would be sent to a bank in Moscow where Mrs G would then go, show appropriate identification, and collect the money.

As neither Mr G nor his wife knew any banks in Moscow, Mr G asked his bank if it could advise him on where best to send the money. One of the staff at the branch showed him a list and told him it contained the names of all the banks that had '*operations in Moscow*'.

Mr G chose one of them, on the basis, as he later told us, that it had a '*western rather than a Russian name*'. He thought this bank was unlikely to have more than one branch in Moscow, so the possibility of any confusion would be minimised. This was an important consideration, as he was anxious to ensure his wife was able to collect the money as quickly and easily as possible.

Mr G's bank duly carried out the transfer.

Unfortunately, as he subsequently discovered, the bank he had selected was not in Russia but in Moscow, Idaho, in the United States of America.

Conscious that his wife was still urgently awaiting the money, Mr G told the bank he could not wait for it to try and retrieve the money and then re-send it to a bank in the 'right' Moscow. He therefore arranged a further transfer through a money transmission business.

The money that had been sent to Idaho was eventually returned to Mr G. However, because it had been converted into US dollars and then back again to sterling, he got back less than the amount he had sent.

When Mr G complained to the bank about its '*incompetent handling*' of the transfer, the bank drew his attention to a statement on its transfer form. This said that the bank would not be liable for any loss that resulted from inaccurate information being entered on the form. The bank also pointed out to Mr G that it had not been obliged to provide him with a list of banks, and had only done so because he had specifically asked for assistance.

Unhappy with the bank's response, Mr G came to us. He said he remained convinced that the bank had been

## ... he complained to the bank about its '*incompetent handling*' of the transfer.

at fault. He thought it should compensate him for the worry he had been caused and the additional costs he had incurred.

### **complaint upheld**

We accepted that the bank had not been obliged to provide Mr G with any information, when he asked if it could tell him of any suitable banks in Moscow to which he could send the money. However, having decided to assist him, the bank *was* obliged to exercise reasonable care and skill in doing so.

In this case, the bank had shown Mr G a list and had told him it included all the banks that had branches in Moscow. This list had been compiled by the bank itself and it included the bank that Mr G had chosen. However, as the list only gave the names of the banks – not their addresses – Mr G had no way of knowing that the bank he had selected was in the 'wrong' Moscow.

The bank told us it had warned Mr G that it was unable to guarantee that all the information it held about the banks on the list was entirely up-to-date.

It had also told him it could not guarantee that Mrs G would find it easy to locate any of the banks on the list. We pointed out that – crucially – it had failed to warn Mr G that some of the banks on the list had no operations at all in Russia.

We did not agree with the bank that the wording on the transfer form absolved it from responsibility in this case. Mr G could not reasonably be held liable for entering incorrect information that the bank itself had given him.

We upheld the complaint. We told the bank to pay Mr G the cost of the second money transfer, together with the amount of money he lost on the currency conversions for the reclaimed payment to Idaho. We said it should also pay him £200 in recognition of the worry and inconvenience he had been caused. ■



## ... they thought the bank would give them an even better exchange rate than the one it had quoted.

### ■ 76/3 consumers complain that bank misled them about the exchange rate they would get when transferring funds from one country to another

Mr and Mrs B were starting to make plans for their retirement and decided to sell the house in the far south of Ireland that they had owned for some years. They wanted to keep their existing house in the UK as their main residence. However, they planned to use the proceeds of the sale of their house in Ireland to buy another property – probably in Spain.

As the couple were in no great rush to buy the new property, they thought they would transfer the proceeds of the sale from their account at a bank in Ireland to their bank in the UK.

Before doing this, they phoned their Irish bank to ask what exchange rate it could offer them if they converted the money from euros to sterling before transferring it to their UK bank.

The couple then phoned their UK bank to see what exchange rate they would

get if they transferred the money in euros, and then asked the UK bank to convert it to sterling. They later said that the UK bank had quoted over the phone a ‘guide conversion’ rate from euros to sterling of 1.28, for transactions up to the value of £25,000.

From this, they concluded that they would be better off transferring the money in euros and then asking their UK bank to convert it to sterling. They had not told their UK bank exactly how much money they were thinking of transferring. However, they thought that when the bank realised the transaction was valued at over £25,000, it would give them an even better rate than the one it had quoted.

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### ... their expectation was not based on anything the bank had told them.

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So Mr and Mrs B instructed their Irish bank to send the proceeds of the sale – totalling 273,950.50 euros – to their UK bank account. The couple were very unhappy when they found that the UK bank had credited £204,663.77 to their



account, having converted the euros to sterling at a rate of 1.3385, and deducted a small transaction charge.

Mr and Mrs B complained to their UK bank, saying that because it had '*deviated*' from the rate it quoted over the phone, they had received substantially less money than they had been expecting. They said the bank had misled them and should therefore compensate them for the amount of money they had '*lost*'.

### **complaint not upheld**

We listened to the recording of Mr and Mrs B's initial telephone conversation with their UK bank about the exchange rate. We were satisfied that this recording gave an accurate account of what had been said. However, there was no mention of an exchange rate of 1.28.

Mr and Mrs B admitted that before transferring the money they had researched exchange rates on various websites and in several newspapers, as well as talking to both their Irish and UK banks. They agreed that they could not be certain of the context in which they had heard about the rate of 1.28 – and they confirmed they had never been told this was a 'fixed' rate.

They also admitted that their expectation that they would get a better rate when converting a larger sum was not based on anything either bank had told them.

We were satisfied that the bank had not misled Mr and Mrs B about the likely rate it could give them. We were also satisfied that it had correctly told them that the actual exchange rate they would receive depended on the market exchange rate at the time the money went through. We did not uphold the complaint. ■

### ■ **76/4**

#### **transfer of funds to foreign bank delayed when incorrect information was entered on the transfer form**

Mr and Mrs D were having some improvements carried out to their holiday home in France. They had agreed to pay their French builder the euro equivalent of £5,000 by 9 August.

So on 27 July Mrs D, who was at home in the UK at the time, phoned her UK bank. She asked it to transfer the money to the joint account that she and her husband had at a French bank.

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### **... we were satisfied that the bank had not misled them**

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Unfortunately, instead of arriving at the French bank on 28 July, as it should have done, the money was not available to the couple at the French bank until 17 August. ▶

## ... the bank said it had accurately transcribed the details she provided, so the error must have been hers.

The couple complained to the UK bank about its failure to carry out the transfer correctly. They said it should compensate them for the expenses they had incurred as a result. They told the bank they had been obliged to travel out to France to ‘*appease*’ their builder and ‘*sort out various problems resulting from the delayed payment*’.

The transfer had been delayed because the identifying number for the French bank had been misquoted on the transfer form. Mrs D insisted that she had given the details very clearly and accurately when she phoned the bank with her instructions. However, the bank said it had accurately transcribed the details she had provided, so the error must have been hers.

The couple had backed up their complaint with a copy of their French bank statement. Referring to this, the UK bank said the statement showed that the money was received in France on 28 July. It said the couple must therefore have been mistaken in saying that they had not had access to the money at their French bank until 17 August.

Unable to get any further with their complaint, Mr and Mrs D then came to us.

### **complaint upheld in part**

We asked the UK bank to let us have its recording of Mrs D’s call, instructing it to make the payment to the French bank. From this, it was clear that she had given the bank the correct identification number. So we were satisfied that the bank had made a mistake when it completed the transfer form.

It seemed to us that the bank had become confused about the date on which Mr and Mrs D had received the money into their French bank account.

It was true that the French bank had back-dated the transfer to 28 July, for interest purposes. However, the couple had correctly stated that the funds had not actually been available to them until 17 August.

We then looked closely at the expenses Mr and Mrs D had claimed from the bank. They had said that they had been obliged to travel to France solely to sort

out the payment and appease their builder. However, we noticed that they had remained in France for a further week after the date on which they said they had met and paid the builder.

We established that the builder was well-known to Mr and Mrs D, and had already carried out a variety of building jobs for them – on a number of previous occasions. And there was no evidence that the delay in transferring funds had affected either their relationship with him, or his completion of the building work, to the extent that a personal visit was necessary.

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**... he complained  
to his bank about its  
'excessive charges'.**

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We were therefore unable to agree with the couple that the bank should meet all the expenses they had said they incurred as a result of the UK bank's mistake.

We did, however, say that the bank should refund the fee that Mr and Mrs D had paid for the transfer, together with the cost of their telephone calls to their French bank when trying to find out if the money had arrived. We said the bank should also pay the couple £150, in recognition of the inconvenience they had been caused. ■

■ **76/5**  
**consumers complain that bank's advice about transferring money abroad led to excessive charges**

Mr T, who was planning to move abroad once he had retired, went into a local branch of his bank to ask about the cheapest and quickest way to transfer money to Portugal. He later told us that he was advised to use his debit card.

Some six months after he had settled in Portugal, Mr T complained to his UK bank about its '*excessive charges*'. He also said that it had misled him about the best way of transferring money to Portugal.

The account fees that the bank had charged him and his wife on their use of their debit card in Portugal included a commission fee of 2.75% and a cash-handling fee of 1.5% for each transaction. As the couple had used their debit card to make frequent and substantial cash transfers from their UK bank account, the cumulative account fees were substantial. ▶

Mr T's bank did not accept that it had given him incorrect advice about transferring money to Portugal. However, it agreed to refund some of the charges, totalling £200, and it later offered a further £150 as a gesture of goodwill. Mr T insisted he was entitled to a refund of *all* the charges but the bank disagreed. Mr T then came to us.

### **complaint not upheld**

The bank branch where Mr T had asked about transferring money to Portugal was a large one, with around 100 staff. Unfortunately, he was unable to recall the name of the member of staff he had spoken to – or even the month in which he had visited the branch.

We asked him if he had withdrawn any money or carried out any other transaction during his visit – as we hoped this might help us to pinpoint exactly when he had made his enquiry. However, Mr T said the only reason for his visit had been to ask about transferring money.

We then checked the bank's records of Mr and Mrs T's account, but found no mention of Mr T's visit, or of his enquiry about transfers.

We had no reason to doubt that Mr T had gone into his branch to ask about transferring money to Portugal. But from what he told us, we thought it unlikely that he had given his name or account number to the member of staff.

He did not appear to have explained that he was going to live in Portugal or that he was intending to make regular, large cash transfers. So the cashier could well have thought he was simply making a general enquiry about how he might obtain relatively small amounts of cash while he was visiting Portugal on holiday.

We noted that after he moved to Portugal, Mr T had continued to receive regular monthly statements from his bank. The debit card charges were clearly marked on these statements, but it was over six months before he queried them. Meanwhile, he and his wife were continuing to use the card to make regular cash transfers.

So we did not agree that the bank should refund all the charges.

We told Mr T that, in the particular circumstances of this case, we thought the offer the bank had already made was a generous one, and we advised him to accept it. ■

## ... the bank's offer was a generous one, and we advised him to accept it.

### ■ 76/6

#### limited company in liquidation says bank contributed to its failure by not transferring payments within 'guaranteed' timescale

G and J Ltd, a company in liquidation, asked its liquidator to make a complaint on its behalf. The company said the bank had misled it about the timescale within which money could be transferred from the company's UK account to the account of its main supplier in Pakistan.

The company said the bank had '*guaranteed*' that urgent transfers of funds could be made to the supplier in Pakistan within 24 hours. Apparently, the bank had said it could be certain about this because it held an account with the same bank in Pakistan as that used by the supplier.

In practice, however, G and J Ltd had found that transfers had taken between two and eight days, and it said this had been a significant factor in the company's eventual failure.

#### complaint not upheld

We found nothing to support G and J Ltd's assertion that the bank had said it had an account with the same bank in Pakistan as that used by G and J's supplier. The bank held an account at the London branch of a subsidiary of the supplier's bank and that had been the position for some years.

When G and J Ltd had opened its account at the bank, it had discussed with the bank's international manager the issue of transfers to the supplier in Pakistan. However, we found nothing to suggest he had ever '*guaranteed*' that funds could be transferred within a specific timescale.

He had many years experience of transfers of this type and was well aware that several different banks were involved. His bank had no control over how quickly the other banks carried out their part of the process, so it was in no position to issue any '*guarantees*'. ▶

## ... they had expected the bank to complete the form correctly.

We accepted that the bank's international manager had said the bank would do its best to administer the company's transfers as smoothly as possible. However, we were not persuaded that he had made any false promises.

We also found no evidence – from the information provided to us by the liquidator – that any delays in transferring funds to the supplier in Pakistan had significantly contributed to the company's failure. We did not uphold the complaint. ■

### ■ 76/7 money transfer carried out incorrectly when inaccurate information was entered on the transfer form

Mr and Mrs A visited their bank to transfer some money to an investment scheme that was run through a company based in Hong Kong. This was the first time they had invested with this company and they had never transferred money abroad before.

They later told us that they had shown the cashier their invoice from the investment company and had asked for her help in transferring the money from their current account. They said the cashier had looked at the invoice and had then filled in a transfer form and asked Mr A to sign it.

The invoice gave the name and number of a bank account in Hong Kong and stated that the couple were required to send 5,000 US dollars. However, as the couple later discovered, the bank transferred £5,000 – the equivalent at the time of 9,728 US dollars.

The bank rejected Mr and Mrs A's complaint that the bank had not carried out their instructions correctly. It denied that the cashier had ever been shown the invoice in question and it said the responsibility for any error lay with Mr A.

The bank said that Mr A had signed the form and that this clearly stated that the equivalent of £5,000 was to be sent, in US dollars. Unable to reach agreement with the bank, Mr and Mrs A brought their complaint to us.

### complaint upheld

The couple provided clear and consistent information about what had happened when they visited the bank. We found their version of events persuasive, and accepted that they had, indeed, given the invoice to the cashier so that she could draw up the transfer form on their behalf.

We did not agree that the instructions entered on the form were as unambiguous as the bank had suggested. It was certainly clear that 5,000 units of currency were to be sent. However, it was not at all evident which currency was required.

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### ... the bank had not properly carried out their instructions

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Mr and Mrs A had been relying on the cashier to complete the transfer form for them, and they had given her the invoice which stated they needed to send 5,000 US dollars. We thought it reasonable, in the circumstances, for them to have expected the bank to know what information was needed – and to complete the form correctly.

We did not agree with the bank that if there had been an error on the form, this would have been obvious to Mr A, when he signed it.

Unfortunately, the scheme that Mr and Mrs A had thought they were investing in turned out to be a ‘scam’. So they were not only unable to retrieve the amount that had been transferred in error, they were unable to get back any of their money.

We told the bank to refund them the difference between the amount it *should have* sent to Hong Kong and the amount it actually transferred. We said the bank should pay interest, to compensate the couple for the time they had been without that money. We said it should also pay them £200 for the worry and inconvenience they had been caused. ■



# Frequently-asked questions about the ombudsman service

As part of an occasional series, we feature answers to some of the questions we are most-frequently asked by those smaller businesses that are covered by the ombudsman service but that do not usually have much contact with us. This information may also be helpful for newer members of staff in those larger businesses that have more frequent dealings with the ombudsman service.

## **What happens when a consumer contacts the ombudsman service?**

The front-line staff in our customer contact division deal with all initial enquiries from consumers – and provide them with general advice and guidance on what to do if they have a complaint about a financial service or product.

If a consumer brings a complaint to us before complaining direct to your business, our customer contact staff will refer the complaint on to you. If you are then able to resolve the complaint to the consumer's satisfaction, we will have no further involvement in the case.

But the consumer can ask us to look into their complaint if:

- you have already sent them your final response and they remain dissatisfied; *or*
- you have had the complaint for eight weeks but have not sent the consumer your final response.

## **What information will the ombudsman need from a business?**

If we receive a complaint about your business, we will contact you and tell you what information we need. We generally settle complaints on the basis of the paperwork that you and the consumer send us, so it is important that you reply as promptly as possible to any request for information.

How long we give you to reply to any request will depend on what we need from you. Sometimes we may ask for a very quick response – for example, if our query is simple or urgent, or if we are asking for information you should already have on hand from your own investigation of the complaint. We will give you longer if we know you will need to carry out your own investigation before you can give us your reply.

If reasons specific to the case in question make it impossible for you to send us information within the time limit we have given you, please tell us immediately.

Don't wait until the time limit is about to run out and only then ask for more time. If you delay unduly in replying to our requests for information, we may base our decision on the case using just the information we already have.

### **What general approach does the ombudsman service take in resolving complaints?**

This will depend on the facts of each individual case. But generally, we will first try to settle the dispute informally, through mediation or conciliation. This can be quicker and more efficient than a formal investigation. Often, just by taking a fresh look at the facts – and identifying and agreeing the key issues as we see them – we can come up with a solution that satisfies both sides.

At this stage, settling a dispute informally might involve us contacting you and/or the consumer – often by phone – to suggest a way forward or to clarify the facts and issues involved.

If we are unable to resolve the matter over the phone – or if the nature of the case makes a written explanation more appropriate – we will confirm our position in writing. This will

give the adjudicator's opinion of the case and set out how, in the adjudicator's view, the case should be resolved.

In some of our more complex cases, the adjudicator may seek to resolve the dispute by issuing a formal adjudication report, which is sent to both parties at the same time. You and the consumer will each be given the opportunity to respond.

### **How does the ombudsman service reach a conclusion about the rights and wrongs in an individual complaint?**

Our decisions are based on what we believe is fair and reasonable in the circumstances of each individual case. We take into account the law, rules, codes and good practice that applied at the time of the event complained about.

We look at all the relevant facts and arguments, ask both sides for their views, and listen to each side of the story. We may ask you to comment specifically on what the consumer has told us. Similarly we may ask the consumer for their views on what *you* have told us. After drawing together all the evidence, we will consider which version of events seems – on the balance of probability – to be the more likely. ►


In most cases, both the consumer and the business accept our adjudicator's view and the complaint is then settled. If you disagree with the view we have put forward, you should discuss matters in the first instance with the adjudicator working on your case. If matters remain unresolved, either side may ask for a review and final decision by an ombudsman. This only happens in about one in ten cases. This is also the stage where any request for a hearing would be considered.

### **Is the ombudsman's approach similar to what a court would do?**

We are an informal alternative to the civil courts – and take a different approach to resolving disputes. We rarely find it helpful or necessary to have official 'hearings' – and our process does not involve sworn witnesses, cross-examinations and formal legal

procedures. We generally settle complaints on the basis of the paperwork that consumers and businesses send us – rather than having face-to-face meetings.

Unlike the courts, we are not limited to looking only at the issues the consumer has highlighted in their complaint. Our approach is 'inquisitorial' – which means we can ask questions to get to the core facts of the case, rather than focus just on the issues presented to us.

We tell consumers they do not need professional help to bring a complaint to us – and that we prefer to hear from them in their own words. We decide complaints on the basis of their individual facts and merits – not on who can present the most persuasive legal arguments. 

You will find the answers to many more of the questions we are frequently asked by businesses at:

**[www.financial-ombudsman.org.uk/faq/businesses/index.html](http://www.financial-ombudsman.org.uk/faq/businesses/index.html)**

# A selection of recent travel insurance complaints

- **76/8**  
**travel insurer refused to pay  
cancellation claim on grounds that  
consumer had not been eligible for  
cover under the policy**

To celebrate her retirement, Mrs G booked a holiday cruise to the Baltic States and asked her friend, Mrs M, to accompany her. The two women had worked together for many years until Mrs M had moved away from the UK some eighteen months earlier to live with her family in Spain.

Sadly, two weeks before the start of the cruise, Mrs G received a phone call from Mrs M's son, telling her his mother had suffered a fatal heart attack. Mrs G then cancelled the holiday.

When she booked the cruise at the travel agent she had also arranged travel insurance for herself and Mrs M.

So in due course she put in a claim to cover the costs she incurred in cancelling the trip. She also passed on the policy details to Mrs M's son, Mr M, so he could claim on behalf of his late mother.

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**... The insurer said it did  
not provide cover for people  
who lived outside the UK.**

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However, the insurer refused to meet Mr M's claim. It said Mrs M had not been eligible for cover as she had been living outside the UK for more than 12 months at the time the policy was taken out.

The insurer said it did not provide cover for people who lived outside the UK, as they might use the travel policy as a cheap means of obtaining medical ▶

insurance, rather than as cover for any emergencies that might arise in relation to a holiday.

When the insurer rejected Mr M's complaint about its refusal to meet the claim, he referred it to us.

### **complaint upheld**

At the time the policy was sold, travel agents did not fall within the scope of statutory financial services regulation. However, it was generally accepted as good industry practice that when travel agents acted on behalf of an insurer, the insurer was responsible for the way in which travel agents marketed and sold insurance policies.

In this instance, when the travel agent completed the application form for Mrs G, he entered her name as '*the lead passenger*' – and gave her address. The only information entered on the form about Mrs M was her name. We found no evidence that either the travel agent or the insurer had asked for her address or checked whether she was eligible for cover under the policy.

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**... the fair and reasonable outcome was for the insurer to pay the claim.**

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We were satisfied that Mrs M had genuinely been seeking insurance to cover a holiday. There was nothing to suggest she had been intending to use the policy to obtain medical cover more cheaply than she would have been able to get it (as a Spanish resident) if she applied for a medical insurance policy. We upheld the complaint and said that – in the circumstances – the fair and reasonable outcome was for the insurer to pay the claim. ■

### ■ **76/9**

**travel insurer turns down claim for cost of cancellation as policy did not come into force before the holiday began**

In mid-October Miss W booked a holiday to Tenerife, due to depart a month later on 17 November. She was planning several other foreign trips over the following 12 months, so she told the travel agent she would not take the single-trip insurance policy it offered.

Instead, she contacted an insurer direct and bought an annual travel policy. This was set up to come into effect from 17 November – the date of her departure to Tenerife. Like most travel policies, the benefits it provided included cover against cancellation.

## ... neither the travel agent nor the insurer had checked whether she was eligible for cover under the policy.

On 1 November, Miss W visited her doctor as she was feeling very unwell. The doctor diagnosed a '*cardiac arrhythmia*'. When Miss W mentioned her forthcoming holiday, the doctor told her that, in the circumstances, it might not be wise to travel abroad. Miss W therefore cancelled the holiday and put in a claim under her travel policy.

The insurer told her it could not meet the claim, as her policy had not yet come into force. Miss W was very upset to learn this and she complained that it was on the advice of the insurer itself that she had agreed the start date for the policy.

She said that the insurer knew the date of her forthcoming holiday, so it should have explained that there was a risk in having a policy that did not come into force until the day that holiday began. If it had done so, she would have insisted on an earlier start date.

The insurer would not discuss the matter further with her but simply repeated that it would not pay the claim. Miss W then referred the matter to us.

### **complaint upheld**

In order to decide this case we had to establish whether the insurer had made Miss W sufficiently aware that, by buying a policy that did not start until the actual day of her holiday, she would not be covered if she had to cancel her trip.

We obtained a tape recording of Miss W's initial phone conversation with the insurer, when the policy had been arranged. It was clear from this that she had told the insurer she was going to Tenerife on 17 November – and that the representative had suggested that would be a suitable start date for the policy. ▶

## ... the insurer had not done enough to highlight the risk she was taking.

While it could not be said that the representative had actually ‘*advised*’ Miss W to have a policy that started on that date, he had not made any attempt to explain the implications of not having insurance in place before then.

When we raised this with the insurer, it said the policy documents made it clear that the policyholder would not be covered if the holiday was cancelled before the policy came into force.

However, in our view the insurer had not done enough to highlight to Miss W the risk that she was taking. We thought it unlikely that she would have agreed to the start date suggested by the insurer if she had understood this risk.

We told the insurer to treat the claim as if the policy had been in force on the date when Miss W cancelled her holiday. We said it should add interest to any payment due under the policy. ■

### ■ 76/10

#### **travel insurer refuses to pay claim for cancellation of holiday on the grounds of ill-health**

On 10 September, three weeks before he was due to go on holiday to Greece, Mr C phoned an insurer to arrange some travel insurance.

During that call, the insurer read out a list of medical conditions and asked Mr C if he had ever suffered from any of them. It also asked if he was aware of ‘*any condition that could reasonably be expected to affect your health during the period of the policy?*’ Mr C answered ‘*no*’ to both questions and the insurer issued him with a travel policy.

Unfortunately, a week before his holiday was due to begin, Mr C had to cancel it. He did this on the advice of his GP – as he had developed a severe chest infection.



However, the insurer rejected Mr C's claim. It said he must have been aware he had the illness that led to the cancellation at the time he applied for the policy – but he had failed to disclose it.

Mr C thought the insurer was being unreasonable. At the time he bought the policy, he had a mild cough. This was not one of the medical conditions in the list that the insurer had read out to him over the phone. And he did not agree that he should have known – at the time of his call – that it might develop into a more serious condition that would affect his holiday.

When the insurer refused to reconsider its position, Mr C came to us.

### **complaint upheld**

We established that Mr C's cough began a day or two before he phoned the insurer to arrange his travel policy. However, it had not at that time seemed to him to be anything worth worrying about.

It was only around a week later – on 17 September – that Mr C decided to see his GP, as his cough was not getting any better. The GP prescribed medication and said he expected Mr C's condition would start to improve within a few days.

However, on 26 September Mr C went back to his doctor and reported that he was still feeling far from well. The doctor prescribed stronger antibiotics and arranged for Mr C to have a chest x-ray. He also suggested that it might not be a good idea for Mr C to travel. Mr C cancelled his trip later that day.

In our view, there was no reason why – at the time he applied for the policy – Mr C should have told the insurer about his cough. He would only have needed to mention it if he knew there was a realistic possibility that the cough would develop into something serious enough to threaten his holiday plans. The evidence did not suggest that this was the case.

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### **... At the time he bought the policy, he had only a mild cough.**

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We also questioned whether it would have made any difference to the cover the insurer provided if Mr C *had* mentioned his cough when he applied for the policy. We thought this unlikely, as there had been nothing at that stage to indicate that Mr C was suffering from anything more than a minor seasonal ailment. ▶

We therefore upheld the complaint and told the insurer to deal with Mr C's claim – adding interest to any payment it made. ■

■ **76/11**  
**travel insurer accepted premium intended to provide cover for pre-existing conditions but failed to ensure the policy was properly in force**

Mr and Mrs K were given a 'free' annual travel insurance policy as one of the benefits of their bank account. However, when they checked through the policy's terms and conditions before booking a holiday, they found that they were not covered for their 'pre-existing' medical conditions.

Anxious to ensure that they had adequate insurance in place before their trip, Mrs K contacted a different insurer. She was quoted just over £200 to cover their pre-existing conditions and she paid this amount over the phone, using her debit card.

Unfortunately, while the couple were on holiday, Mrs K was taken seriously ill and had to spend several days in hospital. When she returned home she put in a claim to the insurer, backed up by a medical certificate that showed her illness had been connected to one of the pre-existing conditions for which she had sought cover.

However, the insurer turned down the claim. It said the cover for pre-existing conditions did not operate as an independent policy but was only available as an 'add-on' for customers who also bought the insurer's 'base' travel insurance. As the couple had not bought the 'base' cover, they did not have a valid policy under which they could make a claim.

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**... She had not realised this cover was 'worthless'.**

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## ... they found that they were not covered for their 'pre-existing' medical conditions.

Mrs K complained that the insurer had failed to make it clear that she needed to buy the 'base' cover. She pointed out that she would hardly have spent '*so much money*' to cover the pre-existing conditions if she had realised this cover was '*worthless*' on its own. The insurer then offered to refund the premium she had paid. However, it still refused to meet the claim, so Mrs K came to us.

### complaint upheld

We asked the insurer to let us have its tape recording of the phone conversation during which Mrs K arranged the cover for pre-existing medical conditions. We noted from this that the insurer's representative had mentioned the 'base' cover. However, he had not made it clear that the cover for pre-existing conditions only operated in conjunction with that 'base' cover.

The insurer maintained that it had explained this point over the phone. It also said that it had sent Mr and Mrs K a letter which '*clearly explained*' that they needed to buy the 'base' cover. We asked for a copy of the letter in question, but did not agree that it was clear. Overall, we were not at all surprised that Mr and Mrs K had thought they had adequate cover in place.

We told the insurer that we did not consider it had done enough to make Mr and Mrs K aware that the cover they had bought only came into force if they also bought the 'base' policy. We said that, in any event, the insurer should not have put itself in a position where it might be accepting premiums without providing any valid cover. ▶

## ... it had not misinformed her in any way about the nature of the travel policy.

We said the insurer should accept and pay Mr and Mrs K's claim – subject to the policy terms and conditions and taking account of the premium the couple would have paid for the 'base' policy, if they had realised they had to do this. ■

### ■ 76/12 consumer obtains a 'free' travel policy when she applies for a credit card – and later complains that extent of the insurance cover was not clearly explained

When Mrs J applied successfully to her bank for a credit card, she was also given a 'free' annual travel insurance policy. The policy provided cover for Mrs J and – as a concession – it also covered '*a spouse or partner*' when that person was travelling with her.

Eighteen months later, while travelling in South Africa on his own, Mrs J's husband suffered a heart attack and incurred substantial medical expenses. He subsequently made a claim on his wife's annual travel policy. This was turned down on the grounds that he was only covered when he and his wife were travelling together.

Mrs J then complained to her bank. She said that when she had obtained the credit card, she had been led to believe that her husband would benefit from the 'free' travel insurance, even when he was travelling on his own.

The bank rejected this complaint. It insisted that it had not misinformed her in any way her about the nature of the travel policy and the cover it provided. Mrs J then referred her complaint to us.

**complaint not upheld**

When we discussed the complaint with her, Mrs J admitted that neither she nor her husband had been entirely sure if he was covered by the policy when travelling by himself. However, she insisted that the bank should have explained the position more clearly when it offered her the policy.

In our view, the policy documents and all the accompanying literature made it perfectly clear that the card-holder's spouse or partner was covered *only* when travelling with the card-holder.

It was not at all unusual for a policy of this type to extend limited cover to a spouse or partner. This was not, therefore, a feature that needed to be specially highlighted. We concluded that the bank had not misled Mrs J about the extent of the cover and we did not uphold the complaint. ■ ■ ■



# the Q&A page

featuring questions that businesses and advice workers have raised recently with the ombudsman's technical advice desk – our free, expert service for professional complaints-handlers

**Q. Does the ombudsman service restrict its work on a complaint to the specific arguments raised by the consumer – as in legal pleadings?**

A. The way in which consumers present their complaints to us about financial businesses can vary significantly. Some present specific reasoned arguments about the shortcomings they are complaining about. Mostly, however, the complaints that consumers bring to us are more general in nature.

Some consumers use simplified templates from newspapers and websites to pursue their complaint. Others are represented by commercial claims-management companies, some of which use standard letters that make little reference to the facts of the individual case.

This has led some businesses to suggest that the ombudsman should only look into complaints where consumers have clearly raised relevant arguments and specifically identified the legal claims they are making.

However, the ombudsman service was set up by law to resolve complaints '*quickly and with minimum formality*'. As an informal alternative to the civil courts, our aim is to '*level the playing field*' between the consumer and the business.

This means we do not expect consumers to present their case to us as if they were making a set of 'legal pleadings'. We generally look beyond the particular way in which a consumer has expressed their complaint – to assess whether they have suffered financial detriment for which the business might be responsible. This approach was approved by the High Court in 2003

(*Green Denman v Financial Ombudsman Service* [2003] EWHC 338 [Admin]). There is more information about this on our website (at [www.financial-ombudsman.org.uk/faq/businesses/answers/handle\\_cases\\_a12.html](http://www.financial-ombudsman.org.uk/faq/businesses/answers/handle_cases_a12.html)).

Where we are satisfied that a business involved in a dispute has notice of the areas of concern they need to address, we do not consider it unfair for us to go beyond the particular points made by the consumer – in order to review the underlying grievance or complaint. We will focus on the substance of the complaint – not the precise terms in which the consumer expressed their complaint.

Ideally, of course, consumers – and especially commercial claims-management companies acting on their behalf – should try to identify the relevant points as clearly as possible when they make a complaint.

But the FSA's rules require businesses to take a responsible approach in considering complaints – however they are made. It is not appropriate or fair for businesses to interpret a consumer's points in an over-prescriptive or technical way – so as to side-step the general thrust of the consumer's concerns.

**Q. How can I find out about the ombudsman's work on complaints about payment protection insurance (PPI)?**

A. We have an online PPI resource, providing a collection of documents, reference materials and links relating to this topic. You will find this resource listed under 'technical notes' on the publications page of our website.