Ombudsman news

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

David Thomas, chief ombudsman (interim)

issue 81

dealing with the numbers

In his last foreword to *ombudsman news* before he stepped down as chief ombudsman (issue 80), Walter Merricks looked back over the last ten years. He noted how, while remaining true to its founding aims and objectives, the ombudsman service has adapted to a growth in workload that no one foresaw at the outset.

Recently, that growth in cases has accelerated, made worse by the poor way in which *some* financial businesses handle complaints, as shown in the complaints data we published this September. For a while, case numbers grew faster than it was possible for us to recruit and train new case-handlers. Although we continued to resolve cases much more quickly than the courts, prioritising the complaints that involved financial hardship necessarily meant that some other types of cases had to take their turn.

However, many of the 200 additional case-handlers we have recruited and trained over recent months are now up to speed, and can take on cases increasingly quickly – so things will speed up over the

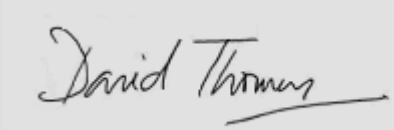
Financial Ombudsman Service

coming months. This will have a particular impact on those few financial businesses and consumers who have taken advantage of our flexible process by delaying unreasonably in responding to our requests for information – thereby unfairly disadvantaging the other party, and affecting our ability to get on with cases.

We will continue to give both sides to each complaint a reasonable time to provide information, and we will of course take account of genuine difficulties. But parties who delay unreasonably will increasingly find that, after giving fair notice, we will decide cases on the basis of what we have actually received – rather than allowing them any further time to supply what we have asked for.

Looking ahead to next year, we expect that our workload will continue to grow. This is confirmed not only by our own detailed projections but also by what we hear from industry and consumer bodies. We will continue to build our capacity in order to respond flexibly to this challenge.

Our detailed expectations for the coming year, and the plans that we are making to enhance the effectiveness and efficiency of our service, will be set out in our *corporate plan and budget* – to be published, as usual, in January.



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Recent complaints involving debt-collecting businesses

Since April 2007, the ombudsman service has covered complaints made by consumers against debt-collecting businesses acting for consumer credit lenders. Under our rules, a complaint can be brought by any consumer from whom the debt collector attempts to recover the consumer credit debt – not just by the person named on the credit agreement. As with all the complaints we deal with, the consumer should first raise the matter direct with the business – which is allowed up to eight weeks to try to resolve the problem.

In some of the complaints we see, consumers say they are being chased for a debt owed by someone else – because the debt-collecting business has not taken enough care about tracing the right person. In cases like this, we expect the business to be able to show us clear evidence that they are indeed seeking repayment from the correct person.

Other complaints may involve a dispute between the consumer and the debt-collecting business about the amount owed. Again, we would expect the debt-collecting business to be able to produce clear evidence, proving how the debt has accrued. Sometimes, debt-collecting businesses tell us they are unable to do this because they were not given sufficient information by the original lender. This does not alter the fact that the debt-collecting business has a duty to be able to show it is asking for the right amount of money. That is, after all, what it would be required to do if it attempted to recover the debt through the courts.

Recent complaints involving debt-collecting businesses

Some of the complaints brought to us concern the way in which a business has gone about collecting a debt. The consumer may, for example, say that the business has pursued them in an oppressive or unreasonable way. When looking at such complaints, we take into account whether the business has kept properly to the relevant Office of Fair Trading guidelines, and has not breached industry codes, such as the Credit Services Association *Code of Practice*. We expect businesses to keep proper records of their visits to consumers – and of their written and phone communications with them – and to be able to produce relevant records to support their case, if a complaint is made against them.

Arriving at a fair agreement for the repayment of a debt will always be a two-way street. The debt-collecting business must take a realistic and proportionate approach to the consumer's proposals. Equally, the consumer must be willing to engage in the process and should not simply ignore reasonable requests to provide a proposal showing how they intend to repay the debt. In some of the complaints we see, difficulties have arisen (or escalated) because the consumer has been advised – inappropriately – not to communicate at all with the debt-collecting business.

Where we decide that a debt-collecting business has not dealt reasonably with a consumer, we will normally tell it to pay appropriate compensation as redress (and we may direct that this should be used to reduce the debt). However, we will not normally conclude that the debt should simply be written-off. In some cases we have found it difficult to achieve a prompt, fair settlement because the consumer's representative has advised them to accept nothing less than a complete write-off of the debt.

Sometimes a consumer (or their representative) asks us to declare a debt legally unenforceable, on the grounds of some alleged legal technicality, even though there is no dispute over the size of the debt – and no complaint that the financial business has behaved at all unfairly. The law requires us to decide cases on the basis of what is fair and reasonable – and we are unlikely to decide it would be fair and reasonable to agree to such a request. This does not prevent the consumer asking a judge to consider these points if the lender seeks to enforce the debt in court.

The following selection of cases illustrates some of the complaints we have dealt with recently involving debt collecting.

81/1

consumer complains of aggressive and unreasonable behaviour by debt-collecting business

Mr M's credit card debt of just under £2,400 was passed on to a debt-collecting business by the lender, after Mr M fell seriously behind with his repayments.

Initially, the business contacted him by letter. He responded through his representative, Mrs K, who worked at a local debt advice agency. She told the business that Mr M proposed paying off the debt by making regular monthly payments of £16. This was the same amount that until then he had been paying to the lender. However, the business said the minimum it would accept was £28 a month.

Mrs K asked Mr M to make an appointment to come and see her, to discuss whether that sum would be affordable. Meanwhile, he made a payment of £16. As soon as it received that payment, the business wrote to Mr M. It said he must now pay off the debt in full, as he had paid less than the required amount.

After Mrs K contacted the business, it agreed to accept monthly payments of £28. For the next five months,

these payments were made as arranged. The following month, however, a payment of only £15 was sent – apparently because of an error on Mrs K's part.

The business then phoned Mr M. He later complained that it had threatened him with bankruptcy unless he gave his debit card details over the phone, so that the business could take a payment there and then to cover the entire balance of the debt.

After speaking to Mrs K, he complained to the business. He said its attitude had been aggressive and threatening – and that forcing him to pay off the entire debt had left him in considerable difficulties. The debit card payment had used up all the money in his current account. He had been obliged to borrow from friends in order to pay for essentials and was unable to make any of his regular payments to other creditors.

The business told him he had no grounds for complaint. It said his other commitments were not its responsibility – and the fact that he had been able to pay off the debt with his debit card '*proved*' that he could easily afford the amount involved. Mr M then referred his complaint to us.

complaint upheld

We asked the business for details of all its communications with Mr M, including recordings of phone conversations. After listening to the call in which the business had taken Mr M's debit card details, we agreed with him that the business had behaved in an aggressive and unreasonable manner. We thought that if it had simply told him it had received a smaller repayment than expected – and given him the chance to look into why this had happened – he would quickly have brought the repayment up to the correct amount.

It was clear from the recording that Mr M had provided his debit card details reluctantly, under threat of bankruptcy. He had told the business that if it took such a large payment he would be left with no money for essential expenses – and would be unable to meet agreed commitments to other creditors. Mr M's bank statement confirmed that this was indeed the position.

We upheld the complaint. We pointed out to the business that as well as treating Mr M unfairly, it had also breached the regulatory guidelines and relevant industry codes. We required it to pay Mr M £500 to reflect the distress and inconvenience it had caused him.

Normally, where we uphold a complaint, we aim to return the consumer to the position they would have been in, if the business had acted correctly. In this case, that would have meant directing the debt-collecting business to return Mr M's money and reinstate his repayment arrangement of £28 a month.

However, we agreed with Mr M's request to leave the debt fully repaid. He told us he was anxious to avoid the possibility of '*more hassle*' if there were any further mistakes or misunderstandings with his repayments. He said he would repay the money he had borrowed from his friends, and make up the missing repayments to other creditors, as and when he could.

81/2

consumer argues that his debt should be declared unenforceable and his payments refunded

Mr C, who owed a consumer credit debt, failed to respond to a statutory demand for payment. The lender therefore instructed a debt-collecting business to recover the money through the courts.

Shortly before the date set for the court hearing, Mr C sent the debt-collecting business two cheques. The business then arranged for the hearing to be adjourned. Each of Mr C's cheques was for £1,800 and the total sum covered the full amount he owed, together with costs. One of the cheques could be paid in right away, the other was post-dated to six weeks later.

A few weeks after sending the cheques, Mr C wrote to the business and asked for a full breakdown of the costs, together with a copy of the consumer credit agreement relating to the debt. The business responded promptly, sending him a breakdown of the costs and explaining that it had contacted the lender and asked for a copy of the agreement.

Two weeks later, Mr C's second cheque was presented for payment on its due date. Mr C then complained to the business that it had '*wrongly engaged in debt collection*' while the debt was in dispute. He said that because the debt-collecting business had failed to provide him with a copy of the original agreement – the debt was unenforceable. The business should therefore return the money from the two cheques – and should not ask him to make any further payment.

The business did not accept that it had been '*wrongly engaged in debt collection*' when banking Mr C's post-dated cheque. Nor did it accept that the debt had been in dispute at that point. Unhappy with this response, Mr C brought his complaint to us.

... he said wanted no contact from the business by phone, so it should only communicate in writing.

We agreed with Mr C that the business had been carrying out the activity of debt-collection when depositing his second cheque for payment. However, we did not agree that the debt was in dispute at the time. Mr C had written to ask for a copy of the original agreement, but there was nothing in that request – or in any of his previous communications with the business – to indicate that he disputed the debt.

We did not consider that the business had done anything wrong in depositing Mr C's cheque. It was certainly the case that the business was unable to enforce the debt in court until it had produced a copy of the agreement. However, we could not see that it was prevented from paying in the cheque that Mr C had already given it. After we had discussed the situation with Mr C, he told us he wished to withdraw his complaint. ■

■ **81/3**

debt-collecting business fails to honour its offer of a discount for early settlement

A debt-collecting business wrote to Miss H about her debt of £1,450 that it had been instructed to collect on behalf of a catalogue company. A few days after receiving this letter, Miss H rang the business during her lunch break at work.

After discussing various repayment options with her, the business agreed to accept £1,280, in full and final settlement of the debt. Miss H then gave the business her debit card details, so it could take her payment of that amount.

When she arrived home that evening, Miss H found she had been sent a mail-shot by the debt-collecting business. Dated two days earlier, the mailing offered '*50% discount for early settlement*' of her debt.

Miss H then complained to the business. She said it was guilty of '*sharp practice*' in asking for £1,280,

as it must have known that the mailing was on its way to her. The 50% discount would have enabled her to pay off the entire debt for £725. She therefore asked for a refund of £555, the difference between this sum and the amount she had just paid.

The business said she had already received a discount – as the sum she had paid was less that the amount she actually owed – so she could not now claim any additional reduction. Miss H then referred her complaint to us.

complaint upheld

We listened to a tape recording of the conversation between the business and Miss H, when the business had discussed payment options and taken her payment for £1,280.

During that call, Miss H had made it clear that her financial resources were very limited and that she was keen to negotiate the best reduction possible, in return for settling the debt right away. Before agreeing to pay £1,280, she had asked if that was the lowest figure the business was prepared to accept, in full settlement of the debt. The business had confirmed that it was.

We upheld the complaint. We told the business it had treated Miss H unfairly and that it should send her a refund of £555.

81/4
consumer complains of harassment by debt-collecting business

A debt-collecting business rang Mr D and asked how he proposed to settle his credit card debt. He told the business that he would consider the matter once it had sent him a copy of the consumer credit agreement for the credit card. Mr D also said that he did not wish to have any contact with the business by phone, so it should only communicate in writing.

Some weeks later, Mr D wrote to the business. He noted that it had still not sent him the copy of the agreement he had asked for. And he complained that it was continuing to '*harass*' him by phoning him. He believed he was therefore entitled to have the entire debt written-off. He also asked the business to compensate him for the '*harassment*' and to remove all adverse credit reference information that it had registered in relation to the debt. When the business refused, Mr D brought his complaint to us.

complaint upheld in part

There was no dispute about the size of the debt. And we noted that the business had been prepared to accept regular monthly repayments, rather than expecting Mr D to pay off the entire amount immediately.

So we did not agree with Mr D that it would be fair and reasonable for the business to write-off the debt. Similarly, we saw no reason why the business should remove the credit reference information registered about the debt, as this was an accurate record of the situation.

The business sent us the recordings of its phone calls to Mr D. Each call was very short, because Mr D had put the phone down as soon as he realised who was calling. Mr D told us he had been advised by someone on an internet forum that his loan was probably unenforceable, and that he should ignore any requests to repay it. Mr D accepted that he had not helped matters by following this advice. He also accepted that he needed to agree a repayment plan with the business and start paying off the loan.

We told the business it should have respected Mr D's request not to contact him by phone. The fact that Mr D had continued to receive regular phone calls appeared mainly to have resulted from poor internal communication at the business. However, it was also clear that the business was frustrated by Mr D's failure to respond to any of its attempts to communicate with him, whether by phone or by letter.

We pointed out to Mr D that the business had not spoken to him in an improper manner or attempted to put any pressure on him to pay the debt. It had offered to pay him £50 for the inconvenience caused by its continuing phone calls. We told him we thought this was fair.

When he brought his complaint to us, Mr D asked us to provide a legal determination on the correct meaning of certain technical provisions of the *Consumer Credit Act* (as amended in 2006), which had not yet been tested in the courts. We explained why we were unable to do this. Our role, as an informal dispute-resolution service, is to decide cases on the basis of what is fair and reasonable. It is not part of our role to provide general opinions on legal matters – or to answer hypothetical questions on the meaning of parts of the law. ■

81/5

consumer goes abroad leaving credit card debt unpaid and providing no forwarding address

Mr G had power of attorney for his daughter, Mrs C, who was working abroad. He was surprised when a letter for his daughter was sent to his address, as she had never lived there and had not asked anyone to forward mail to her there.

... he said someone on an internet forum had told him his loan was probably unenforceable.

After opening the letter, which had been sent by a debt-collecting business and concerned a credit card debt, Mr G rang the business. He asked how it had obtained his address – and why it had sent the letter there. The business told him it had not had any contact from his daughter for some time and it believed she had moved abroad without leaving a forwarding address. After arranging a 'trace' to try and establish her whereabouts, it had discovered that she stayed with her father for a short period before going abroad.

Mr G sent the business proof that he held power of attorney for his daughter. He then asked it to send him statements of her account, so he could satisfy himself that the debt was indeed his daughter's responsibility. The business agreed to do this, but it was nearly three months before it sent Mr G the statements.

Mr G found no reason to doubt that his daughter was responsible for all the transactions listed on the statements. However, he pointed out to the business that none of the transactions had been made within the past year or so. And he said that as his daughter had long since moved away from the address the credit card company held for her, she would not have received any statements for some while.

He offered to pay £200, in full and final settlement of the debt. The business thought that was insufficient, as the debt currently stood at around £2,300. However, it said it was prepared to discuss repayment options with him, if he wanted to pay off the debt on his daughter's behalf.

Mr G then complained that the business was being unreasonable in not accepting his offer. He also asked for compensation for its delay in sending him copies of the statements.

... we did not think it would be fair or appropriate for the business to pay him any compensation.

complaint not upheld

We accepted that Mr G thought his offer of £200 was generous in the circumstances – given that Mrs C had moved abroad and was apparently not prepared to pay anything towards the debt.

However, we explained that the business was under no obligation to accept that offer. It had been willing to discuss reasonable repayment arrangements, if Mr G wished to pay the debt on his daughter's behalf. However, the business had made it clear that it was dealing with him solely in his capacity as power of attorney for his daughter. It had not at any time suggested that he was liable for the debt – and had not asked him to pay it.

We agreed that the business had taken a long time to get the statements to him and had been unable to provide a clear explanation for the delay. However, in the circumstances we did not think it would be fair or appropriate for the business to pay him any compensation.

We noted that it had, correctly, supplied him with the information he required in order to check the validity of the debt. And it had not taken any steps to pursue payment before (or indeed after) he had received that information. We did not uphold the complaint. ■

■ **81/6**

debt-collecting business pursues the wrong person for payment of a debt

Mrs V was surprised to receive a letter from a debt-collecting business about a consumer debt of £715 that it said she owed to a loan company. She could not recall having had any dealings with that company. And she thought it strange that the letter had been sent to her current address, as the business had used her maiden name of Miss J. She had not used her maiden name since her marriage some years earlier, and she had only recently moved to her current address, where she was registered as Mrs V.

She called the business and asked if there had been some mistake, as she was sure she had never taken out the

loan in question. The business quoted the address where it said she had been living when she took out the loan. She told the business that was '*proof*' that it was pursuing the wrong person, as she had never lived at that address. She offered to send the business copies of her birth and marriage certificates, together with evidence of the length of time she had lived at her current and previous addresses.

The business agreed to look at anything she wished to send, but said that in the meantime she must make a payment towards the debt. Mrs V refused to do this. She said that once it saw her documents, it would realise she was not the person who owed the debt.

However, even after it had received Miss J's documents, the business continued to make regular phone calls, asking her to pay the debt. She then complained to us.

complaint upheld

There was nothing at all unusual about either Mrs V's first name or her maiden surname. We pointed this out to the business and asked what checks it had made to establish that Mrs V and the Miss J who owed the money were the same person. The business was unable to provide any clear answer to this question.

We were satisfied that Mrs V had taken a reasonable approach to the matter, and had been quick to offer convincing proof of her identity. It was evident, from the recordings provided by the business, that its phone calls to Mrs V had not been aggressive or threatening in nature. However, we told the business that we did not consider it had behaved reasonably in continuing to try to collect the debt from her.

The business offered to pay Mrs V £100, to compensate her for the distress its actions had caused. It also undertook to write to her, confirming its clear understanding that there was no connection between her and the Miss J who owed the debt. And it provided written assurance that it had not registered any credit reference information against Mrs V's name, in relation to the debt. We considered that to be a fair outcome, and Mrs V was happy to settle on that basis. ■

Money-transfer operators and the ombudsman

From 1 November 2009, money-transfer operators have been regulated by the Financial Services Authority (FSA) – and automatically covered by the Financial Ombudsman Service. From this date, these businesses should have put in place in-house complaints procedures that comply with the FSA's complaints-handling rules (the '*DISP*' rules).

what's the background to this?

Money-transfer operators came under the ombudsman's remit from 1 November 2009 as a result of the Payment Services Directive. This is a new European directive intended to help protect consumers transferring money cross-border and to provide more of a level playing-field in this market.

We focused on the Payment Services Directive – and on the role of the Financial Ombudsman Service as part of the directive's complaints-handling requirements – in issue 74 of *ombudsman news* (December 2008/January 2009).

what does the Payment Services Directive cover?

The Payment Services Directive requires countries in the European Economic Area to regulate payment services – including, for example, payments by plastic cards, direct debits and money transfers. The directive affects all businesses providing payment services in or from the European Economic Area.

In the UK this includes:

- banks and building societies – already regulated by the Financial Services Authority (FSA) and covered by the ombudsman;
- authorised electronic-money (e-money) issuers – already regulated by the FSA and covered by the ombudsman;
- small (certified exempt) e-money issuers – not regulated by the FSA but now covered by the ombudsman;
- non-bank credit-card companies – already licensed by the Office of Fair Trading (OFT) and covered by the ombudsman; *and*
- money-transfer operators – not previously regulated by the FSA (nor licensed by the OFT) and not covered by the ombudsman before.

what does this mean for businesses that provide payment services?

The Payment Services Directive has been implemented in the UK through the P*ayment Services Regulations 2009* – which came into force on 1 November 2009. From this date, businesses that provide payment services have had to comply with Europe-wide rules

on their 'conduct of business' (the way in which they handle payment-services transactions with their customers).

From 1 November 2009, businesses providing payment services have also had to comply with rules on how they deal with customer complaints relating to payment services. These rules include giving consumers the right to refer unresolved complaints to the ombudsman.

Following public consultation last year, the FSA made changes to its rules in order to implement aspects of the Payment Services Directive. These changes involved:

- introducing an approach to enforcing the Payment Services Regulations that mirrors the FSA's general approach to enforcement under the *Financial Services and Markets Act;*
- applying the FSA's complaints-handling rules to payment-services firms; *and*
- extending the jurisdiction of the Financial Ombudsman Service, so that we can provide the 'out-of-court' redress function required by the directive.

Earlier this year, the FSA published information outlining its approach to authorisation and supervision issues under the Payment Services Directive (see www.fsa.gov.uk/Pages/About/What/International/psd/).

what kind of money-transfer transactions will the ombudsman cover?

From 1 November 2009, the ombudsman's remit has covered transactions carried out by money-transfer operators in or from the UK. These include transactions starting or ending *outside* the European Economic Area (EU members plus Iceland, Norway and Liechtenstein) and transactions carried out in *non*-European currencies.

This reflects the ombudsman's remit in relation to money-transfer complaints we already covered – involving banks, building societies and e-money issuers.

can small businesses also complain to the ombudsman about money-transfer transactions?

Yes. But in order to reflect the definition of '*micro-enterprise*' used in EU legislation, the eligibility criteria have changed for smaller businesses wanting to bring a complaint to us.

Since 1 November 2009 – the date the Payment Services Directive came into effect in the UK – businesses with an annual turnover of up to 2 million euros (currently approximately £1.8 million) have been able to use the ombudsman service – as long as they have fewer than ten employees.

Previously the turnover threshold was lower, at £1 million, but with no requirement relating to the number of employees.

This new eligibility definition for 'micro-enterprises' now applies to smaller businesses that bring complaints about everything the ombudsman covers – not just money-transfer complaints.

what information and support services does the ombudsman provide for money-transfer operators?

The free services we offer that will be of particular interest to money-transfer operators new to the ombudsman include:

- our technical advice desk (020 7964 1400) dedicated to answering queries about the ombudsman service and its general approach;
- this newsletter, *ombudsman news,* covering a wide range of information including examples of banking and money-transfer disputes relating to foreign travel (issue 64); case studies involving the transfer of money abroad and currency exchange (issue 76); and a focus on the Payment Services Directive (issue 74);
- our online information resource (www.financial-ombudsman.org.uk/faq/businesses) specifically for businesses that have little direct contact with the ombudsman; *and*
- access to a wide range of events – from hands-on workshops to formal conferences.

This is part of our commitment to work with businesses to identify and reduce problems that might otherwise lead to time-consuming complaints.

what contact has the ombudsman had with money-transfer operators so far?

We have taken part in a number of events aimed specifically at money-transfer operators that came under the ombudsman from November 2009. This has included providing speakers for conferences and seminars on the Payment Services Directive held by the FSA and the UK Money Transmitters Association.

We have also had helpful and constructive meetings with the main money-transfer trade associations and the major money-transfer operators – to introduce and explain our work at the ombudsman service.

A selection of recent mortgage case studies involving disputes over valuations

In our *annual review* covering the financial year ending March 2009 we noted an 11% increase in complaints about mortgages, compared with the previous year. A significant proportion of these cases involved disputes about the handling of mortgage arrears – reflecting challenging conditions in the property and mortgage markets.

The complaints we have seen since April this year have continued to reflect difficult market conditions. As these case studies illustrate, these problems regularly include disputed property valuations.

Sometimes these complaints arise from the situation where, having tightened-up its lending criteria, a lender has not offered as favourable a rate of interest as the consumer had hoped for – citing the re-valuation of the property concerned as the basis of its decision. Complaints may also arise following the sale of a repossessed property at what the consumer considers too low a price, in relation to the property's market value. Where such a sale raises insufficient funds to repay the mortgage in full, consumers sometimes argue that responsibility for making good the shortfall lies not with them but with the lender.

81/7

consumer complains that after repossessing his flat, the lender sells it for less than its market value

After finding himself in unexpected financial difficulties, Mr A decided to re-mortgage the flat he had only recently bought as an investment property. He re-mortgaged the flat with the lender for £150,000. At that time the property was valued at £180,000.

Mr A's financial situation was not helped by his inability to find tenants for the flat and before long he was in serious arrears with his mortgage repayments. Eventually, just over a year after he had arranged the re-mortgage, the lender took possession of the flat. It was valued at £155,000 but the lender received few realistic offers and in the end agreed to sell for £140,000.

... he said there would have been no shortfall if the lender had sold his flat for its proper market value.

Unpaid interest had been added to Mr A's mortgage and this, combined with the low sale price, meant that £25,000 remained to be repaid after the sale of the flat. Mr A refused to accept responsibility for this sum. He said there would have been no shortfall if the lender had sold the flat for its proper market value. Unable to reach agreement with the lender, Mr A referred his complaint to us.

complaint not upheld

After examining evidence provided by the lender, we concluded that it had acted reasonably and followed good industry practice when dealing with the sale of Mr A's property. It had obtained two professional valuations and allowed sufficient time for potential buyers to view the flat. There had not been many viewings, but the lender had rejected several offers that were considerably lower than the price it eventually accepted.

We noted that the sale had probably been hindered by the fact that the flat was part of a new development. Some properties on the development were still under construction and the developer was offering substantial incentives to buyers of these new properties. We did not uphold the complaint.

... we concluded that the lender had acted reasonably and followed good industry practice.

81/8

consumer complains that lender sells repossessed house for less than its market value

Ten years after they took out a joint mortgage, Mr and Mrs T separated. Mr T moved out of their house but would not agree to transfer ownership to Mrs T. She was soon finding it a serious struggle to pay the mortgage and eventually decided to hand the house back to the lender.

When she told her new partner what she had done, he said he would put in an offer to buy the property himself, so she could continue living there. However, the lender refused his offer as it was considerably less than the price it was asking for the house.

The lender subsequently sold the property at a much lower price than that offered by Mrs T's new partner. Mrs T was far from happy when the lender told her the sale had not realised enough to fully repay her mortgage, and she would have to pay the shortfall. Unable to reach agreement with the lender, she referred the matter to us.

complaint upheld

We thought the lender had acted reasonably in refusing the offer that Mrs T's partner had made, just after the house went on the market. He was offering significantly less than the current valuation. However, we saw no reason why the lender should not have accepted his offer, once it became apparent that the property would not sell at the original asking price.

We said the lender should reduce the amount that Mrs T still owed by the difference between the price offered by Mrs T's new partner and the price at which the house was sold.

81/9

consumer complains that lender sells her repossessed flat for less than its market value

Ms N's circumstances changed significantly not long after she had taken out a mortgage of £207,000 to buy a flat. Realising that she would now find it difficult to afford the monthly payments, she decided to let the property out while she tried to sell it.

She put the flat on the market at £240,000 but was unable to find a buyer. The rent that she was getting helped her to meet her mortgage repayments for a while. However, a couple of years later her mortgage arrears had built up to the extent that the lender decided to take possession of the flat.

Although the lender was able to sell the property reasonably quickly, the sale did not produce enough to repay the outstanding mortgage, together with arrears charges.

Ms N did not agree with the lender that she was responsible for meeting the shortfall and she referred her complaint to us. She said the lender had '*caused the problem*' by selling the flat for less than its market value – and she noted that the selling price was lower than offers she had turned down when trying to sell the flat herself.

complaint not upheld

The evidence provided by the lender showed that it had obtained two valuations and had put the flat on the market at £220,000 – the higher of the two recommended sale prices. The lender had rejected several offers that were far lower than the asking price before it finally agreed to sell the flat for £208,000.

The lender pointed out that the flat was on a new development where a number of similar, repossessed properties were also on the market. We agreed that this situation was likely to have affected the sale price. We did not uphold the complaint.

... they said the lender had '*created financial difficulties*' for them by changing its mind about altering their mortgage arrangement.

81/10

consumers complain that lender creates financial difficulties for them by retracting an agreement to change their mortgage arrangements

Mr and Mrs D were finding it increasingly difficult to look after Mrs D's elderly mother, Mrs M, and started looking for suitable care homes. After considering possible ways of freeing up some money to help pay the fees, they contacted their mortgage lender. They asked if they could change their mortgage arrangement from a capital and interest basis to an interest-only basis, in order to reduce their monthly outgoings.

Initially, the lender appeared to agree to this. However, it subsequently refused, after a valuation of Mr and Mrs D's property suggested that it was worth less than the outstanding mortgage. The lender told the couple that this situation meant that they did not meet its lending criteria for an interest-only mortgage.

Mr and Mrs D later told us that their arrangements for Mrs M to go in to the care home were already well-advanced by the time the lender said it would not, after all, be able to change their mortgage. They said they felt they had no option but to go ahead with the care home arrangements, even though they would be committed to paying the care home fees as well as the cost of their existing mortgage.

After complaining unsuccessfully to the lender, they brought their complaint to us. They said the lender had '*created financial difficulties*' for them by changing its mind about altering their mortgage arrangement.

complaint upheld in part

We accepted that it had been reasonable for Mr and Mrs D to have thought, after their meeting with the lender, that it had agreed to alter the basis of their mortgage.

... They asked the lender to refund their mortgage application fee.

However, we noted that the lender had contacted them again within a very short time to explain why it had changed its mind. At that point, the couple had still not made any firm arrangement for Mrs M to move in to the care home. Nevertheless, they had taken the decision to go ahead, despite knowing that this would commit them to paying the home's fees as well as continuing to meet the cost of their existing mortgage.

... we did not agree that the lender had treated them unfairly or that it had failed to process their application correctly.

Our investigation showed that the financial difficulties facing Mr and Mrs D were long-standing and had not arisen solely as a result of their commitment to meet the care home fees. So we did not accept their view that the lender's change of mind had caused their difficulties.

However, we reminded the lender of its regulatory obligation to act fairly towards customers in mortgage arrears. We said the lender should operate the mortgage on an interest-only basis for an extended period, to allow Mr and Mrs D time to seek advice on their overall financial position and on ways in which they could meet the cost of care for Mrs M. ■

81/11

consumers complain that lender based its mortgage interest rate offer on an inaccurate valuation of their property

Mr and Mrs B wanted to transfer their existing mortgage to a tracker arrangement, and applied to do this online, on their lender's website.

When the lender subsequently got in touch with them, it quoted a higher interest rate than they had been expecting. It told them the reason for this was that they were borrowing more than 60% of the value of their property.

After the couple complained about this, the lender arranged for the property to be re-valued. However, the outcome of the valuation did not alter the position.

Mr and Mrs B then questioned the accuracy of the valuation, saying it differed considerably from the value that another lender had placed on their house earlier that year.

They provided details of what they said were the sale prices of similar properties that had been on the market recently in their area.
They also asked the lender to refund the mortgage application fee that they had been required to pay as part of their online application.

complaint not upheld

We noted that the lender had obtained a professional valuation of the couple's house and we saw no reason to conclude that it could not rely on that valuation.

The information provided by Mr and Mrs B related to the prices at which similar properties were being advertised – not the actual sale prices. The valuation figure used by the lender was supported by such information as was available about the sale prices for similar properties in the same area.

We understood Mr and Mrs B's disappointment that they had not been able to obtain the interest rate they had applied for. However, we did not agree that the lender had treated them unfairly or that it had failed to process their application correctly.

And we did not agree that the lender should refund the couple's application fee. The lender's terms and conditions, which the couple had seen before paying the fee, made it clear that the fee was not refundable. 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. Can I rely on an adjudication as representing the official ombudsman approach?

A. We encourage the businesses we cover to consider carefully the decisions we make – and to apply our general approach to their own complaints handling. This is why we recognise that it is important for us to be consistent in the way we apply a general approach to similar types of complaint.

However, our primary focus is to resolve the individual case in front of us – rather than to produce general guidance for businesses.

This is reflected in the fact that our adjudications do not always set out the full framework within which we have analysed the dispute. Instead, they tend to focus on those points on which we have placed particular weight in deciding the outcome of the case.

So care needs to be taken in interpreting more widely, or in a more general context, an adjudication made in a one-off case. And an adjudication is not a final ombudsman decision.

Cases which may look broadly similar – perhaps involving the same financial product at around the same time – will often turn on very different points, when we start to examine the individual facts. This is because everyone's personal and financial circumstances are different. The right outcome in one case won't automatically be the right answer in other, similar-looking cases.

Q. How does the ombudsman ensure consistency between decisions?

A. The fact that we may arrive at different outcomes on separate cases shouldn't be seen as surprising. This isn't a question of inconsistency – it reflects the fact that we look at each complaint individually and make a decision on what we believe is fair and reasonable in the circumstances of the particular case.

As noted in our reply to the previous question, there may be surface similarities between some complaints. But when we look at them in detail, we generally find that very different facts and issues are involved – because everyone's personal and financial circumstances will be different.

Deciding complaints – like financial advice itself – can involve a complex balance of judgement, often based on a wide array of seemingly contradictory facts. The 'right' outcome in one case will not automatically be the right answer in other 'similar' cases. However, if a business or a customer thinks an adjudicator's view is inconsistent with the ombudsman's general approach, then they can of course ask for an ombudsman's decision on the case.

We dedicate a considerable amount of resource to monitoring the quality and consistency of our work. Our decision-making processes are embedded in an intranet-based knowledge management system. And our quality management process includes a casework-wide quality control and audit mechanism. This means that internal review procedures and quality-checking systems are built in across the life-cycle of complaints.

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