

Ombudsman news

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



Natalie Ceeney, chief executive and chief ombudsman

Planning cycle

Last month I said we had reached an important stage in our annual planning cycle, looking at what the second half of this year and the next financial year may hold for us. Meetings with some of our key stakeholders are providing us with a valuable forum to share our thinking on our future plans, as well as on the challenges we face. The dialogue that is emerging will help inform our *corporate plan and budget* for 2011/2012, to be published in January 2011.

One thing that has been evident in all my discussions to date is that stakeholders really value the importance of the ombudsman service in providing a trusted, fair and easy-to-use service for resolving disputes. It's been encouraging to see the extent to which stakeholders also appreciate how our service helps to improve confidence in financial services overall.

The feedback we've been getting suggests that our workload is likely to remain high and volatile. This reinforces the need for us to remain flexible – able to react promptly and effectively to any shifts and surges in demand. As I indicated in our *annual review* in May, an important priority is to further reduce the time taken to resolve cases. ▶

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Financial
Ombudsman
Service

We are already working towards being able to settle over half of all disputes within three months. But greater streamlining of our operations may be necessary before we can improve on that. The interview with our new operations director, Simon Rouse, on page 10 shows how we will, for example, be looking at how new technology can help us deal with cases quickly and cost-effectively. We believe greater use of technology would also benefit businesses, by reducing their costs in working with us.

At the heart of all we do, of course, is the knowledge and expertise of our people. Sharing this knowledge and expertise is critical. Internally – it ensures the quality and consistency of our approach. Externally – it helps businesses become better able to resolve disputes themselves, without our involvement. So as well as further enhancing our in-house knowledge management, we will be increasing the amount of information we provide online.

If you visit our website regularly you will have seen that our online technical resource has already grown considerably. Further expansion is in the pipeline. And in the past few weeks we have published the third set of complaints data about named individual businesses – helping businesses to draw lessons from the complaints we see.

One of the principal ways in which we communicate regularly with our stakeholders is through this newsletter – *Ombudsman news*. It has been particularly encouraging to hear from businesses and consumer advisers about topics they would like us to cover. And in response to those suggestions, this issue features cases about disputed debit card transactions and complaints relating to legal expenses insurance. Although the actual number of cases we see on these topics is relatively modest, the underlying issues clearly generate considerable interest among both consumers and businesses. Do please keep your suggestions coming for future editions.



Natalie Ceeney

chief executive and chief ombudsman



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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.

Disputes involving legal expenses insurance

Legal expenses insurance is most commonly obtained as a low-cost or free addition to a household or car insurance policy but it is also available as a stand-alone policy. Typically, it provides cover for the legal costs that a policyholder might incur in pursuing a dispute relating to personal injury, contracts for goods or services, property or employment. These costs will generally include solicitors' fees, court fees, the fees of any expert witnesses and any legal costs awarded to the other party in the dispute.

Legal expenses policies generally stipulate that any proposed legal action for which a policyholder makes a claim must have a reasonable prospect of success. The policyholder is also usually required to accept any reasonable offer of settlement. And there will be an overall limit to the amount that can be claimed.

When a policyholder puts in a claim under this type of policy, the insurer will assess the proposed legal action and may refer details of the claim to one of the solicitors on its panel of independent legal advisers. If the insurer concludes that the proposed action has little prospect of success, it may simply notify the policyholder that it is not prepared to accept the claim. ▶

The complaints referred to us about legal expenses insurance are relatively small in number and tend to arise most frequently from an insurer's decision not to meet the expenses of proposed legal action. We have featured cases involving legal expenses claims before in *Ombudsman news*, most recently in issue 47 (July 2005), and our approach remains unchanged.

Understandably, the consumers who refer these complaints to us are usually focused primarily on the underlying legal dispute for which they had made their claim. So we often have to explain that it is not for us to determine the outcome of that underlying dispute. Rather, our role is to decide whether their insurer handled their claim correctly, in accordance with the policy terms and conditions.

■ **89/1**
consumer claims for legal expenses to bring unfair dismissal and racial discrimination case

Mr J decided to bring a case against his former employer for unfair dismissal and racial discrimination. He had been dismissed from his job as a school caretaker after being accused of serious misconduct.

As he had legal expenses cover as part of his household insurance policy, Mr J put in a claim for the cost of his proposed action. He was very disappointed when his insurer refused to meet the claim. The insurer cited the policy terms which said that cover was only available if *'it is more likely than not that you will recover damages or will make a successful defence.'*

Mr J referred the matter to us after he had complained unsuccessfully to his insurer. He said he had expected *'at the very least'* to be able to discuss the case with a solicitor before any decision was reached about paying the claim. He was unhappy that he had not been given that opportunity and he said the insurer had turned down his claim *'without bothering to look at it properly.'*

complaint not upheld

We noted that Mr J's policy was clearly written and gave a straightforward explanation of the types of claim that were covered – and of how claims were assessed.

The insurer sent us evidence of the steps it had taken to assess Mr J's claim.

... there was no evidence that the insurer had failed to give his claim proper consideration.

After looking at the details of the proposed action, it had sought advice from one of its panel of independent solicitors. The solicitor had reviewed all the evidence that Mr J provided as part of his claim and had concluded that the proposed action *'lacked any reasonable prospect of success.'*

There was clear evidence that Mr J's employer had followed all the necessary disciplinary procedures. And before his employer eventually dismissed him, Mr J was given ample opportunity to appeal. The alleged misconduct was of a very serious nature and Mr J had not been able to provide any convincing arguments to refute the allegations – either during the appeal process or subsequently.

Mr J had assumed that after putting in a claim he would have a personal interview with a solicitor, as part of the insurer's claims process. We pointed out to him that there was nothing in the policy terms and conditions to suggest this would happen. We told him there was no evidence that the insurer had failed to give his claim proper

consideration. And we saw no reason to question the solicitor's opinion, especially as Mr J had not provided an alternative legal opinion to counter it. We were therefore unable to uphold his complaint. ■

■ 89/2

consumer claims for cost of legal action against the solicitor who acted for him in his divorce

Mr B was very unhappy with the outcome of his divorce settlement. He thought his former wife had received considerably more than she was legally entitled to get. He therefore decided to sue the solicitor who had acted for him.

As Mr B had legal expenses cover, he put in a claim to his insurer, saying he wished to bring an action against the solicitor for professional negligence. ►

**... he said he had been
'unfairly denied' funding he was
'entitled to' under his policy.**

The insurer turned down the claim, on the grounds that the proposed action had little prospect of success. Mr B then complained to us that he had been '*unfairly denied*' funding he was '*entitled to*' under his policy.

complaint not upheld

We noted that the policy terms and conditions stated clearly that the insurer would not meet a claim if it thought it unlikely that the policyholder's proposed legal action would succeed.

**... the proposed legal
action stood no reasonable
prospect of success.**

The insurer sent us evidence that it had referred Mr B's claim to one of its panel of solicitors. The solicitor had carefully reviewed the divorce settlement negotiated between the solicitors acting for Mr B and his now ex-wife. The insurer's solicitor had noted, among other things, that the divorce settlement was disproportionately favourable to Mr B, in view of the assets held jointly by the couple before their divorce.

The insurer's solicitor also noted that counsel's opinion had been sought during the negotiations over the settlement. This had suggested that if the proposed settlement went to court, there was a risk that a 50/50 split of the assets would be imposed.

The insurer's solicitor concluded that the legal action for which Mr B was now claiming expenses stood no reasonable prospect of success.

We did not uphold the complaint. We told Mr B we were satisfied that the insurer had *not* treated him unfairly. Before reaching a conclusion on his claim, it had arranged for his proposed legal action to be given careful and appropriate consideration.

The insurer told Mr B that if he was able to obtain a clear and well-reasoned independent legal opinion that supported his proposed action, it would reconsider his claim. It would also reimburse him for reasonable costs in obtaining that opinion. We told Mr B this was a fair and reasonable offer. ■

■ **89/3**
consumer claims for legal expenses to recover costs after a car accident

Ms K suffered minor injuries and her car was damaged when she was involved in an accident with another car. The driver of the other vehicle offered to pay £2,500 towards the costs she incurred as a result of the accident.

These costs totalled over £10,000 and Ms K thought the driver of the other vehicle ought to pay half that amount. She thought he was at least 50% to

blame, so she therefore decided to pursue legal action against him.

She put in a claim under the '*legal protection*' section of her motor policy for the cost of that legal action.

In support of her claim, Ms K provided a statement from her solicitor, saying there was a reasonable chance of establishing that the other driver was 50% responsible for the accident.

The insurer rejected the claim. It told Ms K it would only cover her legal expenses if it was more likely than not that *all* the costs would be recovered from the other driver. Ms K complained that this was unfair, but the insurer refused to reconsider the matter. She then brought her complaint to us.

complaint upheld

We looked at the wording of the policy. This said that claims for legal expenses would be met if '*there are reasonable prospects of recovery from the third party.*' ►

We did not think this was as clear as it should have been. And it certainly did not justify the insurer's view that it would only provide funding if there were reasonable prospects of recovering *all* the costs from the third party.

Proposed legal action is generally considered to have a '*reasonable*' prospect of success where it is thought more likely than not that it will succeed.

In this case, Ms K's claim was for 50% of her losses and her solicitor clearly considered that she was more likely than not to recover that amount. We therefore told the insurer to meet the claim, subject to the other terms of the policy. ■

... The insurer refused to pay anything.

■ 89/4 claim made under legal expenses policy for costs of seeking injunction against a neighbour

Mr and Mrs G were trying to sell their house and were concerned that their neighbour, Mrs D, was preventing potential buyers from visiting the property.

Mrs D had a right of way through the couple's garden in order to get access to her garage. The couple said she behaved aggressively towards anyone visiting their house for a viewing. She claimed that these visitors were blocking her right of way and she prevented them parking near the couple's house.

Eventually, Mr and Mrs G decided they would have to take legal action against Mrs D and they put in a claim to their insurer for legal expenses.

The insurer referred the claim to one of the solicitors on its panel. He concluded that no '*damage, trespass, nuisance or interference with rights*' had taken place and that Mr and Mrs G were '*merely seeking a declaration of their rights.*' As this was not covered by the policy, the insurer rejected the claim.

... we told the insurer to meet the claim, subject to the other terms of the policy.

Mr and Mrs G decided to proceed at their own expense, and in due course their solicitor obtained an injunction, preventing Mrs D from interfering with the sale of Mr and Mrs G's property, including stopping potential buyers from parking on their land. The judge also instructed Mrs D to pay half Mr and Mrs G's legal costs.

The couple then contacted their insurer again. They pointed out that, despite the opinion of the insurer's solicitor, they had been successful in bringing a legal action arising from interference with their rights. They therefore thought the insurer should reimburse them for their unrecovered legal costs.

The insurer refused to pay anything. It said it only funded cases that arose from *'an insured event, as specified in the policy.'* Mr and Mrs G then referred their complaint to us.

complaint upheld

We looked at the wording of Mr and Mrs G's policy. This said the insurer would cover the costs of making a claim in a *'dispute arising out of your ownership or occupation of your main home.'*

The legal dispute which formed the subject of this insurance claim was essentially about Mr and Mrs G's right to park on their own land – and the extent to which this interfered, if at all, with Mrs D's right of way.

We noted that the court judgment appeared to accept that the acts of Mr and Mrs G's neighbour constituted *'damage, trespass, nuisance or interference with rights'*. So we were satisfied that this was a dispute arising from the couple's *'ownership and/or occupation'* of their home. It was therefore covered under the policy.

We upheld the complaint and told the insurer to pay Mr and Mrs B an amount equal to the unrecovered costs they incurred in suing Mrs D. ■

ombudsman focus: getting operational

Simon Rouse started work as our new operations director in August.

Ombudsman focus catches up with him to find out what the job involves and how things have gone in his first weeks.

Welcome to the Financial Ombudsman Service. And straight in at the deep end – how does it feel to be operationally in charge of dealing with 750 new complaints and over 3,500 enquiries every working day?

I'm delighted to have joined the team here and I'm very excited about the operational challenges involved! The colleagues I'm working with are full of ideas on how we can continue to improve the service we provide. I certainly feel a huge sense of responsibility for this service – knowing that every year, tens of thousands of individual consumers and businesses rely on us to help resolve their disputes. It's true I've jumped straight in at the deep end, but I wouldn't have it any other way.

Before joining us you were director of strategic planning for NHS Hertfordshire. What did that entail – and how was it similar or different to the ombudsman service?

At NHS Hertfordshire my main aim was to lead major programmes involving organisational change, aimed at improving services – in a tough financial climate – across the whole



Simon Rouse, operations director

range of healthcare, including GP, community and hospital services.

That was a pretty complex environment involving thousands of stakeholders. Of course, much of the health service environment is very different from the financial services world. But I do think there are similarities as well. We all need to focus on constantly improving services, while ensuring real value for money. And a key similarity is the sense of purpose that comes

with being part of an organisation that's focused on making a broader difference to society. That was one of the big attractions for me of coming to work with the Financial Ombudsman Service.

The press release announcing your appointment said you'd previously held a number of senior posts at Barclays plc, including head of strategy and performance management for business banking. Doesn't this mean you'll be looking at everything through business eyes – rather than from the consumer's perspective?

I had a number of roles at Barclays, across both retail and commercial banking. But most of my work involved leading teams responsible for serving customers. So I hope that my financial services experience, working in a range of different customer markets, will be a valuable asset in my work here at the Financial Ombudsman Service.

I think I've succeeded in my career so far because I've always been passionate about understanding the diverse needs of the customers I serve. I'm determined that the same will be true of my time here. Looking at things from the perspective of both the business and the consumer is absolutely intrinsic to the work of the ombudsman service, as an impartial body that settles disputes. It's also at the heart

of how I believe we can make our complaints-handling operations even more effective.

Were you ever involved in complaints handling at Barclays?

My very first senior-management role was as head of customer relations. I managed the relationship between Barclays and the then Banking Ombudsman (before the Financial Ombudsman Service was set up) and I led Barclays' complaints handling across the group. In my capacity as a personal banker, branch manager, area director and then regional director I had direct responsibility for leading the front-line teams providing services to customers – and I made sure I handled complaints in a way that helped me really understand the service we were giving.

I think anyone who's worked with me would tell you I believe passionately in the importance of handling complaints well – using them to improve customer service more generally. It's one of the areas I've already focused on in my first few weeks here. This means handling effectively any complaints about our own level of service, and using these complaints to help us learn from any shortcomings and make improvements. ▶

ombudsman focus: getting operational

How well do you think the NHS handles complaints about itself – and how does that compare with complaints handling in the financial services sector?

The NHS is a very big organisation so I wouldn't want to generalise. But in my time there, I saw some common themes that I think stretch across a number of sectors, including financial services. For me, the important themes are for organisations to react promptly and effectively to customer dissatisfaction; to stop issues escalating unnecessarily; to communicate in an easy-to-understand way; and to use the issues raised in complaints to improve services, rather than just focusing on handling the immediate complaint and then moving on.

How much did you already know about the Financial Ombudsman Service before you applied for the job of operations director?

With my financial services experience, I already knew a lot about the Financial Ombudsman Service. As I've just mentioned, I was responsible for helping Barclays prepare for the introduction of the 'new' complaints-handling arrangements and the 'new' Financial Ombudsman Service over ten years ago. But it's definitely true that when you come into an organisation you see so much more than you ever realised from the outside!

So what has surprised you about the ombudsman?

First, the range of complaints that the ombudsman service now deals with is vast. I had no idea about some of the areas the ombudsman covers. Secondly, I've been really struck by the wealth of industry expertise held by colleagues. This is clearly one of the organisation's key strengths. Finally, the level of pride and passion that colleagues have for what they do is very much evident – and part of why I feel so excited to be here.

What's a typical day like for you in your new job?

I don't think I've had a typical day yet – and I suspect that won't change a lot. My first month has been pretty packed – meeting colleagues and finding out what they do; getting to the heart of the operation to understand the real issues; sharing my initial observations; and then getting on with fixing the issues that can get in the way of delivering a great service.

In terms of where I plan to spend most of my time, it's out in the operation with colleagues who work directly with our customers. In my experience they, together with our customers, hold the answers to the things we need to do. My most pleasing success since being here came from a visit to the post room where they were frustrated by something that was

cumbersome for us and inconvenient for the customer. With a little focus, we had it fixed in a week!

What do you think your biggest personal challenge is going to be in this job?

Part of what attracted me to this job was the scale of ambition to improve the service we provide – and help take the ombudsman service forward. Getting the right balance between focus on the immediate operational challenges – while building for the future – will be critical. That’s what makes this job so exciting.

When did you last complain about something yourself? Did you get the problem sorted to your satisfaction?

Well, recently I had cause to complain to HM Revenue & Customs, who refused to answer my query on the phone and insisted that their process required me to send them an email! I wasn’t too impressed by that.

I also had an unhappy experience at a restaurant a few weeks back. As I’d organised the evening and chosen the restaurant, I felt personally responsible when the service and food turned out to be pretty poor. Actually, I think most restaurants are much better at handling these situations nowadays. And certainly on this occasion, they handled it well, taking the unsatisfactory meals off the

bill, providing a complimentary bottle of wine, and most importantly, recognising why we were unhappy and apologising to us.

Googling your name brings up the actor who used to play DCI Jack Meadows in *The Bill*. So is acting what you do to relax after work?

No – the peak of my acting career was playing the shepherd in the school nativity play. Nowadays, as I have two young children, relaxation comes rarely. But when time permits, I enjoy being hit around a squash or tennis court by far better players.

And finally, in a year’s time what would you like to say you’d achieved in your first year at the ombudsman service?

I want to be able to say at least three things in a year’s time. First, that I’ve built up a great operational team around me to work together on the challenges ahead. Second, that we’ve made a significant step forward in further modernising our operations, to maximise value-for-money and efficiency. And finally, that we’re delivering an experience for our customers that we can be proud of and that our stakeholders tell us is constantly improving. ❖

Banking complaints about disputed debit card transactions

We regularly receive banking complaints involving disputed debit card transactions. Typically, the consumer says that their current account was debited with transactions they did not make. However, the bank refuses to refund the amount in dispute, saying the consumer must have known about the transactions as they were carried out with a genuine card and the correct PIN.

Our approach when dealing with these disputes is set out on our website, in the note on *disputed transactions* in our online technical resource. The precise questions we will ask depend on the circumstances of the individual case but are likely to cover the whereabouts of the consumer at the time of the disputed transaction, their previous use of their card, and how the transaction was verified (for example by inputting the PIN). Information we will require from the bank normally includes, among other things, its electronic audit trail for the disputed transaction and for any related transactions (such as balance enquiries) that preceded or followed it.

It is not uncommon – in cases of this type – for consumers to assume they must have fallen prey to fraudsters. There are often reports in the press about scams involving plastic cards and about the ever-more sophisticated electronic devices used by criminals to access bank details.

When looking into the cases referred to us we will certainly consider the likelihood that some kind of scam may have been employed. However, in the vast majority of the cases we see, there is a far more down-to-earth explanation for the disputed transactions.

As the following case studies illustrate, our investigations sometimes reveal that the bank has made a straightforward error. And we sometimes find that the consumer was careless with their card and PIN or had genuinely forgotten that they had, after all, carried out the transaction themselves or authorised a friend or relation to do so.

■ **89/5**
**consumer queries unauthorised
transaction on his current account**

An elderly consumer, Mr M, asked his bank to explain why a cash withdrawal of £150 had been debited from his current account. Mr M said he had never withdrawn the money. However, the bank told him the transaction had been carried out using his debit card and the correct PIN. The bank therefore thought it probable that he had withdrawn the money himself, and then forgotten about it.

Mr M denied this and said he would certainly have remembered withdrawing such a large sum in cash.

The bank then suggested that he might have '*lent*' his card and PIN to someone else, perhaps so that they could obtain some cash on his behalf.

Mr M later told us that, by this time, he had become '*very frustrated by the bank's refusal to accept that it might have made a mistake*'. He said he was worried that '*even more money might disappear*' from his account in the same way. And he was concerned that he would be unable to convince the bank that he had not taken the money himself. Unable to resolve the issue with his bank, Mr M came to us. ►

... we decided that this *'proof'* was not as convincing as the bank had suggested.

complaint upheld

We established that a pension payment of just over £100 was credited to Mr M's current account on the 23rd of each month. And on the following day, he always withdrew exactly £100 from the same cash machine in his home town. It was generally the only withdrawal that Mr M made from this account.

The disputed transaction had been made just after 2pm on a Thursday afternoon in Cambridge, some 45 miles away from Mr M's home. Mr M had already told the bank that his card had never left his possession, so we asked if he could confirm where he had been on the day in question.

Mr M provided a statement from Mrs G, the manager of a charity shop situated close to where he lived. She said that Mr M had been on the shop's rota of volunteers for several years – and that he always helped out on Mondays and Thursdays. She kept detailed records and was able to confirm that he had been working in the shop on the day

of the disputed transaction. She said that *'as usual'* that day, he had come in at 11am and worked through until just after 1.30pm.

The bank had not been able to produce any evidence that Mr M had been careless with his card or his PIN. But it sent us information that it said provided *'clear proof'* that Mr M's card and PIN were used to make the withdrawal. After making an independent assessment of this information, we decided that this *'proof'* was not as convincing as the bank had suggested.

On the basis of all the available evidence, we concluded that Mr M had neither withdrawn the money himself nor given anyone else the means to do so.

We upheld the complaint and said the bank should refund the £150 to Mr M's account. We said it should add interest at 8% per annum, for the time the money was missing from the account. We said the bank should also pay him £100, to reflect the distress and inconvenience he had been caused. ■

■ **89/6**
consumer reports unauthorised transactions on his current account after the theft of his wallet and plastic cards

Mr A contacted his bank and asked it to cancel his cards after he discovered that his wallet had been stolen.

In addition to a credit card issued by the bank, there had been two debit cards in his wallet – one for his ‘main’ current account, held jointly with his wife, and the other for the current account, held in his sole name.

Not long afterwards he was concerned to find that transactions he did not recognise had been debited from the current account held in his sole name. These transactions totalled £1,552.58 and included purchases made in several shops, together with two cash machine withdrawals.

The bank told him there was nothing to indicate that any of these transactions had been fraudulent. They had all been carried out by someone using the correct card and PIN.

Mr A told the bank he was upset by the implication that he had carried out the transactions himself. He said he was always careful with his PIN and could only conclude that a fraudster had made a ‘*lucky guess*’ or had ‘*somehow found the PIN from information stored*

electronically in the card or the cash machine.’

The bank thought the most likely explanation was that Mr A had left a note of his PIN with the card. And it insisted that as there was no evidence of fraudulent activity, it was unable to refund the disputed amount. Mr A then referred his complaint to us.

complaint not upheld

Mr A provided evidence that he had reported the theft of his wallet to the police – and that he had asked for all his cards to be cancelled. Unfortunately, because there had been some delay before Mr A realised his wallet was missing, the disputed transactions had already been made by the time he contacted the bank. ▶

**... he had neither
 withdrawn the money himself
 nor given anyone else the
 means to do so.**

... the disputed transactions had only been possible because he had not taken reasonable care of his PIN.

These transactions were all made with just one of the cards – the debit card for Mr A's personal current account. We noted that Mr A did not use his account at all frequently and it was over eighteen months since the debit card had last been used.

Mr A had told us that he had a different PIN for each of his cards. We noted, from the audit trails and other information supplied by the bank, that an attempt had been made to withdraw money using each of the cards in the stolen wallet in turn.

In each instance, only one PIN had been entered – the same PIN that had eventually proved successful when used with the debit card for Mr A's personal account.

After considering all the evidence, we thought it very unlikely that the thief had either guessed the correct PIN or obtained it by any technological means.

We accepted that Mr A had not made the disputed withdrawals himself. But we thought that he had probably written down the PIN for the card he used with his personal account (the card he used least often) and kept it, with the card, in his wallet. The thief was then able to try the PIN with each of the cards in the wallet until he found the card it worked with.

We decided that the disputed transactions had only been possible because Mr A had not taken reasonable care of his PIN. We did not uphold the complaint. ■

... She told the bank she thought fraudsters must have targeted that particular store.

■ 89/7 consumer reports suspected fraud after unauthorised cash withdrawal from her account

Miss L complained that her bank would not reimburse her for a cash withdrawal of £250 that she insisted she had neither made nor authorised. The money had been withdrawn from a cash machine inside her local supermarket.

She admitted visiting the store around the time the transaction had taken place. However, she said she had only used her card to pay for groceries – not to withdraw cash.

Miss L told the bank that she thought fraudsters must have targeted that particular store, as a friend had a similar experience. She said he had been to the same supermarket a day or so earlier – and later discovered that unauthorised cash withdrawals had been debited from his account.

The bank told Miss L that whoever had made the disputed withdrawal from her account had used the correct PIN. The bank therefore concluded that she had either carried out the transaction herself or otherwise authorised it. Unhappy with this response, Miss L brought her complaint to us.

complaint not upheld

It was clear from the audit trail provided by the bank that Miss L's debit card and PIN had been used for the disputed transaction.

We asked Miss L if her friend was willing to tell us more about his own experience involving the same cash machine. Miss L said he did not want to get involved, as he was now *'not certain exactly which cash machine had been used.'* ▶

... there had been no other reports of suspicious activity at that particular cash machine.

We noticed that just ten minutes before the disputed withdrawal, Miss L's debit card was used at a self-service checkout machine in the same store, to pay for some groceries. That transaction appeared on the same bank statement as the cash machine withdrawal and had not been disputed.

The bank confirmed that there had been no other reports of suspicious activity at that particular cash machine. And Miss L's longer account history showed that it was not uncommon for her to use that cash machine shortly after buying groceries in the store with her debit card. The amounts she withdrew in cash generally varied between £200 and £250.

We concluded from the evidence that there was nothing to support Miss L's claim that she had neither made nor authorised the disputed withdrawal. We did not uphold her complaint. ■

■ 89/8

consumer complains of poor service and inadequate compensation after bank debits her account with unauthorised transactions

As soon as she discovered that her purse had been stolen, Ms T rang her bank and asked it to cancel her debit card. Several weeks later she checked her bank statement and saw that the bank had debited her current account for two transactions that she did not recognise. The transactions, totalling £279.42, were made after the bank had told her that her card was cancelled.

After investigating Ms T's complaint, the bank eventually accepted that the transactions had been fraudulent.

It refunded the money to Ms T's account but she remained far from happy. She said the bank had taken '*far too long to grasp what had gone wrong*'. She also complained that it had taken several weeks to send her the forms it had required her to complete before it would investigate the problem.

... the bank took over three months to finish its investigation and re-credit her account.

The bank offered Ms T £100, in recognition of the inconvenience she had been caused.

Ms T thought £150 would be a more appropriate sum. She said that the transactions would never have been made if the bank had acted more promptly to cancel her card. So she thought the bank should have refunded her account as soon as she queried the transactions, rather than spending time on an investigation. When the bank refused to increase its offer of compensation, Ms T came to us.

complaint upheld

We noted that the disputed transactions had been made some while after Ms T reported her card stolen. We were therefore satisfied that she should not have been held liable for them.

We also noted that there had been a delay of over three months before the bank finished its investigation and re-credited Ms T's account. The bank was unable to explain this delay.

In the circumstances, we agreed with Ms T that the bank should pay her £150, in recognition of the inconvenience it had caused her. ■

■ 89/9

disputed transaction made with debit card

Mr C complained to his bank when he found a debit card transaction that he did not recognise on his bank statement. A payment of £27.50 had been made in an off-licence in the town where he lived.

Mr C said he had never visited that particular off-licence and he asked the bank to refund his current account for the amount it had *'debited in error'*. ►

... she said the bank had taken *'far too long to grasp what had gone wrong'*.

... the bank suggested that he might simply have forgotten he had visited the off-licence that evening.

The bank told him the payment had been made using the correct PIN with his bank card. The transaction had taken place just after 8.30pm on a Saturday evening – and the bank suggested that Mr C might simply have forgotten that he had visited the off-licence that evening.

Mr C again insisted that he had not made the payment. The bank then told him it could only conclude that he had authorised someone else to carry out the transaction.

Mr C strongly denied this and he asked the bank to carry out a more detailed investigation. When it refused to do this, Mr C brought his complaint to us.

... the facts of the case did not suggest to us that this was a sophisticated fraud.

complaint withdrawn

We asked Mr C if he had any evidence that would show he could not have been in the off-licence when the disputed transaction took place.

He told us he had been playing in a five-a-side football game at the local leisure centre that evening.

He gave us details of the timings of the fixture and said we could check that he had been playing if we contacted the match organisers, the other team members – or indeed anyone who had been watching the game.

He also told us he had been accompanied to the match by his teenage son and the son's classmate, who had gone along to support the team.

We looked at the audit trail for the disputed transaction, together with related information provided by the bank. We were satisfied from this that the payment had been made with Mr C's genuine card.

The PIN for that card was the day and month of his son's birthday. And whoever used the card for the disputed payment had entered the correct PIN at the second attempt.

Mr C said he was sure the only explanation was that someone had 'cloned' his card. But the facts of the case did not suggest to us that this was such a sophisticated fraud.

The transaction had taken place not long after the start of the football match – and in an off-licence just five minutes away from where the match was taking place. It was a relatively modest transaction and whoever used the card had entered the correct PIN on the second attempt.

We phoned Mr C to discuss the case. As a result, he told us he would make some enquiries of his own. The following day he rang us to say he no longer wished to pursue his complaint. ■ ■ ■



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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. Why doesn't the ombudsman service restrict itself to dealing *only* with the specific arguments that a consumer raises when making a complaint? You seem to look *behind* what a consumer has actually said rather than just sticking to the points they have mentioned.

A. The way in which consumers express complaints about financial businesses can vary considerably. Some present *specific* reasoned arguments about the matters they are complaining about. But most consumers set out their complaints in more general terms. And some of them use simplified templates from newspapers or websites, while others are represented by commercial claims-management companies, which may use standard letters that make little reference to the particular details of the individual case.

Some businesses have suggested that we should *only* pursue complaints where consumers specifically raise relevant arguments. But we do not expect consumers to present their case to us as if they were making a formal set of legal '*pleadings*'. The ombudsman service was set up to resolve complaints '*quickly and with minimum formality*'. As an alternative to the civil courts, our aim is to '*level the playing field*' between the consumer and the business. So 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)*] – when the court considered a dispute involving pensions advice. The ombudsman had upheld the complaint on the basis of points that were not explicitly raised by the consumer himself – and the judge agreed with the ombudsman's approach. (There is more information about this case in the FAQ section of our website).

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 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 the consumer has raised – to review the *underlying* grievance or complaint. We will focus on the substance of the complaint – not on the precise terms in which the consumer expressed their concerns.

Businesses are required by the FSA's rules to take a responsible approach in considering complaints – however they are made. And it is not appropriate or fair for businesses to interpret consumers' complaints in an over-prescriptive or technical way – so as to side-step the general thrust of the consumer's concerns. We note that the FSA has made similar points to businesses in its own observations about complaints-handling.