Ombudsman news

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

Natalie Ceeney, chief executive and chief ombudsman

issue 91

Transparency

Openness and transparency are particularly topical right now. Issues surrounding access to – and publication of – information that was not previously publicly available are currently exercising many politicians and policy-makers. The expectation of openness – on the one hand – and the right to privacy – on the other – is something that is always at the forefront of our minds at the Financial Ombudsman Service, as we work to find the right balance between the two.

It is now more than two years since we reached the end of a lengthy public consultation concerning the publication of data on the complaints we receive about named financial businesses. Initially, the proposal that we might release such data was considered controversial. However, the information we subsequently made public was much better received and understood than many people feared. And now, most people not only accept that we *should* be publishing this information – they are asking for more.

Financial Ombudsman Service

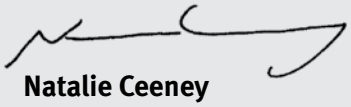
This is, of course, very much a reflection of what is happening in society more generally – with rapid changes in technology making it ever-quicker and easier for people to get access to information of all kinds. This in turn fuels a demand for yet more data.

We are currently preparing to start the annual round of consultation on our *corporate plan and budget* for the next financial year. And transparency is one of several major projects we will be working on over the coming year. What does greater transparency mean? What more can we make available – to whom – and about which areas of our work?

We greatly welcome debate on these issues and will be consulting all our stakeholders as we examine the costs and benefits of transparency and how it fits with our other priorities and responsibilities.

Meanwhile, in this last issue of *Ombudsman news* for 2010 we take the opportunity, on page 18, to tackle some of the myths about the ombudsman service that I and some of my colleagues have come across during the year, particularly when talking to some of the smaller businesses that generally have less direct contact with us.

We also feature a selection of recent complaints involving a variety of different financial products, where the consumers concerned are also involved in family disputes or encountering serious difficulties in close personal relationships. This may not seem a particularly cheerful topic for the time of year. However, it reflects the reality that complaints such as these, where consumers find themselves in difficult or distressing circumstances, reach us as often during the festive period as they do throughout the rest of the year.



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A selection of recent financial complaints involving family disputes and difficulties in close personal relationships

This month we feature a variety of recent cases where consumers are in dispute with a financial business and *also* in dispute with a family member – or experiencing serious difficulties in a close personal relationship.

In some instances a difficult domestic situation – such as the aftermath of death, separation or divorce – has been the trigger that leads to a financial complaint. In other cases, underlying family tensions or communication breakdowns have contributed to – or complicated – a problem with a financial product or service.

It is, of course, by no means unusual for us to see complaints where the consumers concerned find themselves in difficult or distressing circumstances. Dealing with such cases requires a high degree of sensitivity – coupled with objectivity – as we disentangle the consumer's personal and family issues from those that relate solely to the financial complaint – in order to analyse the facts and reach a fair and impartial conclusion.

91/1

bank ignores instructions to prevent withdrawals from joint account after married couple separate

The relationship between Mr and Mrs G had deteriorated to the extent that they decided to separate. Mrs G moved out of the family home and told her bank that she and her husband were getting divorced.

Mr and Mrs G each had a personal current account at the bank – together with a joint account. Mrs G asked the bank to place a restriction on the joint account, preventing any withdrawals. She also gave the bank her new address and asked it to keep this confidential, as she did not want her husband to know where she was now living.

Just over a month later, Mr G caused a disturbance one night outside the flat that Mrs G was renting. And on several occasions over the next few days, Mrs G returned home from work to find that messages from her husband had been put through her letterbox.

When she emailed her husband to ask how he knew her address, he said he had seen it on a computer screen at their local branch. He told her he called in at the branch to discuss the direct debits on his personal account. A member of staff had taken him to a side office and had initially opened the screen showing Mrs G's details – presumably by mistake. The staff member had then been called away for a couple of minutes. While he was out of the room, Mr G was able to look at all the information on screen and to make a note of his wife's new address.

Mrs G then checked the transactions on the joint account and found that her husband had recently withdrawn £300. When she complained to the bank, it apologised for its '*oversight*' in allowing the withdrawal. It said it would refund £300 to the joint account and pay Mrs G £100 for the distress and inconvenience caused by its failure to keep her details confidential.

Mrs G thought the bank's offer was '*insufficient*', as she did not think the bank had '*properly acknowledged the seriousness of its error*'. She therefore referred her complaint to us.

complaint settled

We said that once Mrs G had told the bank that she and her husband had separated, it had a duty to take particular care in its handling of their accounts. And we said the bank had been right to refund the £300. This restored the account to the position it was in before the bank mistakenly allowed Mr G to make a withdrawal.

... she told the bank she did not want her husband to know where she was now living.

We also thought the bank was right to compensate Mrs G for the distress and inconvenience caused by its failure to keep her details confidential. However, we said that in the particular circumstances of this case, £350 would be a more appropriate sum. The bank agreed to increase its offer and the case was settled on that basis.

91/2

consumer says bank failed to notify her of her brother's mortgage arrears on a property in which they both had an interest

Mrs K and her brother, Mr T, inherited a house from their aunt. The house had been remortgaged very shortly before their aunt's death and they took over the mortgage in joint names. However, they agreed between themselves that as only Mr T would be living in the house, he would be solely responsible for the mortgage repayments. If they eventually sold the house, they would split the proceeds between them.

Mrs K and her brother did not keep in touch and it was purely by chance, over a year later, that she found out the bank was about to repossess the house, as Mr T had fallen seriously behind with the repayments.

The bank was unable to sell the house at a high enough price to completely repay the amount outstanding on the mortgage. Mrs K reacted angrily when the bank told her that she and her brother were jointly responsible for clearing the remaining debt.

She said that if the bank had considered her to be '*in any way*' responsible for the situation, it should have told her about the mortgage arrears as soon as they began to build up. As it was, she said she had not known about the problem until it was too late for her to do anything about it.

... we said the bank was not responsible for the lack of communication between her and her brother.

The bank pointed out that the mortgage was in joint names and that all correspondence about it had been addressed jointly to her and her brother and sent to the mortgaged property. It said Mrs K had never queried this or asked it to send correspondence to her separately, at a different address.

In response, Mrs K insisted that she was not responsible for her '*brother's problem*'. Unable to reach agreement with the bank, Mrs K eventually brought her complaint to us.

complaint not upheld

Mrs K said it had never crossed her mind to ask the bank to send correspondence about the mortgage to her at her home address. She had considered it Mr T's responsibility to '*deal with all the paperwork*', as he was the one who lived in the property. He had never shown her any of the bank's letters about the arrears or told her he was in difficulties with the payments. She said this was '*no surprise*' as they rarely spoke to one another.

There was no disagreement over the amount of the arrears. And Mrs K admitted she could not have afforded to contribute to the mortgage payments, or to pay the arrears, even if she had known about the situation at an earlier stage.

She did not dispute that when she had inherited the house and taken on the joint mortgage, she had been clearly informed that she and her brother were jointly responsible for the repayments.

We said the bank could not reasonably have known that she had never seen the letters it sent to her and her brother jointly at the mortgaged property. Nor could it be held responsible for the lack of communication between her and her brother. And we noted that she would not have been able to prevent the repossession by paying the arrears, even if she had known about them.

So we told Mrs K that the bank was not acting unfairly in refusing to waive her liability for the amount still outstanding on the mortgage. We did not uphold the complaint. ■

91/3

consumer claims he had to pay increased divorce settlement because of bank's breach of confidentiality

Mr and Mrs D had separated and were going through a divorce. They had agreed that, as part of the settlement, Mrs D would take over sole ownership of the business they had been running together for the past five years.

Not long before matters were finalised, Mrs D told her husband she would be asking the court for an increased settlement. She had discovered there was nearly £73,000 more in his current account than he had led her to believe. When he asked how she knew this, Mrs D said she found out when she asked the bank to confirm some details about their business account.

Mr D then complained to the bank. He said he had never shared the details of his personal account with his wife, even at the start of their marriage, so she could not have known the balance of his account unless the bank had told her.

He therefore thought the bank should reimburse him for the additional amount he would now have to pay in the divorce settlement.

Mrs D was unwilling to say exactly how she acquired the details of her husband's personal account.

The bank conceded that she might have discovered this information when she came into the branch. However, it stressed that there was no evidence that it had been responsible for any breach of confidentiality. The bank also pointed out that full details of Mr D's finances would, in any event, be disclosed as part of the divorce proceedings.

The bank eventually offered to pay Mr D £250, to reflect any distress and inconvenience he had been caused. But it said it could not be held responsible for the increased settlement that he said Mrs D was now demanding. Unhappy with this, Mr D referred his complaint to us.

complaint not upheld

The bank had admitted that it could not be certain it had not inadvertently revealed information about Mr D's personal account. However, as it had noted, he could not have continued to keep this information secret from his wife. He was legally required to provide details of all his financial affairs as part of the divorce proceedings.

We told Mr D we thought the bank's offer of £250 was very reasonable, in the circumstances. We did not uphold the complaint. ■

91/4

dispute over unauthorised withdrawals from current account

Mr M complained that the bank had made some errors on his current account. His statement showed a number of cash machine withdrawals that he did not recognise and the balance was far lower than he thought it should have been.

The bank did not accept that it had done anything wrong. It said that all the disputed transactions had been made with Mr M's debit card and PIN – and on each occasion the PIN had been entered correctly at the first attempt.

When Mr M insisted that he knew nothing about these transactions, the bank said the only other possibility was that he must have been '*grossly negligent*' with his card and PIN. Mr M then brought his complaint to us.

complaint settled

We were satisfied, from information supplied by the bank, that the disputed withdrawals had all been made with Mr M's debit card and PIN. So we discussed the situation with Mr M and asked if anyone else might have had access to his card.

He told us that several weeks before he complained to the bank he had caught his teenage daughter stealing money from his wife's handbag.

He had thought this was just a '*one-off*' incident at the time. However, he had since discovered that his daughter had developed a drug habit. He said that '*with hindsight*', he now thought she was probably responsible for the cash withdrawals.

We then talked to the bank. From the evidence, it seemed more likely than not that Mr M's daughter had made the withdrawals without his authority.

We said that – in normal circumstances – Mr M could not be considered '*grossly negligent*' for having kept his card in his wallet, rather than under lock and key, in his own home. And it was quite likely that any close family member would have had plenty of opportunity to observe him using his PIN. So again – in normal circumstances – he could not be considered '*grossly negligent*' for not having prevented this.

However, we said that after he discovered his daughter stealing cash, he should have taken precautions with his card and changed or guarded his PIN – to ensure she could not get access to his account.

We suggested that the bank should refund Mr M's account with the cost of the withdrawals made *before* the date when he caught his daughter stealing. We said he should bear the cost of those made *after* that date. The complaint was settled on that basis.

91/5

consumer says credit broker misled her into signing an agreement that made her jointly liable with her son for any missing payments

Mrs E said she had been misled by the credit broker who set up a finance agreement so that her son could buy a car. The agreement had been taken out in joint names and Mrs E contributed the whole of the first monthly payment.

For the next three months, each payment was made by her son. However, he soon started missing payments altogether and eventually the finance provider began to pursue Mrs E for the arrears.

She refused to accept any responsibility for the missing payments. She said that before buying the car she had come to a clear understanding with her son that she would only pay for the first month. He would be responsible for all the subsequent payments.

The finance provider told her that whatever private arrangement she and her son had made, they had signed a *joint* finance agreement and she was therefore jointly liable for the arrears.

Mrs E then contacted the credit broker. She said he had '*misinformed and misled*' her about the nature of the agreement. She said her intention had always been that she would contribute the initial payment and that her son would make all the subsequent payments. She also said that by '*setting up the wrong type of arrangement*', the credit broker had caused her a considerable amount of stress. She and her son had fallen out over the situation and he was no longer speaking to her.

The credit broker rejected Mrs E's complaint. He said he had given her all the relevant information before she signed the agreement. And he said he had made it very clear that she would be jointly liable for the debt if her son defaulted on the loan. Unhappy with this response, Mrs E then came to us.

complaint not upheld

The credit broker sent us copies of the documents he had given Mrs E. These included a brochure describing the nature of the finance arrangement and a copy of the agreement that both Mrs E and her son had signed. We noted that the wording and layout of both documents was very clear.

We pointed out to Mrs E that she had signed a straightforward agreement that she was jointly liable with her son for the repayment of the whole loan. We asked her to explain why she thought the agreement had been misrepresented to her – and how the credit broker had misled her. She was unable to give us any plausible explanation.

We did not uphold the complaint. We said there was no evidence to suggest that she had been misled or that she had failed to understand the obligation she was taking on. ■

91/6

consumer complains that finance business should have ensured loan repayments were affordable before approving her application

Ms T complained that a finance business was pursuing her for a debt she was unable to afford. She maintained that the business should have checked that she could afford the repayments before it lent her the money.

She said her partner at the time, Mr C, needed to buy a car but had run into difficulties obtaining finance because of his poor credit rating. He had therefore persuaded her to take out a loan herself in order to buy the car.

She said he promised to give her a cash sum each month to cover the repayments. However, after a couple of months he started paying a smaller amount and eventually he left her, taking the car with him.

When the finance business contacted Ms T about the arrears, she argued that the fault lay with the business itself for never having made proper checks about her financial circumstances.

The business did not accept that it was in the wrong. It said it had acted entirely responsibly and had put her loan application through the normal process of credit checks and credit-scoring, based on the information she had provided. It therefore saw no reason why she should not be held liable to repay the amount she borrowed.

Unhappy with this response, Ms T came to us.

complaint not upheld

We noted that in processing Ms T's application, the business had fully complied with the *Finance and Leasing Association* code. The application form, which Miss T had completed and signed, stated that she was in full-time employment. However, when she made her complaint to the business she had said she was unemployed.

We asked Ms T to explain why she considered the loan to have been unaffordable from the outset. We also asked her to tell us more about her employment history.

We eventually established that she had been unemployed at the time she applied for the loan and had not been in work since then. She told us it had been Mr T's idea that she should say she was in employment, as it seemed unlikely she would get the loan otherwise.

We did not uphold the complaint. ■

91/7

insurer refuses to pay claim for theft and damage caused by policyholder's former partner

Six months before the date set for her wedding, Ms C moved in with her fiancé, Mr J. Shortly after that she discovered he was having an affair with a work colleague. Ms C decided to end the engagement immediately and after gathering up as many of her belongings as she could easily carry, she went to stay with her sister.

Three months later, Mr J returned home from a few days' holiday to find that someone had broken into his house. A considerable amount of damage had been done to the interior and all the clothes in his wardrobe had been sprayed with paint. A number of Mr J's personal possessions were missing, as were most of the items belonging to Ms C that she had left behind when she moved out.

The police confirmed that there was no sign of any forced entry and Mr J told them the most likely culprit was Ms C. He said he had not seen her since the evening she had left him but he thought she still had a key to the house.

In due course, the police arrested Miss C and brought charges against her for theft and for damage to his house and property.

Mr J was kept waiting for a number of weeks for any response after he submitted a claim to his insurer. When he asked the reason for the delay, he was told that his paperwork had been temporarily mislaid but that it had since been located. Then over the next few weeks he was twice asked for information that he had already provided. The insurer eventually told him it would not pay the claim. It said his policy did not provide cover where '*damage and/or theft were caused by a person or persons legally entitled to be in or on the buildings*'.

Mr J argued that this was unfair, in the circumstances, but the insurer would not reconsider the matter. He then brought his complaint to us.

complaint upheld

We noted that the incident had occurred three months after Ms C had moved out of the house. It was clear that neither party wanted anything more to do with the other, and we saw evidence that all the wedding arrangements had been cancelled shortly after Ms C had left.

We said that the policy exclusion was not, in itself, unreasonable. However, we thought that in the particular circumstances of this case it had been applied unfairly. We upheld the complaint and said that the insurer should settle Mr J's claim in full.

We said it should also pay Mr J £250 for the stress and inconvenience he had been caused by its initial delay in processing his claim.

91/8

insurer takes payments from third party's account on the basis of a fraudulent signature

Mr V complained that an insurer took payments from his bank account without his authorisation after he helped his stepson, Mr H, by paying the first premium on his policy.

Mr V said his stepson needed to take out an insurance policy but was '*temporarily unable*' to pay the initial premium of £500. Rather than lending him the money, Mr V had made the payment direct to the insurer over the phone, using his debit card. Mr V said that there had never been any suggestion that he would pay for more than that initial premium – and Mr H had promised to pay the £500 back to him within the next few weeks.

A few months later, Mr V was still waiting for his stepson to pay back the money when he discovered that the insurer had taken a further payment from his account – this time for £1,600.

Alarmed to discover that Mr H had moved out of his flat without leaving a forwarding address, Mr V then contacted the insurer and asked why the money had been taken from his account without permission.

The insurer strongly denied having done anything wrong. It said that Mr H had fallen behind with his premiums and that the £1,600 payment had covered the arrears, together with associated charges. The insurer said it had a statement signed by Mr V that authorised it to take payments from his account if Mr H failed to pay his premiums. Very unhappy with the situation, Mr V then came to us.

complaint upheld

We established that when the insurance was first set up, Mr H had been sent details of the policy, together with several forms that he was required to complete and return. These included a statement agreeing that if he failed to pay any subsequent premiums, the insurer could take the money from the card used to make the initial payment. The holder of the card in question was required to sign this statement.

When Mr V saw a copy of the statement, he said his stepson must have signed it, using Mr V's name. Mr V said he would never have signed it himself, if he had been asked to do so.

We noted that the policy was applied for in Mr H's sole name and he was described as the '*primary payee*'. Mr V was not mentioned at all on the form. In our view, this confirmed Mr V's assertion that it had never been his intention to pay the premiums for his stepson.

We also noted that the signature on the insurer's statement did not match Mr V's signature. We said that in the particular circumstances of this case, the insurer should refund the £1,600 to Mr V, together with interest. ■

91/9

consumer says bank incorrectly allowed his sister sole access to their late father's current account

Dr K, who was in his eighties, set up a joint current account with his daughter, Mrs G. Because of a disability he had become increasingly reliant on her to do his shopping and pay his bills, so this arrangement was convenient for both of them.

A couple of years later, Dr K died. He specified in his will that his estate should be divided equally between his son and daughter. However, his son was concerned to find that the bank had arranged for the joint current account to be transferred into Mrs G's name only.

Mr K complained to the bank, arguing that the account should never have been put in his sister's sole name as he was now entitled to half of whatever money was in it.

The bank did not agree that it had done anything wrong. It told Mr K it had followed standard procedure and that as Mrs G was the surviving joint account holder, the funds in the account were hers. Mr K then brought his complaint to us.

complaint not upheld

We noted that the funds in the joint account were not part of the late Dr K's estate and were not covered by his will. We explained to Mr K that the bank had correctly followed standard procedure when one of the parties to a joint account dies.

Mr K felt the situation still left him '*seriously disadvantaged*'. He asked us to intervene on his behalf and to suggest to Mrs G that '*as a matter of natural justice*', she should share with him the contents of what had formerly been the joint account.

We explained that it was not for us to get involved in what was a private matter between him and his sister. We did not uphold his complaint. ■

91/10

bank wrongly allows withdrawal from joint savings account

Mrs Q complained to her bank after discovering that her husband, from whom she had recently separated, had withdrawn money without her knowledge from the savings account set up for the benefit of their young daughter.

She and her husband were joint trustees of the account and the bank should have required both their signatures before allowing the withdrawal of any money. However, following their separation Mr Q had been able to make several withdrawals, totalling £1,100, without his wife's signature.

The bank apologised for its error in not obtaining both signatures. It reimbursed the account with the £1,100 that Mr Q had withdrawn and it offered Mrs Q a payment of £100, '*in recognition of the distress and inconvenience caused*'.

Mrs Q did not think this was sufficient to resolve the matter. Her husband had said he took the money from the account in order to pay for the holiday that he and his daughter had recently taken. Mrs Q had been under the impression he paid for the holiday '*from his own money*'.

She thought it '*quite improper*' that the bank should have allowed him to '*spend his own daughter's money to try and regain favour with the child*'. She therefore wanted the bank to force him to pay the money back.

She also thought the bank's offer of £100 for her own distress and inconvenience was '*not enough to punish the bank for the seriousness of its mistakes*'.

Unable to reach agreement with the bank, Mrs Q brought her complaint to us.

complaint not upheld

We accepted that Mrs Q had been distressed that the bank had allowed her husband to withdraw money from the account without her signature. However, the bank had admitted its error and repaid the money. So we told Mrs Q that her daughter had not been disadvantaged by the bank's mistake.

We explained that it was not for the bank to specify how the funds could be spent – and the bank could not require her husband to repay the money, as she had wanted it to do.

We also explained that the bank's offer to pay her £100 was a reasonable one, in the circumstances. The purpose of such awards is to provide compensation for distress and inconvenience – not to punish businesses for their mistakes. We did not uphold the complaint.

91/11

consumer says bank gave a third party access to a joint account without authority

Mrs B complained that her bank had allowed '*unauthorised access*' to the joint account belonging to herself and her husband. She said that she usually left all financial matters to her husband. However, as he had now '*moved away*' she had started looking more closely at various aspects of their finances.

She had been very concerned to discover that six months earlier the bank had given a debit card to Ms Y, who at that time was the family's au pair. Mrs B complained that this card enabled Ms Y to spend money from the joint account '*without restriction*'. She said that as she had never authorised this, the bank must have acted – incorrectly – solely on her husband's instructions.

The bank told her that, to the best of its knowledge, she *had* approved this arrangement. It sent her a copy of the authorisation that it said she had signed but Mrs B said the signature was not hers.

The bank maintained that there was no discernible difference between that signature and the one it held on its records for her accounts. It therefore refused to accept that it had acted improperly in adding Ms Y to the account.

Mrs B then referred her complaint to us.

complaint not upheld

We looked at the signature on the form that the bank said Mrs B had signed – and compared it with the signature the bank had on file for her. We agreed with the bank that there was no discernible difference.

We then asked the bank to send us details of the expenditure on the account for the six months before and after Ms Y had been able to use it.

The overall amount spent was approximately the same in both periods. However, we noted two significant differences. *After* Ms Y had begun to use the account, regular weekly debit card payments – of roughly similar amounts – were made at a supermarket near Mr and Mrs B's home.

In the six months *before* Ms Y was able to use the account, the debit card had not been used at any supermarkets. But there *had* been much larger cash withdrawals each week than was the case once Ms Y had access to the account.

We asked Mrs B for her comments on our observations. She said she was unable to offer any explanation. However, she admitted that one of Ms Y's responsibilities had been to do the family's weekly food shopping.

She also told us that she had suspected Mr B of having an affair with Ms Y, so she had asked the au pair to leave.

We concluded that Mrs B had probably agreed that Ms Y should have access to the account, in order to make it easier for her to pay for the family's shopping. We suggested to Mrs B that she might simply have forgotten signing the bank's authorisation form – after becoming concerned about the possibility of an affair.

We said there was no evidence that the bank had acted incorrectly. It had properly insisted on obtaining the signatures of both her and her husband before allowing Ms Y to have the debit card. We did not uphold the complaint. ■

■ 91/12
insurer declines claim for damage and theft relating to rented property

Mrs W inherited a house in a town some distance from where she and her husband lived. The town had a large student population and she thought that instead of selling the house, she might instead obtain an income by letting it. She was still weighing up the options when her nephew asked if he could rent the house, as he had just obtained a place at the university nearby.

Mrs W later told us her husband had said she should '*do things properly and formally*' even though she was '*dealing with family*'. She therefore arranged for her nephew, Mr T, and two of his friends to sign a one-year *assured shorthold tenancy* agreement. She insisted on their paying her a deposit of £2,500 against the cost of any damage to the property. She also took out a landlords' insurance policy.

For some months, everything appeared to be working out well – and the rent was always paid on time and in full. But then the student daughter of one of Mrs W's friends, who was at the same university as Mr T, said she had heard '*disturbing rumours*' about the rented property. All the downstairs windows of the house were boarded up and there were stories of '*unusual activity*' and of '*much coming and going at unreasonable hours*'.

After trying without success to contact her nephew, Mrs W and her husband visited the house. They were unable to gain access to the property as the locks had been changed. Mrs W then contacted the police.

In due course the police entered the house and found it had been turned into a cannabis factory. The interior was substantially damaged and most of the furniture and fittings had disappeared. There was no indication that anyone had recently been living there.

... she had heard '*disturbing rumours*' about the rented property.

Mrs W tried again to get in touch with her nephew but had no success. The university term had just ended and he and his friends were thought to have '*gone off travelling*'.

Mrs W then put in a substantial claim to her insurer for malicious damage, vandalism and theft. The insurer refused to pay out, as it said the policy specifically excluded damage or loss caused by any of the tenants.

Mrs W argued that there was no evidence to suggest that her nephew or any of the other tenants had been responsible. She thought the scale of the enterprise suggested that a '*criminal gang*' was involved. And she suggested that this gang must have threatened the students and forced them to hand over the house and go into hiding.

The insurer told Mrs W that as there was no evidence to support her view of events, it was not prepared to reconsider the matter. Mrs W then referred her complaint to us.

complaint not upheld

We noted that Mrs W had discussed the situation in detail with the police. They had told her there was no evidence that her nephew and his friends had been approached by criminals. And there was no evidence that any '*outsiders*' were involved.

We said that, on the balance of probabilities, it appeared more likely than not that Mrs W's tenants *had* been involved in setting up and running the cannabis factory. Given the specific terms of the insurance policy, we said the insurer's stance was reasonable. We did not uphold the complaint.

ombudsman focus:
myths and truths about the ombudsman service

Over nine out of ten businesses we cover don't actually have complaints referred to us by their customers. As these businesses have little or no direct contact with us, many tend to rely on what they hear about us from others – rather than asking us *direct*. This means that myths can circulate which may be several steps removed from the reality.

Here are some of the myths we hear most often about the ombudsman service – and the answers, straight from the horse's mouth.

myth
The ombudsman is a 'quasi' regulator.

truth
The Financial Ombudsman Service isn't any more of a regulator than the courts are. We are part of the statutory arrangements designed to underpin consumer confidence in financial services. But we don't fine or discipline firms – as a regulator can. And unlike a regulator, our role is to resolve *individual* disputes – as a quicker and more informal alternative to the courts.

myth
The ombudsman is a consumer champion.

truth
Research shows that many consumers struggle with officialdom – and find formal procedures challenging and off-putting. This is why we aim to make our process as easy and straightforward as possible – and more accessible and user-friendly than the courts.

But making it easier for people to tell us their side of the story – without feeling confused or intimidated – *doesn't* make us a consumer champion. We're just as concerned to reduce hurdles for smaller businesses – who also tell us that they want as little '*red tape*' and '*bureaucracy*' as possible.

Like the courts, the ombudsman service is entirely neutral in deciding cases. The evidence for this can be seen in the complaints uphold-rates that we publish. In the last quarter these rates ranged between 84% and 4% in favour of consumers, depending on the financial product involved (see *ombudsman news* issue 90 – Nov-Dec 2010).

myth

The ombudsman was imposed on the financial services industry.

truth

The financial services industry itself invented the concept of the ombudsman for the financial sector – through the industry-created *Insurance Ombudsman* (established in 1981) and the industry-created *Banking Ombudsman* (established in 1986).

Credit is due to those industry figures who – back then – recognised that consumers were more likely to have confidence in the industry, and to do business with it, if they were guaranteed redress if something went wrong.

myth

The ombudsman's powers have grown unfettered over the years.

truth

The defining features of the Financial Ombudsman Service today are exactly the same as they were thirty years ago – when they were first agreed by the industry for the *Insurance Ombudsman*. These well-established features are that we:

- are an independent service, free to consumers;
- resolve disputes informally on the basis of what is '*fair and reasonable*' in each individual case;
- can tell a business to pay up to £100,000 to put things right for an individual customer.

ombudsman focus:

myths and truths about the ombudsman service

myth

The ombudsman ignores the law by using 'fairness' to decide complaints.

truth

It is the law itself, laid down by parliament, that requires the ombudsman to decide cases on the basis of '*fairness*' – while complying with the *Human Rights Act*.

The principle of '*fairness*' lies at the heart of modern consumer-protection legislation applied in the courts – including the *Unfair Contract Terms Act*, the *Unfair Terms in Consumer Contracts Regulations* and the '*unfair relationships*' test in the *Consumer Credit Act 2006*.

Most of the complaints we handle turn on disputes about what actually happened – or on the application of general legal principles. In most cases, our approach is based on what the courts would be likely to do in similar circumstances. But in some areas, the standards that the industry has voluntarily imposed on itself (through its codes of practice) exceed the law's requirement.

myth

The ombudsman's approach lacks transparency.

truth

Every year we issue literally hundreds of thousands of decisions, views, opinions and adjudications – sent directly to the individual businesses and consumers whose complaints we settle. So our approach in each case is open and transparent to the parties involved – but not to anyone else.

Some argue this is '*justice behind closed doors*' – while others say that settling complaints out of the glare of publicity is what makes *private* dispute resolution so effective. After thirty years of *not* publishing ombudsman decisions for all to see, we are keen for a debate on this subject. Should we make every decision publicly available? And where does '*privacy*' fit into the transparency debate?

Meanwhile, we continue to set out our procedures and general approach to resolving different types of complaints in a wide

range of publications, all available on our website (named '*website of the year*' by the Plain English Campaign last year, following nominations from the public).

The website includes our *online technical resource* – with technical notes, case studies and further reading on everything from caravan insurance to spread-betting.
The FAQs section of our website also answers the hundred or so questions we are most frequently asked by businesses.

We publish case studies and articles monthly in *Ombudsman news*. And we take part in roadshows, seminars, conferences and other events across the UK – to meet financial services practitioners face-to-face and answer their queries.

Businesses can also contact our dedicated technical advice desk for free advice.
The technical advice desk (phone 020 7964 1400) handles 20,000 calls a year from industry practitioners – and deals with technical queries across the whole range of financial products and disputes we cover.

We understand that a specific complaint may be the first of its kind for the business dealing with it. However, given the breadth of our experience and the extent of our remit, we see few complaints where we haven't already dealt with similar issues before.

So we are keen to talk about our well-established approach to most types of complaint – and to refer to information already available on our website.
But should we be publishing more – and if so, what and how?

myth

The ombudsman uses hindsight to apply today's standards to yesterday's events.

truth

Our rules require the ombudsmen to take account of the law, regulators' rules, and industry good practice *as at the time of the events concerned*. We recognise, for example, that the FSA's ICOBs rules were preceded by GISC standards, which were in turn preceded by ABI codes.

ombudsman focus:

myths and truths about the ombudsman service

myth

The way the ombudsman is funded is unfair – and consumers should have to pay.

truth

All ombudsman schemes in the UK – from the *Parliamentary Ombudsman* to the *Prisons and Probation Ombudsman* – are free to consumers. And this was a defining feature of the ombudsman schemes established by the financial services industry itself back in the 1980s – and the model on which we are based.

80% of our funding currently comes from case fees, so it is based on the number of complaints businesses actually have with us. At £500, these case fees are much less than a business would have to spend if their customers pursued legal action through the courts, rather than bringing their complaint to us to settle.

The first three cases that a business has each year are '*free*'. So over 95% of the businesses we cover don't pay *any* case fees.

The case fee is payable whatever the outcome of the case. If we charged a case fee only if we upheld a case, the fee would have to be much bigger in order to cover all our other costs. And it might then look like we had a financial incentive to uphold complaints.

Where we *don't* uphold a case, it doesn't automatically mean the consumer was wrong to have complained. We see many cases where a clear, helpful and sympathetic explanation by the business – rather than a defensive and legalistic response – would have resolved misunderstandings and prevented the complaint in the first place.

And it doesn't automatically mean that a case has no merit – or that it should be considered '*frivolous and vexatious*' – if a consumer pursues their complaint in an unfocused way that a business may think unreasonable. Last year (2009/10) we concluded that only 0.4% of our total caseload could be categorised as '*frivolous and vexatious*' (0.1% in the year before that).

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. What's the latest on the judicial review on payment protection insurance (PPI) complaints – being brought by the British Bankers Association (BBA) against the FSA and the ombudsman? And how is it affecting PPI complaints with the ombudsman?

On 8 October 2010 – on behalf of a number of high-street banks – the British Bankers Association (BBA) filed papers in the High Court requesting a judicial review of the Financial Services Authority (FSA) and the Financial Ombudsman Service.

This is a legal challenge relating to:

- the FSA's new payment protection insurance (PPI) complaints-handling measures that came into force on 1 December 2010 *and*
- information on our website about the approach we take to consumers' complaints that they have been sold PPI policies inappropriately.

The judicial review is scheduled to take place in the High Court in London during the week beginning Monday 24 January 2011.

At the time the BBA launched its legal challenge, we confirmed that we would continue to deal with PPI complaints, while awaiting the outcome of the court case. This has meant we have continued to receive and process new PPI cases – now being referred to us at a rate of up to 2,500 each week.

This number has been increasing. Many businesses are continuing to handle complaints as normal but some have decided that they will not respond substantively to many PPI complaints until the final legal outcome is known.

The consumers in these cases can still bring their complaints to us – but only once they have first given the business eight weeks (the time the business has to sort out complaints under the FSA's 'DISP' complaints rules).

The increase in PPI cases referred to us by consumers, where the businesses involved have *not* set out their conclusions on the complaints by the end of that eight-week period, means that the rate at which we can settle these cases is now slowing down.

Where businesses do *not* set out clear views on cases, it will be difficult for our adjudicators to resolve cases informally. Inevitably this can only result in further delays and additional costs.

We regret any reduction in service levels for customers with PPI complaints. Consumers and businesses with complaints about *all other* financial products and services will remain unaffected by this.

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