Ombudsman news

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

Natalie Ceeney, chief executive and chief ombudsman

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PPI – a way forward?

I am sure that, by now, every reader of *Ombudsman news* will have heard about the High Court's judgment on the handling of consumer complaints about payment protection insurance (PPI).

In a very clear ruling issued on 20 April, Mr Justice Ouseley rejected, on all counts, the legal challenge on the approach to handling PPI complaints, brought against the Financial Ombudsman Service and the FSA by the British Bankers Association (BBA) – on behalf of a number of high-street banks.

This High Court ruling means that financial businesses should now be following the FSA's rules, which require them to investigate their customers' PPI complaints properly and fairly. The ruling also means that businesses should be working constructively with the ombudsman service to resolve those complaints that they cannot sort out directly with consumers.

Financial Ombudsman Service

The PPI complaints workload has been the biggest challenge the ombudsman service has faced over the last year. In the last twelve months we have received over 100,000 new complaints alleging mis-selling of PPI – more than half of our total caseload and more than double the number of PPI cases we received in the previous year.

The approach taken by the businesses involved in this legal action has meant that we have not been able to resolve as many of these cases as we would have hoped. This has led to delays, uncertainty and frustration for the consumers involved – large numbers of whom have seen little or no progress on their PPI complaints for many months.

As an organisation that aims to provide a good customer service, we have not enjoyed having to explain these significant delays to large numbers of our customers.

This is why – now we have a clear-cut ruling from the High Court – we all need to work together to resolve these complaints as quickly as possible. It will greatly benefit *all* of our reputations to do so.

Natalie Ceeney
chief executive and chief ombudsman

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A selection of recent financial complaints involving gadgets and electrical appliances

The majority of the complaints in this selection relate to the quality of goods that were bought using certain types of consumer credit, although gadgets and electrical appliances also feature in many of the insurance disputes we see.

Some consumer protection laws make the *credit provider* liable, in certain circumstances, for some problems with goods or services that were obtained on credit. The main consumer protection laws we see invoked in disputes of this type are section 75 of the *Consumer Credit Act* and the *Supply of Goods (Implied Terms) Act 1973*.

Section 75 only applies where goods or services are bought using types of consumer credit where arrangements are *already in place* between the supplier of the goods and the provider of the credit. When the consumer uses that credit to make a purchase, this creates the necessary connection between the consumer, the lender and the supplier.

Complaints referred to us are usually about problems with goods bought using a credit card or with a 'point-of-sale loan' (a type of loan arranged through, and paid direct to, the supplier of the goods). Section 75 does not apply to purchases made using a debit card.

In some cases we see, the consumer has bought online, using a credit card on a website that uses a secure third-party payment system to process credit card payments. Section 75 may not always apply to these transactions, because this payment mechanism can break the chain of arrangements that must be in place between the consumer, the lender and the supplier.

Hire purchase agreements are another common form of payment arrangement. Section 75 does not apply to hire purchase but we can deal with complaints about the quality of goods obtained under a hire purchase agreement.

This is because the *Supply of Goods (Implied Terms) Act 1973* says that, in a hire purchase agreement, there are *implied conditions* (conditions the law says you can assume are in the contract even if they are not written there), including conditions that the goods will meet their description and be of satisfactory quality.

93/1
consumer complains to provider of point-of-sale loan after buying video camera

Mr G, who was a self-employed wedding photographer, wanted to buy a video camera so that he could also provide wedding videos. After researching the different makes and models available, he visited a retailer and ordered the camera that he thought would best meet his needs. This camera cost £7,400 and he took a point-of-sale loan in order to pay for it.

The following week, when the camera was delivered, Mr G found he had not been sent the adapter that he thought was included in the price. When he queried this with the retailer, it told him the price did *not* include an adapter.

The retailer said the sales representative would have told him, at the time he bought the camera, that the adapter was no longer necessary because of recent updates to the camera's software.

... he wanted to return the video camera, cancel the loan agreement, and get a refund of his money.

Mr G said that he had not been told this and that he believed the adapter was still necessary in certain circumstances. He also stressed that he had only bought that particular camera because he knew he would need an adapter and had been led to believe it was included in the price.

However, the retailer was adamant that the adapter was no longer necessary and that it would only provide one if he paid extra for it. So Mr G sent a letter of complaint to the finance company that had provided the loan ('*the lender*'). He said that unless he received an adapter – at no further cost – he wanted to return the camera, cancel the loan agreement, and get a refund of the money he had paid so far.

The finance company acknowledged Mr G's complaint but it never contacted him again after that, so he referred his complaint to us.

complaint upheld

Mr G sent us a copy of the sales invoice he had been given. This said he had bought a '*mini shoulder-mount camcorder with 14x lens and related adapter*'. The total price stated on the invoice was the same as the price quoted in the loan agreement.

When we contacted the lender, it told us it did not consider that Mr G had any grounds for complaint. This was because the supplier had said that Mr G had *'not lost out in any way'* as the adapter was no longer necessary.

We then contacted the manufacturers of the camera. They told us that most of the camera's functions could now be carried out without an adapter. However, the adapter was still necessary if the user wanted to make a simultaneous back-up copy of a video recording.

Given that he was a professional photographer, we decided that Mr G would have been well aware that he would need the adapter. The documents he was given at the time of the sale indicated that it *was* included in the cost of the camera. We thought it unlikely that he would have gone ahead with his purchase, if he had been told this was not the case.

We told the lender to *either* ensure that Mr G was given an adapter *or* deduct the retail price of an adapter, together with any related interest, from his loan agreement. We said the lender should also pay Mr G £100 because of the inconvenience it had caused him by its failure to handle the complaint correctly. ■

... we said the lender should pay him £100 because of the inconvenience it had caused him.

■ 93/2

complaint to finance company about whether certain '*extras*' should have been included with car obtained on hire purchase

After collecting the new car that he had obtained on hire purchase, Mr D was very disappointed to find that the car had not been fitted with a CD changer and digital radio. He contacted the dealer and said he had understood that these items were included in the price of the car.

The dealer said they were only provided '*as standard*' for customers who did not select any of the '*optional entertainment extras*' on offer. Mr D had chosen the optional '*rear passenger entertainment package*', so the dealer told him he would only get the CD changer and radio if he paid extra for them.

Mr D then complained to the lender (the finance firm that was providing the hire purchase arrangement). He said he would never have selected the optional items if he had realised he would not then be entitled to get the CD changer and the radio '*as standard*'.

The lender told Mr D he had no grounds for complaint because he had received '*exactly what was specified in the agreement*'. Mr D then referred the matter to us.

complaint not upheld

We asked the lender to send us copies of all the paperwork it had given Mr D at the time of sale. This included a checklist for customers to complete if they wanted to order any optional extras. The checklist stated very clearly, '*Please note, when option for additional entertainment extras is selected, the CD changer and digital radio will not be provided as standard*'.

Mr D accepted that he had been given the checklist and that he had signed and returned it to the dealer, indicating that he wanted the optional '*rear passenger entertainment package*'. He said he could not recall whether he had read the wording in question at the time. However, he agreed that it was clearly written and placed prominently on the checklist. We did not uphold the complaint.

93/3

dispute about quality of solar-powered heating system bought with point-of-sale loan

Mr L was very disappointed with the new solar-powered heating system he had bought with a point-of-sale loan. He contacted the lender and complained that the system had been '*a total waste of money*', as it did not produce sufficient hot water for his family's everyday needs.

The lender arranged an inspection of the system. This revealed a problem with the thermostat, which was then replaced free of charge as the system was still under warranty.

Several months later, Mr L contacted the lender again and asked it to reimburse him for the cost of replacing the system's circulation pump and boiler programmer. He said he had continued to be unhappy with the system's performance after the thermostat was replaced. He had reported the problems he was experiencing to the supplier but had not had any response. He had therefore asked his own plumber to look at the system and put right any faults he found.

After sending an engineer to inspect the system, the lender told Mr L that the work done by his plumber had not been necessary, so it would not cover these costs. Mr L then referred his complaint to us.

complaint settled

Mr L said he thought he was '*fully entitled*' to be reimbursed for the cost of the plumbing work. He also thought he should be able to reject the system on the grounds that it was '*not fit for purpose*'.

... even in the warmer months he had found the solar-powered heating system '*less than adequate*'.

He said this was clear from the fact that he had only been able to keep his house warm during the winter by supplementing the system with several electric fires. And he said that even in the warmer months he had found the solar-powered system '*less than adequate*', as it only seemed to work properly when there was bright sunshine.

We looked at the brochure about the heating system that the supplier had given Mr L. We also looked at the terms and conditions of the guarantee. Both documents stated clearly that '*solar systems are not designed to provide 100% of your heat needs*'. The terms and conditions also stated, '*no guarantee is given regarding the minimum heat output that might be achieved through the system*'.

Mr L accepted that before he placed his order for the heating system he had been told that the system was unlikely to provide all his home heating needs. However, he said had '*not fully realised what that would mean in practice*'.

We told him we were unable to conclude that the system was '*unfit for purpose*' or that the supplier had made false claims for the system or misrepresented it in any way.

However, we noted that Mr L had reported several technical faults within a relatively short time of having the system installed. We therefore arranged for an independent engineer to inspect the system and review the work that Mr L's plumber had carried out.

The engineer concluded that the remedial work done by the plumber *had* been appropriate, in view of the faults Mr L had reported. The engineer also confirmed that the system was now working properly and the faults had not recurred since the work was done.

We thought this indicated that the work *had* been necessary, so we told the lender to reimburse Mr L for the amount he had paid his plumber – and to add interest to that amount. ■

93/4

complaint made to credit card provider about defective mobile phone software

Mr G used his credit card to buy software for his mobile phone from a specialist company. He paid £135 for the software, which came on a disk with accompanying instructions on how to download it on to his phone from his home computer.

A couple of weeks later Mr G went back to the supplier to complain. He said he had installed the software correctly but it had subsequently stopped working. He thought it must have been faulty, so he asked to be given replacement software or to have a refund.

The supplier wanted to inspect the phone but Mr G was unwilling to allow this, so he decided to complain instead to his credit card provider. However, his card provider told him it could not uphold his complaint without evidence that the software was faulty. It suggested that the best way to establish this would be for him to allow the supplier to examine the phone. Unwilling to agree to this, Mr G then referred his complaint to us.

complaint withdrawn

We told Mr G that his card provider was acting reasonably in wanting some proof that the software was faulty. We suggested that he should *either* allow the supplier to inspect his phone *or* obtain his own independent report. Mr G said he was not prepared to do this, as he wanted to maintain the confidentiality of the other items and downloads on his phone. We told him that although we understood his concern about privacy, we would need more information about the problem with the software before we could help him resolve matters. Mr G then withdrew his complaint.

93/5

complaint made to credit card provider about quality and price of mp3 player bought abroad

While she was on holiday in Colombia, Mrs C used her credit card to buy an mp3 player as a gift for her son. However, when she returned to the UK she discovered that it did not work and that she had been charged £100 more than the price she had agreed with the retailer.

Mrs C contacted her credit card provider but it said it could not help as she was unable to produce a receipt. She then referred her complaint to us.

complaint not upheld

We could see from the information the card provider sent us that Mrs C had bought *something* in Colombia. However, there was no conclusive evidence that the transaction related to the mp3 player or, if it did, that the amount Mrs C had been charged was not the price she had agreed.

All that Mrs C was able to tell us was that she had agreed to pay the equivalent of £50 and that she had bought the mp3 player from a small shop that was '*a short walk*' from her hotel. She could not recall the name or address of the shop and she said that although she was sure she had been given a receipt, she had not been able to find it when she returned home.

We explained that there was insufficient information for us to establish whether there had been any misrepresentation or breach of contract, so we were unable to uphold the complaint.

93/6

complaint to hire purchase company that new car was not fit for purpose

Just three months after Mr J obtained a new car on hire purchase, it was so badly damaged by fire that it had to be written-off. The fire officer's note of the incident said that the fire was electrical and appeared to have started inside the car, in the area around the fitted radio and stereo system.

As he had obtained the car on hire purchase, Mr J complained to his lender. He said that the car could not have been '*fit for purpose*' when he was provided with it. He therefore wanted the lender to cancel the hire purchase agreement and refund all the money he had paid to date.

The lender refused to do this. It said there was '*no proof that the faults leading to the accident were present at the time of the sale*'. Mr J then referred his complaint to us.

complaint not upheld

Before Mr J took possession of the car it had been used as a demonstration model in the dealer's showroom. The dealer confirmed that the radio had already been fitted when it obtained the car – brand-new – from the manufacturer.

We arranged for an independent expert to inspect the burnt-out car. He concluded that the fire had started because of a '*trapped and broken wire at the back of the radio, probably resulting from an attempt to fit a new radio*'.

... we arranged for an independent expert to inspect the burnt-out car.

When we asked Mr J for his comments he admitted that he had tried to fit his own radio in the car. However, he had found that it was too large for the space available, so he had then replaced the original, factory-fitted one. He was adamant that he had done this correctly and that he had not trapped any wires.

We said that in view of the expert's report and in the absence of any evidence to the contrary, the most likely explanation of the fire was that Mr J had accidentally trapped a wire while replacing the original radio. We did not uphold the complaint. ■

... he admitted that he had tried to fit his own radio in the car.

■ **93/7**

complaint about poor quality of sun beds obtained under a hire agreement

Mrs B, who owned a hair and beauty business, decided to start offering tanning facilities at the salon. She obtained a sun bed for a trial period, by means of a *hire agreement*.

Hire agreements are similar to *hire purchase* agreements but there is no option to purchase at the end of the hire term. A company or individual, known as the '*owner*', buys goods from a supplier and hires them out for a defined period to third parties.

The sun bed was popular with Mrs B's clients so, at the end of the trial period, she contacted the owner (the business that hired out the sun beds) and asked if she could renew the agreement and hire three more beds. ▸

The owner arranged for the additional sun beds to be delivered to Mrs B and – shortly afterwards – contacted her to check that they had arrived in good condition and had been installed satisfactorily. Mrs B confirmed this and then signed the hire agreement.

Several weeks later, Mrs B rang the owner and said she wanted to cancel the agreement and arrange for all the sun beds to be taken away. She complained that the three new sun beds had been '*delivered in a damaged state*' and she was concerned that they were not safe to use.

The owner's representative told Mrs B that the hire agreement was '*non-cancellable*'. He pointed out that she had confirmed, before signing the agreement, that the sun beds had been delivered in a satisfactory state and were in full working order. The owner had completed its purchase of the sun beds on the basis of her confirmation and was not now in a position to cancel the agreement.

After complaining unsuccessfully to the owner about what she considered to be its unreasonable attitude, Mrs B referred her complaint to us.

complaint not upheld

Mrs B sent us a statement from an electrician, together with photographs of the new sun beds. She told us that this evidence '*proved*' that the sun beds were already damaged when they were delivered – and that the hire agreement should therefore be cancelled.

We told her we did not dispute that the sun beds were damaged. However, the relevant issue here was *when* that damage had occurred. We asked why she had originally told the owner that the sun beds were delivered in good condition and that they had been successfully installed.

Mrs B then admitted that she had not actually seen the sun beds at that stage. She said the salon had been temporarily closed for re-decoration on the day scheduled for their delivery. Rather than change the delivery date, she had asked the delivery company to leave the sun beds at her friend's house.

She told us that it was only after her husband and brother-in-law had collected the sun beds the following week and moved them to the salon that she had realised they were damaged.

... she said the sun beds were damaged when they were delivered to her salon.

complaint not upheld

Mrs B did not dispute that she had originally told the owner the sun beds had arrived undamaged and were installed successfully. On the basis of this information, the owner had gone ahead and bought the sun beds from the supplier. In view of this, and the fact that the sun beds could have been damaged while they were being stored at her friend's house, or while they were being moved from there to the salon, we said it would not be fair to hold the owner liable for the damage.

We told Mrs B that she had no grounds for cancelling the hire agreement and that she remained liable for paying the amount stated in that agreement. ■

... he had obtained a point-of-sale loan in order to pay for the laptop.

■ **93/8**

dispute about defective laptop bought with point-of-sale loan

Just a few months after Mr A obtained a new laptop, it developed what appeared to be a serious fault. He obtained an inspection report from a specialist laptop repairer. This identified a '*motherboard failure*' and said the motherboard would have to be replaced.

As Mr A had obtained a point-of-sale loan in order to pay for the laptop, he wrote to the lender, enclosing a copy of the report, and said he wanted to '*reject*' the laptop and obtain a replacement. ▶

The lender told Mr A that he did not have sufficient grounds to reject the laptop. The lender said the report did not specify that the fault arose from an '*inherent defect with the laptop*', so it might have resulted from '*other causes including mis-use after purchase*'.

Unhappy with this response, Mr A then obtained a report from a different computer specialist and sent it to the lender. This concluded:

'*The motherboard has developed a fault with the video controller. I have seen this same fault many times with this model. A replacement motherboard would be the only solution. Due to the high repair costs involved, in my opinion I would advise the laptop is beyond economical repair*'.

The lender questioned the validity of the second report and told Mr A the report contained nothing to suggest he had any grounds for complaint.
Mr A then referred his complaint to us.

complaint upheld

We asked the lender to explain why it had questioned the validity of the second report but it was unable to do so. We noted that both reports were from suitably-qualified independent sources. Both supported Mr A's view that the laptop should not have developed such a serious fault so soon after he had bought it.

The lender was unable to provide any evidence to counter this view, so we upheld the complaint. We told the lender to accept Mr A's rejection of the laptop and to ensure he was supplied with a suitable replacement of equal value. We said the lender should also reimburse Mr A for the cost of obtaining the two reports.

93/9
complaint made to lender about the stereo/dvd/satellite navigation system fitted to car obtained by hire purchase

Mrs K complained to the lender after taking delivery of the new car she had obtained under a hire purchase agreement. When she placed her order for the car, she had also ordered a specific system incorporating stereo, a DVD player and satellite navigation. However, a different system was supplied and fitted.

She queried this with the car dealer, who told her that the system she ordered was no longer available, so a similar system had been fitted. The dealer said she had '*benefitted*' from the change because – for no extra charge – she had now got a more expensive system.

Mrs K was far from happy with this, so she contacted the lender. She explained that she had specifically chosen the system in question because she knew

it would fit neatly into the car. This was an important consideration because the car was a small convertible and space was limited.

She had wanted a system that was compact enough to sit neatly in the front centre arm-rest. However, the system that was supplied was too bulky to fit there, so it was installed instead in the boot of the car. Mrs K said this had taken up space that she could not afford to lose, as the boot of the car had not been very roomy to start with.

Initially, the lender told Mrs K that she had no cause for complaint, as she now had a more expensive system than the one she had ordered. However, Mrs K did not agree and she insisted that she was '*entitled to have things put right*'.

Eventually, the lender said it would arrange to have the system removed from her car. It told her it was impossible to obtain a replacement that was a similar size and shape to the one she had ordered. It therefore offered to fit the cd player that normally came '*as standard*' for that particular car. It said it would also refund the cost of the system she had ordered.

Mrs K was unwilling to accept this offer. She said that in addition to the refund, she wanted to keep the system, even though it deprived her of more boot space than she had wanted to lose.

The lender refused to agree to this, so she referred the complaint to us.

complaint settled

The lender did not dispute that it was in breach of the *Supply of Goods (Implied Terms) Act 1973* – as Mrs K had neither received the system she ordered nor been supplied with an alternative that met the same description.

The lender was willing to let Mrs K keep the alternative, more expensive system at no extra cost. However, it would not agree to *also* refund the amount she had paid for the system she ordered. If it did this, it would mean she would obtain the system entirely free of charge.

The lender accepted that the alternative system was less convenient for Mrs K, because of the amount of space it took up. It offered to pay her £150 compensation in recognition of this.

We told Mrs K we thought the lender's offer was reasonable, in the circumstances. She agreed to accept it and settle the case. ■

93/10

complaint about faulty laptop bought with credit card

Miss T's new laptop developed a serious fault just six weeks after she had bought it, so she took it back to the supplier and asked for a refund or replacement.

The supplier told her it was unable to help. It suggested that she should get in touch with the manufacturer, who would arrange to inspect the laptop and then decide whether to repair or replace it.

Miss T explained that she was busy revising for her college exams and could not afford to lose study time while the laptop was out of action. However, the supplier was adamant that her only course of action was to contact the manufacturer.

Concerned about the amount of time this might take, Miss T then visited a different supplier, where she used her credit card to buy another laptop.

She had used her credit card to buy the original laptop and a few weeks later, once her exams were out of the way, she contacted her credit card provider. She explained the problem she had experienced with the original laptop and said she wanted to claim a refund.

However, the card provider told her it could not help because it was '*not responsible for the quality of goods bought with a credit card*'.

Miss T arranged to have her laptop inspected at a local computer centre and was told that there was a problem with the motherboard. She subsequently obtained another report on the laptop from an independent computer specialist. This confirmed that the motherboard was faulty – and said that replacing it would cost more than the value of the laptop. Miss T then referred her complaint to us.

complaint upheld

On the basis of the evidence supplied by Miss T, we said that the laptop was not fit for purpose, as it should not have developed a fault of this nature so soon after Miss T had bought it.

We noted that Miss T had attempted to reject the laptop as soon as the fault became evident. She had only bought a replacement because it was essential for her studies and because the retailer had failed to deal correctly with her complaint. We pointed out to the card provider that it was jointly liable with the supplier for any breach of contract.

... the supplier had been in breach of contract by selling a laptop that was not fit for purpose.

The supplier had been in breach of contract by selling a laptop that was not fit for purpose, so we told the card provider to reimburse Miss T for the cost of the faulty laptop and of the two independent reports she had obtained. We said it should also pay Miss T £100 to reflect the inconvenience it had caused her by its failure to handle the complaint correctly.

93/11

complaint that catalogue company failed to provide the free mp4 player offered in a sales promotion

Mrs H often bought clothes from a catalogue company that offered its customers credit facilities in order to buy its goods. She complained that the company had failed to send her the free mp4 player that she believed she was entitled to receive, as part of a sales promotion.

The company had written to her with details of the promotion. The company's letter said:

'*Drop everything, pick up the phone and call on this number *** **** quoting your special order code. If you're one of the first 150 people to call and place an order, an mp4 player is yours – absolutely free*'.

An accompanying leaflet gave further information, including the terms and conditions of the promotion, which stated that the competition started on 29 January.

Mrs H placed an order online on 28 January and received confirmation by email. The email also said that Mrs H had won an mp4 player. Soon afterwards, however, the company contacted Mrs H to apologise for its error in telling her this.

It explained that there had been a problem with its computer system. As well as incorrectly linking orders to the promotion in advance of the promotion's start date, the system had failed to distinguish between telephone orders and those made online. The promotion only applied to telephone orders.

To compensate her for its error in telling her she qualified to receive the mp4 player, the company offered Mrs H £50, together with a discount of £10 on her next order. However, Mrs H thought that as the company had originally told her she had won an mp4 player, it was obliged to '*fulfil its promise*' and send her one. The company disagreed, so Mrs H brought her complaint to us.

complaint not upheld

We noted that the information that the company had sent Mrs H, telling her about the promotion, stated clearly that it applied only to telephone orders made on or after 29 January.

Mrs H had ordered online on 28 January, so she did not qualify to be part of the promotion. We accepted her argument that the company should have been better prepared to deal with customer response to the promotion. However, we told her we thought the company had made a very reasonable offer to compensate her for its mistake in telling her she had won. We did not uphold the complaint.

93/12

motor insurer refuses to pay claim because policyholder failed to disclose '*modifications*', including entertainment and navigation systems

Mr E complained about the actions of his motor insurer after his new car was stolen, just a couple of months after he had bought it.

The insurer noted that when Mr E applied for his motor policy, he had not disclosed that the car had been fitted with a CD changer. The insurer refused to pay the claim, citing a policy clause that allowed it to do this where a policyholder failed to disclose '*a substantial upgrade to the internal entertainment/navigation systems – eg satnav unit, games console, CD changer, Bluetooth kit, etc*'.

The insurer told Mr E it would '*void*' his policy (treat it as if it had never existed). It said it would never have offered him cover if it had known about the upgrade, as this made the car '*extremely attractive to thieves*'.

Mr E thought the insurer was being '*unfair and unreasonable*'. He said he had been '*totally honest*' when applying for the policy and had '*not knowingly withheld any relevant information*'. However, the insurer did not accept that Mr E had any grounds for complaint, so he referred the matter to us.

complaint upheld

Mr E told us that when he ordered his car in the dealer's showroom he had opted for an '*additional entertainment package*' which included a CD changer. He accepted that he had not mentioned this when he completed the insurer's proposal form. However, he said it had not appeared to him to have been relevant to any of the questions he was asked.

We asked the insurer to send us a copy of the form. There was only one question which referred to modifications. This asked if the car had been '*modified or altered in any way from the manufacturer's standard UK design or specification*'. Next to this question there was an '*explanatory note*' which said:

'*Please include any change to the engine or which alters the performance of your car; cosmetic changes to the bodywork or trim (eg fitting of spoilers or body kits); changes to suspension; wheels or brakes (eg alloy wheels or lowered suspension)*'.

Mr E had ticked the '*no*' box for this question, and his proposal had been accepted on the insurer's standard terms and conditions.

We agreed with the insurer that the optional extra Mr E had selected for his car constituted a '*material fact*' that it would wish to know about. However, we said that it needed to ask clear questions about any such facts.

In this case, we did not consider that the insurer's question about modifications *had been* sufficiently clear.

We accepted that the examples given in the '*explanatory note*' were not intended to provide an exhaustive list. However, they were types of modification that would enhance the car's performance or exterior appearance. We thought it entirely plausible that Mr E would not have realised, from reading this, that the insurer regarded his CD changer as a modification – and that he needed to mention it in response to this question.

We upheld the complaint and told the insurer to reinstate Mr E's policy and deal with his claim in line with the usual policy terms and conditions. ■■■

ombudsman focus: compensation for distress, inconvenience or other non-financial loss

In response to demand from many businesses and consumer advisers, this *ombudsman focus* outlines our long-established approach to the awarding of compensation for distress, inconvenience or other non-financial loss – and provides some illustrative case studies.

There is more information on this topic in the online technical resource on our website.

Where we uphold a consumer's complaint (wholly or partly), we consider whether it is appropriate to tell the financial business to pay the consumer compensation for distress or inconvenience it has caused. We do this even if the consumer did not specifically ask us to do so. Exceptionally, we may also tell a business to pay compensation for distress and inconvenience it has caused by particularly poor handling of a complaint, even if we do not uphold the underlying complaint itself.

We will not automatically award compensation just because the consumer has experienced some distress or inconvenience – it has to have been *caused by* the financial business. And we are unlikely to say that compensation is appropriate where the degree of inconvenience or distress appears to be slight.

All of us may experience some inconvenience in our day-to-day lives when dealing with organisations and businesses. For example, the fact that a phone line is busy or that a name is not spelt correctly can be annoying – but neither situation is likely to result in compensation (although this could be appropriate if the problem persists).

Where the degree of distress, inconvenience or other non-financial loss is sufficient to warrant compensation, the amount is generally likely to be modest. Most compensation is for less than £300 and in only a small number of exceptional cases does it exceed £1,000. Cases involving pain and suffering are likely to lead to higher compensation than those involving distress or inconvenience.

The following examples illustrate our general approach to compensation for distress and inconvenience and other non-financial losses. They reflect actual decisions made by ombudsmen.

Assessing the appropriate amount in individual complaints depends on the circumstances of each case. In certain circumstances, repeated or aggravated errors may cause more distress and/or inconvenience than an isolated error – as reflected in these example case studies.

ombudsman focus:
compensation for distress, inconvenience or other non-financial loss

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

- Mr F decided to close his savings account, so he visited a local branch of his bank. He completed and signed a form and was told that the account would be closed later that same day.

  The bank then failed to take any further action. Mr F had to make a number of phone calls to the bank – and return to the branch to complete the paperwork again – before his account was finally closed.

- Miss Y made a claim under her car insurance policy after she was involved in a road traffic accident. Her policy said that the insurer would provide alternative transport while her car was being repaired. However, she had to wait more than a week before the insurer arranged a hire car for her. During that time, she had considerable difficulties getting to work, as she lived in a rural area with poor public transport. The insurer eventually reimbursed her bus and taxi fares for the time when she was without a car, but she had still suffered inconvenience.

- When Mrs D's investment bond matured, she gave written instructions to the investment business to transfer the proceeds into her bank savings account. She checked with her bank several weeks later and found the money had never been transferred. She then had to contact the investment business several times before it finally transferred the money, more than two months after the date when it had originally said this would happen.

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

- Mr and Mrs K's house was flooded by a burst pipe which caused serious damage. Their insurer did not arrange and pay for alternative accommodation for them and their two young children – although their home insurance policy said it would do this. As a result, the whole family had to share a room in a relative's house for over two weeks.

- The business that provided Mrs C's personal pension contacted her some six months after she retired. It said it had miscalculated her pension and had been under-paying her from the outset. The period concerned included one of the coldest winters on record. Mrs C had struggled financially to keep her home warm, but could easily have afforded her winter fuel bills if she had been receiving the correct pension.

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

- Ms J obtained a loan with a credit provider so she could pay for a plumbing course. She contacted the provider a few months later, as she was unable to keep up with the repayments. The credit provider agreed to accept reduced repayments. However, it failed to note this on its records. Even though Ms J kept to the new arrangement, the credit provider started writing to her about her failure to keep to the initial agreement.

  The credit provider knew that she suffered from serious mental health difficulties which were aggravated by stress. She explained this again – and reminded the credit provider that it had agreed new repayment terms. Despite this, she continued to receive numerous phone calls and letters demanding repayment – and she subsequently suffered a severe deterioration in her mental health.

- Mr T suffered serious injuries after falling down a flight of stairs at his hotel, while on holiday in Thailand. His doctor recommended that he should be repatriated urgently to the UK for a specialist operation.

  Mr T's wife contacted their travel insurer for help in getting him back to the UK. However, it said the hospital in Thailand had reported that Mr T was drinking heavily on the evening of his fall. This invalidated any claim relating to the accident. Mrs T said her husband never drank alcohol, and independent witnesses had confirmed that he had been sleep-walking when he fell. He had previously sought treatment from his GP for sleep-walking.

  Mrs T stressed that the situation was urgent and that she could not afford to get her husband back to the UK without confirmation that the insurer would cover the costs. Despite this, it was two weeks before the insurer contacted her again. It said it had made a mistake and now believed that Mr T had *not* been drinking. By then Mr T's condition had worsened and he had undergone emergency surgery in Thailand.

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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. What is the latest situation with the judicial review on payment protection insurance (PPI)?

A. Judgment was handed down by the High Court in London on 20 April 2011, following the legal challenge ('judicial review') brought by the British Bankers Association (BBA) – on behalf of a number of high-street banks – against the Financial Ombudsman Service and the FSA on the approach to handling PPI complaints.

The judgment endorses the approach taken by the ombudsman and the FSA. The banks have 21 days to consider whether to appeal.

The ombudsman service continues to handle large volumes of PPI complaints from consumers. Since the legal challenge was launched in October 2010 we have been receiving up to 5,000 of these complaints each week. In total, we have received over 200,000 complaints about mis-sold PPI policies – and have upheld 3 out of 4 cases in favour of consumers.

The lack of co-operation from some financial businesses has made it difficult to progress PPI cases since the launch of this legal challenge. However, the clear-cut judgment means that banks and other financial businesses should now be in the position to deal promptly, efficiently and fairly with their customers' PPI complaints.

Q. I read in the last *Ombudsman news* that you are working on a re-vamped version of your consumer leaflet. Are there similar plans for the complaint form?

A. In issue 92 we explained that we would shortly be launching a new version of our leaflet, *your complaint and the ombudsman*, with 20% less text and with more colour – in response to feedback from consumers and businesses.

We also regularly make minor changes to the text and design of the complaint form, to take account of users' suggestions and of ongoing changes to rules and procedures. We now want to review the form's readability and accessibility and, in particular, to reduce the form to three pages – from the current four. As well as making the form easier to complete, this will save a million pieces of paper a year. We can achieve this largely by re-allocating the space provided for answers, based on our observations of how consumers actually complete the form.

We also propose simplifying text; highlighting the '8-week' rule in relation to our ability to get involved at an early stage; *and* clarifying where consumers need to sign the declaration – in relation to joint complaints and complaints on behalf of businesses.

We've asked users and stakeholders (including the industry panel of practitioners and trade associations) for their views, and we expect the new form to be available on our website shortly. For consumers with complaints, it's generally still easier to phone us directly on 0800 023 4567 – so we can go through the form with them over the phone, and then send it to them to check, complete and sign.

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