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 96

planning ahead

That autumnal 'back to school' feeling at this time of the year has a particular significance for me and my colleagues here at the ombudsman service. It's a reminder that we're coming up to the half-way point of our financial year – at the end of September.

For the outside world there should be far fewer surprises than ever before about the issues and workload we've been facing in the first six months of this financial year. We've made no secret of the record number of cases coming our way – driven by the flood of payment protection insurance (PPI) complaints, following the banks' unsuccessful legal challenge. The numbers involved have been very clear to see – both from the statistics we published in the last issue of *ombudsman news* (covering the first quarter of the financial year) and from the complaints data we published a week or so ago, in relation to the 157 financial businesses who accounted for 93% of our complaints workload.

The figures for the first six months – showing a doubling of our workload compared with this time last year – make forecasting what will happen in the *second half* of this financial year ➤

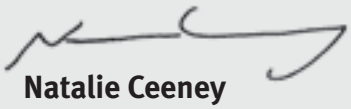
Financial Ombudsman Service

especially interesting. With the commitment of the big banks to sorting out their substantial backlogs of PPI cases (applying our long-standing approach to settle these complaints fairly and quickly), I'm hopeful that we should start to see a marked decline in the number of unresolved PPI disputes being referred to us to sort out.

The impact of PPI complaint volumes on our workload over the next months is crucial, not only to how we plan and deploy our resources over the rest of *this* financial year. It's also a key part of planning ahead for what budget and resources we'll be needing in the *next* financial year (2012/13).

This is because our annual planning cycle for next year has, in fact, *already* begun. Over the last few weeks, colleagues and I have been assessing risks and priorities, analysing figures and trends, and forecasting budgets and numbers. We'll be sharing all this information in informal discussions with key stakeholders over the autumn months. And this will lead up to formal consultation in January and February on our *plans and budget* for next year. At this early stage it's already looking as though it's going to be another year of volatility and uncertainty on the complaints front. But I'm starting to recognise that this is perhaps just 'business as usual' for an organisation like ours.

What this means, though, is that it's never too early to start thinking about what you believe the trends and impacts might be that will affect our work at the ombudsman service next year. We'll be wanting to hear your views as part of our feedback and consultation process. I'm looking forward to it.



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complaints involving e-money

Electronic money services (also known as 'e-money') are commonly used by consumers when transferring money to pay for goods bought through websites such as eBay. Neither the buyer nor the seller is able to see the other party's bank account or card details, as these are kept hidden by the e-money business (or 'issuer') during the transaction.

The financial businesses that provide e-money do not have to be banks. They operate payment transfer systems by providing an account that the consumer can:

- 'feed' from their bank or plastic card accounts if they are paying money; *and*
- use to receive money paid to them by others, through the e-money system.

We can look at complaints about e-money issuers from sellers as well as buyers. This includes consumers and micro-enterprises (businesses with an annual turnover of under 2 million euros – approx. £1.7 million – and fewer than ten employees). As this selection of recent case studies illustrates, the complaints we see usually involve:

- an e-money issuer 'reversing' a payment made to a consumer's e-money account;
- the quality (or non-receipt) of goods that the consumer paid for through their account with the e-money issuer;
- an e-money issuer restricting or closing the consumer's e-money account ; *or*
- an e-money issuer failing to resolve a buyer/seller dispute to the consumer's satisfaction.

96/1

e-money issuer refuses consumer's request for a refund

Miss G saw a well-known brand of smartphone listed on an online auction website and bought it for £50, using her e-money account.

When the phone was delivered, she found that it was a brand she had never heard of and that all the phone's functions were displayed in Chinese. She complained to the seller, who said she had no grounds for a refund as he had never suggested that the phone was made by the well-known brand.

Miss G then contacted her e-money issuer and asked for its help in getting her money back. It, too, told her there were no grounds on which she could claim a refund. It said the phone had not been described in a way that suggested it was made by the well-known brand.

It also said she should have realised, from the comparatively low price she paid, that the phone could not be a premium brand. Miss G then referred her complaint to us.

complaint upheld

Although we do not cover complaints about the sellers of goods – we *do* cover complaints about e-money issuers.

We looked at the terms and conditions of Miss G's e-money account. These said she was entitled to a refund from the e-money issuer in certain circumstances, including where goods had been paid for but never received, or where goods differed significantly from the seller's description of them.

We checked the description of the phone that had appeared on the auction website. We took the view that this was clearly intended to suggest the phone was made by the well-known brand. The brand was not only mentioned in the heading but was also referred to several times in the description of the phone.

We accepted that the asking price was unusually low – and might therefore have aroused some suspicion. However, we thought the description would have led any reasonable person to believe they were purchasing a phone that was genuinely made by the well-known brand.

We told the e-money issuer to refund the amount Miss G had paid for the phone and to reimburse her for all related postage costs, including the cost of returning the phone. ■

... the e-money issuer said there were no grounds on which she could claim a refund.

96/2

consumer complains that e-money issuer '*reversed*' a payment made into his account

As a surprise gift for his wife, Mr K bought a pair of concert tickets costing £150 each. The concert, scheduled to take place the following year, was part of an international tour by a major American singer.

The ticket agency sent Mr K confirmation that he had booked and paid for the tickets – and told him it would post the tickets to him nearer the date of the concert.

Several months after paying for the tickets, Mr K realised that he would not be able to use them. He had forgotten that his wife's sister was getting married on the same day.

He had still not been sent the tickets. However, he was aware that the concert had already sold-out, so he was sure he would get a good offer for the tickets on an online auction website.

As he had hoped, Mr K quickly succeeded in finding a buyer. Mrs C agreed to pay £500 for the pair of tickets. But not long after her payment had been credited to Mrs K's e-money account – and while he was still waiting for the ticket agency to send him the tickets – the concert promoter announced that the singer's tour had been cancelled.

As soon as she heard about this, Mrs C asked Mr K to refund her £500. He told her he was not yet able to send her any money, as he was still waiting for the ticket agency to send him his own refund. However, he said that as soon as this arrived, he would pass the money on to her.

It was several months before Mr K got his refund. He then contacted Mrs C to tell her she would shortly be receiving a refund from him of £300. She thought at first that this must be an error and she reminded him that she had paid £500 for the tickets. ➤

However, Mr K said he could only afford to send her the amount he had himself paid for the tickets, which was their face value – £300.

Mrs C then contacted the e-money issuer. It told her it would put things right by '*reversing*' the payment, which it did by taking £500 from Mr K's e-money account and paying it to her account.

When he found out what had happened, Mr K complained to the e-money issuer. He said it had '*no right to interfere*'. He noted that the terms and conditions of the e-money account stated that buyers should '*raise any dispute within 45 days of sending a payment*'.

As it was longer than this before Mrs C had contacted the e-money issuer, Mr K thought it was '*past the stage*' where the e-money could take any money from his account.

The e-money issuer told Mr K that he had failed to act in accordance with its '*acceptable use*' policy. It therefore considered that it had been '*fully entitled*' to reverse the payment, even though it had done this some while after the original transaction. Mr K then referred his complaint to us.

complaint not upheld

We noted that the e-money issuer's terms and conditions allowed it to reverse payments, in certain situations.

Mr K did not dispute that he had received £500 from Mrs C for tickets he had never supplied. And he accepted that, because the concert had been cancelled, he would not now be in a position to supply them.

We said we thought it was fair and reasonable for the e-money issuer to remove the £500 from Mr K's account in order to refund the full amount Mrs C had paid. We did not uphold the complaint.

96/3

consumer complains that e-money issuer prevented him from getting access to his account

Within just a few days, Mr L sold a number of separate items on an online auction website. The payments were credited to his e-money account and he thought he would leave the money there for a while. A couple of weeks later, however, he decided instead to withdraw it.

He was then very surprised to find he could not get access to his account. The e-money issuer told him its automatic security system had

... access to his e-money account had been restricted for up to 180 days, while security checks were carried out

flagged his account as '*potentially risky*'. This was because he had only a limited account history and there had suddenly been a marked increase in the number of high-value transactions going through his account. The e-money issuer said that access to his account had therefore been restricted for up to 180 days, while security checks were carried out.

Mr L said that he thought this '*totally unacceptable*' and he wanted to withdraw his funds immediately. The e-money issuer told him the money could only be released if he:

- answered some questions about the recent transactions; *and*
- provided a copy of his driving licence or passport, as proof of his address and identity.

Mr L then referred his complaint to us, saying the e-money issuer had '*no right*' to withhold his money and '*cross-examine*' him in this way.

complaint not upheld

The e-money issuer sent us a copy of its terms and conditions for the e-money account. These were clearly set out and stated that the e-money issuer could restrict access to accounts, where it considered this appropriate, '*to help safeguard the interests of sellers*'.

We noted that the e-money issuer had acted within these terms and conditions when restricting Mr L's access to his account.

In the circumstances of this case, we thought the e-money issuer had also acted reasonably in asking Mr L for details of the recent transactions and in requiring proof of his identity, so that it could validate the information registered on his account. We did not uphold the complaint. ■

... because of problems with the pre-paid e-money card, he had been obliged to use his credit card instead, while on holiday.

96/4

consumer seeks compensation for failure of a pre-paid e-money card he had planned to use while on holiday

Mr B was very unhappy about the difficulties he had when trying to use a pre-paid e-money card while he was on holiday in Italy. He had used one of these cards on a previous holiday to the same small village – and had found it a convenient way of obtaining cash and paying for goods and services. On this occasion, however, things were different.

He used the card without difficulty on the first evening of his holiday, when he paid the bill in a local restaurant. However, the following morning he was unable to withdraw any money with it. There was only one cash machine within easy reach of where he was staying, so he was unable to try and get cash elsewhere.

In response to his phone call complaining that his card was faulty, the e-money issuer arranged to send him a replacement by courier, so that it reached him as quickly as possible.

As soon as this card arrived, Mr B went to the cash machine but he had no more success with this card than he had with the other one. He therefore got in touch with the e-money issuer again.

The e-money issuer said its system had not recorded any instances of his attempting to withdraw money with the replacement card. It therefore concluded that the fault must lie with the cash machine. It advised Mr B to '*leave it a while*' until the machine was working properly and to then try again.

Four days later, Mr B had still not been able to withdraw any cash with the card, so he contacted the e-money issuer again. This time it arranged an electronic transfer of the total amount remaining on the card. Mr B was then able to collect the money in cash from the village post office.

Not long after the end of his holiday, Mr B wrote to the e-money issuer to complain. He said that because of the problems with the pre-paid card he had been obliged to use his credit card instead. He wanted the e-money issuer to refund the charges incurred

on his credit card because of this. He also wanted the e-money issuer to compensate him for '*ruining*' part of his holiday.

complaint not upheld

The pre-paid e-money card used by Mr B was one that is widely accepted by banks, including the one that operated the cash machine where he had tried to obtain cash. The e-money issuer had no record of any transactions on Mr B's card being declined, and no problems had been reported by other users of this make of card.

We therefore thought the most likely explanation was that there was a mechanical fault with the cash machine Mr B had used. We told Mr B we did not think the e-money issuer could reasonably be held liable for this.

We pointed out that the e-money issuer had not been obliged to use a courier to get a new card to him. Nor had it been obliged to send him the balance electronically. However, it had gone to some trouble to try and minimise the inconvenience caused by the problems he had reported. We did not uphold the complaint. ■

96/5

e-money issuer refuses to refund consumer's account after consumer returned faulty goods

Mr J used his e-money account to buy a car stereo from an online auction site. It was evident as soon as the stereo arrived that it was faulty, so Mr J contacted the seller. The seller agreed to refund the £300 that he had paid for the stereo and gave him details of the address to which he should return it.

Mr J sent the stereo to this address, using registered post. Over a month later, however, he was still waiting to get a refund. After making several unsuccessful attempts to contact the seller about this, Mr J eventually asked the e-money issuer to refund his money.

The e-money issuer said it would look into the situation and get back to him.

A couple of weeks later it told Mr J that it was not prepared to arrange a refund. It said the seller had reported that Mr J had never returned the stereo. But it noted that, in any event, Mr J had '*failed to follow the correct procedure*' for returning faulty goods. ➤

The e-money issuer told him its terms and conditions stated that any faulty goods must be returned to the address registered on its system for the seller. However, it said it had no record of the address Mr J claimed to have used when returning the stereo. Mr J then referred his complaint to us.

complaint upheld

Mr J provided copies of his email exchange with the seller. He also provided proof both that he had sent a package to the address the seller gave him – *and* that the package had been delivered there.

We looked at the terms and conditions of the e-money account. Contrary to what the e-money issuer had told Mr J, these did *not* say that items had to be returned to the address the e-money issuer held for the seller. They simply said that items had to be returned to the seller.

As Mr J was able to prove that he had followed the seller's instructions, we said the e-money issuer had unfairly turned down his request for a refund. We told the e-money issuer to refund the £300 Mr J had paid for the car stereo. We said it should also pay him £50 for the inconvenience it had caused him. ■

96/6

consumer complains that e-money issuer closed his account unfairly, because of his occupation

Mr D ran his own business working as a male stripper. Most of his bookings were for hen parties and the booking fees were credited to his e-money account.

He was very surprised when his e-money issuer contacted him to say it was closing down his account. It said it had been conducting '*a periodic review of clients' accounts*'. As a result of this, it had found that he was not using his account in accordance with the terms and conditions.

Mr D complained that this was unreasonable. He said that, to the best of his knowledge, he had done nothing wrong. In its response, the e-money issuer told him its terms and conditions stated that accounts could not be used for '*certain sexually-orientated materials or services*'.

... we said the e-money issuer had unfairly turned down his request for a refund

... the e-money issuer told him its accounts could not be used for certain '*sexually-orientated materials or services*'

Mr D then referred his complaint to us. He said the e-money issuer was wrong to assume that he was offering '*sexually-orientated services*'.

He said he was a professional entertainer, offering what was purely an entertainment service. He also noted that he had been using the account without any problems for nearly four years, so he did not see why the e-money issuer should '*suddenly have an issue*' with his occupation.

complaint not upheld

We agreed with the e-money issuer that it was entitled to carry out periodic reviews, to check whether accounts were being used in accordance with its terms and conditions. Where appropriate, the e-money issuer could give reasonable notice to close an account.

The terms and conditions did not list every situation in which the e-money issuer might close an account. However, it did provide an email address for customers wanting to check their own situation before they opened an account.

We explained to Mr D that, as long as the e-money issuer acted within the law, including equality legislation, it was a matter for its own commercial judgement to decide who it chose to do business with. Our involvement was limited to deciding whether the e-money issuer had acted fairly and in accordance with the contract terms.

Overall, we did not think it unreasonable of the e-money issuer to consider that Mr D's business fell into the category of '*sexually-orientated materials or services*'. We also noted that it had given Mr D a reasonable amount of notice that it was closing the account. We did not uphold the complaint. ■

... he did not see why the e-money issuer should '*suddenly have an issue*' with his occupation

... the e-mail was part of a fraudulent scheme, designed to trick her into sending the sunglasses without being paid for them.

96/7

consumer says e-money issuer incorrectly charged a fee for handling a cross-border transaction

After she had sold a pair of designer shoes on an online auction website, Ms A's e-money account was credited with payment received from a buyer in southern Europe. The buyer was using a European e-money account provided by the same e-money issuer.

When she saw details of the transaction, Ms A noticed that the e-money issuer had deducted an additional fee, which she had not expected to have to pay. She raised this with the e-money issuer, who told her it had made the charge because the transaction involved currency conversion.

Ms A did not think this fair but the e-money issuer told her the terms and conditions of the account allowed it to apply the charge. Ms A then referred her complaint to us.

complaint not upheld

We looked at the e-money issuer's account terms and conditions. These clearly outlined the transaction fees payable, including those that applied to cross-border transactions where a currency conversion was required.

We concluded that the e-money issuer had acted within the terms and conditions when it deducted the fee from Ms A's account. We did not uphold the complaint.

96/8

consumer says that e-money issuer should cover her losses after she was caught out by an online scam

Miss M decided to try and sell a pair of designer sunglasses on an online auction website. She had never before used that website or had an e-money account.

The sunglasses sold for £1,500. Shortly after the auction ended, Miss M received an email. This informed her that the buyer's payment had been received, but the money would not be released to her until she had sent the sunglasses to the buyer.

Miss M then posted the sunglasses to an address in eastern Europe, as instructed in the email. In due course she logged into her e-money account to withdraw the payment.

She was unable to find the payment or any reference to it and when she contacted the e-money issuer, it said it had not handled any transactions on her account.

At first, Miss M was convinced that the e-money issuer must be mistaken. Eventually, however, she realised that the email she had been sent was part of a scam.

Miss M asked the e-money issuer to reimburse her for the £1,500 that she had never received. When it refused, she referred the complaint to us.

complaint not upheld

Miss M understood that the email telling her to despatch the sunglasses had not been sent by the e-money issuer. She said she now realised it had been part of a fraudulent scheme, designed to trick her into sending the sunglasses without being paid for them.

However, she was adamant that the e-money issuer '*must somehow be responsible*' for making good her financial loss.

We accepted that she was an inexperienced user of the website involved and that she had never had an e-money account before. However, we noted that the website contained clear information for sellers, including details of its '*internet safety policy*'.

We also noted that Miss M could have checked the authenticity of any emails relating to the transaction by viewing her e-money account online. This contained a copy of all messages sent to her by the e-money issuer.

We sympathised with Miss M's situation. However, we said the e-money issuer had not been involved in any aspect of the transaction and could not be held liable for her loss. We did not uphold the complaint. ■■■

... she was adamant that the e-money issuer '*must somehow be responsible*'

ombudsman focus

our response to business feedback

As part of our regular surveys of businesses covered by the Financial Ombudsman Service – from major financial groups to sole traders – we invite comments and suggestions from financial services practitioners in all sectors of the industry on how we can improve our service for them. Here are a selection of the comments made in the latest postal survey – and our replies.

‘When you forward complaint forms to us, they don’t always have the relevant attachments.’

Under the FSA’s complaints-handling rules, businesses have up to eight weeks to sort out a customer’s complaint – *before* the ombudsman steps in and investigates. But consumers often come to us before raising their complaint with the financial business involved.

When this happens, we forward the complaint to the business – giving them the opportunity to try to resolve the problem at this early stage. This may also involve our sending the business the complaint form that the consumer has already completed – together with any relevant paperwork the consumer has enclosed along with their form.

Businesses have given us feedback that it isn’t always clear which attachments the consumer has sent – or whether all the documents have been attached. And we know that consumers don’t always remember to include the documents that they have referred to when completing the form.

As part of our recent re-design of our complaint form (which resulted in reducing it from four pages to three, saving a million pieces of paper a year), we looked at how we might help minimise this problem. And following suggestions from businesses and consumers, we have added specific tick-box prompts at the bottom of the complaint form. These remind consumers, when they sign and date the document, to check they have included any relevant documents.

The prompts also help us make sure we send on the right documents to the business, if we need to forward the complaint for investigation before we have any formal involvement with it.

‘When it’s a joint complaint, the ombudsman needs to make sure that *both* consumers have signed the complaint form.’

Again, we looked at this as part of the re-design of our complaint form. We added a reminder that each person needs to sign individually, where a complaint involves accounts or policies held *jointly*.

This reminder is *right underneath* where consumers sign the form – so it’s very obvious.

‘You should be clearer that consumers still have to sign the complaint form, even if they have appointed someone else to handle their complaint on their behalf.’

As we explained in issue 94 of *ombudsman news* (June/July 2011), over half of all cases are now referred to us by third parties acting on behalf of consumers. Although these are mostly claims-management companies, they also include family members, friends and a wide range of consumer advisers who are helping people for free with their complaints. In fact, a consumer can ask anyone to represent them with their complaint – and we will deal with that representative, as long as we have the consumer’s permission to do so.

So that we can be certain the consumer has given their permission in these cases, we have revised the text on our complaint form – making it very clear that consumers still need to sign the form themselves, even if someone else completes it for them. ➤

ombudsman focus

our response to business feedback

‘You ought to reject complaints that are patently ridiculous.’

We do. Of the 164,899 complaints we settled last year, we concluded that 1,447 cases (0.9% of the total) could be categorised as ‘*frivolous and vexatious*’. In these cases, we do not charge a case fee to the business complained about.

But just because we don’t uphold a consumer’s complaint does not mean that the case was ‘*frivolous and vexatious*’. Similarly, the failure by a consumer – or their representative – to present a reasoned argument does not automatically mean a case has no merit – or that it should be dismissed without any investigation. We look at each case individually and make a decision based on its own particular facts.

Consumers can sometimes pursue complaints in an unfocused way and this may make them appear unreasonable to the business they complain to. On the other hand, businesses sometimes respond to customer concerns unhelpfully and defensively – aggravating problems that might have been resolved with a clear, helpful and sympathetic explanation.

For example, a complaint referred to us about a mis-sold PPI policy could, in *some cases*, be categorised as ‘*frivolous and vexatious*’ if the consumer (or their representative) persisted in bringing the complaint to us when they should clearly have known, from information already available to them, that *no policy* was ever sold to them.

‘You should publish more guidance so the ombudsman’s approach is more transparent.’

Some in the industry ask us to publish *more* guidance, to help them resolve complaints themselves. Others criticise us for publishing guidance *at all*. They claim this means we are stepping outside our role and ‘*making rules*’ about how financial businesses should behave.

The guidance we publish is based on real cases that we have investigated and decided. We *don’t* tell financial businesses what they should or should *not* do, in general terms. Our aim is to show how we are likely to approach particular types of complaints if they are actually referred to us.

In his independent review a few years ago into the openness and accessibility of the ombudsman service, Lord Hunt concluded that this was the right approach. And he encouraged us to publish even more guidance. He didn't believe that our doing this was incompatible with our impartial role in settling individual disputes.

This confirmed the crucial role we play in sharing insights from the complaints we see, in order to help prevent future problems. Being clear about our approach to complaints involving different products and issues also helps consistency. It clarifies the general framework against which we decide individual cases on their own particular facts and merits.

Since Lord Hunt's review, we have developed and expanded the online technical resource on our website. It now covers our approach to complaints about the financial products and services that make up over 90% of our total workload – from pet insurance to spread betting, debt collecting to mortgages.

It includes case studies, links to other resources and publications across our website, and details on how we are likely to approach complaints based on our previous extensive experience.

'Why don't you consult on your technical notes before you publish them formally?'

The technical notes we publish are based on real cases that we have investigated and decided. They set out the general approach we are likely to take to the complaints we see most often about a wide range of financial products and services.

Deciding cases is a 'quasi-judicial' task. It involves our taking into account the evidence and arguments from the two sides in each dispute. It would be wholly inappropriate for us to *consult* about the outcomes we arrive at in these cases.

We publish our technical notes as part of our online technical resource on our website, and we welcome feedback from users. There's a feedback form on each page, to make it easier for you to tell us about anything you think we could clarify or explain better. Following user comments, we regularly update these pages to try to make things as clear as possible.

We keep our published approach under review, in the light of the cases we continue to receive and to reflect any changes in the law and regulatory standards.

ombudsman focus

our response to business feedback

‘We don’t always understand how you arrive at the ‘*distress and inconvenience*’ awards you tell us to pay.’

We have very well-established guidelines on our approach to compensating consumers for non-financial loss – such as distress and inconvenience. These guidelines are available from our online technical resource on our website, and we regularly summarise them in *ombudsman news* with relevant case studies (most recently in issue 93, April/May 2011).

These guidelines set out clearly that we do not *automatically* award compensation just because we uphold a complaint in favour of the consumer – or just because the consumer has experienced some distress or inconvenience.

In our latest *annual review* we explained that we told the business to compensate the consumer for distress and inconvenience in 28% of the cases we upheld – generally awarding between £150 and £500.

Our guidelines also establish three broad categories for compensation – depending on the circumstances of the particular case. Where we tell a business to compensate a consumer for non-financial loss, the payment involved will usually be *modest* (less than £300). But we may award *significant* compensation (£300 to £999). And in a small number of cases, we tell businesses to pay *exceptional* compensation (£1,000 or more).

In addition to publishing these guidelines, we also illustrate, through many of the cases we include in *ombudsman news*, how we apply the guidelines in real-life situations. Looking at published case studies, based on complaints we have actually dealt with, is a good way of seeing – in context – how the guidelines work in practice, as a simple ‘rule of thumb’.

If, in a specific case, you don’t understand or agree with a recommended payment for distress and inconvenience, you should talk to the adjudicator involved. It will help if you can refer specifically to our published guidelines – with examples that you believe support your case.

‘You should share more statistical information more regularly, so that stakeholders can see trends emerging sooner.’

This suggestion led to our deciding to publish detailed figures every quarter in *ombudsman news*. These figures show the number of new cases, and the proportion we resolved in favour of consumers, in relation to the fifty or so financial products or services that make up 99% of our complaints workload.

We have received very positive feedback, indicating that it is now much easier for people who are interested in these numbers to see trends emerging *throughout* the year. Previously they only got to see the figures *annually*, after the financial year ended and the figures appeared in our *annual review*.

In issue 95 of *ombudsman news* (July/August 2011) we published the complaint figures for the first quarter of the 2011/2012 financial year (covering April, May and June 2011). In issue 97 this autumn we will be publishing the figures for the second quarter (July, August and September 2011).

‘Why can’t you provide more updates on ‘*open*’ cases?’

The way in which we update businesses on the progress of cases depends very much on the size of the business and the number of ongoing cases involving them that we have. With ten of the UK’s financial services groups accounting for three-quarters of our workload, the exchange of information between us and these businesses is pretty much a continuous process. It is on such a scale that ‘bulk updating’ by spreadsheet is generally the norm, rather than sending individual letters.

Some businesses, however, only ever come into direct contact with us if an isolated case happens to be referred to us by an unhappy customer. For example, last year 2,131 businesses each had only one complaint with us. We recognise that for many of these (mainly small) businesses, this can be an unfamiliar and worrying experience.

So we automatically send a special factsheet to all businesses that we identify as not having had a complaint with us before. This sets out the steps involved in having a complaint referred to us. It also signposts the range of information and support services available to businesses. These include our technical advice desk, our online video guide for smaller businesses, and the FAQs on our website (which are based on the questions we’re usually asked by businesses dealing with us for the first time).

ombudsman focus

our response to business feedback

The message we're especially keen to get across to smaller businesses – and to those who have few complaints and little direct contact with us – is that if they have any questions or concerns they should talk to the adjudicator dealing with their case. This is particularly important if they don't appear to have heard from us for a while – and just want to check on progress.

Meanwhile, as part of our longer-term plans for greater use of web-based technology, we are looking at developing an online portal, allowing consumers and businesses alike to log on securely and check the progress of their case.

'So will you be improving electronic communication with businesses?'

In our *plans and budget*, that we consulted on publicly at the start of this year, we said we would be increasing the 'e-enablement' of our operations – internally (in terms of our own systems) and externally (in the way we exchange information with our customers). As well as helping to improve our own effectiveness and efficiency, this should help reduce the costs for the industry of 'doing business' with us.

Our 'e-enablement' plans have moved forward and we are working closely with key stakeholders to ensure, wherever possible, that what we do will link with their own processes. We have had initial discussions with five of the largest businesses (where the flow of files and data in and out of our offices is currently running at record levels) on the logistics of exchanging large amounts of data electronically. But we will be taking account of the position of smaller businesses as well.

‘You need to show you’re making decisions based on industry and regulatory knowledge.’

Few of the cases we receive turn simply on whether or not the financial business has complied with a specific rule. Many cases, on the other hand, involve disputes between the consumer and the business over what actually happened. In these cases, after drawing together all the evidence and arguments, we then consider which version of events seems to us – on the balance of probability – to be the more likely. Once we have established what happened, the law requires us to decide complaints on the basis of what we consider to be fair and reasonable in the circumstances of the individual case.

In doing so, we take into account the rules, codes and good practice that applied at the time of the event complained about – as well as relevant law and regulations.

‘The ombudsman is too willing to believe the consumer when there’s no documentary evidence.’

And on the other hand, consumers whose complaints we don’t uphold sometimes say we’re too willing to believe *the business*, when there’s no documentary evidence. The true position is that we never automatically favour either side.

Each case is different – and is decided on the basis of the particular facts and circumstances involved. We form a view based on what we believe is likely to have happened, taking all kinds of information into account. In fact, it’s pretty rare for us to have to make a decision based *solely* on the existence (or the absence) of a *single* pivotal piece of evidence.

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‘The £500 case fee is too harsh.’

We have frozen the case fee at £500 for two years running. And it is paid by only around a quarter of the businesses who have complaints referred to us.

This is because we don’t charge a business a case fee for the *first three cases* each year. And around three-quarters of businesses with complaints have *fewer than four* cases.

Each year we consult publicly on our funding – including the level of our case fee. Views on our funding arrangements range significantly from business to business and from sector to sector.

Some favour *lower* case fees and a higher general levy – paid by the financial services industry as a whole. Some argue that the case fee should be *higher*, to encourage businesses to resolve more complaints properly themselves – instead of (as is sometimes claimed) using the ombudsman service as a kind of ‘outsourced’ complaints service.

There are also a wide range of views on whether there should be different case fees for complaints resolved at different (or tiered) stages of the process, for different types of products, or on the basis of whether or not we upheld the case.

Our current funding structure broadly represents the consensus of views – over the last ten years – on what are probably the simplest and most practical arrangements to implement effectively. But we will continue to take views and encourage debate on this topic – with the next consultation due on our *plans and budget* during January and February 2012.

‘You should consider running sector-specific events for complaints handlers from larger financial businesses.’

Over the last year, we have been running a series of conferences around the UK. These have been aimed at complaints handlers across all sectors of the financial services industry who have larger numbers of cases and are in regular contact with the ombudsman service.

The conferences have been very well-received and have covered *cross-sector* topics of interest. These topics have included matters that are of equal relevance to practitioners from banking, insurance and investment backgrounds, such as complaints-handling tips and our approach to compensation for non-financial loss.

In response to feedback, the conferences we are currently planning for next year will include some events aimed at complaints handlers from *specific* industry sectors. Meanwhile, we will also continue to run our regional ‘*introducing the ombudsman*’ events, tailored specially for smaller businesses and those who have little or no direct contact with us. ❖

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Printed on Challenger Offset paper made from ECF (Elemental Chlorine-Free) wood pulps, acquired from sustainable forest reserves.

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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. I've heard you've changed the ombudsman leaflet that the rules say we must send to consumers who complain. How does it differ from earlier versions?

A. As we outlined in issue 92 of *ombudsman news* (February/March 2011), we recently re-designed our consumer leaflet, *your complaint and the ombudsman*, reflecting feedback from both businesses and consumers. We've reduced the number of words, so that there are now fewer pages. We've introduced more graphics and colour. And we've updated the reference to the maximum compensation available from the ombudsman service (£150,000 for complaints we receive from 1 January 2012).

Copies of the updated leaflet have been available from us since June – in packs of 25 at £5 per pack (including p&p). You will need to complete an order form (available on the publications pages of our website) and send it to us with your payment. You can pay by cheque, BACS, debit card or credit card. Copies are available free of charge for public libraries and consumer advice agencies such as trading standards and citizens advice bureaux.

Q. when does the ombudsman tell businesses to add interest to compensation paid to consumers – and why at the rate of 8%?

A. Where a consumer has been wrongly deprived of a sum of money in the past – for example, where an insurance claim was wrongly rejected – we usually require the financial business to add interest, from the date when the consumer *should have had* the money until the date the money is *actually paid*.

In some cases, the consumer will have incurred an identifiable cost, as a result of having to borrow money in the meantime. In other cases, there will be an identifiable loss of income on other funds that the consumer had to use instead.

But in many cases, the effect on the consumer's finances could only be discovered by making speculative assumptions. So unless it is apparent what the consumer's borrowing cost (or investment loss) actually was, we are likely to award interest at 8% a year simple.

Most consumers will have to pay lower-rate income tax on this (which the law may require the financial business to deduct). And some consumers may also have to pay higher-rate tax – even if they had to pay non-tax-deductible interest on borrowing in the meantime.

The current low rates paid on deposit accounts are not an appropriate yardstick. The rates of interest consumers have to pay in order to borrow are much higher.

So the 8% interest rate (which is also the rate generally used by the courts) reflects the fact that the rate:

- is gross before tax is deducted;
- often applies to historic losses at times when different base-rates applied; *and*
- takes account of current interest rates being charged on overdrafts and loans – which have not reduced in line with the base rate.

designed, edited and produced by the communications team, Financial Ombudsman Service ref: 673