

transparency and the Financial Ombudsman Service



**publishing ombudsman decisions:
*next steps***

who should read this paper?

We expect this paper to be of interest to financial businesses, consumers and those representing them – as well as other stakeholders interested in the work of the Financial Ombudsman Service.

responses

We are keen to receive feedback and views from all our stakeholders on the issues raised in this paper – and in particular, on the specific questions set out in section 8.

Please send your views and comments to eiko.heffer@financial-ombudsman.org.uk – to reach us by Friday 9 December 2011. Or write to us at the following address:

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In the interests of transparency, we encourage non-confidential responses.

Information provided in response to this consultation, including personal data, may be subject to publication, disclosure, or release to other parties – in order to comply with the *Freedom of Information Act 2000*. We expect to be subject to this Act from November 2011.

It would be helpful if you could tell us why you might consider the information you have provided us with to be confidential, so that we can take this into account before deciding whether to release it. We cannot guarantee that confidentiality can always be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the service.

We expect to publish a summary of our responses later this financial year – when we will set out our further thinking and next steps.

A copy of this paper can be downloaded at www.financial-ombudsman.org.uk.

publishing ombudsman decisions: *next steps*

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executive summary

The government has indicated its intention to require us to publish the final decisions of our ombudsmen (subject to certain safeguards) – by including a clause to that effect in the recently published draft *Financial Services Bill*. This paper sets out our initial thoughts on how we might publish decisions in practice.

We believe that it is helpful to start the discussion now, so that stakeholders can debate the government's proposed legislation with a better idea of what it might mean in practical terms – and so that the ombudsman service can be ready to implement the change at the earliest moment should Parliament enact it.

In this document we explain the background to our ongoing work to enhance the transparency and accountability of our service – including the wide range of material we already publish on our work and on the approach the ombudsman takes to cases, with examples of the disputes we see and data about our cases and findings. We expect to be subject to the *Freedom of Information Act 2000* from November 2011.

We set out the reasons why we believe we should make decisions more publicly available – and the government's proposals for legislative change to underpin this approach. We explain why we think it is important that publication should be limited to the final formal decisions made by our ombudsmen – around one in nine of all the formal complaints we handle – and why we want to keep the informal stages of our complaints-handling process confidential.

We set out how we plan to ensure customers' personal information is protected – and the other steps we may need to take to protect material that should not be in the public domain (for example, because it might help fraudsters).

We invite views on a number of practical issues about how we should best go about publishing final ombudsman decisions. And we seek views and further feedback on the implications this might have for our service, its users and other stakeholders.

We want to ensure that publication is preceded by careful thought and preparation – so that our service, as well as our users, are properly prepared for the changes we propose. In particular, we want to get feedback from the widest possible range of users about the impact this might have on them and the way they use our service. The precise timescale for publication will depend, among other things, on the parliamentary timescale for the draft *Financial Services Bill*.

We welcome comments and feedback on the approach to publication that we describe in this paper by Friday 9 December 2011.

1. background – our commitment to transparency

The Financial Ombudsman Service was established under the *Financial Services and Markets Act 2000*. Our statutory function is to resolve – quickly and with minimum formality – disputes between financial businesses and their customers, as an alternative to the courts.

We attach considerable importance to being an open and transparent organisation – consistent with our statutory duties and our responsibilities as a body carrying out important decision-making functions backed by statute.

Following an [independent review](#) carried out for our non-executive board by Lord Hunt of Wirral in 2008¹, we have reviewed our strategic approach to transparency and significantly extended the volume and scope of information about our work.

Our many stakeholders – ranging from consumers deciding whether to pursue complaints, to trade associations carrying out policy research – look to the Financial Ombudsman Service to provide the information they need. We aim to be as open and helpful as we can in making information freely available.

We expect to be subject to the *Freedom of Information Act 2000* from November 2011. And we already publish extensive information about what we do and how we operate – all available on our website. We also commit considerable resource to dialogue and liaison with those who use – or have an interest in – our service.

Our website and publications such as our *annual review* already give a significant amount of information about our service, the consumers and financial businesses that use us, and the decisions we make.

The information we already publish includes:

- information about who we are and what we do, including:
 - [key facts](#) about who we are, [our aims and values](#) as an independent public body, and the [legislation and official documents](#) underpinning the Financial Ombudsman Service;
 - our [organisation chart](#) showing how we are structured, who our [executive team](#) and [senior management team](#) are, and who [our ombudsmen](#) are and their backgrounds;
 - details of the non-executive directors who make up [our board](#) and the [minutes of their meetings](#);
 - the [memoranda of understanding](#) between the Financial Ombudsman Service and other official bodies.
- information about what we spend and how we spend it, including:
 - [how the ombudsman service is funded](#) and more details about our budget – including statistics on staff numbers, productivity and workload (consulted on publicly each year in our annual [corporate plan and budget](#));
 - [pay scales for employees](#) and details of our directors' remuneration and expenses (as set out in our [directors' reports and financial statements](#)).

¹ Lord Hunt's review: *Opening up, reaching out and aiming high* (2008)

- information about what our policies and priorities are, including:
 - our [annual review](#) and our annual [corporate plan and budget](#);
 - independent external reviews of the ombudsman service by [Lord Hunt of Wirral](#) and [Bristol University's Personal Finance Research Centre](#);
 - [our equality and diversity policy](#), [equality standard](#) and [equality and diversity action plan](#);
 - procedures for complaints about us (as part of [our service standards](#));
 - our employment policies, corporate governance arrangements, policies on internal controls, and approach to corporate social responsibility (as set out in our [directors' reports and financial statements](#)).
- information about the services we offer, including:
 - our [consumer helpline](#) – open 8am to 6pm, Monday to Friday;
 - our [complaint-enquiry online](#);
 - [accessibility](#) – information and resources in different languages and formats;
 - [our outreach work in the community](#);
 - our resources for [businesses](#), [smaller businesses](#) and [community and advice workers](#);
 - our [technical advice desk](#) – for businesses and professional complaints handlers;
 - our [external liaison and outreach team](#).

We also provide anonymised case-study summaries organised in themes. Since we were set up, we have published a regular newsletter, *ombudsman news*, which provides brief anonymised summaries of example cases – as a way of explaining and illustrating our approach to cases. In this way, we have already published over 1,000 case examples – all available on our website.

We publish a significant amount of information about how we handle cases and make decisions. We set out carefully how our complaints-handling process works – for the businesses we cover (as set out in [our guides for businesses](#) and our [online resource for businesses](#)) and for consumers (as set out in our consumer leaflet, [your complaint and the ombudsman](#), and our factsheet [how we deal with your case](#)).

Following Lord Hunt's report, we have also placed greater weight on publishing more technical information about our approach. We have set out on our website more detailed [technical notes](#) and online resources, covering key complaint topics such as [payment protection insurance \(PPI\)](#), [mortgage endowments](#) and [motor insurance](#). We now have over 50 technical notes on our website, ranging from how we handle disputes involving spread betting to complaints about caravan insurance and debt collection.

We also report extensively on the outcomes of our work. Our *annual review* describes what our cases are about and highlights key themes. And we publish detailed statistics about the volume and outcome of cases.

Following Lord Hunt's review, we also publish six-monthly [complaints data](#) relating to the larger businesses – showing the number of complaints for each and the proportion upheld in favour of the consumer.

2. final ombudsman decisions

Ombudsman decisions are issued by our panel of ombudsmen – and represent the final and most formal part of our three-stage process. The ombudsman’s decision, if accepted by the consumer, is final and binding on the financial business. If necessary, it can be enforced in the courts. It is a requirement of the *Financial Services and Markets Act 2000* that the ombudsman’s “determination” (final decision) sets out the reasons for the decision and is given in writing to the parties to the dispute.

Last year (2010/2011) we handled 1,012,371 initial enquiries and complaints from consumers – the first and most informal stage of our process. We can resolve most initial enquiries by giving general advice and guidance on the complaints procedure. We forward many complaints direct to the relevant financial business, for it to deal with in the first instance. But we also give practical suggestions on sorting things out informally – providing facts and information that empower people to resolve problems themselves.

As a result of this, only around one in five of the initial queries we handle turn into a formal dispute – representing 206,121 cases last year. The approach we take to resolving these disputes is largely determined by the individual facts of each case – and by the types of intervention required to settle matters appropriately.

Each dispute is referred initially to one of our adjudicators – for an individual assessment of the case. Our preference is to resolve complaints as informally as possible at this second stage – getting both sides to agree to the views or informal settlements that our adjudicators may suggest. But more complex or sensitive disputes may require detailed investigations and lengthy reviews.

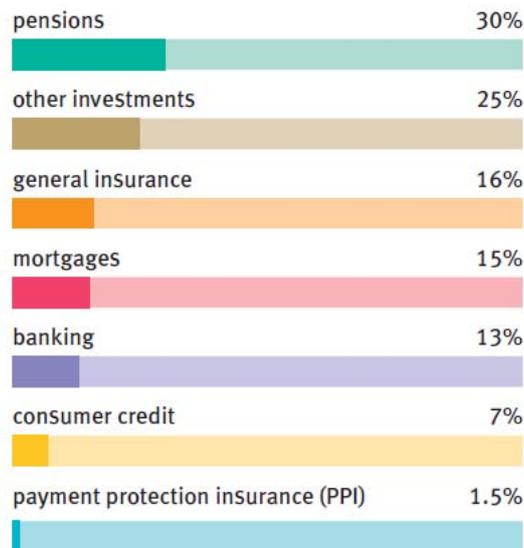
By setting out their “view” of the dispute, adjudicators are able to settle most of the cases we resolve *without* the need for any formal involvement by our panel of ombudsmen. But in a minority of cases, one or other of the parties to a complaint ask for it be reviewed by one of our ombudsmen.

The number of cases requiring a final decision by an ombudsman to resolve the dispute has been increasing significantly in recent years – up from 10,730 cases in 2009/2010 to 17,465 in 2010/2011. This means that around 11% of our cases last year were resolved by ombudsman decision. We expect the number of ombudsman decisions to increase further in the current year. This shift towards more entrenched disputes is one we have highlighted in our recent *annual reviews*.

Of the final decisions made by our ombudsman last year, 38% arose because of a request for a decision by a financial business and 62% of requests were made by consumers. In over eight out of ten final decisions, ombudsmen reached the same basic conclusions as the adjudicators who handled the cases in the earlier stages. Where they did not do so, there was usually a finely-balanced judgment call or, more often, new facts came to light only at that very late stage.

Proportionately more cases were referred to an ombudsman for a final decision where the dispute related to pensions or investments – generally reflecting the complexity of these disputes and the larger amount of money often at stake.

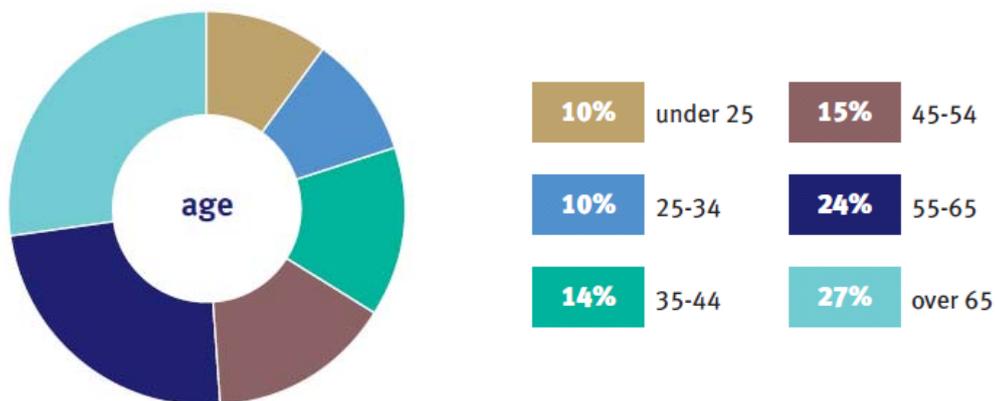
which types of complaints required ombudsman decisions?



source: annual review 2010/2011

Younger people are statistically less likely to request a formal ombudsman’s decision than consumers of other ages. In fact, the proportion of cases requiring an ombudsman’s final decision increases by age group. However, this largely reflects the types of financial products involved –with older people more likely to have more complex products such as pensions and investments.

proportion of cases requiring ombudsman decision – by age group



source: annual review 2010/2011

The proportion of men and women who request a final decision is broadly similar to the proportion who use the ombudsman service overall – as is the proportion of requests made by consumers of different faith and ethnic groups. However, the proportion of consumers from professional and managerial occupations, and from retired people, is slightly higher proportionately than for other groups – reflecting, in part, the types of products these consumers complain about. There is more information about who complained to us and their backgrounds in our *annual review*.

At present we do not normally make public the findings of our individual investigations into cases (our adjudicators’ “views”) – nor do we routinely publish our ombudsmen’s final decisions.

3. why publish ombudsman decisions?

Ombudsman decisions are a formal statement of the decisions that the Financial Ombudsman Service makes – and the way in which we exercise our statutory powers to determine cases. They show the reality of the issues we deal with – and the challenges of the judgements we need to make.

This means our decisions are the subject of frequent discussion – in the trade and consumer press, and among professional advisers and others in industry and consumer groups. Sometimes our decisions are “published” in full by one of the parties – typically on message boards and forums online, or in communications with trade or consumer bodies.

More commonly, selective quotations are used to support a particular slant on our decision. This *partial* publication can give an extremely selective – and often inaccurate – picture of the work we actually do and the decisions we make. As social media and online engagement increases, we expect to see far more of our work circulated widely in this way.

We have ourselves, on occasion, published (normally in anonymised form) full decisions. We did so, for example, in the cases of Equitable Life and “splits” – where we published “lead decisions” that set out our general approach to the key issues involved in the large number of disputes we received on those topics. In the case of mortgage endowments we have published (again on an anonymised basis) some example decisions about issues such as redress and the application of time limits.

More recently we have published several example decisions as part of our online technical resource on payment protection insurance (PPI). We also published the ombudsman’s decision on a travel insurance case involving weather conditions and volcanic ash clouds.

However, the cases we currently publish represent only a very small proportion of the total number of final decisions we produce. Publishing decisions is at present something we do on a case-by-case basis, reflecting our judgement on the significance of a particular decision to *other* consumers and financial businesses. But there is inevitably a risk that our decisions on publication will be seen by some as “editorial” and potentially in conflict with our impartiality. Why should one decision be published but not another?

More significantly, the decisions that become publicly available in these ways do not give an accurate reflection of the *overall mix* of the decisions we make. This is because:

- Where only *partial* accounts of our decision are given, the report may mislead consumers and/or financial businesses by omitting important facts or context.
- Most decisions that become public are those where we have upheld a case against a financial business – but in around half of the complaints we resolve, we conclude that the business has done nothing wrong (or has already offered appropriate redress).
- Many of the decisions that we have published to date are complex. Our decisions on the lead “splits” cases, for example, were over 30 pages long – reflecting the significance of the issue and the volume of legal and technical representations made by the financial businesses involved. But most of our decisions are, in fact, simple and straightforward documents, sometimes only one or two pages long.

Misunderstandings and myths about the approach the ombudsman takes can add unnecessary costs for businesses wanting to reflect our approach in the way they handle complaints themselves. And they can erode the confidence of consumers and businesses in the complaints-handling process and the work of the ombudsman. Publishing formal ombudsman decisions with appropriate safeguards would:

- ensure that our stakeholders had access to a full, accurate and balanced picture of the decisions we reach;
- ensure that interested parties could see for themselves the decision we made – rather than the decision we are *reported* by one of the parties to have made;
- avoid any risk of being seen to “editorialise” on which decisions should be publicly available;
- set clear guidelines about what information should *not* be included in the decisions we publish; *and*
- give further assurance to our stakeholders about the quality and consistency of our work.

ombudsman decisions, the law, research and improved practice

Regulatory guidance requires businesses to carry out appropriate analysis of past ombudsman decisions, in order to assess future complaints fairly (see [DISP 1.3.1R](#) and [DISP 1.3.2AG](#)). Our present practice of *not* publishing ombudsman decisions restricts the ability of interested parties, not directly involved in the complaint, to learn from the cases we decide.

Ombudsman decisions are, by their nature, important to the parties and of interest to a range of external stakeholders – as we make clear in our statement of aims and values: “*we are committed to ... sharing our experience and insight – to help to prevent future problems*”.

In 2007 we “opened our books” to the Law Commission – so that they could consider our experience of dealing with insurance issues such as non-disclosure in their review of insurance law. They reviewed and reported on large numbers of our decisions relevant to their review. That review of our decisions directly informed the [Law Commission’s conclusions](#) about how insurance law should be modernised² and the new legislation currently under consideration by Parliament, the [Consumer Insurance \(Disclosure and Representations\) Bill](#).

The Law Commission’s review of our decisions was carried out with our agreement – and involved a significant amount of effort both by the Commission and us to protect confidentiality. Routine publication, however, would enable a wider range of academics and other researchers to consider the way the ombudsman handles issues of law and practice and the wider implications of our work.

As stated by Lord Justice Rix in June 2008 (in *R (Heather Moor & Edgecomb) v Financial Ombudsman Service* [2008] EWCA Civ at paragraph 89):

“... the following values are all to be appreciated and brought into a pragmatic balance: that an efficient and cost-effective and relatively informal type of alternative dispute resolution should not be stifled by the imposition of legal doctrine; that the opportunity for the development of new ideas fitting financial service industries operating in consumer markets should be appreciated for the

² The Law Commission and Scottish Law Commission: *Consumer insurance law: pre-contract disclosure and misrepresentation* (Dec 2009)

benefits they can bring; that on the other hand transparency, consistency and accessibility as to the principles which inform the ombudsman’s determinations remain virtues in this new setting; and that publicity as to those principles and determinations can assist in that regard.”

That availability of ombudsman decisions would also help new entrants to the financial services sector to better understand how the ombudsman works – and the decisions we make. It would mean that professional advisers and others would be better placed to advise their clients on the likely approach of the ombudsman to case issues. Better informed handling of complaints by financial businesses can help avoid unnecessary referrals of disputes to the ombudsman.

accountability

Greater transparency of our decisions will also help underpin the accountability of our service. Interested parties will be able to make their own informed judgement about the quality and content of our work, the appropriate consistency of our decisions, and how we are exercising our jurisdiction. Informed criticism of our work will help the ombudsmen to maintain high standards and develop our practice.

We welcome this increased accountability. It means the transparency of our decision making should add to the confidence that customers can have in our handling of complaints. And it should help dispel myths and misunderstandings about how we handle disputes.

government proposals

The publication of our ombudsman decisions also needs to be considered against a broader background of thinking about the benefits of transparency – in driving positive behaviours by regulated businesses and better accountability of public bodies.

Transparency forms a core part of the government’s overall agenda. Increased transparency improves standards and enhances confidence in the system. As part of the “transparency agenda”, the government has said it will set new standards for transparency. And it has made commitments to publish data held by public bodies in an open, standardised way.

In [*Better Choices: Better Deals*](#), the government said that empowered consumers, enabled by increased transparency and developing technology, could make the right choices and resolve problems when things go wrong – which in turn makes it easier for high-quality businesses to compete³. It called on ombudsmen and regulators to be more transparent about their complaints information (in part following the lead that we have already taken in the financial services sector).

In its white paper, [*A new approach to financial regulation: the blueprint for reform*](#), the government has set out a range of measures designed to enhance transparency in the sector and by decision makers – with a view to enhancing consumer confidence⁴.

It is proposed that the new regulatory bodies, the Prudential Regulatory Authority (PRA) and the Financial Conduct Authority (FCA), must have regard to *general* regulatory principles – including the desirability, in appropriate cases, of publishing information relating to financial businesses as a means of meeting regulatory objectives – and to the *specific* principle that regulators should exercise their functions as transparently as possible (clause 5: proposed section 3B of the draft legislation).

³ Department for Business, Innovation and Skills: *Better choices: better deals* (2011)

⁴ HM Treasury: *A new approach to financial regulation: the blueprint for reform* (June 2011)

In relation to the ombudsman service, the government has confirmed various steps to enhance the transparency of the work we do – and our relationship with the FCA.

The draft legislation provides (in schedule 10, paragraph 7) for a new section in the *Financial Services and Markets Act* as follows:

230A reports of determinations

- (1) The scheme operator must publish a report of any determination made under this Part.
- (2) But if the ombudsman who makes the determination informs the scheme operator that, in the ombudsman’s opinion, it is inappropriate to publish a report of that determination (or any part of it) the scheme operator must not publish a report of that determination (or that part).
- (3) Unless the complainant agrees, a report of a determination published by the scheme operator may not include the name of the complainant, or particulars which, in the opinion of the scheme operator, are likely to identify the complainant.
- (4) The scheme operator may charge a reasonable fee for providing a person with a copy of a report.

“Determinations made under this Part” are the ombudsman’s final decisions made in our compulsory and consumer-credit jurisdictions.

4. our approach

In light of the considerations set out earlier in this document, we have decided that we should consult publicly on how best we might proceed with the publication of final ombudsman decisions.

The publication of decisions has the potential to benefit consumers as well as financial businesses – by making complaints handling by financial businesses better informed and by reducing the number of unnecessary referrals to the ombudsman service. It will also enhance the transparency and accountability of our own work – and enable a broader range of stakeholders to make informed comments on the issues we handle.

However, we see the publication of ombudsman decisions as just one part of our wider commitment to enhancing the accessibility and transparency of our service. We recognise that looking through large numbers of ombudsman decisions is not the way that most consumers and financial businesses will prefer to learn about our approach.

So we will continue to publish more information for consumers and businesses about our general approach – ensuring that this information is accessible to the diverse range of our users. We will also continue to set out in our *annual reviews* and elsewhere our wider observations about the cases we handle.

In planning how we might publish ombudsman decisions, we want to take fully into account not only the importance of being transparent about what we do, but also the need to:

- maintain an accessible, prompt and informal system of dispute resolution;
- protect the personal information that we hold;
- avoid placing information in the public domain that could help financial crime or limit our ability (or that of others) to handle cases fairly;
- minimise any additional costs of handling and publishing data and resolving disputes;
- comply with the legal and regulatory requirements that apply to our handling of information (including the *Data Protection Act* and the *Freedom of Information Act*); *and*
- help financial businesses and consumers reach informal and fair settlements where disputes arise.

question 1

Do you agree with our overall approach? Are there other considerations we should bear in mind, in approaching the publication of our ombudsmen's final decisions?

should we publish other cases – including those *not* decided by ombudsmen?

We have also considered the arguments for a wider publication scheme – for example, including all cases resolved informally by our adjudicators without the formal involvement of our ombudsmen. This would, in effect, make *all* our conclusions on cases public – even those resolved by agreement through the *views* of our adjudicators.

Some of the arguments about the benefits of transparency might also apply to this far larger set of cases. But we are firmly of the view that any such *wider* publication would not be helpful.

Our service is required to be relatively informal and prompt. We seek to resolve cases informally – and wherever possible by agreement between the parties. Enabling those individual discussions to take place *confidentially* is an important part of achieving our core organisational objectives.

If our adjudicators' *views* were routinely published this would have the effect of adding an unhelpful element of formality into our process – and would tend to limit our ability to handle cases pragmatically and effectively. More significantly, the widespread publication of *views* could discourage some consumers from seeking our opinion on their complaint – and so limit the accessibility of our service.

In practical terms, such a move would also be difficult to achieve – with around 150,000 cases decided by adjudicators each year – and would be costly.

There may be a handful of cases each year where limited publication of adjudicator *views* might be appropriate. For example, we published some adjudicator views (with the consumers' names anonymised) in relation to Equitable Life – and in some other areas where we needed to show large numbers of consumers how our thinking on a “lead case” was developing. However, we think the publication of adjudicators' *views* should be the exception, rather than the rule.

question 2

Do you agree that we should *not* publish the *views* of adjudicators – instead limiting the publication of decisions to those made by our ombudsmen?

5. issues for consideration in publishing decisions

should we produce case summaries – or rely primarily on the decisions themselves?

The draft legislation would require the publication of “*a report of any determination*” – not the determination (final decision) itself. In principle, this report could be a summary of the decision – written by the ombudsman, or another person, summarising the main points of the determination and any award or direction made.

In certain circumstances, this type of *summary* document might be helpful – especially where the case was complex or involved a significant amount of case-specific detail that might be confusing to the third-party reader. An analogy here is some of the law reports – summarising key decisions by the courts.

Summarising ombudsman decisions has some attractions – but as noted earlier, we already publish anonymised case summaries in our regular *ombudsman news*. On the other hand, we are concerned that summarising *all* ombudsman decisions would add significant administrative burdens, costs and potentially delays into the process. The costs of this approach are difficult to forecast accurately. But our initial estimate (assuming we do not use ombudsmen to do this work) is that the cost of summarising all decisions might be £700,000 or more each year.

In any event, most of our decisions are relatively brief (typically just a few pages) and are designed to be accessible documents that can be readily understood by both the financial business and the consumer. Summarising such documents – with the costs, the potential reduction in clarity, and the inevitable scope for errors – is not, in our view, the most appropriate way forward.

So our preference is to publish the *actual* determination made by the ombudsman, subject to appropriate safeguards (see below).

question 3

Do you agree that our published reports on cases should *not* normally be specially commissioned summaries, but the actual determination made by the ombudsman (subject to the appropriate safeguards)?

consumer identities and personal information

Given the nature of the cases we handle, some contain very sensitive information about personal finances. Some contain information about the particular consumer’s health and medical histories – or other details of family and personal life that the individual would not want to be widely known, let alone published. The very fact of having a complaint involving an investment or a debt collector could clearly be sensitive in many circumstances.

So we welcome – and fully agree with – the government’s clarification that, in publishing decisions, we should *not* include the name of the consumer or details which in our opinion are likely to identify the consumer.

We are mindful that the “triangulation” of data could give rise to a risk that a person’s identity may be disclosed – even if their name is “redacted” from the published decision. This could arise, for example, if the case reports very specific events and locations.

We have carried out a review of past decisions to assess the likely extent of this risk. Although the sample was relatively small, it was slanted towards those areas of our casework that we know involve particularly sensitive issues. We found that by deleting or disguising the consumer’s name, their identity would remain protected in 50 of the 60 cases we reviewed.

In the remaining ten cases, we found that deleting a limited amount of information from the decision would have been enough to secure the identity of the consumer. This typically included information such as addresses, the names of doctors or the trading names of self-employed persons.

When we reviewed these cases, we noted that the information was seldom necessary as part of the final decision. Careful drafting of the decision – being mindful of the need to protect consumer information – would therefore be possible, *without* losing the clarity or effectiveness of the decision itself either for the parties involved or for third-party readers.

We also carried out a wider survey of cases decided in the past few months that were known to include sensitive information. From that wider group, we found one specific case where we were concerned that:

- the particular facts were very personal – involving a detailed set of considerations around the consumer’s medical history;
- those facts could readily be used to identify the consumer from other information already in the public domain – as the individual was a public figure; *and*
- those facts were central to a proper understanding of our decision.

We concluded that it would *not* have been possible to publish that decision in a way that protected the personal information of the consumer *and* still retained a clear and understandable account that would have been of value to third parties. However, our review suggests that this type of case is not a common part of our caseload. When we see cases like this, the best approach will be *not* to publish the case at all.

So we conclude that we should routinely:

- disguise consumer identities in the published version of decisions (so that Mr Smith becomes Mr H);
- disguise or delete other information that is likely to identify the consumer (such as addresses); *and*
- reserve the right *not* to publish a small number of decisions where the risk of identifying the consumer from the facts of the case are significant.

financial information

We also considered in our review the extent to which our decisions included financial information about consumers that could be of use to fraudsters. Our decisions do not generally give much information about personal finances that could be used without knowing the identity of the consumer. But it is clearly best to err on the side of caution.

Account numbers and similar specific financial information need not normally be included in decisions. But we would certainly exclude them from published documents.

financial businesses

The draft legislation is silent on the question of whether the identities of financial businesses should be disclosed. Our initial view is that we should *not* delete the name of the financial business involved – nor seek to avoid publication of information that would identify the business (and/or brand) involved.

In many cases, the identity of the financial business is central to the issue in question, and its identity is often clear from the substance of the decision itself. For example, product names, policy wordings and business practices often form a core part of an ombudsman’s considerations, which might all point to a specific business.

So if the objective was to protect the identity of the financial business in the same way as we propose to protect the identity of consumers, there would need to be extensive redaction of the decision – often effectively making the decision incomprehensible on publication.

There is inevitably considerable public interest in the identity of the business in many cases. Even if redaction was practical, it is unlikely to be generally sustainable. And attempting to do so may only fuel public speculation – and sometimes erroneous reporting. This can damage a wide range of financial businesses *as well as* or even *instead of* the actual business concerned.

This is not to say that the interests of transparency and publication mean that *all* information provided by or about businesses – and currently included in decisions – should be made public. There may, for example, be information about a business practice or procedure that is genuinely commercially sensitive – or which would be otherwise damaging if published (for example, information about anti-fraud procedures).

And so very occasionally we may need to bear in mind representations about the wider financial implications of a particular decision for the business involved – in relation to information that could be genuinely confidential. In practice, however, this type of information is very rarely recorded in decisions (not least because of the risk that already exists of wider communication of the decision to third parties). But we would clearly need to exercise yet greater care in publishing decisions.

Financial businesses are, of course, best placed to alert us to information that is, or may be, genuinely sensitive or confidential. There already exist in the complaints-handling rules procedures for financial businesses providing such information to the ombudsman in confidence ([DISP 3.5.9](#)). Businesses can and should draw our attention in this way to confidential information.

We have also considered carefully the issue of the publication of ombudsman decisions relating to smaller businesses. And we have taken into account the circumstances of partnerships or individuals who are (or were) authorised as financial businesses in their own right – and so come within our jurisdiction.

In practice, many of the same arguments about businesses *generally* also apply to *smaller* businesses. Excluding business-specific information could be difficult in practice (see below). And cases of significant public interest can arise in the context of smaller businesses as well as larger ones.

Some argue that the reputational impact of decisions may be greater for smaller local businesses or specialist institutions. However, in our experience much of the publicity about cases involving smaller businesses is generated in the trade press by the businesses themselves or by their advisers.

Others note that a smaller business's handling of a complaint may be a reflection of its professional indemnity (PI) insurer's position – rather than that of the business itself. We understand this argument. However, in practice we do not routinely include the names of any PI insurers (indeed, we may not be aware of them) – and we do not think we should do so in future.

Excluding the names of smaller businesses would also have practical difficulties. How would these businesses be identified and clearly distinguished from other larger businesses? Smaller businesses are sometimes involved with sudden spikes of complaints involving a single financial product or sales practice.

So, for example, excluding from publication those decisions relating to businesses that had *fewer* than a certain number of cases in a previous period might not be a meaningful or effective filter – and would be difficult to justify or explain in practice.

Overall, therefore, we conclude that we should include in the published decision the name of the financial business involved in the dispute (and, where relevant, the trade name under which it operates).

considerations around other persons and businesses identified in ombudsman decisions

In addition to the consumer and the financial business who are directly involved in the dispute, our decision may identify a range of other persons and businesses. This might include other financial businesses (for example, the product provider, as well as the adviser against whom the complaint was made) – or firms such as builders and garages, providing services on behalf of the financial business.

Other people mentioned in decisions might include professional advisers acting for either the financial business or the consumer (for example, lawyers, doctors, surveyors and indemnity insurers), claims-management companies, relatives of the consumer, and individuals working for the financial business.

Our general view is to exercise caution when naming *individual people* in the published version of the decisions. Similarly, we will need to be careful when considering whether to include the names of businesses that are *not* in our jurisdiction – not least because these names, especially if locally based, might help identify the consumer involved in the case. The identity of these third parties is not normally material to the substance of the issues we need to determine. Nor is there likely to be any material or confidential information involving these third parties.

So we will take care to remove names and business identities that might help identify the consumer. And we would not normally name individual employees working for financial businesses. But otherwise we will not delete third-party identities routinely – unless it is fair or necessary to do so.

exceptional circumstances

There may be exceptional circumstances where it is clear that the decision should *not* be published – or that parts of it should be redacted.

This might arise – exceptionally – where publication of the full decision might prompt or inform criminal activity, or might frustrate a criminal or regulatory investigation. In these circumstances, we would have the discretion *not* to publish part (or all) of a decision – as provided in the draft legislation. In practice, we do not consider that these types of circumstances would be common. But it is right to provide for such circumstances should they arise.

seeking consumers' consent to disclose personal information

The draft legislation says that we *could* publish a consumer's identity if we had that consumer's permission. This might be helpful in exceptional circumstances. But we do not believe we should generally seek such consent.

Our preferred approach is to delete from published decisions any personal information that might identify the consumers involved. Asking for consent *generally* would therefore be unnecessary – and might be confusing or concerning to some consumers. It might also add unnecessarily to administrative costs.

questions about our approach to safeguarding confidential information

question 4

Overall do you think our proposed approach strikes the right balances between transparency, protecting genuinely confidential information and the costs of implementation?

question 5

Do you think the steps we propose are sufficient to protect consumer identities and personal information – or are there other specific steps we should take?

question 6

Do you agree that we should *not* seek to protect the identity of financial businesses? If you disagree, what other steps would you want us to take?

question 7

Do you agree with our planned approach to the identities of third parties – including other financial businesses, professionals, other representatives and third-party businesses?

question 8

Do you agree that we should reserve the right *not* to publish certain decisions – or to exempt information in other exceptional circumstances?

question 9

Are there other considerations about safeguarding personal information that are *not* covered in this paper and that we need to take into account?

6. impacts on consumers, financial businesses and the ombudsman service

With changes of the kind we are proposing in this paper, we need to consider the potential consequences on users and on the service itself. So we would welcome feedback from stakeholders on the impacts they envisage.

consumers and accessibility

One area of focus is the question of accessibility of our service for users. There might be concern that the publication of ombudsman decisions (even with the safeguards we have in mind) could discourage certain consumers from seeking an ombudsman's decision – or from using our service at all.

We recognise that publication might add to the perceived formality of the service for some consumers. On the other hand, other consumers might be attracted to the prospect of making their concerns about a financial business more publicly known.

This is why we will be carrying out further research with users, to measure the likely extent of such impacts. We will be carrying out equality analysis (formerly known as equality impact assessments), to assess whether specific groups covered by the *Equality Act 2010* could be impacted.

Our existing data shows those groups of consumers whose complaints are currently proportionately more likely to be resolved following a decision by an ombudsman (see page 7). We will be working with specialist charities and consumer groups, who represent those consumers who are proportionately more likely to receive an ombudsman's decision, to ensure that their views are taken into account.

We will also be carrying out additional quantitative and qualitative research directly with consumers. We will survey consumers whose cases have been resolved following a final decision by an ombudsman – to ask them what impact, if any, the publication of their decision would have had on them.

This will include carrying out in-depth interviews with consumers across the relevant equality and diversity strands – whose attitude to the publication of decisions differs – to gain further insights.

financial businesses

We will similarly be engaging with the representatives of the widest possible range of financial businesses, to ensure we have understood the potential impacts this change might have on the different industry sectors – and on the ability of businesses to handle complaints fairly and effectively.

In our initial discussions with trade associations and others about these issues, two concerns have been raised. First, that publication might cause individual businesses reputational damage. Second, that the information would enable claims-management companies to “target” businesses and topics. We consider these points in turn.

Reputational damage might arise if a decision disclosed embarrassing or inconvenient information about a financial business. Of course, in so far as the decision accurately records actual events, then the reputational damage may be deserved. Hiding the identity of the specific business may serve the interests of the business concerned, but may harm the interests of other similar businesses who have not acted in the same way.

So the fact that a decision may disclose embarrassing or inconvenient information about a financial business is not, of itself, a reason to keep the issue confidential. Indeed,

some might argue that the risk of such publication could help discourage poor behaviours by financial businesses.

And of course, a financial business will have had at least two previous opportunities to settle the case to the consumer's satisfaction – first, when the consumer complained to the business in the first instance, and later when the case was handled by an adjudicator, before it was subsequently referred to an ombudsman for a final decision and then made public.

Some say that reporting of our decisions by the media will overstate negative stories about financial businesses. Similar concerns were raised when we sought views about how best to publish complaints data about individual named businesses. In the event, reporting of that information is generally accepted as having been balanced and appropriate. Increasingly, analysis has focused on the *differences* between financial businesses. We expect the same to happen in this case.

Similarly, the fact that the financial business (or, of course, the consumer) may not agree with the decision or the opinions expressed should not restrict publication. The ombudsman has no wish to embarrass or offend the parties to disputes – and in our decisions we are careful to limit our opinions and decision making to the facts of the individual case we are considering.

In relation to claims-management companies, some have argued that the publication of ombudsman decisions will enable claims managers to identify new target areas – and perhaps even to focus on individual financial businesses. But in practice, it seems unlikely that the information we provide in decisions will give most claims-management companies any new information about the behaviour of businesses.

As we showed in our *annual review*, claims-management companies flourish in areas of widespread consumer detriment and concern – in issues like payment protection insurance (PPI). Those issues are typically already widely publicised – including through regulatory action.

We do not believe that the publication of ombudsman decisions would make a material difference to the ability of claims-management companies to identify new issues – or to focus unfairly on individual financial businesses. In contrast, it might help to avoid unnecessary referral of cases by claims managers to businesses – and then to our service.

our service

The publication of decisions could change the way in which some consumers and businesses use our service. But we do not at present see a clear picture emerging of any systematic change – for example, the encouragement or discouragement of informal settlements. If such evidence emerged, it could have a significant impact on our efficiency.

A consequence of publication will be that a wider range of individuals and organisations will have the ability to compare and contrast our decisions. For example, we expect more people to ask us if an adjudicator's view is consistent with a previously published decision – or if one decision is consistent with another. Of course, this is something that large businesses (and increasingly, claims-management companies) are already able to do – given the volume of our cases they see. While publication might result in an increase in the risk of challenge, it will give further assurance to our stakeholders about the quality and consistency of our work. We welcome this increased accountability.

question 10

What impacts do you believe publication of decisions as we propose will have – on consumers, financial businesses and on our service?

7. the timing, scope and form of publication

when should decisions be published?

Our initial view is that we should publish decisions shortly after they have been issued. Allowing for the time needed for decisions to reach the relevant parties first – and for the decision to be prepared for publication – there is likely to be a short delay, perhaps of around a week or so.

We have considered a more delayed timescale. This might be helpful in some circumstances. But a delay would only encourage uncontrolled release of information. The parties would have had a short period to prepare before the decision was public – as with a court decision.

question 11

Do you agree with our approach to the timing of publication? If not, when should decisions be published and why?

how should decisions be published?

We would publish decisions when they are ready from time to time – rather than in major batches. With around 300 to 400 decisions issued each week, a great deal of information would soon be amassed.

We intend to make decisions available from our website. Clearly, it will be easier for users to self-serve – but we would provide printed copies on request (though we may need to reserve the right to charge for this service).

In designing how the decisions are published, we aim to ensure accessibility and ease of use. We welcome your views and suggestions on how this may be achieved. We think it likely that whatever method is adopted would need to evolve over time – to take account of changing technology and use of the information.

We would publish decisions without any individual commentary. Examples of decisions are included for illustrative purposes at the annex of this document. Some decisions might be used as examples in [our online technical resource](#), to help illustrate our approach to particular topics.

question 12

Do you agree with our approach to the form of publication?

timings and past decisions

As noted earlier in this document, the timing of publication will be influenced, among other things, by the Parliamentary timetable.

We do not plan to publish *past* decisions generally. That would give rise to significant administrative costs. As they were drafted on the assumption that they would normally remain confidential, the extent of redaction needed to protect the identities of the consumers would be more extensive than will be required for cases decided in future.

question 13

Do you have any comments on when we should start publication of decisions – and what are your views on the publication of past decisions?

costs

The costs of implementation will depend heavily on the type and extent of redaction required. If we follow the approach set out in this paper, most safeguards can be achieved through the initial drafting of the decision – rather than by requiring extensive work *after* the decision has been issued to the parties involved. This way, administrative costs would be minimised. There would, however, be some costs associated with preparing decisions for publication on our website. There would also be costs in providing the IT support and infrastructure required to hold the data.

We will be carrying out further work on this over the next three months. But our initial estimate is that the costs are unlikely to exceed £600,000 in the first year and £200,000 a year after that.

Our initial view is that these proposals would not increase costs for those businesses (or their customers) who already have good complaints-handling processes. We would welcome evidence from businesses on this point. Publication could reduce costs for businesses, by making the approach the ombudsman takes clearer – and so helping to avoid unnecessary referrals of unresolved cases to the ombudsman service.

our different jurisdictions

The draft legislation provides for the publication of decisions across our compulsory jurisdiction (involving FSA/FCA-regulated businesses) and our consumer-credit jurisdiction. Each year a small number of decisions are also made in relation to our voluntary jurisdiction. We would plan to publish decisions made under our voluntary jurisdiction on the same basis.

question 14

Do you agree that we should adopt the same approach across all our jurisdictions – and specifically do you agree that we should cover our voluntary jurisdiction in the same way as our compulsory (FSA/FCA) jurisdiction and our consumer-credit jurisdiction?

8. feedback and next steps

We expect to publish a summary of responses to this consultation paper later this financial year – when we will set out our further thinking and next steps.

To inform our thinking, it would be helpful, in particular, to have comments on the following specific questions.

section 4: our approach

question 1

Do you agree with our overall approach? Are there other considerations we should bear in mind, in approaching the publication of our ombudsmen’s final decisions?

question 2

Do you agree that we should *not* publish the *views* of adjudicators – instead limiting the publication of decisions to those made by our ombudsmen?

section 5: issues for consideration in publishing decisions

question 3

Do you agree that our published reports on cases should *not* normally be specially commissioned summaries, but the actual determination made by the ombudsman (subject to the appropriate safeguards)?

question 4

Overall do you think our proposed approach strikes the right balances between transparency, protecting genuinely confidential information and the costs of implementation?

question 5

Do you think the steps we propose are sufficient to protect consumer identities and personal information – or are there other specific steps we should take?

question 6

Do you agree that we should *not* seek to protect the identity of financial businesses? If you disagree, what other steps would you want us to take?

question 7

Do you agree with our planned approach to the identities of third parties – including other financial businesses, professionals, other representatives and third-party businesses?

question 8

Do you agree that we should reserve the right *not* to publish certain decisions – or to exempt information in other exceptional circumstances?

question 9

Are there other considerations about safeguarding personal information that are *not* covered in this paper and that we need to take into account?

section 6: impacts on consumers, financial businesses and the ombudsman service

question 10

What impacts do you believe publication of decisions as we propose will have – on consumers, financial businesses and on our service?

section 7: the timing, scope and form of publication

question 11

Do you agree with our approach to the timing of publication? If not, when should decisions be published and why?

question 12

Do you agree with our approach to the form of publication?

question 13

Do you have any comments on when we should start publication of decisions – and what are your views on past decisions?

question 14

Do you agree that we should adopt the same approach across all of our jurisdictions – and specifically do you agree we should cover our voluntary jurisdiction in the same way as our compulsory (FSA/FCA) jurisdiction and our consumer-credit jurisdiction?

example (A) of an ombudsman's final decision

FINAL DECISION	
complaint by:	Mr X
complaint about:	Example Bank Ltd (Example Bank)
complaint reference:	0000000
date of decision:	1 June 2011

This final decision is issued by me, Example Ombudsman, an ombudsman with the Financial Ombudsman Service. It sets out my conclusions on the dispute between Mr X and Example Bank Ltd. Under the rules of the Financial Ombudsman Service, I am required to ask Mr X either to accept or to reject my conclusions, in writing, before 1 July 2011.

complaint

Mr X complains that his ISA was set up incorrectly on a variable interest rate by Example Bank. As a result he says he has lost out on interest.

our initial conclusions

The adjudicator recommended that the complaint should be upheld. She was satisfied that Mr X had asked Example Bank to open a two year fixed rate ISA. She said that Mr X's ISA should be backdated with the difference of interest paid to him.

Example Bank did not accept the adjudicator's findings. It said the certificate issued to Mr X in 2007 states the investment term, the interest rate and the maturity date. The certificate issued in 2008 does not include this information. It thinks it is reasonable that Mr X would have expected to receive a certificate in 2008 similar to the one sent to him the year before.

my final decision

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Where there is a dispute about what happened, I base my decision taking into account all of the information provided by both parties.

Mr X's previous ISA with Example Bank was a two year fixed rate. Mr X has been clear and consistent in saying that he told Example Bank that he wanted to take out the same type of ISA in 2008 as he had the previous year. However, he later discovered that it had, in fact, opened a variable rate account. Based on evidence provided by both parties, I am persuaded that he did ask for a fixed rate ISA.

I accept that there are some differences between the ISA certificate issued in 2007 and 2008. But I would not necessarily expect Mr X to have compared both certificates. Even if he had, I do not consider that they are sufficiently different for Mr X to have realised that Example Bank had not opened a fixed rate ISA as he had requested.

My final decision is that I uphold Mr X's complaint. Example Bank should pay the difference between the interest Mr X received from the product's start date and what he would have received in its two year fixed rate ISA at 5.75% until the maturity date of the product.

name of ombudsman

example (B) of an ombudsman's final decision

FINAL DECISION	
complaint by:	Mrs Y
complaint about:	Example Insurer Ltd (Example Insurer)
complaint reference:	0000000
date of decision:	12 July 2011

This final decision is issued by me, Example ombudsman, an ombudsman with the Financial Ombudsman Service. It sets out my conclusions on the dispute between Mrs Y and Example Insurer Ltd. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs Y either to accept or to reject my conclusions, in writing, before 12 August 2011.

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint.

complaint

This complaint concerns Example Insurer's rejection of Mrs Y's cancellation claim under her travel insurance policy on the grounds that her illness pre-dated the start of the policy.

background to complaint

On 20 December 2010, Mrs Y telephoned Example Insurer in connection with travel insurance. As she did not know the return date for her proposed skiing trip to France on 10 January 2011, she was advised to purchase an annual travel insurance policy. She agreed that cover under the policy should start on 10 January 2011.

On 9 January 2011, Mrs Y was treated in hospital for a chest infection. She cancelled the holiday on the advice of her treating doctor on 10 January 2011 and submitted a claim to Example Insurer for the cost of the holiday.

Example Insurer rejected Mrs Y's claim on the grounds that the infection occurred before the start of the policy. Mrs Y disputed the decision, stating that she had been advised specifically during the sales call that the policy would cover cancellation with effect from 10 January 2011 and she had not cancelled until then. Example Insurer maintained that it was made clear that the cancellation cover would not start until 10 January. It pointed out that her illness started on 9 January, before the policy start date, and it was excluded from cover as a pre-existing medical condition. It also noted that she had not declared her longstanding asthma, which it considered was linked to her chest infection.

our initial conclusions

Our adjudicator considered the complaint and concluded that Example Insurer was entitled to reject Mrs Y's claim. She listened to the sales call and was satisfied that Mrs Y had been advised of the implications of her choice of the policy start date.

Mrs Y did not accept the adjudicator's view. She stated that she was advised to cancel the holiday on 10 January 2011, which was during the period of insurance; and neither the policy terms nor the sales adviser indicated that there would be no cover if the holiday was cancelled on the date of travel. She said this situation would not have arisen if she had been allowed to take out a single trip policy as desired. She submitted a letter from her GP, confirming that she had not experienced asthma symptoms during the eight-year period, prior to January 2011.

my final decision

The issue for me to determine is whether Example Insurer was justified in rejecting Mrs Y's claim.

I agree with Mrs Y that an exclusion of cancellation benefits from cover under a travel insurance policy is a significant restriction and it must be drawn specifically to the attention of a consumer before the sale of the policy has been completed.

Example Insurer has said that its agent took sufficient steps to make this limitation on the policy benefits clear to Mrs Y before she purchased the policy. I have considered the transcript of the sales call carefully. I am satisfied that Mrs Y chose the start date of the policy. The sales agent then said:

"If you want to make sure you're covered for cancellation we can start it from today's date or we can start it from the day you travel and you will have no cancellation cover."

Mrs Y confirmed that she wished the policy to start on 10 January 2011. I am satisfied that she was clearly informed that she would have no cancellation cover prior to the start of the policy. I do not accept that the cancellation cover was misrepresented to her.

I have given careful consideration to Mrs Y's contention that, because she cancelled the holiday on 10 January, her claim was covered under the policy because it was in force on that date. However, it is clear that her illness started before 10 January and is therefore excluded under the definition of "pre-existing medical condition". I appreciate that Example Insurer also made reference to Mrs Y's asthma as a pre-existing medical condition, but it did not rely on the exclusion in relation to asthma and I have not considered this aspect.

Mrs Y argued in her email of 10 June 2011 that on 9 January 2011 she was feeling well enough to travel and explained that she went to the hospital only as a precaution. However, this is in contradiction to her statement on the claim form that she attended A & E on 9 January, as she was unwell with a chest infection and asthma. I find it more likely than not that her illness started before the policy.

I am satisfied that Example Insurer was justified in rejecting her claim on the grounds that the need to cancel the holiday arose before the policy came into force. I do not consider it would be either fair or reasonable to require Example Insurer to make any payment to Mrs Y.

my decision

It is my final decision that Example Insurer was entitled to reject Mrs Y's claim.

I make no award against Example Insurer.

name of ombudsman