Ombudsman news

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

Tony Boorman,
principal ombudsman
and decisions director

issue 95

Riding the rollercoaster

It's been a bit of a rollercoaster. The first three months of the financial year were the busiest-ever quarter for the Financial Ombudsman Service. As the figures we publish on page 22 of this issue show, we received over 81,000 complaints – more than double the number we received in the same period last year.

It won't surprise our readers to learn that payment protection insurance (PPI) was the main reason for this substantial increase. During the quarter we were receiving on average over 900 PPI cases each working day. The period also saw both the High Court decision on the PPI judicial review *and* the decision by the British Bankers' Association not to appeal that decision. During the period of that judicial review, our ability to progress cases against many banks and other financial businesses was seriously hampered, meaning that fewer cases than we had planned were resolved. That had an impact on the 'uphold rate', as inevitably it was the cases that we thought should be upheld that proved most difficult to finalise.

When we come to publish the results for the next quarter, I expect the position on PPI will have changed again. With complaints-handling rules 'waivers' agreed by the Financial Services Authority, the rate of ▸

Financial Ombudsman Service

new PPI cases has slowed – for the moment at least. And the efforts by many banks to clear the backlog of cases that has built up should see record volumes of cases closed, and high uphold rates.

But the real challenge – and continuing uncertainty – will not appear until the second half of the financial year. By then, banks and others will be dealing with cases that they received *after* the judicial review, where there is no dispute that they should be following the ombudsman's approach and the FSA's complaints-handling guidance. Banks and others are already reporting record numbers of new complaints and it will be some time before we see the impact of those on our figures. So it's difficult to tell whether we will be seeing still higher numbers yet – or whether the figures will now start to decline.

In the meantime, to show the impact that PPI is having, we will be splitting out PPI from other general insurance products when we next publish (in September) our complaints data showing individual named businesses. This will enable everyone to see the impact it is having at a business-by-business level.

Elsewhere, at least by comparison, things were relatively stable over the first quarter. We have seen a further welcome decline in current account complaints – and some increase in mortgage-related complaints. And we have split out, for the first time, a growing area of complaints involving home emergency cover – previously included as part of specialist insurance.

But while we are on this rollercoaster of fast-changing complaint numbers, we should exercise some care about interpreting snapshots. We won't really know what it has been like until we reach the end – and get our feet back on solid earth.

Tony Boorman, principal ombudsman and decisions director
(Natalie Ceeney, chief executive and chief ombudsman, is currently on leave)

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020 7964 1400
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setting up home: financial complaints involving buying, refurbishing or furnishing a home

This selection of recent cases illustrates how we dealt with a variety of consumer credit, mortgage and insurance disputes that arose in connection with buying, refurbishing or furnishing a home.

95/1

complaint about how the insurer deals with claim made under a *removal insurance* policy

Mr K bought a *removal insurance* policy to cover his possessions while they were moved from his old flat to the house he had just bought.

Two weeks after the move, he put in a claim under the policy. He said he had just unpacked and discovered that a number of items of fine china had been broken beyond repair.

The insurer turned down his claim, telling him that the policy required him to report any damage within seven days of his move.

Mr K complained that it had '*not been practical*' to unpack his cases immediately after the move. However, he had done this '*as soon as it was possible*' and he had then contacted the insurer '*at once*' to report the damage.

The insurer again drew Mr K's attention to the terms and conditions of the policy. The insurer also noted that Mr K's removal firm had said that when it delivered the packing cases, '*builders were inside the property, carrying out extensive renovation work*'. In the insurer's view, this suggested that the damage could have occurred *after* the cases were delivered.

Unhappy with this response, Mr K referred his complaint to us.

complaint not upheld

We noted that the policy stated that claims had to be made within seven days of a move. We told the insurer that, as a matter of good insurance practice, it should not reject claims solely on this point – providing the damage was reported within a reasonable time.

We then looked at the circumstances in which the damage had occurred. Mr K's policy covered: '*accidental loss or destruction of, or damage to, customers' property whilst in transit between the collection location and the destination advised to underwriters and/or whilst stored at the premises specified by the remover*'.

So in order to uphold the complaint, we had to be certain that the china had been damaged '*whilst in transit between the collection location and the destination advised to underwriters*'.

We asked Mr K about the insurer's observations that the renovation work might have been the cause of the damage.

He confirmed that builders were still working inside the house on the day his packing cases were delivered. However, he said that their work had been '*almost complete*' by then, so he thought it '*unlikely*' that they would have had any need to move his cases.

When we questioned Mr K further, he said he had needed to stay with a friend for nearly a fortnight after the cases were delivered, as he was waiting for the builders to finish. It was because of this that he had not been able to unpack and check the contents right away.

We said that, in the circumstances, we could not conclude that the removal firm was responsible for the damage to his china. We did not uphold the complaint. ■

... to uphold the complaint, we had to be certain that the china had been damaged '*whilst in transit*'

95/2

consumers complain to lender about problems with the fitting of their new kitchen

After moving to a larger house, Mr and Mrs B commissioned a specialist kitchen firm ('the supplier') to design, make and fit a new kitchen. The supplier also made arrangements for the couple to pay for the kitchen by means of a fixed-sum loan.

A number of problems arose while the kitchen was being installed. Mr and Mrs B subsequently complained to the supplier, citing a number of specific faults. These included the fact that there appeared to have been errors with the initial measurements, so that none of the worktops fitted correctly.

The supplier arranged for remedial work to be carried out. But even after the worktops had been replaced four times, Mr and Mrs B remained dissatisfied with the standard of workmanship. They were also concerned that some of the other problems they had reported had not been resolved.

Mr and Mrs B then complained to their lender. They said they were making '*sizeable loan repayments each month for something that is sub-standard*'. The lender investigated their complaint but did not uphold it. It said the supplier had confirmed that the kitchen '*was satisfactorily supplied and fitted*'. Mr and Mrs B then referred their complaint to us.

complaint upheld

The couple sent us a copy of an independent inspection report on their new kitchen. This included photographic evidence and listed a number of issues that still needed to be put right. The report concluded that '*completely replacing the kitchen*' was '*the most cost-effective remedy at this stage*'.

When we asked the lender to comment on the report, it said that as Mr and Mrs B had been using the kitchen for nearly a year, '*some of the issues may relate to wear and tear*'. ▸

However, it told us the supplier had agreed to carry out all remaining remedial works free of charge.

Mr and Mrs B did not have any confidence that this would resolve matters. They said they had '*already given the supplier ample opportunity to rectify the errors*'.

We concluded, on the basis of the independent report, that the kitchen had *not* been installed with reasonable skill or care and that the goods provided had not been of a satisfactory quality. There had therefore been a breach of contract by the supplier, for which the lender could be held equally liable under section 75 of the *Consumer Credit Act 1974*.

We agreed with Mr and Mrs B that the supplier was given reasonable opportunity to put things right. We did not accept that some of the faults were simply the result of '*wear and tear*'. They were all matters that the couple had raised with the supplier as soon as the kitchen was fitted – and that they had been trying to resolve ever since.

... the loss adjuster had not found any evidence that the house was occupied.

We upheld the complaint and told the lender to:

- refund in full each loan repayment that Mr and Mrs B had made, plus interest;
- terminate the fixed-sum loan agreement, at no further cost to Mr and Mrs B; *and*
- cover the costs of removing the kitchen and of putting right any resulting damage.

95/3
buildings insurer refuses new owner's claim for damage to his property

Mr F's complaint concerned a claim he made to his buildings insurer after the windows and brickwork at the back of his house were badly damaged by vandals.

The insurer turned down the claim on the grounds that the property had been left vacant since Mr F bought it, three months before he made the claim. Under the terms of the policy, vandalism was not covered if the property had been left unoccupied continuously for more than 60 days.

Mr F said he had never left his house unoccupied for more than a few days at a time. As he was carrying out extensive renovation and redecoration work, he had '*not yet fully moved in*'.

... he could not move his furniture into the house until the work was completed.

He explained that as he worked full-time, he did not have much time during the week to work on the house. He normally stayed with his sister, who lived close to where he worked – in a neighbouring town. But Mr F insisted that he '*almost always*' spent every weekend at his house, to get on with the renovation.

The insurer said its loss adjuster had not found any evidence that the house was occupied, so it refused to re-consider the claim. Mr F then referred his complaint to us.

complaint upheld

We asked Mr F to comment on the loss adjuster's statement that there was no evidence of the house being occupied. He told us he had put curtains at the windows but could not move his furniture and other belongings into the house until the work was completed.

He said he never brought much with him when he stayed at the house at weekends. He usually just had his radio, a sleeping-bag and a change of clothes – and he took these back with him when he left on Sunday evenings. However, he said he always left his toolbox at the house, together with '*various items of DIY equipment, wallpaper, paint etc*'.

We asked Mr F if he could provide any evidence that he had been living at the house. He told us he usually had the heating on while he was staying there – and he sent us bills, showing gas and electricity consumption in the house during the period in question.

Mr F also sent us some used bus tickets. He said he had only very recently realised he still had them. His sister had found the tickets when checking through the pockets of a couple of his jackets before taking them to the dry cleaners.

The dates on the tickets showed they had all been bought on Friday or Sunday evenings during the months after Mr F bought his house. All the Friday journeys had started in the town where Mr F worked, and where his sister lived. The Sunday journeys all began in the town where his new house was situated.

We told the insurer that, on the basis of the evidence, we did not agree that the house had been left unoccupied for more than 60 days in a row. We upheld the complaint and told the insurer to pay his claim. ■

■ **95/4**

consumer complains to lender about sale of sofa-bed that did not meet health and safety requirements

Mrs C was concerned to read in her local paper about the potential dangers of a particular make of sofa-bed, which did not comply with relevant health and safety requirements. She had bought one of these sofa-beds just a few months earlier, from the retailer mentioned in the paper.

After trying unsuccessfully to contact the retailer by phone and ask for a refund, Mrs C visited the shop where she had ordered the sofa-bed. She found the retailer was no longer in business.

Mrs C had agreed to pay for the sofa-bed with a point-of-sale loan, arranged by the retailer, so she then wrote to the lender. She enclosed a copy of the article from her local paper and asked for her money back.

The lender acknowledged that, under section 75 of the *Consumer Credit Act 1974*, it was equally responsible with the retailer for a breach of contract. The lender also acknowledged that it was a breach of contract to supply goods that fail to meet statutory health and safety requirements. However, it said it would need '*more evidence than a cutting from a local newspaper*' before it could conclude that a breach had occurred here.

Mrs C then referred her complaint to us.

complaint settled

We rang Mrs C's local paper and asked about the background to its article. It sent us a copy of a report from an independent expert.

... the couple had a poor credit history, so they were only able to borrow on the sub-prime market.

After we showed this report to the lender, it offered to cancel Mrs C's loan agreement, refund the payments she had made so far, and arrange to have the sofa removed and disposed of. Mrs C was happy to settle the complaint on this basis.

95/5

couple complain to mortgage broker about '*inadequate and misleading advice*'

Mr and Mrs Q visited a mortgage broker to apply for a mortgage as they wanted to move house. The couple had a poor credit history and had incurred arrears on a previous property, so they were only able to borrow on the sub-prime market. This meant that they had to accept a higher interest rate than would otherwise have been the case.

They applied to borrow £300,000 over a period of 25 years. The broker obtained a mortgage offer for them on a variable interest rate of 6.75%, initially discounted by 1.75%. This offer also gave details of the early repayment charges that would apply.

Mr and Mrs Q signed the offer. However, a number of difficulties delayed their purchase of the house. The mortgage offer had to be extended several times and it eventually expired, nearly a year after it had first been issued.

The broker then obtained a revised mortgage offer for them. The terms were identical to the original offer, except that the variable interest rate quoted was 7.75%, to be discounted by 1.75%.

Mr and Mrs Q accepted this revised offer and, after a few further delays, their house purchase eventually went ahead. However, they were concerned to discover, when their first mortgage payment was due, that the repayment amount quoted was far higher than they had expected.

... they said the interest rate was '*excessive*' and they had been given '*inadequate and misleading advice*'.

The couple then complained to their mortgage broker. They said that the interest rate was '*excessive*' and they had been given '*inadequate and misleading advice*'.

They thought the discounted rate should start from the date when they had actually exchanged contracts, not the date when the mortgage offer was made. They also said the broker had never told them about the early repayment charges.

The mortgage broker did not uphold the complaint, as it said Mr and Mrs Q had been '*fully informed of all aspects of the offer*'. The couple then referred their complaint to us.

complaint not upheld

We looked at the terms of the two mortgage offers and noted they were exactly the same, except for the interest rate. The offers were very clear and they set out, in a prominent position:

- the variable nature of the interest rate (and the rate that applied at the date of the offer);
- the amount of the early repayment charge, and the circumstances in which it would fall due; *and*
- the amount of the initial discount, and the date when it ended.

We saw a copy of a letter that the mortgage lender wrote to Mr and Mrs Q, before completion, to confirm the changes in interest rate. The revised mortgage offer also included this information, as did a letter the couple were sent by the mortgage broker.

It was clear from their complaint that Mr and Mrs Q had not expected the discounted period to be affected by the delays in their obtaining their new property. However, we saw no evidence that they had been told the discounted rate period would extend beyond the date specified on the offer. We did not uphold the complaint. ■

95/6

consumer complains about repayment arrangements after obtaining a television set from a catalogue company

Furnishing and equipping her new flat was proving more expensive than Miss A had expected. She was therefore attracted by an '*introductory offer*' sent to her by a catalogue company. This gave her the chance to buy goods on a '*buy now, pay later*' basis, spreading the payments over 52 weeks.

After looking through the catalogue, Miss A ordered a television set. Soon after it was delivered, she received a statement asking for a larger repayment than she thought was correct.

When she queried this, the company confirmed that its figures were right. It told her its offer to spread repayments over 52 weeks was only available to customers who quoted a special code when they placed their order. The company said that as she had not quoted the code (which was printed in the letter explaining the introductory offer) her repayments had been set up on the normal basis, over 20 weeks.

Miss A thought she *had* quoted the code but the company had no record of this. It did, however, tell her that it was prepared to alter her repayment terms to 52 weeks if she now provided the code. Unfortunately, Miss A was unable to do this as she had not kept the letter.

Six weeks later, Miss A contacted the catalogue company again. She said her finances were very tight and she could not afford to continue with her repayments. She wanted to cancel her repayment agreement and return the television set.

The company said that unless items were faulty, they could not be returned after the initial '*14-day guaranteed return period*'. Miss A then came to us.

complaint settled

It was not possible to establish whether or not Miss A had provided the correct promotional code when placing her order. However, after looking at her income and expenditure at the time she set up the credit arrangement, we concluded that she was not able to afford the repayments on a 20-week basis. ▸

... she wanted to cancel her repayment agreement and return the television set.

When we put this to the catalogue company, it offered to rearrange her repayments over 52 weeks. It said it would refund any late payment charges she had incurred and amend any information recorded on her credit file. It also offered her £50 compensation to cover any inconvenience it had caused. Miss A was happy with this outcome.

95/7

consumer disputes the amount of compensation offered by lender in response to complaint about poorly-fitted kitchen

Mr G was very unhappy with the standard of the new kitchen that was supplied and fitted in his flat by a high-street retailer. The worktops were damaged and a number of fittings were missing, including taps and most of the door handles for the kitchen units.

When the contractors asked him to sign a form, confirming that the job had been completed, he instead noted on the form that he was '*highly dissatisfied*' with the work, which was '*still incomplete*'. He also listed a number of matters that needed to be put right.

The contractors had told Mr G that someone would be in touch with him '*shortly*'. He waited a week but no one contacted him, so he went to the retailer's premises. The door of the shop was locked and there was a notice in the window saying that the retailer had closed down.

As he had agreed to pay for the kitchen by means of a point-of-sale loan, arranged by the retailer, Mr G then wrote to the lender. He enclosed details of all the outstanding problems, together with several photos.

Initially, the lender appeared confident that it would be able to get the retailer to supply replacements for the missing and damaged items. However, a few weeks later it wrote to Mr G to say this had not proved possible. It offered him £2,000 to cover the cost of getting a different company to supply and fit these items. The lender also offered to pay Mr G £300 for the inconvenience he had been caused.

Mr G was unhappy with this offer, which he said was '*far from adequate*', as he would now have to replace his entire kitchen.

... he said the offer was '*far from adequate*' as he would now have to replace his entire kitchen.

complaint not upheld

The lender did not dispute that the retailer had failed to provide goods and services of a satisfactory quality. It therefore accepted that he had a valid claim under section 75 of the *Consumer Credit Act*.

We asked the lender why it thought the sum it proposed paying Mr G was reasonable. It sent us a quotation from a retailer who was able to supply and fit identical worktops and fittings to the ones that Mr G needed, at a total cost of £1,500.

We were therefore satisfied that it would not be necessary for Mr G to replace his entire kitchen. We told him that, in the circumstances, we thought the lender's total offer of £2,300 was a fair one. We did not uphold the complaint.

95/8

consumer complains that catalogue company's error resulted in his being pursued by a debt-collection agency

Mr M bought a flat with the intention of letting it out. After getting the flat decorated he started to furnish it. He also ordered several pairs of curtains and a number of other items of soft furnishings from a catalogue company.

The day before his order was delivered, Mr M managed to obtain similar items at much reduced prices from a local retailer's closing-down sale. He therefore arranged with the courier who delivered his order to return it to the catalogue company.

... he said he had been '*offended and upset*' by the involvement of a debt-collection agency.

Shortly after this, Mr M went abroad unexpectedly to look after his elderly mother, who had been injured in a road traffic accident. It was over five months before he returned home. He then found a number of letters from the catalogue company, requesting payment for the goods he had already returned. There were also several letters from a debt-collecting agency about this same '*debt*'.

After making a number of phone calls to both the agency and the catalogue company, and writing to both of them, Mr M was eventually able to sort things out.

The company told him the debt had arisen because he had never paid for the goods he ordered – and he had then incurred interest and late payment charges. Fortunately, however, Mr M still had the receipt that the courier had given him when he returned the goods.

He sent this to the company and several weeks later received a brief standard letter. This was addressed to '*Dear Sir/Madam*' and simply confirmed that his account would '*be amended to remove the outstanding balance*'.

Mr M then wrote to the company's head office. He said he did not think this response was adequate, in the circumstances. He pointed out that he had been caused a considerable amount of inconvenience. He also said he had been '*offended and upset*' by the involvement of a debt-collection agency.

The company undertook to remove all adverse information from Mr M's credit file and to ensure that the agency did not contact him again about this matter. It also apologised for any inconvenience he had been caused. But it told Mr M it would not have needed to involve the debt-collection agency if he had responded to its letters and requests for payment.

Mr M then referred his complaint to us.

complaint upheld

When we contacted the catalogue company, it confirmed that Mr M's returned items had been received back in its warehouse just a few days after they were sent out to him. However, the company had not amended its records to show this.

Because of that error – and Mr M's inability to respond to any subsequent demands for payments – the '*debt*' had eventually been passed on to the agency.

We noted that the company had responded to Mr M's complaint by amending his credit history, as well as updating its own records. Overall, however, we did not think it had handled the matter well.

The company accepted that Mr M had been put to some inconvenience. It also accepted that, in the circumstances, he had good reason to be unhappy about the involvement of a debt-collecting agency. We told the company to pay Mr M £150, in recognition of the distress and inconvenience it had caused him. Mr M was happy to settle the complaint on this basis. ■

95/9

home-owner complains to mortgage lender after discovering structural problems at her property

Miss J had a one-storey property that was close to the sea-front in a small town. After living there for several years, she decided to sell her home and move in with her fiancé, who lived some distance away.

A potential buyer, Mr D, lost interest in buying her property after obtaining a valuation report. This described the property as a '*lightweight timber-frame holiday chalet of sub-standard construction, with some evidence of movement*'. The report concluded that Miss J's property was '*not suitable as security for a mortgage*'.

Miss J then complained to her mortgage lender. She said the valuation report it had obtained when considering her mortgage application – several years earlier – had been '*negligent*'. She thought that if the valuation had been carried out correctly, the lender would never have given her a mortgage and she would not have been left with an '*un-sellable property*'.

The lender did not accept Miss J's complaint. It told her it had no reason to doubt the accuracy of the valuation report it had obtained when considering her mortgage application.

Unhappy with this response, Miss J referred her complaint to us. ▸

complaint not upheld

We accepted that the lender had been entitled to rely on the professional opinion of the valuer, when considering whether to give Miss J a mortgage. The valuer, who worked for a company that traded under the same name as the lender, was a member of the relevant professional body, the Royal Institution of Chartered Surveyors (RICS).

The original report had valued the property at £140,000. It noted that the property was of '*timber frame and rendered construction*' and located close to the sea-front. The report did not raise any concerns about the property's construction, location or condition.

The report had been based on a *limited inspection* of the property. It included guidance notes explaining that it only highlighted matters that, in the valuer's opinion, materially affected the property's value – in accordance with the RICS '*Specification for Residential Mortgage Valuations*'.

... there had been a number of problems with the structural work.

The report that Mr D's lender arranged was more detailed. However, there was no reason to assume that issues noted in this later report – such as the evidence of movement – had been present at the time the first report had been commissioned.

We also noted that the property was timber-framed. Although Miss J's lender had been prepared, several years earlier, to lend against '*non-standard*' properties of this type, other lenders now had a different approach.

We established that a significant amount of work had been done to Miss J's property since she had moved in. As well as having central heating installed and a new kitchen fitted, Miss J had arranged for one exterior wall of the property to be completely re-built.

She told us there had been a number of problems with this structural work because the first firm of builders she had employed had turned out to be '*cowboys*'. However, she said the '*most serious*' problems had since been rectified, leaving only a few '*cosmetic issues*' still to be dealt with.

After taking all the circumstances into consideration, we did not uphold Miss J's complaint against her lender.

... She said the first firm of builders she had employed had turned out to be '*cowboys*'.

95/10

catalogue company refuses to allow consumer to return furniture she had ordered but found unsuitable

Having recently had her bedroom redecorated, Mrs L decided to buy two new bedside tables from a catalogue company ('the supplier'), paying for them by credit card.

When the tables were delivered she was very disappointed with them. Although identical in style, the tables differed significantly in their appearance. One of them had been finished with a very much darker shade of wood than the other one.

Mrs L contacted the supplier and explained that she would like to return the tables and get her money back. The supplier told her it was only able to arrange refunds if the goods were faulty.

Mrs F admitted that the tables were not actually '*faulty*'. However, she argued that as she had bought them specifically to be used as a pair, the fact that they looked so dissimilar meant that they were no use to her.

The supplier said she had no grounds to get a refund. It said it had been her choice to use the tables as a '*set*'. They were not intended to be used in this way – and had been sold as individual items – not as a pair.

Unhappy with this response, Mrs L then complained to her credit card provider. It said it could only help if there had been a breach of contract by the supplier. However, it said this was not this case here, as the supplier had fulfilled her order correctly and had not provided faulty goods. Mrs L then brought her complaint to us.

complaint upheld

Mrs L sent us some photos of the tables. These photos were taken from various angles and in different lights – and we decided they clearly showed a significant difference in colour between the two tables. She also sent us the catalogue from which she had selected the tables. The page featuring the tables included a photograph showing two of the tables – one on each side of a bed.

... She said the lender should have checked she could afford the repayments, before it agreed to lend her so much money.

Given that the catalogue had pictured the tables as a 'set' – and that it was on the basis of this that Mrs L had decided to order two tables – we concluded that she had a good claim under section 75 of the *Consumer Credit Act 1975*. This makes the lender equally responsible with the supplier for the supplier's breach of contract.

So we said the credit card provider should give Mrs L a refund to cover the cost of the furniture and the interest charged on her credit card balance. We said the credit card provider should also arrange to have the furniture collected from Mrs L's home. ■

... We gave her the details of a free debt-counselling service.

■ **95/11**

consumer complains that lender was irresponsible in giving her a credit card and a loan for home improvements

Mrs D complained that her lender had '*acted irresponsibly*' in granting her a loan for £15,000 and a credit card with a limit of £5,000, since she was not in a position to afford the repayments.

She had obtained the loan in order to pay for home improvements – and a couple of months later had applied successfully to the same lender for the credit card.

Eight months after that, she told the lender it should not continue to take the repayments for the loan and credit card from her joint account, as she and her husband were thinking of separating. She also said she was finding it difficult to afford the repayments and would like a '*repayment holiday*'.

The lender did not agree to this, but it did agree to accept reduced payments, for a limited period.

Mrs D managed to pay the reduced amounts for several months. But without any further discussion with the lender, she then started making repayments of just £10 a month on each account.

The lender asked her to:

- increase her repayments to the (reduced) amount that it had agreed with her; *or*
- send it details of her income and expenditure.

In response, Mrs D complained that the lender was at fault. She said it should have checked that she could afford the repayments before it agreed to lend her so much money. She thought, '*in the circumstances*', that the lender should '*write off all outstanding amounts*'. When the lender said it was not prepared to do this, she referred her complaint to us.

complaint not upheld

We asked the lender what checks it had undertaken before agreeing to give Mrs D the loan and credit card.

It sent us details of its credit checks and of a check on the electoral register. And it sent us a copy of the information that Mrs D had supplied when she applied for both the loan and the credit card.

In both applications, Mrs D had stated that she and her husband had larger incomes than was actually the case. However, we noted that she had maintained her repayments until *after* informing the bank that it should no longer take the money from the joint account. So we did not think that her borrowing was unaffordable at the outset, based on the income figures she had given.

We asked Mrs D why she had applied for, and accepted, the loan and credit card – given that she thought the lender should have known the repayments were unaffordable. She was unable to offer any explanation. Nor was she able to explain the discrepancy between the total income she had quoted in her applications and the actual amounts that she and her husband earned.

The lender had a duty to assess the affordability of its lending. However, we saw no evidence that it had acted irresponsibly and failed in that duty. We did not uphold Mrs D's complaint. We gave her details of a free debt-counselling service and explained how it could help her to work out affordable arrangements to repay her debts. ■

... the laminate wooden flooring in the hallway of her new flat was accidentally scratched.

95/12

buildings insurer refuses claim for damaged laminate flooring

Ms T bought a ground-floor studio flat in a street that was very close to the one where she had been sharing a rented flat with several friends. As she did not have much furniture, Ms T decided to move her belongings herself, with the help of her former flat-mates.

In the course of the move, the laminate wooden flooring in the hallway of her new flat was accidentally scratched. Ms T had not yet got around to arranging contents insurance. However, she *did* have buildings insurance and she noted that the policy included cover for accidental damage. She therefore put in a claim.

The insurer told her it could not accept the claim because the damaged flooring was part of the '*contents*' of her property, so her buildings policy did not cover it. Miss T thought this was unfair and she complained to us.

complaint upheld

After asking for more information about Ms T's laminate wooden flooring, we established that it was glued together and fixed under the skirting board. This meant that it would be very difficult to lift and re-locate it without substantially damaging it.

We told the insurer that it had long been our approach, in such circumstances, to consider this kind of flooring to have effectively become part of the fabric of the building. We said the flooring *was* therefore covered under Ms T's buildings insurance. We told the insurer to meet Mrs T's claim and to pay her £50 compensation for the inconvenience it had caused her.

95/13

consumer complains about retailer's refusal to let him cancel his order for a new sofa

A first-time buyer, Mr V, visited a furniture retailer ('the supplier') shortly after buying his new flat. He very much liked the look of a large sofa in an

L-shaped design and he decided to buy one like it, paying for it with a point-of-sale loan arranged by the retailer.

Twelve weeks later, when the sofa was delivered, he was very disappointed to find it was too large to fit his living-room. It was only with some difficulty that the delivery men managed to get it into his flat at all. Mr V told them he no longer wanted the sofa, but the men said they were not permitted to take it back.

Mr V then rang the supplier. He explained that he had not realised, until the sofa arrived, that it would not fit into his flat. He wanted the supplier to cancel the sale but it refused to do this. It said it had explained, when he placed his order, that if he changed his mind he had only 48 hours in which to cancel. After that time, his order would be confirmed and passed on to the factory for '*bespoke manufacture*'.

Mr V then complained to the lender, without success, so he referred his complaint to us.

complaint not upheld

Because Mr V had taken a point-of-sale loan, his lender was equally liable – with the supplier – for any breach or misrepresentation of the sale agreement.

Mr V accepted that he had been sent the exact item he had ordered. However, he said he had understood that he had the right to cancel at any time until the sofa was actually delivered and signed for.

As the sofa was not faulty or sub-standard in any way, Mr V's complaint could only succeed if – in not allowing him to cancel his order at the point of delivery – the supplier had breached its agreement with him.

We looked at the sale agreement that Mr V had signed when placing his order. Printed at the top of the page, in bold type, was the statement, '*Please be aware you only have 48 hours to cancel this bespoke order. To do so contact your local retail store or call this number .....*'

Immediately before Mr V's signature, the sale agreement stated '*I acknowledge that I have read and understood the terms of this agreement and my attention has been brought to the relevant cancellation rights*.'

We asked Mr V if he had been given time to read the agreement before signing it. He confirmed that he had – and that he had not been told that he had a longer cancellation period than the 48 hours stated in the sale agreement.

We therefore concluded that there had not been any breach or misrepresentation of the agreement. We did not uphold the complaint.

ombudsman focus:
first quarter statistics

a snapshot of our complaint figures for the *first quarter* of the 2011/2012 financial year

We published our latest *annual review* back in May – covering the financial year 2010/2011. One of the most visited sections of the online version of the *annual review* continues to be the chart that lists the number of new cases referred to the ombudsman service during the year, in relation to each specific financial product and service.

Given the interest shown in these numbers, we decided last year to start publishing updates on a *quarterly basis* – giving more regular snapshots of our workload. We have received positive feedback that this makes it easier for people who are interested in these numbers to see trends emerging *throughout* the year – rather than only seeing the figures *annually*, after the financial year has ended.

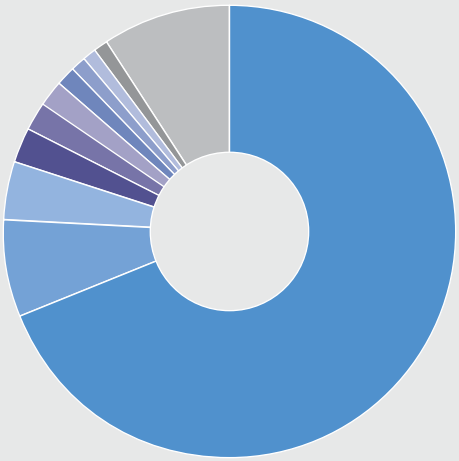
In this issue of *Ombudsman news* we focus on data for the *first quarter* of the new financial year 2011/2012 – showing how many new complaints we received, and what proportion we resolved in favour of consumers, during April, May and June of this year.

* *Complaints involving home emergency cover and mobile phone insurance have previously been categorised under 'specialist insurance' – and have not been shown separately before.*

In September 2011 we will also be publishing on our website the latest six-monthly complaints data (for the period from 1 January to 30 June 2011) relating to individual named businesses.

what consumers complained about most to the ombudsman service in April, May and June 2011

payment protection insurance (PPI)
credit card accounts
current accounts
house mortgages
car and motorcycle insurance
overdrafts and loans
buildings insurance
deposit and savings accounts
mortgage endowments
travel insurance
'point of sale' loans
contents insurance
hire purchase
whole-of-life policies
home emergency cover
personal pensions



- 69% payment protection insurance (PPI)
- 7% credit card accounts
- 4% current accounts
- 2.5% mortgages
- 2% overdrafts and loans
- 2% car and motorcycle insurance
- 1.5% buildings insurance
- 1% deposit and savings accounts
- 1% mortgage endowments
- 1% 'point of sale' loans
- 9% complaints about other products

the financial products that consumers complained about most to the ombudsman service in April, May and June 2011

number of new cases			% resolved in favour of consumer		
Q1 (Apr to Jun) 2011/12	full year 2010/11	full year 2009/10	**Q1 (Apr to Jun) 2011/12**	full year 2010/11	full year 2009/10
56,025	104,597	49,196	**55%**	66%	89%
5,500	17,356	18,301	**60%**	61%	68%
3,201	19,373	24,515	**26%**	27%	20%
2,044	7,060	7,452	**36%**	36%	37%
1,741	5,784	5,451	**47%**	45%	38%
1,402	5,805	6,255	**39%**	43%	48%
1,225	3,469	3,437	**44%**	42%	43%
880	4,326	4,508	**40%**	42%	52%
603	3,048	5,400	**26%**	31%	38%
582	2,503	1,956	**50%**	42%	44%
568	2,765	1,735	**36%**	36%	52%
461	1,697	1,863	**47%**	41%	38%
394	1,395	1,430	**46%**	43%	48%
393	1,444	1,690	**29%**	33%	28%
388	*	*	**59%**	*	*
347	1,126	1,359	**39%**	36%	29%

continued

from previous page

This table shows all products and services where we received (and settled) at least 30 cases during the quarter. This is consistent with the approach we take on publishing complaints data relating to named individual businesses. This approach was agreed after public consultation.

what consumers complained about most to the ombudsman service in April, May and June 2011

portfolio management
specialist insurance
endowment savings plans
warranties
debit and cash cards
credit broking
term assurance
income protection
unit-linked investment bonds
legal expenses insurance
cheques and drafts
'with-profits' bonds
critical illness insurance
investment ISAs
debt collecting
direct debits and standing orders
share dealings
catalogue shopping
interbank transfers
pet and livestock insurance
(non-regulated) guaranteed bonds
mobile phone insurance
self-invested personal pensions (SIPPs)
store cards
annuities
debt adjusting

ombudsman focus:

first quarter statistics

number of new cases			% resolved in favour of consumer		
Q1 (Apr to Jun) 2011/12	full year 2010/11	full year 2009/10	**Q1 (Apr to Jun) 2011/12**	full year 2010/11	full year 2009/10
254	1,148	1,040	**68%**	67%	48%
253	1,791	1,070	**54%**	51%	50%
207	924	1,512	**35%**	33%	25%
205	895	863	**66%**	61%	53%
196	878	964	**35%**	41%	43%
194	697	341	**74%**	63%	62%
194	926	912	**26%**	27%	24%
179	702	740	**41%**	42%	39%
178	849	2453	**70%**	72%	57%
177	619	597	**23%**	21%	25%
173	691	773	**48%**	47%	49%
165	683	1,056	**31%**	37%	28%
162	528	598	**36%**	31%	31%
156	824	1,301	**54%**	48%	42%
151	512	697	**31%**	42%	42%
138	571	737	**44%**	45%	48%
135	979	1,105	**51%**	62%	52%
133	582	755	**60%**	66%	79%
132	529	606	**40%**	43%	43%
121	438	462	**37%**	31%	24%
120	430	421	**41%**	40%	50%
119	*	*	**58%**	*	*
108	417	410	**52%**	46%	53%
107	480	574	**74%**	70%	74%
103	423	501	**42%**	37%	33%
102	302	231	**57%**	54%	65%

continued

from previous page

what consumers complained about most to the ombudsman service in April, May and June 2011

private medical and dental insurance
electronic money
roadside assistance
commercial vehicle insurance
guaranteed bonds
state earnings-related pension (SERPs)
commercial property insurance
personal accident insurance
occupational pension transfers and opt-outs
guaranteed asset protection ('gap' insurance)
structured capital-at-risk products
unit trusts
total
other products and services

ombudsman focus:

first quarter statistics

number of new cases			% resolved in favour of consumer		
Q1 (Apr to Jun) 2011/12	full year 2010/11	full year 2009/10	**Q1 (Apr to Jun) 2011/12**	full year 2010/11	full year 2009/10
95	506	652	**49%**	50%	35%
94	369	453	**33%**	36%	49%
85	300	226	**52%**	40%	35%
82	317	290	**37%**	36%	35%
74	408	595	**43%**	40%	37%
71	196	560	**3%**	7%	2%
65	429	487	**31%**	31%	22%
62	304	274	**56%**	49%	26%
57	281	368	**47%**	49%	48%
44	182	224	**35%**	46%	53%
34	550	273	**96%**	52%	
32	125	192	**51%**	65%	44%
80,711	204,043	160,776	**49%**	51%	50%
590	2,078	2,236	**43%**	34%	42%
81,301	**206,121**	**163,012**	**49%**	**51%**	**50%**

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the Q&A page

featuring questions that businesses and advice workers have raised recently with the ombudsman's technical advice desk – our free, expert service for professional complaints-handlers

Q. what's the ombudsman's approach to complaints involving 'basic advice' and 'simplified advice'?

A. We are already used to dealing with complaints about many financial products where there is no specific 'suitability' or 'know your customer' regulatory requirement. In such cases – as long as consumers have not been misled – we expect people to be responsible for their own choice.

We assess any complaint we deal with involving the sale of a 'stakeholder product' on the understanding that the consumer received 'basic advice'. So we will not, for example, expect the adviser to have completed a 'fact find' or to have made detailed enquiries to 'know the customer'. As with other products, we take the FSA's rules and guidance into account. We also look at good industry practice.

'Simplified advice' processes must comply with the same regulatory requirements as those involving full advice, including the requirement that the advice has to be 'suitable'. But in any complaints we might receive, we would judge the advice in the specific context in which it was given. So we would not expect a full 'fact-finding' exercise. But we *would* look at the questions asked and the options open to the particular consumer concerned.

Where the 'simplified advice' involves an automated process, we would look – as part of our consideration of any complaint – at whether there was a good record of the information the consumer gave and the choices they made.

Q. why don't you have a hearing in every case? I thought this was necessary to comply with human rights law.

A. We are an *alternative* to the court system and aim to resolve disputes as quickly, cost-effectively and informally as we can. We can nearly always get to the bottom of complaints – and recommend solutions or make decisions – on the basis of the information, facts and arguments that each side gives us in writing and on the phone.

Some people might want their 'day in court' – to personally cross-examine the other party and challenge the ombudsman in person. But we do not operate as a traditional court of law. We do not have the power to take evidence on oath and test it by cross-examination, or to compel witnesses and/or third parties to attend. The cost involved in organising and holding hearings is another reason why they are not a standard part of our process.

It is only very rarely that we consider oral hearings necessary or helpful. In the small number of cases where we *do* decide to hold an oral hearing, the ombudsman conducting the hearing decides what procedure to follow and what questions to ask. The ombudsman ensures that neither side is intimidated or disadvantaged by the process.

We are satisfied that our approach to oral hearings complies with human rights requirements. And a judgment from the European Court of Human Rights in June 2011 (*Heather Moor & Edgecomb Ltd v the United Kingdom*) confirmed that the ombudsman operates fully within the rule of law and complies with the European Convention on Human Rights.

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