

another crucial role we have is to share the insight we get from disputes

Natalie Ceeney, chief executive and chief ombudsman



ombudsman news

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

sharing lessons

Everyone knows that the role of the ombudsman service is to resolve individual disputes – fairly and impartially. But people who know us will know that another crucial role we have is to share the insight we get from those disputes, helping businesses prevent future problems by learning from previous situations where things have gone wrong.

ombudsman news is, itself, a great way of doing this. Our thematic summaries of cases we've seen – and the decisions we've made – are regularly commented on by consumer groups and businesses alike as giving clarity and insight into the approach a reasonable business should take to resolving certain issues.

This isn't, however, the only way we give feedback. Our ombudsmen give talks on a range of topics, up and down the country. We work with consumer groups, businesses and the media to make sure that our feedback is widely heard. ▶



Financial

Ombudsman Service



scan for previous issues

in this issue

money transfer case studies
page 3

ombudsman focus: how businesses handle complaints – feedback from our adjudicators
page 10

section 75 case studies
page 14

Q&As
page 20



And we have a dedicated helpline – our technical advice desk – answering 20,000 queries a year from businesses and consumer advisers who want to better understand our approach, so that they can resolve complaints more effectively themselves.

In this issue of *ombudsman news*, we're doing more – we're sharing the hands-on frontline insight of our case handling staff who work on resolving cases every day.

Handling complaints across the entire financial services sector, they see where things go wrong, and the best and worst ways of handling disputes. I do hope that the feedback is useful.

After all, it's in all of our interests to learn from what goes wrong – so that we can prevent future problems and build more trust and consumer confidence in financial services.

A handwritten signature in blue ink, appearing to read 'Natalie Ceeney'.

Natalie Ceeney
chief executive and
chief ombudsman

... it's in all of our interests to learn from what goes wrong – so that we can prevent future problems.

Financial Ombudsman Service

South Quay Plaza
183 Marsh Wall
London E14 9SR

switchboard 020 7964 1000

consumer helpline

Monday to Friday 8am to 6pm and
Saturday 9am to 1pm
0800 023 4567 or 0300 123 9 123

technical advice desk

020 7964 1400
Monday to Friday 9am to 5pm

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Ombudsman News is not a definitive statement of the law, our approach or our procedure. It gives general information on the position at the date of publication. The illustrative case studies are based broadly on real-life cases, but are not precedents. We decide individual cases on their own facts.

money transfer

... some transfers can happen very quickly and might be irreversible.

Transferring money from one account to another can be complicated, and it's inevitable that problems will sometimes arise. All money transfers – whether they take place online or over the counter – rely on the account details of the intended recipient being entered correctly. We see a significant number of complaints involving money being transferred to an unknown third party by mistake. In some cases the money can be recalled, but this relies on the consumer and the financial business acting quickly.

We also see problems arising because consumers do not feel well informed about the transfer process. Some transfers can happen very quickly and might be irreversible. In other cases, particularly when money is being transferred overseas, the money can take weeks to reach its destination. The overseas transfer process can be particularly complicated because intermediary banks usually have to be involved. And of course, when money is moving between countries, different exchange rates can lead to consumers receiving less money than they had expected.

Our online technical resource, “banking transfers, payments and cheques” contains information about how we deal with these complaints.

This selection of case studies illustrates the wide range of complaints we are asked to deal with including:

- ◆ a consumer losing out because the exchange rate changed during a delayed transfer;
- ◆ a money transfer bureau that did not warn a consumer about the risks of passing on payment details;
- ◆ a consumer who entered incorrect beneficiary details;
- ◆ a consumer who was persuaded to transfer money as part of a scam.



... we accepted that the bank had wanted to contact Mrs F to confirm the transfer request was genuine.

▶
case study
102/1

consumer complains about bank's delay in carrying out overseas transfer

Mrs F wanted to transfer £90,000 to her savings account in France. She wrote to her bank in the UK to ask them to transfer the money. A few days later, she received a letter from her bank's transfer department telling her that it had been unable to carry out the transfer. The letter provided a general helpline number and asked Mrs F to get in touch.

Over the next few days, Mrs F phoned the bank several times but was unable to reach the right department. So she made the one-hour round trip to her nearest branch where a member of staff was able to transfer the money straightaway.

Mrs F subsequently made a complaint to the bank, saying that the exchange rate had changed since she first requested the transfer – and that the bank's delay had caused her to lose out. The bank responded to the complaint, and told her that for security reasons, it had been unable to process the transaction without additional authorisation. It said that it would have attempted to contact Mrs F three or four times by phone, in line with its procedures.

Unhappy with this explanation, Mrs F referred her complaint to us.

complaint upheld

We accepted that the bank had wanted to contact Mrs F to confirm that the transfer request was genuine. After all, the transfer involved a substantial amount of money.

However, having considered all the evidence, we did not consider that the bank had done all it could to ensure that the transfer took place within a reasonable amount of time. Although the bank had accepted that Mrs F had phoned the number provided on its letter, it was unable to explain why it had been unable to put her through to the right department.

We therefore decided to uphold the complaint. We told the bank to pay Mrs F the difference between the money she had actually received and the money she would have received had the transfer been made on the date she received the bank's letter. In addition, we told the bank to pay £150 compensation for the inconvenience it had caused.

case study
102/2

complaint about money transferred overseas not reaching its destination promptly

Mr and Mrs R's son was travelling in South America for a few months and they instructed their bank to make an international money transfer to him. After a week, he had not received the money and Mr and Mrs R made enquiries with the bank.

They phoned the bank several times, but it could not explain why their money had not arrived. During the following weeks, Mr and Mrs R sent two letters to their local branch by registered post, but received no reply.

A month after the transfer had been requested, the money arrived in South America. Mr and Mrs R remained unhappy and made a complaint to the bank. They said that the bank had failed to carry out the transfer promptly and had not explained why it had been delayed.

The bank responded, saying that it had in fact made the transfer promptly – and that it was not responsible for the delay. It apologised for not having handled Mr and Mrs R’s subsequent enquiries as efficiently as it could have done. Mr and Mrs R were still dissatisfied and referred their complaint to us.

complaint upheld in part

We explained to Mr and Mrs R that the process of transferring money overseas can be complicated – particularly when it is being sent outside the European Union. A UK bank usually has to send the money via one or more intermediary banks – sometimes called “correspondent” banks in the banking sector.

We looked at all the records relating to the transfer, including those of the intermediary bank. These showed that the money had been sent promptly to the intermediary bank for onward transfer to South America. In addition, it was clear that the intermediary bank had processed its part of the transfer promptly. It seemed that the delay had arisen at the receiving bank.

We were therefore satisfied that Mr and Mrs R’s own bank had not caused a delay in the payment being sent. We pointed out that money transferred to some South American countries can often be delayed due to requirements imposed by their governments.

However, we did not consider that the bank had handled the matter entirely well. It had been unable to answer Mr and Mrs R’s questions over the phone and had not responded to their letters. We noted that the bank had apologised to Mr and Mrs R, but we told it to pay them £100 compensation for the inconvenience it had caused.

case study 102/3

complaint about a transfer not reaching its destination due to incorrect beneficiary details

Mr N owned a small, specialist business importing rugs and carpets. He went into the local branch of his bank and completed the forms instructing it to carry out an international transfer from his business account. The transfer subsequently failed, because the beneficiary details were incorrect – and the money was returned several weeks later. Unfortunately, Mr N did not get back as much as he had sent because of a change in the exchange rate.

Mr N made a complaint to his bank and asked it to cover his loss. He said that the bank must have made a mistake with the beneficiary details because he had made a similar transfer a week later that had gone through successfully.

The bank responded by saying that it had processed the transfer in line with Mr N’s instructions, and that it was not responsible for the incorrect details. It also said that the details Mr N provided for the two transfers were different.

Mr N was dissatisfied with the bank’s response and referred his case to us.

... they phoned the bank several times, but it could not explain why their money had not arrived.



complaint not upheld

We asked the bank to provide us with the transfer request forms for both transactions. These showed that the beneficiary account details provided were different for each transfer. We noted that the first form requested a transfer to the beneficiary's account in Pakistan, while the second requested a transfer to the beneficiary's account in India.

We were satisfied that the bank had processed the first transfer according to the instructions it had received from Mr N – and that there was nothing in the information it had received from Mr N that should have alerted it to any potential problem. We concluded that the bank was not responsible for the accuracy of the details that Mr N had provided. We therefore did not require it to refund any of the loss that he incurred.

... we did not consider he would have acted differently if he had known the money would be transferred immediately.

case study 102/4

consumer complains he is not informed that a transfer can happen instantly

Mr G went into his bank to make a payment of £1,000 to a recipient in eastern Europe. Unfortunately, the next day he realised that he had been caught up in a sophisticated scam. Mr G phoned his branch straightaway and asked for the transfer to be cancelled. He was informed that the transfer had already been made and that the bank would not be able to recall the money.

Mr G complained to the bank, saying he had not been told that the transfer would go through instantly. He said he would not have gone ahead with the transfer if he had known this. The bank told Mr G that it had processed his transfer correctly, and that after he had got in touch, it had tried its best to recall the money. Mr G decided to refer the matter to us.

complaint not upheld

We sympathised with Mr G, who had been the unfortunate victim of a scam. However, we did not agree that the bank had acted incorrectly. We established that the transfer had taken place in accordance with Mr G's instructions and had been completed routinely in a matter of minutes. There was no suggestion that Mr G had expressed any reservations to the bank, or asked about timing, before making the transfer. In light of what Mr G had told us, we did not consider that he would have acted differently if he had known that the money would be transferred immediately. Indeed, Mr G had told us that he had been pressurised by the beneficiary to make prompt payment.

We were satisfied that the bank had tried its best to recall the money. It had also tried several times to obtain further information and updates for Mr G, even though what eventually happened to the money was outside its control. We concluded that the bank had done nothing wrong, and that there was therefore no basis on which we would require it to reimburse the money that Mr G had lost.

case study 102/5

consumer complains she is not properly informed about her account balance before making a transfer

Miss D phoned her bank to check the amount of money she had in her business account. She was told that she had £1,500. On the same day, Miss D went into her local branch and completed a transfer request form, instructing the bank to send £500 to a supplier in the Middle East. She asked for it to be processed the following day. However, the transfer was not processed the following day because Miss D did not have enough money in her account.

... the actual rate that applies to an individual transaction will fluctuate during the day.

Miss D complained to the bank that she had been given incorrect information and that the failed transfer had led to significant losses to her business. The bank responded by explaining that the balance she had been given over the phone would have been correct as at close of business on the previous day. Miss D felt that the bank had not made this clear. She referred her complaint to us.

complaint not upheld

The bank provided us with a recording of Miss D's phone call. We were satisfied that the bank had explained to Miss D that the balance was correct as at close of business on the previous day. In light of this, and given that Miss D had instructed the bank to process the transfer the day after she completed the form, we considered that it would have been reasonable for Miss D to have taken account of the other transactions that would go through her account. Under these circumstances, we did not uphold the complaint.

case study
102/6

consumer complains that an overseas transfer has an unexpected exchange rate applied

Mrs E wanted to transfer some money from her overseas account to her account in the UK. However, when the money arrived, it was less than she had expected because of the exchange rate that had been applied.

Mrs E complained to her bank. She said that the rate it had used was wrong because it differed from the "market" rate she had seen on a news website before making the transfer. The bank responded by saying that it had followed its procedures and applied its own exchange rate. Mrs E was still unhappy and referred her complaint to us.

complaint not upheld

Having looked at the evidence, we were satisfied that the bank had processed Mrs E's transfer correctly, using the exchange rate that applied at the relevant time.

We explained that the exchange rate that Mrs E had seen on the news website would only have given an indication of the general rate available.

The actual rate that applies to an individual transaction will fluctuate during the day and will vary between banks due to a number of different factors.

On that basis, we did not consider that the rate applied to Mrs E's transfer could be described as "wrong" simply because it was different from a better rate she had seen stated elsewhere. So we did not uphold the complaint.

case study
102/7

complaint about bank not checking that account details match before processing an online transfer

Mr P used his internet banking service to transfer £1,000 to his daughter, who was away at university. A week later, the money had not reached his daughter's account. When Mr P queried this with his bank, he discovered that the money had gone into the account of an unknown third party. The bank told him that one of the digits of the account number he had entered had been wrong.

The bank was able to recall the money and transfer it to Mr P's daughter. However, Mr P complained to the bank, saying that it should have checked that the name and account number matched, and that the fact it had not done so had caused him significant inconvenience.

... the bank told him that one of the digits of the account number he had entered had been wrong.

► **complaint not upheld**

We explained to Mr P that the bank was not required to check that the name and the account number matched before processing his online transfer. Having looked carefully at the evidence, we were satisfied that the bank had displayed a clear on-screen message at the start of the online payment process, explaining that only a sort code and an account number would be used to process a payment – and not an account name. For this reason, we did not uphold the complaint.

case study
102/8

complaint about money transfer bureau releasing funds to third party without having explained security risks to consumer

Mrs L saw a car advertised on the internet for £2,500. She contacted the seller, who said he would be prepared to drive the car to her home in order for her to view it, but that she would first need to prove she had sufficient money to buy the car. The seller suggested that Mrs L send the money to her husband using a money transfer bureau, and email him (the seller) a copy of the receipt to show that the funds were available. He also offered to refund the transfer fee.

Mrs L had not made such a transfer before, so she completed a transfer request form with the help of her local money transfer bureau – having mentioned the purpose of the transfer. When she got home, she emailed the seller a copy of the transfer request form. Mrs L did not hear from the seller again. When her husband went into the money transfer bureau to collect the money, he was told that it had already been withdrawn by someone who had provided the necessary identification.

Mrs L complained to the money transfer bureau, explaining that the intended recipient was her husband and that he had not withdrawn the money. The bureau replied that Mrs L should not have released the payment details to a third party, and that she had been the victim of a sophisticated scam. Mrs L remained unhappy and referred her complaint to us.

complaint upheld

We noted that the money transfer bureau said it was Mrs L's fault for sending a copy of the receipt – which contained payment details including the reference number which the beneficiary had to quote in order to get the money – to a third party.

However, there had been nothing printed on the receipt to warn a customer against doing this. The money transfer bureau insisted that Mrs M should have realised this was a scam because it had seen it performed “many times” recently. In light of this, we considered that the bureau could have done more to draw relevant fraud warnings to Mrs L's attention.

In the circumstances of Mrs L's case, we did not consider that she should have realised that an unknown third party would be able to use the receipt to withdraw the money she had sent to her husband. On that basis, we upheld the complaint and told the bureau to reimburse Mrs L with the full amount of the money she had transferred, together with suitable compensation for the worry and inconvenience this had caused her.

case study 102/9

complaint about online transfer process not giving consumer enough opportunities to check beneficiary details

Mr B went online to transfer £150 to his mother's bank account. Because he had sent money to her before, he was able to click on her details from a list of recent transactions. Unfortunately, Mr B clicked the wrong recipient details and the money was transferred to someone from whom he had bought a second-hand computer.

Mr B contacted his bank immediately to see if he could recall the transfer, and was told that someone from the relevant department would call him back. Although he phoned the bank another three times that day, Mr B was unable to speak to someone who could help him until the following day.

By this time, the bank told him that it could not recall his money.

Mr B complained to the bank. He said that he had not been prompted to check that the transaction details were correct, and that the bank had been unhelpful when he had told them about the mistake.

The bank replied that its online transfer process was simple to follow and that Mr B ought to have been "more careful" when he made the transfer.

The bank also said that even if Mr B had been able to speak to someone in the right department sooner, it would have been unlikely that he could have got his money back.

Mr B was unhappy with this response, not least because he no longer had the contact details of the person to whom he had transferred the money. He referred his case to us.

complaint upheld

We listened to what both sides told us and reviewed the relevant facts of the case. This included viewing screenshots of the steps Mr B would have gone through to make the transfer.

We did not consider that the bank had given Mr B sufficient opportunity to check the transaction details. In particular, we noted that there was no "final confirmation" page.

In addition, we did not consider that the bank had handled Mr B's situation well. We established that had it acted more quickly, there was a good chance that it could have got Mr B's money back.

As things stood, the bank was unable to explain why Mr B could not speak to the relevant person on the day he made the phone calls.

We therefore upheld the complaint and told the bank to refund Mr B £150, plus £75 compensation for the inconvenience it had caused.

... the bank replied that its online transfer process was simple to follow and that Mr B ought to have been "more careful".

ombudsman focus: how businesses handle complaints – feedback from our adjudicators

In issue 96 of *ombudsman news* last autumn we published comments and suggestions made by financial businesses in response to our regular business surveys. We published our replies to the fourteen issues that businesses raised with us most often – explaining how we had acted on their feedback and what we did next, and giving more details about the issues involved from the ombudsman service’s perspective.

Following the positive feedback to that feature in *ombudsman news*, we’re now looking at things the other way round – giving feedback from our adjudicators on how financial businesses themselves handle complaints.

These suggestions were all posted recently on our intranet casework forum – where case-handling staff and ombudsmen answer each others’ questions, debate casework issues and share knowledge with each other. The suggestions were in response to the following “thread”, posted by Caroline Wells, our head of outreach and external liaison:

Here in the outreach and external liaison team we’re planning the events and seminars we’ll be running next year for businesses large and small across the UK.

When we’re deciding the content for these events, we look at the sorts of enquiries handled by our technical advice desk and the types of complaints coming to the ombudsman service. But are we missing anything? Let us know. It could shape the content of our future events.

- ◆ *What don’t businesses know that they need to know?*
- ◆ *What do businesses do well – and not so well – when handling complaints?*
- ◆ *What more could we do to help businesses handle complaints better – and prevent complaints from escalating to the ombudsman service?*



Over the next few pages we've reproduced a selection of the comments and suggestions from adjudicators who had helpful observations about the way businesses handle complaints.

step in early

- ◆ "If businesses took the time to contact a customer as soon as they received a complaint, to talk to them directly about their concerns, some of the entrenched attitudes we see months later could be avoided."
- ◆ "It's so much easier to nip problems in the bud if you apologise early where it's clear something's gone wrong – rather than try to justify the mistake, which can look defensive."
- ◆ "Explaining things over the phone in person is often much more effective – and human! – than trying to explain things in letters using business-speak."

putting the customer first

- ◆ "What could businesses do? Engage and listen. Most customers don't bring complaints just for the fun of it. And most customers are far more likely to accept an unfavourable outcome if someone takes the time to explain things courteously, sympathetically and in plain English."
- ◆ "We still see so many cases where the complaint is actually about something pretty simple – often just an administrative cock-up. All the consumer wanted was an apology – and some token compensation for the inconvenience they were put to in repeatedly having to contact the business to get the problem fixed. But instead, the complaint gets escalated to the ombudsman – and becomes a full-blown dispute."
- ◆ "The default reaction of some businesses when confronted with a complaint seems to be to refuse to believe they could have done anything wrong. Even when they genuinely haven't done anything wrong, they give the impression that being proved right is more important than repairing the relationship with their customer."
- ◆ "I've seen cases where a business actually agreed with the customer that it hadn't handled things well. But rather than just saying sorry, it retrenched into long complicated explanations and justifications that ended up sounding defensive."
- ◆ "While we may agree with a business that broadly a complaint isn't justified, we might still find that the way the case was handled only made things worse for the customer."

... most customers are far more likely to accept an unfavourable outcome if someone takes the time to explain things courteously, sympathetically and in plain English.



◆ “Consumers can sometimes see offers of compensation of less than £50 as quite insulting – especially where they’ve had to struggle long and hard to get a problem sorted or their complaint taken seriously. Rather than quibbling over ten or twenty pounds here or there – where it’s the principle, not the sum of money, that’s at stake – it might sometimes be worth thinking about alternative ways of apologising. For example, someone senior in the business might take the time to phone or write personally to the consumer, to explain how lessons have been learned.”

where big’s not beautiful

◆ “I very often see cases where there’s confusion within the financial services group about which bit of the business is technically responsible for handling the complaint. For example, where a complaint involves insurance or investments that a consumer bought in their local bank branch, the consumer can find themselves being passed from pillar to post between the

“regulated entity” that sold the product and the one that managed or administered it. These regulatory and legal niceties shouldn’t get in the way of someone taking responsibility centrally – and making sure all the parts communicate with each other – and most importantly, with the consumer.”

◆ “For large financial services groups, it can be difficult to co-ordinate different responses from different parts of the group – for example, where a single complaint involves both how a loan is being administered as well as payment protection insurance (PPI) issues. But should that be the customer’s problem? The customer rightly expects that their complaint should be dealt with in the round – as a single issue.”

◆ “Some complaints staff at the larger businesses seem more interested in the official outcome codes their cases should be recorded under – rather than just putting things right for their customer. Perhaps their targets are based on these statistics – which can only put them under added pressure.”

◆ “It sometimes seems that senior management at some larger businesses unwittingly puts procedural obstacles in the way of their frontline complaints handlers – who are reluctant to raise their practical concerns.”

admin support

◆ “Keeping up with the paperwork and managing files efficiently can help prevent so many basic administrative problems – at every organisation including our own! For example, we get so many letters from businesses telling us to refer to enclosures that aren’t enclosed at all ... ”

◆ “It would be useful if businesses could provide us with a complete file – not just a copy of the complaint form and copies of our own letters to them. If we can get all the information we need in one go, it saves so much time for everyone involved. On the other hand, I think that consumers also sometimes need to make a greater effort to send us as much information as possible.”

◆ “Over-worked complaints departments sometimes send us pretty chaotic complaint files which we then have to sort out and re-organise ourselves – to be able to work out what papers we’ve got and what else we might need. This makes me wonder how the business itself managed to arrive at a decision on the complaint, if their paperwork was so illogical and disorganised.”

◆ “In cases involving financial hardship, the consumer often only gives us their current-account number – but the bank or lender will know from their system whether that customer has other accounts or cards that we will also need to take into account. It would be helpful if the bank could give us that information before we had to work it out for ourselves by going through the customer’s current-account statements.”

... promises not being kept is a constant source of irritation and complaints.

tailor the response

- ◆ “Using jargon can make a difficult situation worse. If your customers don’t understand what you’re telling them, how can you convince them that you’ve listened to their problem and resolved their complaint?”
- ◆ “Some businesses use so many internal abbreviations, acronyms and corporate jargon that sometimes even we don’t understand what they’re telling us. So it’s hardly surprising that a lot of our time is spent trying to explain to consumers what businesses actually mean in their written decisions on complaints.”
- ◆ “We often see larger businesses making the original problem worse, by responding to the consumer using obviously standard templates – which frequently miss the point of the original complaint.”
- ◆ “Busy complaints departments that deal with large numbers of complaints sometimes have a tendency to pigeon-hole cases – and to respond to them with standard letters.

But even when a complaint may look “standard” in terms of the product or service complained about, there may be other issues round the edges – things that have particularly annoyed the consumer. Showing you’ve understood and responded to those issues, too, can really help in resolving the complaint with a personal touch.”

learning from other complaints

- ◆ “What can we do to encourage businesses to make greater use of the resources we have available for them – like our technical advice desk and the online technical resource of our website?”
- ◆ “A good place to start is learning from earlier cases that have been referred to the ombudsman service – either your own cases or those we publish in *ombudsman news*.”
- ◆ “It’s important that complaints-handling staff have enough time to look at the information we publish on our approach to complaints – to see how it might help with the complaints they’re dealing with themselves.”

do what you say

- ◆ “Where consumers ask why things went wrong, businesses often respond by saying, “the relevant individual has been spoken to and training will be provided” – which isn’t always the “putting things right” that the consumer wanted to hear.”
- ◆ “Promises not being kept is a constant source of irritation and complaints. It’s generally not the deliberate intention to break a promise – it’s often just that other things get in the way, or it turns out not to be as easy as it sounded. But making sure errors are put right – and administrative glitches are sorted – is a vital part of resolving complaints. This is something where most organisations can do better. In fact, it’s why one of our own values here at the ombudsman service is *doing what you say you’ll do*”.

section 75

Section 75 of the *Consumer Credit Act 1974* protects a consumer in specific circumstances when they make a purchase using certain types of consumer credit. Over the last few years, we have seen a significant increase in the number of complaints involving section 75. This suggests that consumer awareness of the protection it can offer is increasing. However, section 75 does not provide protection for every transaction made using a credit card, and the law in this area is complicated.

Our online technical resource, *goods and services bought with credit (including section 75 and section 75A)*, gives more information about how we can usually help with complaints relating to section 75.

The case studies that follow show just how varied these complaints can be. Before reading them, it is helpful to note three main requirements of section 75.

- ◆ For section 75 to apply, there must be an unbroken connection between the consumer, the lender and the supplier. So arrangements must already be in place between the supplier of the goods and the provider of the credit – and the consumer using that credit completes the chain.

- ◆ Section 75 only protects the purchase of items that cost between £100 and £30,000.
- ◆ Section 75 only helps the consumer where there has been either a breach of contract, or where goods or services have been misrepresented to the consumer. As the case studies show, many of our decisions hinge on whether one or both of these have taken place.



case study 102/10

complaint relating to a claim under section 75 for mis- representation by a holiday club provider

During a holiday in the Canary Islands, Mrs S attended a presentation about membership of a holiday club. During the presentation, the holiday club provider said that new members would receive a certificate from a third party “cashback” company – which would guarantee that they would be refunded the cost of membership after five years.

Mrs S decided to take out membership and paid the supplier £3,500 by credit card. However, when she received the certificate, Mrs S realised that she was not guaranteed to get all her money back and could actually receive nothing.

Mrs S contacted the holiday club provider by phone and email, but received no reply. So she decided to contact her credit card provider to make a claim under section 75. The provider said it could not uphold the complaint because it was based purely on Mrs S’s “recollection of events”. Mrs S was unhappy with this response and complained again. When her second complaint was rejected, she decided to refer her case to us.

complaint upheld

We looked at the evidence carefully and listened to the arguments for both sides. We also took into account information that was publicly available about other customers of the same holiday club provider who were pursuing legal action against it.

Having assessed the evidence, we were satisfied that Mrs S had been assured by the holiday club provider that she would definitely receive all her money back from the “cashback” company. We were also satisfied that she would not have taken out the membership had it not been for this assurance.

We therefore concluded that Mrs S did have a claim for misrepresentation by the holiday club provider. We told the credit card provider to refund her the cost of the membership, plus interest.

... we were satisfied that she would not have taken out the membership had it not been for this assurance.

... his argument was simply that it was not good value for money.

▶
case study
102/11

complaint relating to a claim under section 75 against a holiday club

During a holiday in the Mediterranean, Mr W decided to take out membership of a holiday club. He attended a presentation and was told about the various deals on flights and accommodation that members would be offered. He paid for the membership by credit card.

When he returned home, Mr W discussed the membership with his son. His son suggested that it was not good value for money. He pointed out that he could get similar deals by carrying out his own research online, without being a member of a holiday club. Mr W immediately contacted his credit card provider and explained the situation, asking them to refund the money as a claim under section 75.

The credit card provider refused. It said there had been no breach of contract or misrepresentation. When Mr W complained, it gave the same response. He therefore decided to refer his case to us.

complaint not upheld

Having looked at the evidence provided by both sides, we established that Mr W had never suggested that the holiday club had been misrepresented to him – or that there had been any breach of contract. His argument was simply that it was not good value for money. While this may have been true, we explained that section 75 does not offer protection against this. We did not uphold the complaint.

.....

case study
102/12

consumer claims under section 75 for a deposit that's below the £100 lower limit – but the total purchase price is above it

Miss N decided to buy a leather sofa for £1,000 from her local furniture store. She paid £99 on her credit card as a deposit, with the balance due on delivery a few weeks later. Unfortunately, the store went out of business before it delivered the sofa.

When Miss N mentioned the situation to a friend, she was told that she had protection under section 75 – and that her credit card provider would be able to get her money back. When she contacted her credit card provider, she was told that it could not help because section 75 only covers transactions between £100 and £30,000. Miss N complained, but the credit card provider stuck to this position. So she decided to refer the matter to us.

complaint upheld

Having looked at the detail of this case, we could see that the credit card provider had got it wrong. We explained that it is the total cash price of a product or service that must fall between £100 and £30,000.

Even though Miss N had only used her credit card to pay a deposit of £99, as the sofa cost £1000, the purchase would be covered by section 75. We therefore told the credit card provider to refund the £99 deposit Miss N had lost and pay £50 compensation to her for the inconvenience caused.

.....

case study 102/13

consumer claims under section 75 for a deposit that's below the £30,000 upper limit – but the total purchase price is above it

Mrs T decided to buy a property overseas to rent out as holiday accommodation. The property cost £162,000. It was still being built and Mrs T was required to pay a deposit of £3,000 to the building company. She paid this using her credit card. Unfortunately, the property was never completed and Mrs T found that the company, which was based overseas, would not return her calls.

She decided to make a claim to her credit card provider under section 75. However, the provider rejected her claim, explaining that the amount of money involved was too high to be covered by section 75. Mrs T complained, saying that the transaction had only been for £3,000, but the provider refused to change its mind. Mrs T referred her complaint to us.

complaint not upheld

We explained to Mrs T that section 75 does not provide protection for every transaction made using a credit card. It does not apply to claims relating to items costing less than £100 or more than £30,000.

Although we noted that Mrs T's deposit was within these limits, the total price of the property – £162,000 – fell outside them. We sympathised with Mrs T's situation, but we agreed with the credit card provider that the transaction was not protected by section 75 and did not uphold the complaint.

case study 102/14

complaint relating to a claim under section 75 for the wrong type of TV equipment

Mr J had been having difficulty getting a clear picture on his TV through his aerial. He was unable to view one particular channel altogether. To solve the problem, he had a satellite dish installed, bought a set-top box and paid a monthly subscription.

Mr J then discovered that he could use his dish to receive free digital channels. While he was looking into his options, he also discovered that replacing his TV with a more up-to-date model would mean he could dispense with his set-top box. So he decided to go ahead and buy a new TV with integrated satellite services.

He went to his local electronics store. When he explained what he was looking for, the sales assistant told him that he would be better off with a different kind of set-up altogether – one that provided free-to-air channels through an ordinary aerial. He said that this would solve the problems that Mr J had experienced.

When Mr J got the TV home, although the picture was clearer, the problems continued. When he contacted the retailer, they refused to refund him, but said they would exchange the TV. However, they did not sell the type of TV that Mr J had originally wanted.

Mr J decided to make a claim to his credit card provider under section 75, but it was refused. A second complaint received the same response. The provider said that Mr J could not prove what he had been told by the sales assistant. Mr J referred his complaint to us.

... the jacket sleeves were too long and the trouser legs far too short..

► **complaint upheld**

We needed to decide what, on balance, was most likely to have happened when Mr J visited the electronics store and spoke to the sales assistant. So we looked at the background to the case and assessed the evidence provided by both sides.

We noted that Mr J already had a satellite dish and that he had only recently cancelled his subscription. Mr J's explanation of the discussion he had had with the sales assistant was persuasive and had been consistent throughout his complaint to his credit card provider and his complaint to us.

We therefore considered it likely that he had gone into the store intending to buy a TV with integrated satellite services, and that he had only been persuaded to buy the alternative model on the basis of the representations made by the salesman.

We upheld the complaint. We told the credit card provider to take away the TV and refund the cost to Mr J.

case study
102/15

consumer claims under section 75 for being "misled" about a caravan park's spa facilities

Mr R booked a week's holiday at a caravan park on the south coast, and paid using his credit card. When he arrived, he was disappointed to find that the park did not have all the spa facilities that he had expected. He contacted the holiday company to ask for a refund, and when it refused, he requested a refund from his credit card provider under section 75. This was also declined.

Mr R then complained to his credit card provider, saying that the holiday company had advertised a "luxury spa", which should have included a sauna and a steam room. Mr R said that he would have looked elsewhere for accommodation had he not been "misled" by the holiday company. The credit card company did not change its mind and Mr R referred his complaint to us.

complaint not upheld

We explained to Mr R that for the credit card provider to be liable under section 75, we would need to be satisfied that the holiday company had misrepresented the facilities available at the caravan park. So we looked at the holiday company's website. We found no suggestion that there would be a sauna or a steam room – either in its written descriptions or in photographs.

We noted that the holiday company did refer to the facility as a "luxury spa", and that it included a swimming pool, hot tub and treatment rooms. It appeared to us that Mr R had *assumed* that it would include a sauna and a steam room, facilities that he expected to find in a "luxury spa". However, given the clear information that the holiday company had provided about exactly what facilities were available in the spa, we did not consider that it had misrepresented things. We did not uphold the complaint.

case study
102/16

consumer claims under section 75 for an ill-fitting tailor-made suit

Mr C saw an advert on the internet for a tailor-made suit service. A tailor would visit his home to measure him, and the suit would be delivered a week later. Mr C paid £799 to the tailoring company using his credit card. When the suit arrived, it did not fit properly and he emailed the company straightaway. The company responded a few weeks later, saying it would make the necessary alterations free of charge and made an appointment to do so. However, the tailor did not keep the appointment.

Mr C complained again, but had no luck with the tailoring company. He decided to contact his credit card provider to ask for a refund under section 75. The provider refused, saying that there was no evidence that the suit did not fit when it was delivered. Unhappy with this response, Mr C complained to the credit card provider. When it stuck to its original position, he referred the matter to us.

complaint upheld

We looked at the evidence provided by both sides, which included photographs of Mr C in the suit. In our view, the suit did not fit well. The jacket sleeves were too long and the trouser legs far too short. We were satisfied that Mr C had given the tailoring company the chance to put things right, but it had not followed through on its offer to make adjustments to the suit.

We noted the credit card provider’s argument that there was “no evidence the suit had not fitted at the time it was delivered”. However, we considered that there was good evidence to show this. Mr C had contacted the tailoring company immediately, and had there not been a genuine problem, we could not see why the company would have offered to make adjustments. Mr C had been promised a suit tailored to fit him, and had clearly not received what he had paid for. We therefore concluded that there had been a breach of contract and upheld the complaint.

We told the credit card provider to refund Mr C the cost of the suit, plus any charges connected with the transaction.

case study
102/17

consumer claims under section 75 for a cancelled excursion during a trip to Lapland

Mrs H decided to take her family on a day trip to Lapland. She booked online and paid using her credit card. During the trip, one of the planned excursions – a visit to a “magical elves’ house” – was cancelled. Afterwards, when Mrs H complained to the travel company, it acknowledged her disappointment and offered to refund her £750.

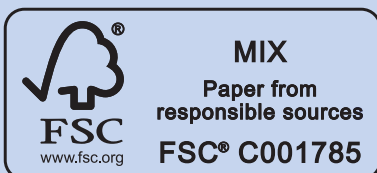
Mrs H was not satisfied with this and thought she should be refunded the entire cost of the trip.

She said that the trip had been misrepresented to her and that the travel company had breached the contract. So she contacted her credit card provider to make a claim under section 75. The provider told her that the travel company had already compensated her sufficiently and that it had no further obligations under section 75. Mrs H then complained to the credit card provider, and when it did not change its position, she decided to refer her complaint to us.

complaint not upheld

We established that Mrs H and her family had been on all but one of the planned excursions. The visit to the “magical elves’ house” had been cancelled at the last minute due to exceptionally heavy snowfall. Given that we were satisfied the excursion would have been available had it not been for the unusually bad weather conditions, we did not consider that the trip had been misrepresented to Mrs H.

We considered that the £750 offered by the travel company was fair and reasonable compensation for the cancellation of the excursion in the circumstances, and so we did not require the credit card provider to make any further payment to Mrs H.



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Q? &A

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

question

the business I work for has just received a complaint which we think is outside the ombudsman's jurisdiction – does this mean there will be no case fee if the complaint is later referred to you?

answer

It may not always be a straightforward matter to determine whether a complaint is covered by the ombudsman service. "Jurisdiction" disputes can involve complex arguments, and we will need to take account of – and investigate – all the facts and legal points that either side might raise.

Where it is not apparent – from the complaint form and the final response letter from the business to the consumer – whether or not we can take on a complaint, a case fee will become chargeable – even

if we later decide, after more investigation, that the complaint is outside our jurisdiction. This reflects the work we still have to do on these cases – often involving legal advice and guidance from senior staff and ombudsmen.

However, all businesses are entitled to a number of "free" cases. We don't charge businesses for the first three chargeable cases closed during the (financial) year. We charge only for the fourth (and any subsequent) case. This means most businesses covered by the ombudsman service never pay a case fee at all.

We have just consulted publicly on a new approach to charging businesses for cases from April 2013. The proposals include developing a new group-account arrangement for each of the 10 financial services groups that together account for 75% of our complaints workload – and increasing the number of free cases from 3 to 25 for the majority of businesses that have the lowest number of complaints referred to the ombudsman service (so that only 1% of businesses would pay any case fees at all).

question

what work does the ombudsman do to keep in touch with consumer organisations?

answer

We work closely with a very wide range of front-line consumer organisations – meeting community and voluntary workers from all kinds of local advice agencies at the training events we hold across the UK every year.

We take part in annual conferences and events run by national consumer bodies such as Citizens Advice, Citizens Advice Scotland, Trading Standards, the Money Advice Trust and the Consumer Council of Northern Ireland – as well as providing complaints-

handling training for front-line organisations such as Age UK and the National Association of Student Money Advisers.

We work in partnership with six disability, mental health and wellbeing charities – including the Samaritans, British Dyslexia Association and Alzheimer's Society – who provide training and guidance for our staff on disability issues.

And we host our consumer-liaison group for representatives from a wide range of national consumer groups – to discuss and share information and issues

relating to consumers, consumer detriment and complaints in financial services. The following consumer organisations are represented on this group:

- ◆ Age UK
- ◆ Consumer Council of Northern Ireland
- ◆ Consumer Credit Counselling Service
- ◆ Consumer Focus
- ◆ Citizens Advice
- ◆ Financial Services Consumer Panel
- ◆ Money Advice Scotland
- ◆ Money Advice Service
- ◆ Money Advice Trust
- ◆ Trading Standards
- ◆ Which?



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