> ... we will continue to reassure people that rapid and concerted action is being taken to make sure they don't lose out

Natalie Ceeney, chief executive and chief ombudsman

ombudsman news

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

banking on trust

Everywhere I've been in the last week or so, people have been asking me about computer problems affecting their bank accounts – and what they can do if things aren't sorted.

We've been taking all kinds of worried and frustrated phone calls about this at the ombudsman service – mostly from consumers in the early stages of working out how any problems might affect them.

The reassuring news for consumers is that when similar – but smaller scale – things have happened in the past, the financial institutions concerned have stepped up and dealt with problems and concerns early on, right at the front-line. Only very few cases then needed to be escalated to the ombudsman, for us to deal with further down the line.

It's true that the recent situation involving people's day-to-day banking seems to have been unprecedented in scale. It affected more people immediately – and it could send ripples that might still be felt in some surprising places.

Financial Ombudsman Service

scan for previous issues

in this issue

complaints involving whole-of-life policies **page 3**

ombudsman focus: first quarter statistics **page 6**

mortgages – arrears and hardship **page 12**

Q&A **page 20**

This makes it even more important that institutions across the banking sector work together and act quickly for the benefit of all their customers. We have been in touch to offer our help and insight where it might be useful. I am confident that, if the banking sector acts now – and shows a genuine commitment to re-building trust and supporting affected consumers – we shouldn't see many complaints later on.

If this *doesn't* happen, of course we stand ready to deal with whatever comes our way. We are, unfortunately, increasingly used to having to scale-up our operation to deal with large volumes of complaints, as we have recently done with payment protection insurance (PPI), where we are now receiving 1,000 new cases each day.

In the meantime, we will continue to remind affected people that there are some simple things they can do to help themselves – like keeping a record of how they've been affected, so that their bank can help them sort things out. And we will continue to reassure people that rapid and concerted action is being taken to make sure they don't lose out.

Natalie Ceeney
chief executive and
chief ombudsman

... if the banking sector shows a genuine commitment to re-building trust and supporting affected consumers, we shouldn't see many complaints

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

switchboard 020 7964 1000

consumer helpline
new extended opening hours
Monday to Friday 8am to 8pm *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.

complaints involving **whole-of-life policies**

Whole-of-life policies are a type of life assurance. They provide a sum of money to a consumer's family or estate when the consumer dies. The consumer pays either a lump sum upfront, or monthly premiums.

Providers sometimes recommend whole-of-life policies for savings purposes – or to those consumers who are looking for savings and life assurance together.

Most of the complaints we see are about "reviewable" whole-of-life policies. When someone takes out a reviewable policy, the provider *invests* some of the money that the consumer pays. The amount of money that the consumer is required to pay – and the sum paid out if they die – are set on the basis of certain assumptions about what will happen in the future – including how well the investment fund will perform.

These policies normally have "review dates" when – if things have not gone as well as expected – the provider may ask the consumer to increase their premiums, or suggest that the level of cover is reduced.

As with any investment, it's important that a consumer who chooses a whole-of-life policy understands exactly what they are taking out and what to expect in the future.

Problems do sometimes arise. Our online technical resource on whole-of-life policies provides more information about the approach we take when cases reach us.

The following case studies illustrate some of the more common problems that we see. The first two focus on consumers who said they had not realised that their policy would be reviewed. In the third case, the policy was not reviewed at the right time, which led to problems further down the line.

Financial Ombudsman Service

... we did not think that the paperwork had explained the review process clearly enough

case study 103/1

consumer complains he did not know that his whole-of-life policy would be reviewed

Having read about them in the weekend press, Mr G decided to take out a whole-of-life policy. Ten years later, his provider reviewed the policy and told him that he would have to increase his premiums significantly to keep the same level of cover – or keep his premiums the same and reduce his level of cover.

Mr G complained to his policy provider. He said he had not realised that the policy premium and level of cover were subject to review – or what could happen as a result. The provider replied that the review would have been explained in the terms and conditions and other paperwork that Mr G had been given when he took out the policy. Mr G disagreed. He said that the documents only contained "complicated small print" and that they did not make it clear that a review would take place. He decided to refer his complaint to us.

complaint upheld

We looked carefully at the paperwork that Mr G had been given when he took out the policy. We found that it used technical and legalistic language. It was also set out in a way that we did not think would have alerted Mr G to the possibility that a review would take place – or indeed the implications of a review. Therefore, we did not think that the paperwork had explained the review process clearly enough.

To make a decision in this case, we needed to decide what Mr G would have done had the paperwork clearly explained the review and its consequences. So we looked carefully at Mr G's circumstances at the time he took the policy out. We were satisfied that he would have taken out a whole-of-life policy – because that was what he had wanted – but we considered that he would have done so on a non-reviewable basis. A *non-reviewable* policy – with the same premiums – would have provided him with less cover initially, but would have paid out a higher lump sum in the later years.

Following our involvement, the provider offered to reconstruct the policy on a non-reviewable basis, and Mr G was happy to accept.

case study 103/2

consumer complains that her whole-of-life policy was reviewed and changed without her knowledge

Ms F had a whole-of-life policy. When she realised that she had not heard from her policy provider for some time, she contacted them. During the conversation, she found that they had reduced the lump sum that would be paid on her death. The provider told her that the policy had been reviewed three years earlier, and that they had written to let her know that she had needed either to increase her premiums or reduce her level of cover.

They went on to say that when they had not heard from her, they had assumed that she had wanted to keep her premiums the same – and reduce the level of cover.

It later came to light that Ms F had not received any letters from the provider because they still had her old address on their records. While she accepted that she had not asked the provider to update her address, Ms F complained that she did not know that they could review the policy. She also complained that they should not have made any amendments until they had managed to contact her. When the provider rejected Ms F's complaint, she decided to refer the matter to us.

complaint not upheld

We wanted to establish whether it would have been reasonable for Ms F to have realised that her policy would be reviewed. So we looked at the documents that Ms F had been given when she took out her whole-of- life policy. In our view, these did explain the review process clearly.

In addition, we established that Ms F had taken out the policy in question shortly after the review of *another* reviewable policy that she had taken out previously. So we were satisfied that Ms F should have realised that her policy would be reviewed.

We were also satisfied that the provider had fulfilled its obligation to let Ms F know that her policy had been reviewed – and the results of that review. In the letters it had sent her, it made clear what action would be taken if she did not respond to its letters. It was not the provider's fault that it had written to Ms F's old address.

And we did not agree with Ms F's argument that the provider should not have made any changes to her policy without her explicit consent.

However, as a result of our involvement, Ms F's provider reassessed the situation. As her health had not changed since she took out the policy, it agreed to reinstate her original level of cover. It asked her to pay the necessary premium increases – backdated to the date of the review. Ms F accepted this proposal.

case study 103/3

consumer complains that her whole-of-life policy review was not carried out at the right time

Mrs M took out a reviewable whole-of-life policy in June 1995. The policy would pay a lump sum of £120,000 on her death.

In November 2010, Mrs M's policy provider wrote to her and explained that a 10-year review should have been carried out in 2005. However, this had not taken place. The letter went on to say that the provider would now assume that had Mrs M been given the option, she would have increased her premiums and maintained her level of life cover. The provider said it would add "extra units" to her policy – and Mrs M would not have to pay any backdated premiums.

However, the provider also told Mrs M that if she wanted to maintain her level of cover from 2010 onwards, she would have to more than double her premiums. Alternatively, if Mrs M wanted to keep her premiums the same, her level of cover would now need to be reduced significantly.

Unhappy with this situation, Mrs M complained to her policy provider. She reminded them that it had been their responsibility to carry out the 10-year review in 2005. She said that if it *had* done that review – and told her immediately about the need either to increase her premiums or reduce her level of cover – she would have cancelled her policy at that point. Mrs M asked the provider to return the premiums she had paid since 2005.

The provider would not agree to this. It said that Mrs M had already received "the benefit" of £120,000 worth of cover between 2005 and 2010 and that if a claim had been made during that period, it would have been paid. Mrs M decided to refer her complaint to us.

complaint upheld

The policy provider did not dispute that it had failed to carry out the 10-year review. So we needed to decide what Mrs M would have been likely to have done if the provider *had* reviewed the policy and explained her options in 2005.

So we carefully reviewed Mrs M's circumstances at the time the review should have taken place. We concluded that, in her particular situation, she would not have continued with the policy had she been faced with the choice between paying higher premiums or accepting reduced cover. We did not consider the fact that Mrs M had received the theoretical benefit of £120,000 worth of cover between 2005 and 2010 as central to the case.

When we put our view to the policy provider, it agreed to put Mrs M in the position she *would* have been in at the 10-year review stage – had she decided to cancel her policy at that time. This involved refunding the disputed premiums she had paid between 2005 and 2010. Mrs M was satisfied with this outcome.

... the policy provider did not dispute that it had failed to carry out the 10-year review

ombudsman focus: **first quarter statistics**

a snapshot of our complaint figures for the first quarter of the **2012/2013** financial year

We published our latest *annual review* back in May – covering the financial year 2011/2012. The most visited sections of the online version of the *annual review* include the charts showing:

- **the number of new cases by financial product *and***
- **the proportion of cases upheld in favour of the consumer in relation to each product.**

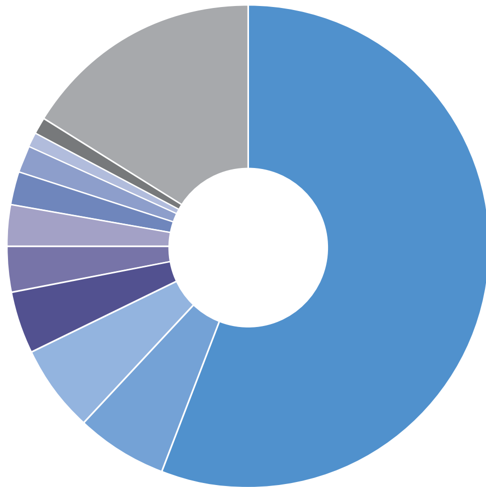
Given the interest shown in these numbers, we also publish updates on a *quarterly* basis. This makes it easier for people who are interested in these figures to see trends emerging *throughout* the year – rather than only seeing the numbers *annually*, after the financial year has ended.

So in this issue of *ombudsman news* we focus on data for the first quarter of the new financial year 2012/2013 – showing how many new complaints we received, and what proportion we resolved in favour of consumers, during April, May and June of this year.

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

Financial Ombudsman Service

the financial products that consumers complained about most to the ombudsman service in April, May and June 2012



- payment protection insurance (PPI) 56%
- credit card accounts 6%
- current accounts 6%
- mortgages 4%
- car and motorcycle insurance 3%
- overdrafts and loans 3%
- buildings insurance 2%
- mortgage endowments 2%
- deposit and savings accounts 1%
- travel insurance 1%
- complaints about other products 16%

number of new cases			
Q1 (Apr to Jun) 2012/13	full year 2011/12	full year 2010/11	full year 2009/10
32,445	157,716	104,597	49,196
3,716	18,977	17,356	18,301
3,543	14,057	19,373	24,515
2,234	9,530	7,060	7,452
1,744	6,239	5,805	6,255
1,715	7,264	5,784	5,451
1,060	4,556	3,469	3,437
907	3,267	3,048	5,400
825	3,734	4,326	4,508
530	1,828	1,444	1,690
472	2,400	2,503	1,956
464	1,432	926	912
445	2,089	1,697	1,863
444	2,247	2,765	1,735
405	1,496	1,126	1,359
383	1,545	1,395	1,430

% resolved in favour of consumer			
Q1 (Apr to Jun) 2012/13	full year 2011/12	full year 2010/11	full year 2009/10
69%	82%	66%	89%
49%	54%	61%	68%
33%	31%	27%	20%
26%	28%	36%	37%
36%	38%	43%	48%
54%	49%	45%	38%
47%	50%	42%	43%
25%	28%	31%	38%
42%	44%	42%	52%
26%	32%	33%	28%
52%	52%	42%	44%
12%	23%	27%	24%
43%	52%	41%	38%
42%	45%	36%	52%
32%	35%	36%	29%
39%	43%	43%	48%

* Complaints involving home emergency cover and mobile phone insurance were previously categorised under “specialist insurance” – and were not shown separately in previous years.

investment ISAs
portfolio management
income protection
home emergency cover
critical illness insurance
debt collecting
pet and livestock insurance
debit and cash cards
specialist insurance
endowment savings plans
legal expenses insurance
warranties
unit-linked investment bonds
catalogue shopping
inter-bank transfers
private medical and dental insurance
"with-profits" bonds
share dealings
store cards
mobile phone insurance
cheques and drafts
self-invested personal pensions (SIPPs)
payday loans
commercial vehicle insurance
annuities
credit broking
debt adjusting
direct debits and standing orders
commercial property insurance
state earnings-related pension (SERPs)

number of new cases				% resolved in favour of consumer			
Q1 (Apr to Jun) 2012/13	full year 2011/12	full year 2010/11	full year 2009/10	**Q1 (Apr to Jun) 2012/13**	full year 2011/12	full year 2010/11	full year 2009/10
305	904	824	1,301	**40%**	51%	48%	42%
300	1,152	1,148	1,040	**59%**	63%	67%	48%
291	950	702	740	**31%**	41%	42%	39%
290	1,473	*	*	**66%**	69%	*	*
234	817	528	598	**20%**	31%	31%	31%
233	576	512	697	**40%**	38%	42%	42%
221	554	438	462	**53%**	40%	31%	24%
201	836	878	964	**37%**	40%	41%	43%
197	791	1,791	1,070	**58%**	53%	51%	50%
183	875	924	1,512	**24%**	33%	33%	25%
178	779	619	597	**26%**	26%	21%	25%
176	881	895	863	**56%**	63%	61%	53%
166	856	849	2,453	**40%**	64%	72%	57%
160	695	582	755	**55%**	60%	66%	79%
158	688	529	606	**44%**	42%	43%	43%
158	513	506	652	**34%**	46%	50%	35%
146	542	683	1,056	**21%**	27%	37%	28%
139	549	979	1,105	**49%**	50%	62%	52%
137	476	480	574	**64%**	67%	70%	74%
134	599	*	*	**61%**	63%	*	*
131	670	691	773	**50%**	47%	47%	49%
128	499	417	410	**46%**	61%	46%	53%
126	296	59	33	**77%**	81%	64%	58%
121	436	317	290	**46%**	38%	36%	35%
113	511	423	501	**25%**	35%	37%	33%
112	627	697	341	**57%**	68%	63%	62%
106	462	302	231	**71%**	63%	54%	65%
100	538	571	737	**44%**	47%	45%	48%
98	629	429	487	**33%**	34%	31%	22%
88	294	196	560	**4%**	2%	7%	2%

** This table shows all financial products and services where we received (and settled) at least 30 cases. This is consistent with the approach we take on publishing complaints data relating to named individual businesses. Where financial products are shown with a double asterisk, we received (and settled) fewer than 30 cases during the relevant period.

personal accident insurance
electronic money
guaranteed bonds
(non-regulated) guaranteed bonds
hiring / leasing / renting
roadside assistance
guaranteed asset protection (“gap” insurance)
occupational pension transfers and opt-outs
merchant acquiring
business protection insurance
OEIC – Open Ended Investment Companies
building warranties
money remittance
“structured capital-at-risk” products
unit trusts
total
other products and services

number of new cases				% resolved in favour of consumer			
Q1 (Apr to Jun) 2012/13	full year 2011/12	full year 2010/11	full year 2009/10	**Q1 (Apr to Jun) 2012/13**	full year 2011/12	full year 2010/11	full year 2009/10
87	322	304	274	**45%**	47%	49%	26%
83	403	369	453	**27%**	33%	36%	49%
81	352	408	595	**35%**	35%	40%	37%
80	484	430	421	**40%**	46%	40%	50%
66	240	221	283	**23%**	46%	43%	37%
62	364	300	226	**47%**	49%	40%	35%
60	213	182	224	**27%**	44%	46%	53%
60	331	281	368	**53%**	43%	49%	48%
35	206	110	95	**24%**	21%	15%	18%
**	160	204	222	**	27%	22%	25%
**	141	140	329	**	47%	76%	56%
**	129	121	161	**	38%	39%	40%
**	114	68	19	**	44%	47%	50%
**	139	550	273	**	90%	52%	49%
**	138	125	192	**	52%	65%	44%
57,076	262,581	204,257	160,641	**50%**	64%	51%	50%
714	1,794	1,864	2,371	**37%**	45%	34%	42%
57,790	**264,375**	**206,121**	**163,012**	**50%**	**64%**	**51%**	**50%**

mortgages – arrears and hardship

People are often anxious and emotional when they bring us a problem relating to mortgage arrears and hardship. These cases are among the most distressing that we see for a consumer, with fear of losing their home at the forefront of their mind. Our approach – outlined in our online technical resource on mortgage arrears and hardship – is always to look carefully at the evidence and weigh up the facts of the case.

When a consumer experiences financial difficulty and contacts their mortgage lender, the lender is required to treat them sympathetically – and to make reasonable attempts to agree a repayment plan with them. This means a lender relies on their customer communicating openly with them and providing information when it is requested. Many problems are resolved successfully this way.

However, sometimes things go wrong. The case studies that follow illustrate some of the most common difficulties we see. These include:

- arrears and arrears charges;
- problems relating to repossession;
- a lender's refusal to change a mortgage to interest-only;
- problems arising because communication between lender and consumer has broken down.

Financial Ombudsman Service

case study 103/4

Complaint about lender's treatment of consumers in financial difficulty

Mr and Mrs C had a mortgage on their property. When Mr C was found guilty of misconduct at work and lost his job, they were unable to keep up their mortgage repayments. Their mortgage subsequently went into arrears.

Mr and Mrs C contacted their lender to discuss their circumstances. They offered to pay what they could afford each month. But the lender said it could not negotiate lower monthly repayments and could not stop their house being repossessed.

Mr and Mrs C complained to their lender, saying it wasn't doing enough to help them. They asked whether it would agree to a repayment holiday, or accept reduced repayments each month. Their lender said that it did not offer repayment holidays, and that their proposal to make reduced payments was not acceptable.

The lender added that it considered Mr C largely responsible for the loss of his job – and because of that, full repayments must continue each month or arrears fees would apply.

Unhappy with this response, Mr and Mrs C referred their complaint to us.

complaint upheld

We reviewed the evidence provided by both sides. We were satisfied that Mr and Mrs C had kept their lender adequately informed about their financial position.

Although the lender knew they were having problems, we could find no evidence to suggest that it had taken steps to help them. It had not entered into any meaningful discussions with Mr and Mrs C about their repayment proposals and had continued to apply its standard monthly arrears charge.

We also noted that the mortgage provider had used the circumstances of Mr C's dismissal as a reason for not giving the couple's proposal more serious consideration. We explained that a lender is required to treat a consumer fairly – regardless of the causes of their difficulties.

So we told the lender to contact Mr and Mrs C to obtain their income and expenditure details – and to agree a repayment plan with them. We told it to refund the arrears charges that were being disputed. We also told it to pay Mr and Mrs C £250 compensation for the distress and inconvenience it had caused them.

... although the lender knew they were having problems, we could find no evidence to suggest it had taken steps to help them

case study 103/5

consumers refuse to give lender information – then complain they have not been treated fairly

Mr S and Miss L took out a loan secured on their house. Shortly afterwards, they took out another loan with the same lender – also secured on their house. A few years later, Mr S lost his job and could only find temporary employment on a much lower salary. This meant that Mr S and Miss L could not keep up their repayments.

When Mr S and Miss L contacted their lender to discuss the situation, it asked them to provide details of their finances. When they had supplied these details, their lender then asked some further questions. In the meantime, it agreed to accept significantly reduced payments for two months.

... they decided they had no choice but to sell the property

However, Mr S and Miss L refused to answer the new questions and the temporary repayment arrangement came to an end. As a result, the lender began to apply fees for handling the arrears on their account.

Mr S and Miss L complained to the lender, saying that it had not done enough to help them. When the lender rejected their complaint, they asked us to investigate.

complaint not upheld

We looked carefully at the details of the case. We were satisfied that the lender had tried to engage in meaningful discussions with Mr S and Miss L. We also took the view that it was reasonable for the lender to ask additional questions to get to the bottom of their financial situation.

Given that Mr S and Miss L had refused to answer these questions, we did not consider it unreasonable for the lender to have ended their temporary repayment arrangement.

Having listened to our view, Mr S and Miss L decided to provide the information that their lender had asked for – and were able to reach an acceptable way forward.

case study 103/6

complaint about lender refusing to change a mortgage to interest-only

Mr N was a self-employed architect. In 2005, he and his wife took out a repayment mortgage for a term of 20 years. A few years later, Mr N lost his biggest client. This reduced his income and Mr and Mrs N were unable to make their regular mortgage repayments.

Mr and Mrs N asked their lender if they could add their arrears to the mortgage – a process known as "capitalisation". They also asked to switch permanently to an interest-only mortgage. The lender agreed to capitalise their arrears. But it refused to change their mortgage to interest-only because Mr and Mrs N did not meet the required criteria.

Mr and Mrs N continued to struggle and ended up behind with their mortgage payments. They decided they had no choice but to sell the property. However, they complained to their lender that they would not have been in this position had it agreed to switch their mortgage to interest-only. The lender responded, saying that it had done all it could for them. This had included accepting token payments from them until the property could be sold.

Mr and Mrs N referred their case to us.

complaint not upheld

We listened to the arguments put to us by both sides and looked carefully at the evidence. This included Mr and Mrs N's repayment history. We concluded that even if Mr and Mrs N's mortgage *had* been changed from repayment to interest-only, it was still unlikely that they would have been able to keep up their repayments.

We also considered the question of how the mortgage would ultimately be repaid – because Mr and Mrs N had seen an interest-only mortgage as a long term option.

We pointed out that the lender was required to treat Mr and Mrs N fairly, but that it was not obliged to agree to their request to change their mortgage. So, taking into account how the lender had behaved – including its agreement to capitalise the arrears and to accept token payments until the property could be sold – we decided that it had not acted unfairly. We did not uphold the complaint.

case study 103/7

consumer in financial difficulty complains about excessive fees charged by her lender

A few years after Miss T took out a mortgage, she fell ill and had to reduce her hours at work. Because of her reduced income, Miss T missed a number of her monthly mortgage repayments and incurred "arrears management" fees.

When Miss T's health improved and she could increase her working hours, she started making repayments again. However, she could not afford to make any payments towards the arrears balance.
Her lender accepted this, but continued to add fees to her account.

Soon afterwards, the lender appointed a solicitor to begin legal proceedings – and started adding monthly "litigation fees" to Miss T's account.

Miss T became increasingly concerned about the fees and contacted her lender to discuss the situation. As a result of this, she was able to agree a repayment plan with the lender. However, Miss T complained about how her mortgage provider had treated her. She said that the application of more and more charges to her account had made things worse. In its response, the lender told Miss T that the fees had been applied correctly "in line with its published tariff". Unhappy with this response, Miss T referred the matter to us.

complaint upheld

Having reviewed the evidence, we took the view that the lender could have agreed a repayment arrangement with Miss T much sooner. We pointed out that its decision to keep adding charges had made her financial position worse than it had needed to be.

In fact, we noted that by the time the mortgage provider and Miss T had reached an agreement, a significant proportion of the arrears balance was made up of fees.

In light of this, we were not satisfied that the lender had treated Miss T fairly. So we told it to refund the fees it had added – from the point at which it had accepted that Miss T could not afford to make any payments towards the arrears balance. We also told it to pay Miss T £200 compensation for the distress and inconvenience it had caused her.

... the lender told Miss T that the fees had been applied correctly "in line with its published tariff"

case study 103/8

consumer in arrears complains about charges applied by lender

Mr W, a self-employed minicab driver, wanted to make some improvements to his home. He took out a loan secured on his house to pay for the work. A few years later, Mr W found that business was slowing down, and he was having difficulty covering his monthly repayments.

Mr W's lender contacted him. It said that if he was experiencing financial difficulty, he should provide details of his income and expenditure so that they could agree a reduced repayment plan. The lender heard nothing back from Mr W, even though it tried to contact him a number of times over the next few months.

When the lender eventually managed to get in touch with Mr W, he provided his income and expenditure details and they agreed a repayment plan. In the meantime, however, the lender had started to apply monthly "arrears management" fees to Mr W's account.

> *... they said that the legal action had come "out of the blue"*

Mr W complained to the lender that the fees were unfair and should be removed. The lender refused. It told Mr W that the fact he was in arrears – and that he had not responded to its requests for information – had meant that it had been required to carry out extra work on his account. Mr W was unhappy with this response, and referred the matter to us for investigation.

complaint not upheld

We looked carefully at the situation from both perspectives and examined the evidence – including Mr W's account statements. We noted that the lender had reviewed his income and expenditure details as soon as he had provided them – and had then agreed an appropriate repayment plan with him. The lender's records also confirmed that it *had* carried out extra work on his account.

Under the circumstances, we were satisfied that the lender had treated Mr W fairly, and that it was not required to refund the charges it had applied.

However, because Mr W told us that he was also behind with some other debts, we put him in touch with a free debt-counselling agency – who would be able to offer him some advice on his financial situation more generally.

case study 103/9

complaint about lender taking legal action and applying charges without warning

Mr and Mrs E had taken out a mortgage to buy their house. They decided to carry out some building work and took out a "second-charge" loan – secured on their property – with a different lender. Two years later, following relationship difficulties, they began to struggle financially and fell behind with their repayments.

Their loan provider obtained an "order for possession" from the court. However, it held off from doing anything further because they had just made some payments towards their account. Unfortunately, Mr and Mrs E made no further payments because they could not agree how much each should pay. They were eventually evicted from the property under the court order.

The house was then sold in order to pay off both the mortgage and the second-charge loan. But after the mortgage was paid off, there was a shortfall in the amount required to pay off the loan.

Mr and Mrs E subsequently complained about how the loan provider had treated them. They said that the legal action had come "out of the blue" and that they had no hope of keeping on top of the arrears with all the fees and charges applied to their account. The loan provider responded, saying that it had "complied with the law" and that it had applied the fees "in accordance with its published tariff".

Unhappy with that response, Mr and Mrs E referred their complaint to us.

complaint upheld

Having reviewed the information provided by both sides, we were not satisfied that the loan provider had treated Mr and Mrs E fairly. We did not see any evidence that it had attempted to discuss their finances with them or taken steps to agree a repayment plan.

> *... we put him in touch with a free debt-counselling agency for advice on his financial situation*

We also noted that the lender had been charging "arrears management" fees to cover the extra work it had been required to carry out. But it had continued to charge these fees even *after* it had referred the account to its solicitors – who were applying their own separate charges. So we asked the lender to show us a breakdown of the work done by its solicitors. When it was unable to, we concluded that the fees could not be justified.

We told the loan provider to refund arrears fees of £500. In addition, the loan provider offered to write-off half the amount outstanding on the second-charge loan. Mr and Mrs E accepted this. We also told the loan provider to put in place a repayment plan that would help them get their finances back on track.

case study 103/10

complaint about insufficient notice of property being repossessed

Mrs D was a property developer. She took out a mortgage to buy a large residential property. The property was sold with some outbuildings. Mrs D intended to convert the main property into four self-contained flats – and to live in one of them herself.

Over the next few years, Mrs D worked on developing the property. However, the project was becoming more costly than she had expected. She began to run out of money and stopped making her mortgage repayments. Instead, she put the money towards completing the project – hoping that she would be able to sell the flats sooner.

Mrs D's lender tried to contact her several times to discuss the missed payments. When she did not reply, it decided to take legal action. The court granted an "order for possession" and Mrs D was eventually evicted from the property.

Mrs D subsequently complained to her lender. She said it had taken possession of parts of the property – including the separate outbuildings – that it was not entitled to. She also said that she was not given enough notice to remove her belongings from the property. The lender disagreed, saying it had acted correctly. Mrs D decided to refer her complaint to us.

complaint not upheld

We explained to Mrs D that we were only able to consider the actions of her lender during the run-up to the legal proceedings – and that we could not reopen the issues that had already been considered by the court. The court had been satisfied that the mortgage covered the outbuildings. We explained to Mrs D that if she wanted to challenge the court's decision on this, she would need to refer it back to the court.

▶

... we also told the loan provider to put in place a repayment plan that would help them get their finances back on track

We looked carefully at the evidence to determine whether the lender had been entitled to *begin* legal action against Mrs D when she stopped making her mortgage repayments. This evidence included the terms and conditions of her mortgage and the court order for possession. Having examined the evidence, we concluded that the mortgage provider *had* been entitled to begin legal action.

We also concluded that the lender had given Mrs D sufficient notice to remove her belongings from the property. In fact, we found that several orders for possession had been granted and subsequently not applied – which had given Mrs D even more time to remove her belongings.

In these circumstances, we did not uphold the case.

case study 103/11

complaint relating to repossession of a property – and its subsequent sale at below market value

Mr J took out a mortgage to buy a bungalow. A few years later, he decided to move out to live with his new partner. When he moved out, he did not contact his lender to give them his new address. He also left some of his furniture and belongings in the bungalow.

A few months later, Mr J began to experience financial difficulty and decided to sell the bungalow. While it was on the market, he began to fall behind with his monthly repayments and arrears began to build up on his account. Mr J's lender tried to contact him about the arrears. But when it could not get in touch with him, it began legal action.

By the time Mr J became aware of this, proceedings were already well under way.

The lender eventually repossessed the property, which it went on to sell. Mr J complained to the lender. He pointed out that higher offers had been made on the bungalow, which the lender had not accepted. He also said that his furniture and belongings had gone missing. When the lender rejected his complaint, Mr J referred the matter to us.

complaint upheld in part

We carefully reviewed the evidence relevant to the case – including information from the estate agent appointed by the lender to sell the bungalow. This showed that there *had* been some offers made on the bungalow that were higher than the final sale price.

When we asked the lender about these offers, it said it had not been told about them – and it could not explain why they had not been pursued. We took the view that the estate agent was acting as the agent of the lender – and that the lender had therefore failed to obtain the best purchase price that had been reasonably available.

But we did not consider that the lender was liable for Mr J's missing belongings. After all, Mr J could have removed them from the property when he first became aware of the legal proceedings. And the lender had sent him further reminders to clear the bungalow before the sale was eventually agreed.

We therefore upheld the complaint in part. We told the lender to pay Mr J £3,000 – the difference between the highest offer that had been made on the property and the final sale price.

... we took the view that the estate agent was acting as the agent of the lender – and that the lender had failed to obtain the best purchase price

... the lender was entitled to discuss the account with either borrower

case study
103/12

complaint about breach of confidentiality – and lender taking action without consumer's consent

Mr and Mrs P were separated, but owned a house together. Neither Mr nor Mrs P lived in the property – but were still joint borrowers under the terms of their mortgage. Mrs P continued to pay her share of the repayments. But when Mr P was made redundant, he was unable to pay his share. This meant that arrears built up, and the lender contacted each of them to discuss their options for repayment.

The lender was unable to get in touch with Mr P, but spoke to Mrs P several times. Following these discussions, the lender decided to add the arrears onto their mortgage account – a process known as "capitalisation". This would prevent further arrears fees being added to the account. However, problems with their repayments continued, and the lender eventually took possession of the property. The house was then sold, and the finances sorted out.

Mr P later complained to the lender that it had breached his confidentiality by giving Mrs P his new address. He was also unhappy that it had capitalised the arrears without his consent and discussed the account on the phone with "a third party". The lender rejected his complaint, and the matter was referred to us for investigation.

complaint not upheld

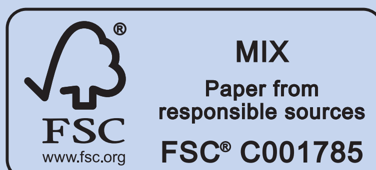
We considered the evidence relevant to the case – including recordings of phone calls during which the problems were discussed. From the evidence, we saw no instances of the lender disclosing Mr P's new address to Mrs P – nor any other breaches of confidentiality.

As far as the discussions with the "third party" were concerned, we found that the lender had discussed the account only with Mrs P or with Mr P himself.

So we spoke to Mr P and established that by a "third party", he had in fact meant Mrs P. We explained to him that the fact they were joint borrowers meant that the lender was entitled to discuss the account with *either* borrower.

We also looked into his concern that the arrears had been capitalised without his consent. Our investigations showed that neither he nor Mrs P had given their consent to this. However, we concluded that neither of them had been disadvantaged financially by the arrears being capitalised. In fact, it had prevented further charges from being applied to their account.

We therefore did not uphold the complaint.



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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

consumers regularly come to our community law centre with problems cancelling so-called "continuous payment authorities" – where neither the company they gave the authority to (for example, an internet company) nor their card provider or bank will accept responsibility. Can the ombudsman help here?

answer

A "continuous payment authority" is a payment arrangement that a consumer sets up on their plastic card. This type of payment arrangement is often used to enable regular monthly payments – for example, to pay for a gym membership or internet subscription. But it can also be used to enable a supplier to take variable payments as and when required.

The consumer gives their authority to the supplier that they want to pay – and the supplier then takes the regular payments direct from the consumer's bank. Each payment will show up as a transaction on the consumer's bank statement in the normal way.

In cases we see, the consumer has run into problems when they decided to stop the ongoing payments – perhaps because they no longer wanted the underlying service they were paying for, or because they were unhappy about the way the continuous payment authority was being used by the supplier. Usually they have been unable to make the supplier stop taking the payments – and they can't get their bank to stop things at their end, either.

Until November 2009 the consumer could only cancel continuous payment authorities with the *supplier*. They could not simply cancel it with their bank in the way they could with a standing order or a direct debit. This meant that if the supplier decided not to cooperate, the consumer could find it very difficult to stop the payments.

From the cases we've seen, since November 2009 there appears to have been some confusion about whether – and how – a continuous payment authority can be cancelled. This seems to be because not everyone has thought about how the payment services rules (which came into effect in November 2009) strengthened consumers' rights to stop payments like these.

From November 2009 consumers have been able to cancel continuous payment authorities direct with their bank – and the bank has then been bound not to make any further payments, even if the supplier continued to request them. If the bank makes payments under a continuous payment authority after the consumer has cancelled it, the rules say that the bank will generally be liable to return those payments.

The law is one of the things we take into account when we consider cases. So we have always applied the payment services rules to complaints about unauthorised payments made since November 2009. Where we decide that a bank has made a payment under a *cancelled* continuous payment authority, this means the usual outcome is that we tell it to refund the payment.

Of course, it makes sense for a consumer to cancel a continuous payment authority with both the bank *and* the supplier – to minimise any chance of problems later on. The purchase agreement that the consumer signed with the supplier may also require some form of notice or cancellation before they can stop it. So just cancelling the payments with the bank may not be enough to stop the consumer being liable to pay (for example, there may be a minimum contract period). This means it's always wise to check first.

ref: 703

Financial Ombudsman Service