*... I can't help being struck by the contrast between the "big numbers" and the real people involved in individual cases*

**Natalie Ceeney,** chief executive and chief ombudsman


# ombudsman news

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


# keeping things in perspective

Over the last couple of months I've spent a lot of time focusing on numbers – how many cases we've received, what they were about, and what we think this means for our workload next year. We've examined, we've analysed, we've forecasted – and we've asked people with an interest in our work to tell us what they think of our assumptions and our plans. Those people who follow our work will know that we've just published our finalised *plans and budget* for 2013/2014 on our website.

So now it's on with the job in hand.

Whenever I talk to colleagues about individual cases, or go through a case file myself, I can't help being struck by the contrast between the idea of "thousands of complaints" – and the *reality* of each individual case, with its own unique circumstances and particular facts. But is it enough just to *notice* the contrast between the general and the particular – between "the big numbers" on the one hand, and the real people and businesses involved in the individual cases?

▶

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**in this issue**

A lot of other organisations grapple with this same issue – and sometimes they can get it badly wrong. Take the recent widely reported problems at an NHS hospital – where a disproportionate focus on numbers and targets had disastrous consequences. When I first heard about the story, my initial reaction was to wonder how on earth it could have happened – how it could have been *allowed* to happen. But when I thought about it more, I started to wonder what *we* could learn from what went wrong there – because, like a hospital, we too have targets, we deal with individuals, and we train and encourage our staff to make decisions and act in certain ways.

Reassuringly for me, I often hear my colleagues reminding themselves – and others – that "there are real people behind every case". I think we're acutely aware that our work affects lives, livelihoods and reputations. Every conversation, every letter, every decision matters a lot to somebody.

That knowledge influences the way we treat our customers, and the way we run our organisation. It's why our values are so important to us. And it's why we always try and look at a problem from the perspectives of the people involved.

But that doesn't mean letting our hearts rule our heads. We make decisions based on the facts, not on how we feel. Our job is to bring clarity and understanding, and to act with integrity.

You could call it "professional compassion" – our way of bridging the divide between "the big numbers" and the real people we deal with.

I'm not saying we get it right all the time. But it's something we're determined not to lose sight of as demand for our services increases.

**Natalie Ceeney**
chief executive and chief ombudsman

> *... our work affects lives, livelihoods and reputations*

**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

# It sounds like **PPI** ... but it **isn't**

Anyone who takes an interest in our work will know that PPI accounts for a significant – and growing – proportion of the cases that we see. Extensive media coverage of PPI mis-selling – and advertising by claims-management companies – has led to a common perception that PPI is a toxic product.

But not all PPI was, or is, "bad" – which is why we don't uphold all PPI complaints. For the right people in the right circumstances, making sure they had the right sort of protection against unforeseen events was a sensible decision.

Too often, however, financial businesses failed to ask themselves – or in some cases *chose* not to ask themselves – whether PPI was really right for their customer, or failed to talk openly and honestly with their customers about what the product was.

The Financial Services Authority and Office of Fair Trading recently published joint guidance for businesses about "new payment protection products". And over the last year or so, we have seen more cases involving different "payment protection products".

Some of these complaints involve products that are similar to PPI in that they are "insurance-backed". But many involve products that are not insurance at all – for example, "debt-freeze" products, which, when activated, freeze the interest on an account balance and suspend any late payment charges that would otherwise apply.

Although the different products available work in different ways, they all offer some sort of financial protection when a consumer finds themselves in financial difficulty.

Unfortunately, the similarities do not end there. Although we haven't seen the widespread problems we have seen with PPI, we have received a number of complaints about these products that have raised similar issues – for example, whether a business provided advice about the product with reasonable care and skill, or whether it gave the consumer information in a way that was clear and not misleading. Because we are seeing similar issues, our approach tends to be the same even though there may be technical differences between the products involved.

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We also find that consumers are often confused about whether the product they have taken out is actually PPI – or some other form of "payment protection product". Understandably, consumers sometimes find it difficult to tell these products apart. But it is disappointing that we also see some businesses and claims-management companies failing to identify the actual product that a consumer was sold and is now making a complaint about. This can lead to unnecessary confusion, delay and frustration on all sides.

The volume of complaints about these products is very small compared with PPI. But in the cases consumers refer to us, we expect financial businesses to have shown that they have learned the lessons of PPI in the way they marketed and sold these products – and, of course, in the way they handled complaints if something had gone wrong.

The case studies that follow illustrate some of the more common situations that we see in relation to "payment protection products" including:

- a consumer who felt a debt-freeze plan wasn't appropriate for him – and that it should never have been sold to him;
- a consumer who was disappointed that his plan didn't do what he was expecting it to do when his circumstances changed; *and*
- a claims-management company that mistakenly thought a debt-freeze plan was a form of PPI.

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## *... the product had been added to her account without her knowing about it*

case study
# 108/1

### consumer complains that a debt-freeze product was added to her account without her consent

When Ms D took out a loan in 2005, she also took out a PPI policy. In 2009, she tried to claim on the PPI policy – but her loan provider turned down the claim, saying it related to a "pre-existing medical condition". Ms D cancelled her policy straight away. But she was annoyed about what had happened, so she complained to her lender about the way the policy had been sold to her. The lender accepted her complaint and paid her compensation.

In 2011, Ms D was looking through her loan statement and noticed that since she had cancelled her PPI policy in 2009, she had been paying "credit protection" charges. Ms D couldn't recall taking out any sort of payment protection when she had cancelled her PPI policy. So she got in touch with her lender to ask what was going on.

The lender explained that *this* credit protection product was different from PPI – in that it wasn't an insurance product. The lender explained that this was a "debt-freeze" product – that would freeze interest and late payment charges if Ms D found herself out of work and unable to make her repayments.

Ms D complained to the lender, saying she had never asked for credit protection – and that she would not have taken it out if it had been offered to her. She pointed out that the product had been added to her account without her knowing about it.

The lender rejected Ms D's complaint. It said the product would have been explained to her – and that she would have been sent the terms and conditions by post. Unhappy with this response, Ms D brought her complaint to us.

#### complaint upheld

The lender told us that Ms D had taken out the debt-freeze product when she had cancelled her PPI policy – and that it "must have been discussed within the same call". However, the lender did not have any evidence to support this.

And it didn't have any other evidence to show how the debt-freeze product would have been sold to Ms D.

When we looked at the terms and conditions of the debt-freeze product, we found that it could not be activated if Ms D's income was reduced because of a pre-existing medical condition.
We noted that Ms D had cancelled her original PPI policy for exactly this reason. So we thought that even if the lender *had* explained the details of the debt-freeze product to Ms D, it is very unlikely that she would have taken it out.

In these circumstances, we concluded that it was unlikely Ms D had been given clear information about the debt-freeze product. So we told the lender to refund all the payments she had made towards it, plus interest.

## case study 108/2

### consumer believed he had been mis-sold PPI – but was actually complaining about a card protection policy

Mr B opened a credit card account in 2007. At the beginning of 2011, he noticed that he had been paying annual charges for a protection product he did not recognise. He rang his card provider to cancel the product, and also complained to them that he had been mis-sold this "PPI".

The credit card provider rejected Mr B's complaint. It told him that he had never had PPI on his account. Mr B was unhappy with this response. He was adamant that his statement said he had been paying annual charges for payment protection. So he decided to refer his complaint to us.

**complaint resolved**

When we spoke to the business, it told us that there definitely was no PPI on Mr B's account – and it sent us evidence to show this. However, when we looked at the evidence, we noticed that although Mr B did not have PPI, he *did* have a card protection policy. The policy had been in place since he had taken out the credit card in 2007 – and he had been paying annual charges for it until he had cancelled in 2011.

We spoke to the business and said we thought that Mr B had simply confused card protection with payment protection. We also pointed out that he was simply unhappy about the product that had been added to his account. The business accepted this and apologised that it had not looked into Mr B's complaint more thoroughly. The business offered to refund all the card protection charges Mr B had paid. It also offered to pay him an additional £100 to apologise for the way it had handled his complaint. Mr B was happy with this offer and the complaint was resolved.

# *... he had been pressured into taking out the plan*

## case study 108/3

### consumer complains he was made to feel he "had to have" a debt-freeze plan

Mr L applied for a credit card in 2008. The credit card provider phoned him to tell him his application had been successful. During the call, Mr L agreed to add a debt-freeze plan to his account.

Mr L later complained to his credit card provider that he had been pressured into taking out the plan and that he had never wanted it. He asked the business to refund all of the charges he had paid.

The credit card provider rejected Mr L's complaint. It said that the representative who spoke to Mr L had followed its phone script – and that he would have been given all the relevant information so that he could make an informed choice about the product.

Mr L was unhappy with this response, and referred his complaint to us.

**complaint upheld**

The credit card provider gave us a recording of the phone conversation between its representative and Mr L. We listened carefully to the conversation, and paid particular attention to the way the representative had explained and sold the product.

We noted that Mr L had initially said he didn't want to take out the debt-freeze plan. He had asked for some time to think about whether he wanted it – and for the credit card provider to send him some more information before he made his decision. The representative told Mr L that he would get exactly the same information in writing as he was being given over the phone. And that if he took out the plan today, he would "*obviously not be signed into a contract of any kind*". At this point, the call had been going on for some time, and Mr L seemed to be getting frustrated. He agreed to take out the plan – but it seemed to us that he had only agreed reluctantly.

We compared the information Mr L had been given over the phone with the information he was sent in the post – and we found that they *weren't* the same.

We concluded that the credit card provider had acted unreasonably. The representative had ignored Mr L when he said he didn't want the product. And she had given him misleading information – telling him that the written information he would receive would be exactly the same as the information she was giving him, and that he would not be signed into a contract. In fact, by agreeing to the plan during the call, Mr L had entered into a rolling contract with the credit card provider, which he would then actively have had to cancel.

We concluded that the credit card provider had failed to give Mr L clear and accurate information – and that if it had done so, he would not have taken out the plan. We told the business to refund Mr L all the charges he had paid, plus interest.

## case study 108/4

### self-employed consumer complains that she should never have been sold a debt-freeze plan

Mrs L was a self-employed physiotherapist. When she took out a credit card in 2004, she also took out a debt-freeze plan, which would freeze interest and late payment charges on her account if she found herself in financial difficulty. Unfortunately, in 2009 Mrs L became ill and was no longer able to work. Her debt-freeze plan was activated and her account was frozen for two years.

In 2011 Mrs L went back to work and was able to make her payments as usual.

A year later Mrs L was talking to a friend. Her friend mentioned he'd heard that self-employed people should never have been sold payment protection products. So Mrs L wondered whether she had been mis-sold the debt-freeze plan – and she complained to her credit card provider. When the business rejected her complaint, Mrs L asked us to look into it.

**complaint not upheld**

We looked at the terms of the plan Mrs L had taken out. The terms said that she could activate the plan by showing "reasonable evidence" that she was no longer able to work. This included evidence showing that she was actively looking for work, or that she was receiving benefits – *including* those benefits available to people who are self-employed. Mrs L had successfully activated the plan in 2009 by doing exactly that.

We also found that Mrs L had been given clear and detailed information when she took the plan out, which had allowed her to make an informed decision about it.

In these circumstances, we concluded that the debt-freeze plan had not been unsuitable for Mrs L's needs. We did not uphold the complaint.

## case study 108/5

### retired consumer complains debt-freeze plan was not suitable for his needs

Mr W was a retired teacher. When he took out a loan in 2006, he took out a debt-freeze plan at the same time.

In 2012 Mr W complained to his lender that the debt-freeze plan had been mis-sold to him. He pointed out that he was retired when he took the plan out – and so it had not been suitable for his needs.

Mr W's lender did not uphold the complaint. It said that it had not *advised* Mr W to take out the plan – but had simply given him the information he needed to make an informed decision. Unhappy with the response, Mr W referred his complaint to us.

**complaint not upheld**

We often see cases where a consumer says a business gave them advice, but the business says it simply gave them information. We always look at the evidence to establish what actually happened – or where we can't be certain, what is most *likely* to have happened.

In this case, we needed to find out whether the lender had given Mr W advice. So we listened to a recording of the phone conversation between the lender's representative and Mr W. It was clear from the call that the representative had *not* offered advice or made a specific recommendation about the product – or its suitability for Mr W – at any point during the conversation.

Even though we were satisfied that the lender had not given Mr W advice, we still needed to establish whether it had explained the details of the plan clearly and accurately to him.

*... the term did not specify exactly what "reasonable evidence" was*

Having listened carefully to the call, we noted that the representative *did* clearly explain the features, benefits and cost of the plan.

She also highlighted the fact that the plan was optional and could be cancelled at any time. The representative explained to Mr W that he would receive some written information about the plan in the post – and that he should carefully read the terms and conditions to make sure the plan was suitable for him. Mr W had agreed to the plan based on this information.

We also noted that although Mr W was retired, he could still have potentially benefited from the plan. Under the plan's terms, it could be activated if he became ill, or if he experienced certain other unforeseen events that were nothing to do with a drop in income.

In these circumstances, we were satisfied that the lender had given Mr W clear information about the plan, and he had been able to make an informed decision about it. We did not uphold the complaint.

## case study 108/6

### consumer complains that business refused to activate the debt-freeze plan on his credit card account

Mr P took out a credit card in 2009 and agreed to have a debt-freeze plan on his account. He was self-employed at the time.

Mr P tried to activate the plan in February 2011 when he became a full-time carer for his wife. The credit card provider asked to see evidence that Mr P was no longer working. He was asked to supply a P45 and to show that he was receiving Jobseeker's Allowance.

Because Mr P was self-employed, he couldn't provide a P45. And because of his age, he was not eligible for Jobseeker's Allowance. But he did make a successful application for Pension Credit. Mr P then sent evidence to his credit card provider that he would soon be receiving Pension Credit.

But the credit card provider refused to activate the debt-freeze plan on the grounds that Mr P had not provided sufficient information to demonstrate that he was "involuntarily unemployed". Mr P couldn't see what more he could do – and he complained to the credit card company. When it turned down his complaint, he asked us to investigate.

#### complaint upheld

We listened carefully to a recording of the phone call during which Mr P had taken out the debt-freeze plan. We were satisfied that the information he had been given was clear and not misleading – and that the plan had not been mis-sold to him.

However, we did *not* think the business had handled Mr P's request to activate the plan fairly. Under the terms of the debt-freeze plan, Mr P had to provide '"reasonable evidence" that he had become "involuntarily unemployed". But the term did not specify exactly what "reasonable evidence" was.

We concluded that Mr P had taken all reasonable steps to supply evidence that he was involuntarily unemployed and in difficult financial circumstances in 2011. In these circumstances, we thought that his credit card provider should have activated the plan when Mr P had asked it to.

We told the business to put Mr P in the position he would now be in if the plan had been activated.

## case study 108/7

### consumer felt the business had acted unfairly by not activating his debt-freeze plan

Mr A had become ill and was – temporarily – unable to work. He contacted his loan provider and asked it to activate the debt-freeze plan on his account. When the lender refused, Mr A complained. He subsequently referred his complaint to us. He told us that the business had increased the strain and pressure he was under – and had made his financial situation worse.

The business told us that although Mr A had made an initial request to activate his plan, he had not supplied all the information that it needed to assess whether the plan could be activated. The business said that it had written to Mr A and set out the information he needed to provide. It also said that it had sent Mr A more letters over the following three months – but had not heard anything more from Mr A until he made his complaint.

Mr A disputed that version of events. He said he had sent all the information he had been asked for by recorded delivery – but that he no longer had copies of the original documents he had sent to the business.

#### complaint not upheld

Mr A couldn't supply tracking numbers for the letters he had sent by recorded delivery. So we could not say for certain whether he had sent the additional information that his lender had asked for.

However, we concluded it was likely that, for whatever reason, the business had never received the information. The business sent us records from Mr A's account history. These showed that the business had spoken to Mr A several times – and explained why he needed to send the additional information.

The business had also written to him several times to remind him that under the terms of his debt-freeze plan, if he decided to ask for the plan to be activated he would need to supply evidence that he had experienced a 25% reduction in his income. The majority of these conversations and requests for information had taken place *after* the date Mr A had said he had sent the information to the business.

In these circumstances, we concluded that Mr A had not met the terms of his agreement. So we did not feel that the business had acted incorrectly or unfairly by not activating his debt-freeze plan.

## case study 108/8

### claims-management company complains about mis-sold PPI – when consumer's product is actually a debt-freeze plan

Mrs E wanted to complain about the way she had been sold a "protection plan" when she had taken out a loan. She wasn't sure how to go about complaining – and was worried that the lender wouldn't take her complaint seriously. She decided to appoint a claims-management company to act on her behalf. The company complained to the lender on Mrs E's behalf – saying that she had been mis-sold PPI.

But the information sent in by the claims-management company did not match the lender's records for Mrs E's account. The lender's records showed that Mrs E had never had PPI on her account. However, the lender did establish that Mrs E had taken out a debt-freeze plan in 2009.

The lender investigated the sale of the debt-freeze product – and wrote to the claims-management company. It said that Mrs E had been given enough information to make an informed choice about whether the plan was right for her.

The claims-management company decided that the lender hadn't supplied enough information to demonstrate that the plan *hadn't* been mis-sold to Mrs E. So it decided to refer the complaint to us. It filled in the standard PPI questionnaire – saying that Mrs E was unhappy with the policy that had been added to her account.

#### complaint not upheld

We asked the lender to supply us with recordings of any phone conversations between its representatives and Mrs E from around the time she had taken out the loan. As we listened to the recordings, it became clear to us that the policy in question was in fact a debt-freeze plan – and not a PPI policy. Unfortunately, the lender's letter to the claims-management company had not been clear about this – although we noted that the plan documentation did say that it was a debt-freeze plan.

We contacted Mrs E and the claims-management company to let them know we had established that Mrs E had a debt-freeze plan – and not a PPI policy.

In one of the conversations we listened to, we noted that an adviser had given Mrs E information about the benefits and the cost of the debt-freeze plan – and had explained that it was an optional feature that she could choose to add to her account.

We concluded that the lender *had* given Mrs E enough information to allow her to make an informed decision about whether to take out the debt-freeze plan. We also thought that the costs of the plan had been clearly set out during the phone conversation.

In these circumstances, we did not uphold the complaint.

# ombudsman focus: businesses – your views on our service

Every six months, we ask businesses involved in recently-closed cases for their feedback on the ombudsman experience: what they think we're doing well, where they think we're falling short, and how we can bridge that gap.

We've now collated the results of the most recent survey we ran. Here's our response to some of the comments businesses made about how we could improve our service.

"the number of spurious complaints that are completely unfounded that are sent to the ombudsman is amazing. By making the customer contribute to the cost they may think twice"

**– a large business**

"you should charge "chancers" for using the service. You are encouraging a compensation culture"

**– a small business**

The proportion of complaints we decide to be totally without merit is actually minimal. Of more than 120,000 complaints we resolved last year about all financial products *other than* payment protection insurance (PPI), we dismissed fewer then 1% as "frivolous and vexatious" under our rules. And when we do that, we refund the case fee to the business concerned.

It's true that we dismiss some types of complaints more than others on these grounds. For example, looking at PPI complaints alone, the proportion – though still small – is significantly higher at 7%. And it's situations where we find that no policy was actually sold that often prompt feedback from businesses that we should charge consumers – or at least claims managers – to refer complaints to us.

But looking at the statistics, we're not that convinced "chancers" is a fair description of the majority of the people who refer complaints to us. As our chief ombudsman explained in *ombudsman news* issue 105, we don't think it's unreasonable that we should investigate complaints where consumers think they might have had PPI but aren't sure.

In fact, in these cases our investigation regularly shows that the consumer has been paying for a policy that they didn't explicitly ask for or know about – and that the business's own investigation has failed to trace.

So as far as charging consumers for our service is concerned, we maintain – and parliament agrees – that their free right of recourse to the ombudsman helps underpin public confidence in financial services.

And though we've thought hard about the option of charging claims management companies to bring complaints to us, we don't believe this would address any of the controversy surrounding that sector – or prevent "mass complaints" at source. And it would be consumers who would ultimately bear the cost.

Financial Ombudsman Service

"you should communicate an expected resolution date once you receive the files requested from a business"

**– a small business**

We're a demand-led service – so we can only make plans based on the types and volumes of complaints we expect to receive in the year ahead. We ask for the financial services industry's help when we consult on our plan and budget each year – inviting businesses and other organisations to share their forecasts so we can factor these into our own.

But forecasts rarely play out – however compelling the assumptions used to reach them. Based on our estimates, we significantly increased our case- handling capacity over the past year – recruiting an additional thousand staff.

But by the by the end of the calendar year we found we were receiving double the number of complaints than we – and many stakeholders – thought we could reasonably expect when we set our plans back in March 2012.

The impact of these "extra" complaints – the majority of which are about PPI – is that consumers and businesses are sometimes having to wait much longer for us to be able to assess their case. When we ask a business to send us its file, it may still be some time before we're able to look into the complaint. And some businesses aren't so diligent about giving us the information we need when we need it.

So because we can never say for sure how many cases we're going to receive – or how long each is going to take to decide – it's very difficult for us to give businesses (or consumers) an expected timeframe for resolving each one at the point we receive it.

And we've been very open about the fact that, given the unprecedented volumes of PPI complaints still being referred to us, these cases will take significantly longer to deal with than complaints about other products – and for some time to come.

"the time firms and complainants have to wait for ombudsman decisions remains far too long"

**– a large business**

As well as receiving a record number of complaints, we're finding that, increasingly, they're less straightforward. And perhaps as a consequence of the economic climate, many cases are now harder-fought by both sides.

Both these factors make it less likely we'll be able to mediate a resolution at an early stage – and more likely that one side will ask for an ombudsman's final decision on the matter.

So as well as the number of complaints at this final stage increasing, if a complaint is particularly entrenched – or the outcome is finely balanced – it will take longer for the ombudsman to review what's happened and reach a decision.

That said, over the last year we were still able to resolve around three in ten cases within three months, around six in ten within six months, and more than eight in ten within a year – that's including PPI. That's broadly the same as in the previous year.

And in terms of making decisions, recruiting 50 new ombudsmen has helped us to significantly reduce waiting times at the final stage of our process. This should continue to improve as we take on more ombudsmen over the coming months.

*technical.advice@financial-ombudsman.org.uk*

**fact**

For cases involving IFAs and smaller businesses, as many disputes are referred to us by *other* financial businesses as they are by claims managers.

**fact**

The proportion of cases we upheld in favour of the consumer in 2012 varied from business to business between 3% and 100%.

**fact**

Of disputes appealed to the ombudsman for a final decision, around 4 out of 10 requests are made by financial businesses and 6 out of 10 by consumers.

## "you should hold events outside London"

## – a small business

We do – you must have missed us! Last year, our outreach team met more than four hundred smaller business representatives at our "introducing the ombudsman" workshops and hundreds of complaint-handlers from larger firms at our *workingtogether* conferences – everywhere from Glasgow and Manchester to Cardiff and Exeter.

And that's not to mention the dozens of regional forums and other gatherings we attended to meet all kinds of businesses face-to-face. We meet the advice community all over the country too.

We've now planned an expanded programme of events for 2013/14 – from Belfast to Norwich via Crawley and Edinburgh – which there's more information about on our website.

## smaller businesses – meet the ombudsman

We run free sessions across the UK for smaller businesses. The sessions are designed to help businesses with little experience of our service to understand:

- the complaint handling rules;
- how the ombudsman service operates;
- how we decide cases; *and*
- the help we offer businesses to support their own complaint handling.

The events are also a great opportunity for business people to meet some of our staff at first hand – including an ombudsman – and for us to hear from businesses about the things that concern them.

over the next few months we'll be visiting

| | |
|---|---|
| 27 March | **Belfast** |
| 11 – 12 April | **Manchester** |
| 2 – 3 May | **Birmingham** |
| 24 May | **Milton Keynes** |
| 19 June | **Durham** |
| 20 June | **Edinburgh** |
| 21 June | **Leeds** |

***to book a place – and to see our full list of events – visit our website***

"we'd find a one-to-one session with an ombudsman very useful to understand the rationale of the Financial Ombudsman Service"

**– a large business**

However useful it might be, it wouldn't be practical for our ombudsmen to visit all the businesses we cover – over 100,000 of them – to explain and discuss how we look at complaints. But we are making changes which we hope will make it easier for businesses to understand and apply our approach.

For example, in response to feedback from a previous survey, we moved from running general complaint-handling workshops to product-specific events. So now businesses can put their questions direct to an ombudsman with a specialism in that area – and discussion can really get down to the finer points of how we decide different types of case.

Last October, we talked motor insurance in London and Manchester, and in January we met travel insurers in London. We're doing the same for health insurance and banking later this year. If you have any questions about our events, email outreach@financial-ombudsman.org.uk.

What's more, in last year's plan and budget we set out our intention to publish all of our ombudsmen's decisions. This will come into effect on this year under the Financial Services Act 2012 – making our rationale in individual cases transparent and accessible to everyone.

And we've now been covered by the Freedom of Information Act for 18 months, as part of which we always look to proactively publish information we're asked for that we haven't already put in the public domain.

Our online technical resource is also regularly updated to reflect the new products and types of complaints we see.

And as always, our technical advice team are available for times where talking a testing situation through would really help. The team can also give an informal steer on the ombudsman's general approach to different types of complaints – as well as information about our rules, jurisdiction and processes. You can phone them on 020 7964 1400 (or email technical.advice@financial-ombudsman.org.uk).

"the case studies in *ombudsman news* are so obvious – use real life cases instead"

**– a large business**

All our case studies are based on complaints we see. We do have to make some changes – often simply to reduce a thick case file into just a few hundred words. Or we might change a small detail to make the complaint less identifiable.

But it's by deciding real cases that we establish and develop our general approach to complaints. So it makes sense that we use real cases to illustrate that approach – especially since people's real stories can be more complex, surprising and powerful than anything we could make up.

*outreach@financial-ombudsman.org.uk*

# complaints made by **smaller businesses**

Most people who bring us complaints do so in their personal capacity as individual consumers. However, we also receive complaints from smaller businesses, charities and trusts.

We can look at complaints brought by "micro-enterprises" – an EU term covering smaller businesses. To be able to bring a complaint to us, a smaller business must have an annual turnover of up to two million euros and fewer than ten employees.

Sole traders and people running small businesses don't always register a complaint with us as a *business* dispute. These people often see the problems they are facing as personal rather than commercial. So in practice, although our statistics indicate that we receive around 5,000 complaints from small businesses each year, it may actually be a slightly higher proportion than that.

Smaller businesses have different degrees of knowledge and experience of dealing with financial matters. Some businesses may be relatively small, but have expertise of dealing with financial matters – and may have arrangements in place for getting financial or legal advice.

When we look into complaints from those sorts of businesses, we would usually expect them to have approached their affairs in a way that reflected their knowledge and experience. But smaller businesses might also include local hairdressers or window cleaners – who usually do not have advisers and who might have less experience of dealing with financial or legal matters. We take this into account when we are dealing with cases from businesses like these.

This selection of case studies illustrates some recent banking and insurance complaints made by the owners of smaller businesses. Many of the issues that arise in these complaints are the same as those we see in complaints brought by individual consumers – for example, problems transferring money from one bank account to another, or disputed insurance claims.

But complaints from smaller businesses raise *different* issues too – for example, damage done to a business's reputation, or problems with the company a business used to supply and run card payment services. The case studies that follow illustrate the wide variety of the cases we see – and some of the things we take into account when we are dealing with them.

Financial Ombudsman Service

## *... their overdraft had become a "static debt"*

case study
# 108/9

### small business owners disagree with bank's decision to convert their overdraft debt into a loan

Mr and Mrs T ran a small business from home trading rare and antiquarian books. Because their business was highly specialised – and depended on them sourcing the right books and finding the right customers – they were finding it difficult to manage their cash flow.

They regularly went overdrawn on their business account, and sometimes exceeded the limit they had agreed with the bank. This went on for several months.

Eventually, Mr and Mrs T's bank wrote to them and explained that it wanted to convert their overdraft facility into a loan that could be paid off in monthly instalments. Mrs T rang the bank to tell them that she and her husband were happy with their existing business banking arrangements – and that they didn't want to take out a loan.

The bank explained to Mrs T that their overdraft had become a "static debt" – rather than a facility that was dipped into every now and then to help with cash flow. The bank also pointed out that Mr and Mrs T would end up paying less – because the loan had a lower interest rate than their overdraft, and because they would not be paying additional charges for exceeding their overdraft limit.

Mr and Mrs T complained. They said that the bank was showing an "*inflexible attitude*" to lending, and that it had fundamentally misunderstood the nature of their business.

When the bank rejected their complaint, Mr and Mrs T decided to bring the matter to us.

**complaint not upheld**

We looked closely at the bank's records to find out more about the decisions it had made on lending to Mr and Mrs T's company. We also looked at the way the business had used its current account – including how it had managed its overdraft facility.

It was clear that the bank had become concerned about the business' dependence on its overdraft facility – and had wanted it to start repaying its debt. We though this was reasonable – especially given the fact that the Mr and Mrs T would have been paying less to borrow the money.

We also listened to Mr and Mrs T's side of the story, and we looked carefully at the evidence that they supplied. But we did not agree with them that the problem had been caused by the bank's failure to understand their business. And we did not think that any further discussion with the couple – or additional information about their business – would have changed the bank's lending decision.

Banks and business customers can often discuss and negotiate lending arrangements – but that doesn't mean they will always agree.

We explained to Mr and Mrs T that the bank had been entitled to make its own commercial decision about the degree of risk it was prepared to take in lending to their business. In these circumstances, we did not uphold the complaint.

## case study 108/10

### insurer rejects claim because keys were left in vehicle

Mr S had a haulage business, which was based in a trading estate. Unfortunately, the company had a truck stolen from the yard outside its offices. The theft was caught on the trading estate's CCTV. The footage showed a man wearing a high-visibility jacket walking into the yard and driving off in the truck. The trading estate's security guard had thought the driver was an employee, and had opened the security barrier to let him out. Later that day, it came to light that one of Mr S's employees had left the key in the ignition.

Mr S made a claim under his business's insurance policy to cover the loss of the truck. But the insurer rejected the claim, pointing out that the policy said "*We will not cover loss of, or damage to, Your Motor Vehicle or Trailer arising from Theft if Your Motor Vehicle has been left unattended with the ignition keys in or on Your Motor Vehicle or Trailer.*"

Mr S complained to the insurer. He said that he had taken all reasonable steps to safeguard the truck – and pointed out that the trading estate was covered by CCTV and was protected by security. He also explained that it was company policy not to leave keys in vehicles, and that the member of staff involved was no longer working there. When the insurer refused to change its position, Mr S decided to refer the matter to us.

#### complaint not upheld

The fact that the key had been left in the truck's ignition was not in dispute. We accepted that Mr S had taken steps to try and stop his employees leaving keys in vehicles. But ultimately, the haulage business was responsible for the actions of its employees. And even though the trading estate was protected by security, a man had been able to walk in and take the truck without being challenged by the security guard.

We asked the trading estate to give us the relevant CCTV footage. When we looked at it, we noted that nobody had been near the truck when it was stolen. So we concluded that it had been left unattended.

We did not think the insurer had acted unreasonably in turning down the claim, and in these circumstances, we did not uphold the complaint.

*... Mrs R's business had not acted in line with its terms and conditions on chargeback*

## case study 108/11

### small business complains that it did not give permission for "merchant acquirer" to refund a consumer

Mrs R ran an online clothing and gifts business. One of Mrs R's customers ordered a cardigan, but when it arrived it was a different colour from the one she had ordered. The customer contacted her bank to ask it to get her money back through "chargeback" – a process that allows a consumer to ask their card provider to reverse a transaction in certain circumstances if there is a problem with something the consumer has bought.

Mrs R's "merchant acquirer" – the company that supplied and ran the card payments system for her business – refunded the customer's bank account and then debited that amount from Mrs R's business account.

Mrs R was unhappy with the merchant acquirer's decision to refund the customer. She complained to her bank. She pointed out that the customer had not returned the item, which her own refund/returns policy said a customer must do when they asked for a refund.

But the merchant acquirer told the bank that Mrs R's business had not acted in line with its terms and conditions on chargebacks, which said that "the refunds/returns policy must be made clear to the customer before payment is requested". The merchant acquirer said that in these circumstances, it had no choice but to refund the customer.

Mrs R was unhappy with this response, and decided to refer her case to us.

#### complaint not upheld

We looked carefully at the merchant acquirer's terms and conditions. We noted that when Mrs R's business had appointed the merchant acquirer, it had agreed to the rules on chargebacks. So Mrs R's business had agreed that it would make its refunds/returns policy clear to a customer before the customer paid for an item.

We looked at the website of Mrs R's business. Although most of the website was clear and well laid out, we noted that its refunds/returns policy was *not* set out clearly on the payments screen. The policy was included in the section on the company's standard terms and conditions – and unlike many websites, there was no tick box asking the customer to confirm that they had read them.

The relevant chargeback scheme rules said that for a company to *refuse* to make a chargeback to a customer, it must show evidence that the customer had seen a refunds/returns policy. In this case, the merchant acquirer was not satisfied that the refunds/returns policy had been brought to the consumer's attention. So we concluded that it had acted reasonably when it had refunded the consumer.

In these circumstances, we did not uphold the complaint.

## case study 108/12

### small business complains that insurer's agent damaged its reputation

Mr B had recently set up a nursery school. It was the first nursery to open in the village – and was proving popular with the local community. When the nursery had been open for six months, Mr B decided to change his insurance provider – and got in touch with a new insurer to discuss his needs. The insurer sent a surveyor to carry out a risk survey of the nursery premises.

On the day the survey was due to take place, the surveyor was waiting outside the nursery for someone to let him in. While he was waiting, the insurer rang him to tell him that the nursery had gone into receivership – and that the survey was no longer needed. The surveyor thought he had better mention this to the parents who were waiting to drop their children off.

*... we usually take into account what sort of information was involved, and how widely it was circulated*

It turned out later that the insurer had made a mistake. It was actually a completely *different* company – with a similar name to Mr B's nursery and covered by the same insurer – that had gone into receivership.

When Mr B found out what had happened, he complained to the insurer. He said the surveyor's actions had cost his company money. The insurer accepted Mr B's argument, and offered to pay £100 compensation. But Mr B rejected this offer. He explained to the insurer that the company had been forced to pay for advertising to let people know it was still in business. When the insurer refused to increase its offer, Mr B referred the matter to us.

### complaint upheld

The fact that the insurer's surveyor had passed on information that was wrong – and potentially damaging to the nursery's reputation – was not in dispute. So we were satisfied that the insurer ought to compensate the business. But we needed to decide whether the insurer's offer was fair compensation for the damage done to the business's reputation.

In cases that involve a damaged reputation, we usually take into account what sort of information was involved, and how widely it was circulated. We also consider the business's reputation *before* the information was disclosed, and the *impact* of the disclosure of the information.

In this case, we noted that the surveyor had only spoken to a handful of people. We thought this was very different from, say, maliciously publishing a defamatory comment. In the circumstances of this case, it seemed unlikely to us that the rumour had spread widely within the local community. We also took into account the fact that the nursery had not been trading for long, and had not yet had the opportunity to build and develop its reputation.

Mr B told us that the nursery had incurred substantial advertising costs to put things right. We asked him to show us evidence that these costs had been incurred because of the surveyor's actions – and would *not* have been incurred in the ordinary course of launching and running the business. Mr B could not show us any evidence to show this had been the case.

We also asked Mr B to show us evidence that he had *lost* any custom as a result of the surveyor's actions. But he did not have any evidence to show this either. However, we did accept that the information might have been passed on both to potential and existing customers by word of mouth. This could have led potential customers to check whether the company was still trading before they enquired about a nursery place for their child. And it could have led existing customers to panic and start to think about alternative childcare arrangements – especially considering Mr B's nursery was the only one in the village.

Taking everything into account, we concluded that the insurer's offer had *not* been fair compensation for the damage done to the nursery's reputation. We told the insurer to increase its offer to £300.

## *... the insurer would not have insured Mr D's vehicle if it had known it had a tipper*

case study
# 108/13

### small business complains that insurer rejected claim wrongly

Mr D owned a small recycling business. After one of his vehicles was stolen, he made a claim under his motor insurance policy. His insurer rejected the claim. It pointed out that the vehicle in question was equipped with a "tipping" mechanism – and that if it had known about that when Mr D had taken the policy out, it would not have insured the vehicle.

However, the insurer *did* refund the premiums that Mr D had paid towards the insurance policy. But Mr D was unhappy with this, and he complained to the insurer. He said that it should have *known* the vehicle had a tipper because he had mentioned the business he ran – and that he did not remember being asked any questions about whether it had a tipper when he took the policy out.

When the insurer rejected the complaint, Mr D decided to bring his case to us.

**complaint not upheld**

Mr D had originally gone to the insurer's website to get a quote for his insurance. We looked at the website and found that he would have been asked to confirm that the vehicle "*is not refrigerated, does not have a tipping unit and does not exceed 3.5 tonnes.*"

We also listened to a recording of the phone call during which Mr D had taken out the policy. During the conversation, the adviser had said "*so it's a standard pick-up, then? It's not a tipper, it has six seats and it's a standard right-hand drive*". Mr D had replied "*yes*".

Although we were satisfied that Mr D had not set out to mislead the insurer, we concluded that the insurer had accepted his answers in good faith. We explained to Mr D that when mistakes like this happen, we usually expect the insurer to do what it would have done if it had been given the right information.

In this case, having looked at the underwriting evidence, we were satisfied that the insurer would *not* have insured Mr D's vehicle if it had known it had a tipper. So we thought the insurer had acted fairly in turning down Mr D's claim. The insurer had accepted that he had not set out to defraud them, and had refunded the policy premiums he had paid.

In these circumstances, we did not uphold the case.

*... he realised that he must have entered the wrong sort code*

## case study 108/14

### business owner complains that bank did not do enough to help when he made a mistake transferring money to his business account

Mr G owned a small IT business. The business needed to pay a supplier £5,000 for some equipment. Mr G's business had two accounts, and he needed to move money from one account to the other to pay the supplier. He logged into his online banking account to transfer the money. But when he went into the account he needed to use to pay the supplier, the money he *thought* he had just transferred wasn't there. He realised that he must have entered the wrong sort code. Mr G had no idea where the money had gone, and his company was left out of pocket.

As soon as he realised what had happened, Mr G phoned his bank to report his mistake. He spoke to several different people at the bank. Eventually he spoke to someone who said they would try and track down the money. But because his business needed the money immediately to pay the supplier, Mr G had to make a transfer from his savings account to cover the money that had gone missing. This time, the payment went through without any problems.

Mr G kept phoning his bank to find out whether it had found the missing money. Three months later, the bank got in touch to say that it had found the money in a "suspense account", and it returned to money to Mr G's business account a few days later.

Mr G complained to the bank about how long it had taken to get the money back. But the bank said that Mr G should have been more careful when he had entered the sort code in the first place – and that it hadn't done anything wrong.

Unhappy with this response, Mr G referred the complaint to us.

#### complaint upheld

When we spoke to Mr G, he accepted that he had entered the wrong sort code when he had tried to transfer the money between his accounts. But he also explained to us that because of his dyslexia, he often found it difficult to tell certain numbers apart – especially when he was in a hurry.

We explained this to the bank. We also asked the bank why it had taken over three months to find the money that had gone missing. But the bank couldn't explain why it had taken so long.

We concluded that the bank should have done more to help Mr G when he had first got in touch with them. We decided that the bank had, in effect, deprived Mr G's company of £5,000 for three months – and we thought it was likely that the money would have been part of the company's working capital. We told the bank to pay Mr G's company the interest that would have accrued on the £5,000 during the three-month period.

## *... because Y Ltd was a limited company – a corporate body – it couldn't "suffer distress"*

case study
108/15

### business owner complains that bank failed to acknowledge the distress it had caused

Mr and Mrs Y ran a property lettings business, Y Ltd. A new tenant had just taken one of their flats and given them a cheque for £2,500 as a deposit. Mrs Y paid the cheque into their business account.

Three weeks later, Mr Y noticed the money was not showing in their account. He phoned the bank to ask what had happened. The bank suggested that Mr Y contact the tenant to ask them to put a stop on the cheque – and to give Mr Y a new one.

Two days later, the bank found the *original* cheque and paid it in to Y Ltd's account. But because the cheque had been stopped, it bounced.

Mr and Mrs Y were unhappy that the bank had wasted their time. They decided to complain. They pointed out that the bank had suggested they get the cheque stopped, and had then gone on to try and credit it to their account. The bank accepted it had lost the cheque and paid Y Ltd £100 compensation for the inconvenience it had caused.

But Mr Y didn't think the bank had done enough to put things right. He wrote to them and explained that he suffered from high blood pressure – and that he had found the whole situation very stressful. He pointed out that he and his wife run their business on their own – that they "are the business". He said that the bank's mistake had made his condition worse. When the bank stuck to its original offer, Mr and Mrs Y brought their complaint to us.

#### complaint not upheld

We looked into all the circumstances of the case. We could understand that Mr Y had found the experience stressful. But we explained to Mr Y that although he thought of himself as the business, the bank's mistake had affected Y Ltd's account. And because Y Ltd was a limited company – a corporate body – it couldn't "suffer distress".

We concluded that the bank's offer to pay £100 to Y Ltd was appropriate compensation for the time that had been wasted sorting the problem out. In these circumstances, we 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

**I handle complaints for a bank and I'm trying to help one of our customers who says that we took too long to open a business account for her. The account should have been up and running within a week, but we took two months to sort it out. I want to offer compensation for the inconvenience we caused, but I'm finding it hard to come up with a figure. The customer says that she lost business because of our mistake. Is this something we should be paying out for?**

## answer

If the consumer can show that the bank's mistake led to her business losing money, then the fair thing to do is to put her back in the position she would be in if the mistake hadn't happened.

If we were dealing with a complaint like this, we would ask the consumer for evidence to support what they were saying – for example, emails, receipts and invoices.

For some people, not having an account for two months would be very annoying, but it wouldn't stop them running their business. Other consumers – for example, those who rely on taking card payments – could be really disadvantaged by the delay.

Talk to your customer to find out exactly how she was affected and whether she experienced any other "losses" like inconvenience or reputational damage.

Together you might be able to come up with a sum that is reasonable and that makes up for the mistake. You might find it helpful to have a look at our technical note on compensation for non-financial loss to see examples of the types of payments we have told businesses to make.

## question

**We provide home contents insurance for a consumer whose house was burgled. Unfortunately, one of the items stolen was a Rolex watch, which was a gift from the consumer's father before he died 10 years ago. All Rolex watches have a unique registration number, so we normally only pay claims where the consumer can give us this number and it matches the database. Our consumer doesn't have the number, but he has provided photos of him wearing the watch that look like they were taken over several years. What would the ombudsman think if we declined the claim?**

## answer

When it comes to proof of ownership in insurance complaints, we focus on what it is fair and reasonable to expect the consumer to be able to show. From what you have told us about this particular case, it doesn't seem unusual that the consumer hasn't kept the receipt because it was a gift from his father. It also sounds as though he has had the watch for a long time. We would look at the photos, take the loss adjuster's findings into account and speak to the consumer to help us make a decision. Depending on the circumstances of the case, we might conclude that refusing to pay the claim simply because the registration number was missing was not a fair decision.

Financial Ombudsman Service