

... we talk to businesses and consumers daily – so we see a lot at first hand.

Natalie Ceeney, chief executive and chief ombudsman



# ombudsman news

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

## in praise of pragmatism ...

We often find ourselves explaining to people who aren't familiar with the ombudsman that "we're not the regulator". The difference between our job and the regulator's is very clear. We're part of the statutory arrangements designed to help

underpin consumer confidence in financial services. But unlike a regulator, we don't fine or discipline financial businesses. And unlike a regulator, our role is to resolve *individual* disputes – as a quicker and more informal alternative to the courts.

Although our roles are distinct, our interests are aligned. At the ombudsman service, we respond to over two million enquiries a year

– ranging from initial queries to drawn-out, contentious disputes. We talk to consumers and businesses daily – so we see a lot at first hand. And we tend to notice very quickly if there's a widespread problem. By sharing what we see in the enquiries and complaints we receive, we can help prevent future problems – and that means we need to work closely with the regulator.

It's true that no regulator can deliver a "zero-failure" regime. But like everyone else, they can learn from experience. It's now widely acknowledged that many of the problems we have seen in financial services were caused partly by light-touch regulation in the past. And it's also widely agreed that the extent of PPI mis-selling



Financial

Ombudsman Service



scan for previous issues

### in this issue

payday lending  
page 3

ombudsman focus:  
on the future  
page 12

ISAs  
page 16

Q&A page 24



was exacerbated by the regulator failing to act quickly and decisively when the problems first came to light.

The new regulatory framework for financial services came into being on 1 April this year – and was explicitly designed to address some of these challenges. The FCA’s chief executive, Martin Wheatley, recently said that he wants the FCA *“to use its new powers and remit to bring a more human face to the regulation of financial services. A more pragmatic, sophisticated approach to regulation.”*

This is a welcome shift – and a timely reminder of the need to balance legitimate business interest with fairness and good customer service.

But it’s also welcome because our own approach to resolving problems on the frontline is rooted very firmly in pragmatism. We make decisions by considering what is fair and reasonable in the individual circumstances of each case. And we often find that problems have escalated unnecessarily where businesses *haven’t* been pragmatic in the way that they have applied the rules.

Ultimately, regulation will be increasingly effective if it takes account of how things are playing out in real life. So a more pragmatic, commonsense approach can only be good news – and we look forward to working closely with the FCA as it implements its new approach to regulation.

And while things are changing at the regulatory level, it’s business as usual at the ombudsman service. In our own work, we will continue to emphasise the importance of dealing with customers fairly – and of balancing the needs and expectations of both sides in a dispute.

As an organisation that affects lives, livelihoods and reputations, we need to concentrate on making sure we’re there when people and businesses need us. That’s ultimately what we’re here for.

So as the spirit of regulation shifts towards balance, fairness and customer service, our work on the frontline – and the insight that brings – feels more relevant than ever.

**Natalie Ceeney**  
chief executive and  
chief ombudsman

*... a more pragmatic, commonsense approach can only be good news*

**Financial Ombudsman Service**

South Quay Plaza  
183 Marsh Wall  
London E14 9SR

**switchboard 020 7964 1000**

**consumer helpline**

*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

© Financial Ombudsman Service Limited. You can freely reproduce the text, if you quote the source.

*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.

# payday lending

Although payday loans only account for a small proportion of the cases we see, it is a growing area of concern. We are now receiving around 30 to 40 cases each month – a 75% increase on last year – and we are currently finding in the consumer’s favour in nearly three quarters of those complaints.

Many of the complaints we see involve the lender’s use of the “continuous payment authority” that the consumer gave it – which allowed the lender to collect payments directly from the consumer’s bank account.

Typical problems involve payday lenders trying to take payments unexpectedly – or repeatedly attempting to take payments when the consumer has already explained that they don’t have enough money to cover the debt. We also see complaints about unaffordable lending and about the debt recovery methods used by some payday lenders.

We see a number of payday loan complaints from consumers who say they never even took out the loan in question. And we do come across situations where fraudsters took out loans in other people’s names.

The following case studies illustrate some of the more common problems that we see in complaints involving payday lending, including:

- ◆ consumers who were experiencing financial difficulty – and who didn’t feel they had been treated fairly by their lender;
- ◆ consumers who believed the lender had used their card details to take payments without their permission; *and*
- ◆ a consumer who had fallen behind with his repayments – and who believed his lender had mistakenly registered multiple loans on his credit file.





## case study 109/1

### consumer complains that lender did not take account of her financial difficulties – even when she told them about her debt management plan

Miss B was struggling to keep on top of her finances. After an unexpectedly high electricity bill, she decided to take out a short-term loan to tide her over until she got paid again.

She borrowed £250 from a lender and agreed that she would pay back £280 within 30 days. She set up a continuous payment authority to allow the lender to take money directly from her bank account.

Just before the loan repayment was due, Miss B realised that she wouldn't have enough money to cover it. She decided to get help from a debt management company. She phoned her lender to let them know that she was entering into a debt management plan. At around the same time, the debt management company wrote to the lender to confirm the arrangements.

But soon afterwards – on the original repayment date – the lender tried to take the payment from Miss B's account. There wasn't enough money to cover it in full.

Miss B was shocked to discover that the lender had tried to take the £280 from her account so soon after she had phoned to tell them about her financial difficulties and her debt management plan.

Miss B complained to the lender. She said that the withdrawal they had made had made her financial problems much worse. She sent the lender a copy of her bank statements, information about her debt management plan and details of her income and expenditure.

The lender turned down her complaint. It said that because neither Miss B nor her debt management company had made an offer of repayment, it was unable to put her account on hold or stop the continuous payment authority.

### complaint upheld

We looked carefully at the information that Miss B had sent to the lender – and at the lender's own records. We saw that the business had recorded that Miss B was having financial problems following her phone call – and that she had a debt management plan in place. But we also noted that the lender had acted very quickly in taking the payment.

*... she phoned her lender to let them know she was entering into a debt management plan*

## ... he said that he hadn't even known about the loan

We took the view that when the continuous payment authority failed, the lender should have been alerted to the fact that Miss B was having problems paying off her loan. We didn't accept the lender's argument that it needed "an offer of repayment" before it could respond to Miss B's difficulties.

We recognise that it is good practice across businesses in this sector to suspend payment for 30 days so that a consumer has the opportunity to set up a repayment plan with a debt advice agency. This gives the consumer the opportunity to send in more information, and allows the debt management company the opportunity to negotiate on the consumer's behalf. In these circumstances, we decided that the lender had acted unfairly by taking the repayments so quickly.

We told the business to refund Miss B the money it had taken from her account, plus interest. We also told it to pay her £150 for the inconvenience it had caused her. To help Miss B move forward, we told the business to work with her debt management company to set up a repayment plan that she could afford.

### case study 109/2

#### consumer complains that lender kept his card details on file – and used them again without his permission

Mr V's son was studying at university and was having trouble keeping on top of his finances. He had taken out a number of short-term loans with different companies. When he realised that he wouldn't be able to pay the money back, he asked his father to help him out. Mr V used his debit card to pay off the loans and his son paid him back over the next few months.

Some time later, Mr V's son took out another short-term loan with one of the lenders he had already used. He couldn't keep up with the repayments so the lender took the money directly from Mr V's bank account. The lender took seven payments – totalling over £900 – from Mr V's account over the course of a month.

Mr V contacted the business to complain. He said that he hadn't even known about the loan – and that it was unacceptable for the lender to have taken money from his account without his knowledge. The lender apologised to Mr V. It said it must still have had his account details on its records from when he had paid off a different loan for his son previously.

The lender said it would take Mr V's card details off the system. But Mr V felt that he had been treated unfairly – and he decided to bring his complaint to us.

#### complaint resolved

We asked the lender for its records relating to the loans that Mr V's son had taken out. We noted that Mr V had supplied his card details to pay off an earlier loan – but that he hadn't had any contact with the lender over the latest loan. So we concluded that the lender must have used the card details that Mr V had supplied before.



The lender had already removed Mr V's card details from its system. But we needed to decide whether it had done enough to put things right. We could understand Mr V's concerns about the money being taken from his account without his permission – and we could see that it had had a significant impact on his finances.

The lender had shown us that it was keen to put things right. So it agreed to our suggestion to refund Mr V the full amount, plus interest. However, we recognised that in repaying Mr V, the business now needed to pursue repayment of the loan with his son. The lender agreed to contact Mr V's son to set up a repayment arrangement for the outstanding balance.

---

## case study 109/3

### consumer complains that lender registered a default without giving him notice

Mr N was having some building work done on his house. The costs had been mounting and as the builders were finishing off the work, Mr N was getting anxious about the final bill.

He took out a 30-day loan to cover the building work – and to make sure he could meet his regular outgoings. But the invoice from the builder was a lot higher than Mr N had been expecting. He realised that he wouldn't be able to pay the builder, cover his regular outgoings *and* pay off the loan by its due date. So he contacted the lender to let them know he wouldn't be able to pay off the loan.

Over the next few months, Mr N managed to reduce his outgoings and put money aside to pay off his loan. He kept in regular contact with his lender to let them know what he was doing.

## *... he knew that he was normally very good with his correspondence*

Six months later Mr N had saved enough money to pay off his loan. The lender accepted his payment and closed the account. It also said that it had updated Mr N's credit file to show that he had settled the account.

But when Mr N checked his credit file a month later he found that the lender had registered a default against his name two months after he had taken out the loan. The default was now showing as "satisfied".

Mr N was worried. He hadn't realised that there was a default against his name – and he was concerned about the impact it was having on his credit rating.

Mr N phoned the lender to find out what had happened. They said that they had sent him a letter telling him that it was going to register a default on his credit file. Mr N didn't remember receiving a letter about this – and he knew that he was normally very good with his correspondence. Unhappy with the lender's response, he brought his complaint to us.

### **complaint resolved**

We asked the lender to send us the all the correspondence that was relevant to the case. But they told us that they couldn't send us a copy of the default notice – or an extract from their records to show it had been sent – because their records system had recently been "updated". This meant they didn't have a copy of the original notice or any records to show us that it had been sent.

However, the lender was able to send us a copy of the terms and conditions for the loan. It pointed out that if Mr N had read them, he should have been aware that it could register a default against his name if he didn't pay off his outstanding balance in time.

Although we accepted this, we explained to the lender that it was required to send out a notice of default to the consumer 28 days before the default was registered. We pointed out that because they couldn't show us a copy of the default notice – or any evidence that showed that the notice had in fact been sent – we couldn't be sure exactly what had happened.

When we explained to the lender that Mr N felt certain he hadn't received a notice, it agreed to remove the default – and to amend his credit file. Mr N was happy with this outcome.

## case study 109/4

### consumer complains that someone fraudulently took out a loan in his name – and the lender refused to compensate him

Mr S ran a successful outdoor clothing and equipment shop in the north of England. Since he had got the shop up and running, his finances had been secure – and he felt he was on top of all his financial arrangements.

So he was surprised when he received a letter from a short-term loan business saying that he owed over £500 on his loan. Mr S just thought there had been a mistake. He threw the letter away and forgot all about it. A month later he received another letter – this time demanding more money.

Mr S wrote to the lender to let them know that they had the wrong person, and that he didn't have a loan with them. He asked them to stop contacting him and to remove anything that they had put on his credit file about this loan. Mr S didn't get a response and a month later he received another letter asking him to repay the increasing debt.

Mr S wrote to the lender again. This time he asked for compensation for the inconvenience he had been caused. The lender wrote back and said that they would take his name off the debt – and remove the information they had put on his credit file. But they said they would not pay him any compensation because they had already made a loss on the outstanding debt.

Mr S was unhappy with this response and asked us to look into the complaint.

### complaint upheld

Before a rule change that came into effect on 1 January 2012, we were not able to look at a complaint like this – where a consumer was not actually a customer of the business. Because the events in Mr S's case took place after that date, we were able to look into his problem.

When we looked at Mr S's bank statements, we noted that his finances were secure and, in our view, he was unlikely to have taken out a short-term loan.

We asked the lender how the original mistake had been made. It told us that it felt that it had taken the necessary steps to identify the consumer who had originally taken out the loan. When we looked at the lender's records, we noted that the debit card that had been used to take out the loan had been registered to Mr S's address.

*... they would not pay him any compensation  
because they had already made a loss*

## ... Miss C didn't want to give the lender any different bank details

We asked the lender whether Mr S's name had been on the card. They said that their validation process involved matching the card to the address – but admitted that the card could have had a different name on it and still been validated.

In these circumstances, we concluded it was likely that someone else had fraudulently set up a loan in Mr S's name – and that the lender hadn't realised what had happened.

We accepted that the lender had taken a loss when it had taken Mr S's name off the loan. But we pointed out to the lender that Mr S was an innocent party – and that he had been inconvenienced by the original mistake and by the way it had handled his complaint. So we decided that Mr S ought to be compensated for the trouble he had been put to.

We told the business to pay Mr S £100 to compensate him for the inconvenience he had been caused.

### case study 109/5

#### consumer complains that lender took payments from credit card without the cardholder's permission

Miss C lived at home with her parents. She had just graduated from university and had recently been offered a job. But she was fast approaching her overdraft limit and she wanted to go on holiday before she started work. She decided to take out a short-term loan for £350 to pay for her holiday. Unfortunately, the job offer fell through and Miss C was unable to repay her loan.

Miss C asked her mother to help – and with her permission, went online and used her mother's credit card to pay off the £350 she had borrowed.

A few days later, the lender took another payment from the credit card. Miss C and her mother were unhappy that this extra payment had been taken without their permission – and Miss C rang the lender to complain. The lender offered to return the payment.

It explained that because Miss C had used a credit card to make her payment, it would need details of a *different* account so it could return the money. They also explained to Miss C that she would still then have an outstanding balance on the loan that would need to be paid off.

Miss C didn't want to give the lender any different bank details because of what had happened before. And she felt that the lender should pay compensation for taking the unauthorised payment. When the lender rejected her complaint, she decided to refer the matter to us.



### complaint not upheld

We asked the lender to supply screen shots of their website so that we could see what information Miss C would have been given when she had paid with her mother's card.

We noted that the website said that *"once you have added card details to your account we will be able to collect future repayments from this card until you remove it"*. It also said that *"you should not add a card that doesn't belong to you"*.

When we looked at Miss C's loan account, we noted that the original payment she had made using her mother's credit card hadn't covered the outstanding debt. She had only paid off the amount she had borrowed – and she had still owed the lender the interest on the loan. The lender had taken the additional payment to clear the balance.

Taking all this into account, we concluded that the lender had *not* acted inappropriately. Their website had brought to Miss C's attention the fact that any card details entered into their payment system might be used again – and the payment in dispute had been used to clear her outstanding debt.

In these circumstances, we considered that the lender's original offer to refund the additional payment had been reasonable. That would leave an outstanding balance on the loan – and we agreed that Miss C would need to repay that amount if she wanted the additional payment to be refunded.

---

*... the payment in dispute had been used to clear the outstanding debt*

*... the lender had recorded five separate loans***case study**  
**109/6****consumer who  
deferred repayment  
complains that lender  
recorded multiple  
loans on his credit file  
– when he had only  
taken out one**

Mr H had recently moved house, and he took out a short-term loan to pay for some of the moving costs. Unfortunately, he found he wasn't able to pay off his loan on the due date – and he deferred payment four times. He managed to pay off his loan in full five months after he had taken it out.

When Mr H checked his credit file a month later, he was surprised to see that the lender had recorded five separate loans for each of the five months he had taken to pay the loan back. Confused and upset, Mr H contacted the lender to ask what was going on.

The lender explained to Mr H that each time he had deferred repayment, it was the equivalent of taking out a new loan. The lender also said that Mr H would have been told each time he had deferred payment that this would happen.

Mr H was adamant that he hadn't known about this. But when the lender refused to change its position, he decided to come to us.

**complaint not upheld**

The lender told us that each time Mr H had applied to defer repaying his loan, he had been sent an email that explained what would happen.

Although the lender couldn't send us copies of the emails, they did give us templates of the emails in their system – and records to show the circumstances in which these would be sent. We were satisfied that Mr H would have received an email explaining the situation each time he deferred his payment – as well as giving him an ID number for a new loan.

In these circumstances, we concluded that the lender had made it clear to Mr H that the original loan had been discontinued and replaced with a new one each time he had deferred his repayment.

We explained to Mr H that the lender was responsible for making sure that his credit file reflected his borrowing activity accurately – and that taking everything into account, we concluded that the lender had acted correctly.

# ombudsman focus: on the future

Liz Brackley has recently joined the ombudsman service as our first *service development director*. Liz comes from a senior strategic role at Virgin Atlantic, and will be helping us meet the challenge of developing our services for the future – at the same time as running our operation to meet today's challenges.

*ombudsman news* caught up with her in her first week to find out about her plans – and to hear more about the challenges of being truly customer focused as an organisation that deals with over 2 million people every year – affecting lives and livelihoods ...

## what did you know about the ombudsman service before you joined?

I've never needed to use the ombudsman myself, but I was definitely aware of the service. I knew it had a different job from the financial regulator and that it intervened in individual disputes. But I was really intrigued by the job advert – and once I started looking into what the ombudsman service does, I decided it was definitely somewhere I wanted to be.

## what was it about us that attracted your attention?

I think it was the striking way the new role was positioned. It reflected an organisation that understood its values, took nothing for granted and recognised the importance of change. The information about the job also contained a compelling personal introduction from Natalie Ceeney, the chief ombudsman, about what she likes about working at the ombudsman service. So the fact that it wasn't just the standard "application pack" – with "role purpose", "objectives" and so on – made me realise just how fresh and unique the new job, and the ombudsman service itself, really are.

## and what made you want to apply?

I was very much struck by the fact that the ombudsman's work *matters* to so many people. I'm used to dealing with customers who have high expectations – and for an organisation where brand reputation and trust are imperative. But what people expect of an airline is very different from what they expect of a service that's making a decision about their finances, their livelihood or their reputation as a business. I applied for this new job because I want to use what I've learned in other areas of business, to help shape the ombudsman service as it develops to reflect and adapt to the changing world around us.

*... my role will allow us to focus on being prepared for the future*



Financial  
**Ombudsman  
Service**



### so will this be a big change for you?

It'll be very different. It's always a challenge to get to grips with a new industry, and I know I'll be learning a huge amount very quickly. But there are similarities. I'm used to working in an organisation that's focused on doing the right thing for its customers – and that understands how fundamentally important that is to our reputation. I'm also used to working on challenges that start with quite an abstract, aspirational brief – where the job involves clarifying the objectives, coming up with options and then delivering them successfully.

### how much do you already know about financial services – from APRs to Z-bonds?

I started my career with American Express – so I am certainly familiar with APRs and some aspects of consumer credit. But looking across the huge range of products and services the ombudsman covers – from pet insurance to spread betting – I've obviously got a lot to learn. Thankfully, I've already discovered the vast resource of expertise and experience available to everyone at the service – there seems to be someone here who you can turn to for every query, however obscure the abbreviation!

### you're our first ever service development director. Why do you think this role is so important to us, and why now?

As the world around us continues to change, and as everyone's expectations of us shift, it's important that we *keep* on changing – to make sure we are delivering our services in the best way possible for all our customers.

My role will allow us to focus on being prepared for the future. I'm pretty sure that the ideas about *how* we should evolve are already here. Everyone I've met at the service has done a great job of dealing with some major challenges – PPI is obviously the big one – as well as innovating through continuous improvement. It's important to me that I'm part of an organisation that embraces change and improvement, even when the going gets tough.

I know the ombudsman's been doing some experiments in different areas of casework over the last year or so. I can see that getting people answers to their problems ever more quickly and with minimal process is going to become increasingly important – and this will be more do-able in some areas of complaints and dispute resolution than others. My job is to help the team define what changes need to happen, what's possible, how to make it happen – and then to actually get on and make it happen.



**what do you think is the key strength of Virgin Atlantic – that other organisations could learn from?**

The Virgin brand is all about challenging the status quo, reinventing things and asking “why not?” rather than “why?” It’s all about innovation and staying relevant.

**so how does Virgin Atlantic go about doing that?**

Having the right people is key. This means making sure that everyone who works for the company, in whatever role, is truly customer focused and has a real passion for making a difference. That became harder to do over the years, as the number of employees grew. But it remains central to the experience the customers receive. In terms of the values, and people’s commitment to them, you often heard people saying “you either got it, or you didn’t”.

**what was your biggest achievement while you were there?**

I led the project to develop the “terminal within a terminal” at Heathrow’s Terminal 3. This was to try and make sure Virgin Atlantic could compete with British Airways, who’d been given a brand new terminal all to themselves!

**what do you think our customers and Virgin Atlantic’s have in common?**

Trust is clearly central to the relationship that customers have with both organisations. In the case of the ombudsman service, businesses and consumers obviously need to trust that their disputes will be handled fairly, impartially and to the highest standards. But I can see that this could be a double-edged sword – because many customers won’t get the outcome they will have hoped for if they don’t “win” their complaint – which must make meeting their expectations all the more challenging.

**what’s the best customer service you’ve ever experienced personally?**

Strangely enough, my best ever one-off experience was a flight. Unfortunately, it was with Emirates Airlines, not Virgin Atlantic. As far as consistently good service is concerned, I have had many years of great customer service from my online bank. I also love my village bookshop, deli and fish shop for their friendly and incredibly helpful service.

**... and the worst?**

Disappointingly, I recently ordered a lamp from a department store that’s usually famous for its customer service. When the lamp arrived it had a damaged base – and each time they sent me a replacement lamp the base was damaged. This was in spite of me getting in touch with them repeatedly to tell them that the packaging was inadequate – and that was what kept causing the damage.

**did you complain about that poor experience?**

Yes – I phoned them and I emailed them. Eventually I gave up all hope of ever receiving an undamaged lamp. Although I eventually got a refund and a voucher, I still felt disappointed in a company I had really expected more from. It was made worse when the “rating” I gave them on their website magically refused to appear – which undermined my faith in their customer review mechanism and their transparency.

**have we become a nation of complainers?**

I think we have grown in confidence. We are far less accepting of mediocrity – and increasingly we vote with our feet or with our wallets. The power of a shared view is being understood more too, especially by the more tech-savvy generations. But whether we regard this as “complaining” or just “being heard” is certainly something very important to think about.

More customer-focused businesses are already seeing “complaints” as all about insight and customer service – not as “regulatory compliance”. Looking on Facebook or Twitter reminds us just what power customers increasingly have if they’re unhappy with something – even though they may not be registering “complaints” in the conventional sense of filling out forms and writing to “complaint departments”.

**what do you think the biggest challenge will be for the financial services sector in the year ahead?**

Becoming trusted again.

**what are you most looking forward to about your new role?**

I’m looking forward to working out how my experience and what I’ve learnt elsewhere can translate into the ombudsman’s world. It’ll be a real challenge. And to building on what others have started.

**... and what do you think the most difficult part of your job will be?**

Initially just getting up to speed with the new world I’ve entered – understanding the subtleties and the complexities. Longer term, I want to demonstrate the value of this new role – and to bring people with us as we move forward and develop.

**if you could achieve just one big thing in your first year, what would it be?**

Working with colleagues to create a vision for the ombudsman service that reflects the changing world around us – and that people can really get behind. And a plan to get there. And parts of that plan well underway. That’s three. But we need to aim high – and I do love a challenge. ✚

# individual savings accounts (ISAs)

Although we receive complaints about ISAs throughout the year, we tend to see more just after the start of a new financial year and into the summer. Many of the problems we see are caused by the rush at the end of the financial year – when businesses are promoting their ISAs and many consumers are in a hurry to make the most of their yearly tax-free allowance. The volume and pace of these transactions can sometimes lead to misunderstandings – and to businesses making administrative mistakes too.

As well as continuing to see complaints about administrative issues, we have started seeing more complaints about introductory offers on ISAs. These often involve ISAs where the interest rate is fixed for a certain period, and then changes to a lower rate. In many of these cases, the consumer says they hadn't realised that the interest rate would change – and that they had only become aware of it once the interest rate had fallen.

We are also seeing complaints about fixed-rate cash-ISAs where the provider has withdrawn the product from the market. This means the ISA is effectively closed to more money being paid in. If the consumer had not funded the ISA up to its limit by the time the product was withdrawn, they were not then able to make any more tax-free savings in that year – because the ISA rules allow consumers to open just one cash-ISA account during a tax year.

The case studies that follow include examples of:

- ◆ a consumer who complained that her ISA provider hadn't told her that the interest rate on her cash-ISA could vary;
- ◆ a consumer who complained that he missed out on his tax-free savings allowance for the year – because his bank wouldn't accept his signature; *and*
- ◆ a consumer who complained that her bank had withdrawn an ISA from the market – and hadn't let her know when it was going to happen.



## *... she was concerned about giving the building society instructions at the right time*

### case study 109/7

#### consumer complains that building society changed terms and conditions of her fixed-rate cash-ISA

Mrs W opened a fixed-rate cash-ISA. The terms and conditions said that when the ISA matured four years later, the funds would be placed into an instant-access cash ISA.

A few months later, the building society wrote to Mrs W to tell her that the terms and conditions had changed. Mrs W would now have to tell the building society what she wanted them to do with the money when the ISA matured. If she didn't, the money would automatically be put into another fixed-rate cash-ISA – similar to Mrs W's existing one.

Mrs W complained to the building society. She said she wasn't happy that the terms and conditions had been changed. And she was concerned about giving the building society instructions about what to do with her money at the right time.

The building society turned down Mrs W's complaint. It said that it would write to her 35 days before the ISA was due to mature – and that she would also have a 14-day "cooling-off period" after the money had been placed in a new fixed-rate ISA. It also said that it would take a customer's individual circumstances into account if there was a genuine reason for them missing these deadlines.

Mrs W was still concerned, and she decided to ask us to investigate.

#### complaint resolved

We asked the building society for background information about the terms and conditions in relation to this case.

The building society told us it had decided to change the terms and conditions because many of its customers had said they would lose money if there wasn't an automatic "rollover" into another fixed-rate cash-ISA.

We also noted that the building society had written to Mrs W explaining very clearly what was going to happen at the end of the term. From our conversations with Mrs W, we established that having received the letter from the building society, she had already planned where she would move the money when the time came.

So Mrs W would not actually have lost out financially because of the change to the terms and conditions. It was more that she felt it was an important point of principle that the building society shouldn't have been allowed to change the terms and conditions of her ISA.

But when we explained what had happened – and why the building society had made the change – Mrs W recognised that it would actually be helpful to other people, and she decided not to take her complaint any further.

## case study 109/8

### consumer complains that he missed out on his tax-free savings allowance because his bank wouldn't accept his signature

Just after Christmas, Mr V opened a fixed-rate cash-ISA with his bank. In early March he decided to transfer some money from his savings account into his new ISA – to make the most of his tax-free savings allowance for the year. He went into the local branch of his bank and filled in a form to instruct his bank to transfer the money. He gave the form to a customer services adviser and was told that the transfer would go ahead over the next few days.

A week later Mr V's bank wrote to him to say they couldn't accept his instructions. They explained that the signature he had given on the transfer form didn't match the one they had on record for him – which he had given them when he had first opened his bank account several years earlier. The bank told Mr V that they would be in touch to organise another way for him to pay the money into his ISA.

A few days later the bank wrote to him again and explained that they would need to see some more identification before they could transfer the money. So Mr V went back into town to the branch. He took his photo driving licence with him, and filled in another form to instruct the bank to transfer money from his savings account.

But once again, the bank said they couldn't transfer the money because Mr V's signatures didn't match. By this point Mr V was really frustrated – and he decided to complain. He wrote to the bank, pointing out that he had been banking with them for several years – and that he was surprised they were being so unhelpful.

But the bank said they hadn't done anything wrong – and that they couldn't go ahead with the transfer without a signature that matched the one they had on record. By the time the bank had responded to Mr V's complaint, the financial year had ended – and he had missed out on his tax-free savings allowance for the year.

Mr V was unhappy with the situation – and he decided to bring the matter to us.

### complaint upheld

We listened to both sides of the story, and we looked at the paperwork Mr V had been sent.

We could understand why the bank had concerns about Mr V's signature not matching the one it had on record for him. After all, they needed to be sure that the instructions really were his.

But we concluded that the bank hadn't done enough to explain to Mr V what he needed to do to update the signature they had on their records. We also thought that some of the information that the bank had sent Mr V had been confusing – and had caused unnecessary delays.

Because Mr V had missed out on some of his tax-free savings allowance for the year, we told the bank to put things right in line with our usual approach to these cases – which we publish on our website.

## ... a bank is required to tell a customer when a fixed or promotional rate is about to come to an end

### case study 109/9

#### consumer complains that bank did not let him know the interest rate on his fixed-rate ISA was changing – and that it delayed transferring his money to a different bank

Mr K had an ISA with a fixed-term interest rate. At the end of the fixed term, the interest rate reduced to 0.5%. Mr K decided to open an ISA with a different bank – and he asked his original bank to transfer his savings to his new ISA.

Mr K's bank told him that the transfer should happen within 15 days – but it took over a month for the money to be transferred to his new ISA.

Mr K was unhappy with the service he had received, and he complained to the bank. He said he ought to have been told sooner about the change to his interest rate, and he asked for compensation for the delay in transferring his money to his new ISA.

The bank didn't agree it should have given Mr K more notice about the change to his interest rate. And it said the delay in transferring the money had been caused by his new bank.

Mr K was unhappy with the situation, and he asked us to look into it.

#### complaint not upheld

The rules governing ISAs changed in November 2009. Under these rules a bank is required to tell a customer when a fixed or promotional interest rate is about to come to an end. Mr K said the bank didn't tell him about the change at all.

However, when we looked at the evidence we noted that the bank had sent Mr K a letter as part of a "maturity pack" telling him about the change a month before it was due to happen. So we were satisfied that the bank had given Mr K enough notice about the change to the interest rate on his ISA – and that it had acted in line with the rules.

When we looked into why there had been a delay in transferring Mr K's money to his new account, we established that the delay *had* been caused by his new bank. The relevant guidelines said that the new bank should pay interest on the money from the sixteenth day after the transfer process had started.

We told Mr K that we could not, in fairness, make his old bank compensate him for delays caused by his new bank. But we explained that he was free to take the matter up with his new bank.

In these circumstances, we did not uphold the complaint.

*... it would count as an additional deposit,  
and would take him over his annual ISA limit*

case study  
109/10

consumer complains  
that bank transferred  
money from his ISA  
to someone else's  
account without his  
permission

Mr R received his annual statement for his cash-ISA. When he looked at the statement he realised that three payments of £300 had been paid from his ISA into an account he had never heard of.

Mr R complained to his bank. He said that he had never given his permission for the money to be transferred, and he asked the bank to refund his money so that he could reinvest it in his ISA.

But the bank said that a standing order had been set up to transfer money from Mr R's ISA. And it said it wasn't prepared to refund the money.

Mr R didn't think this was fair. He was sure he hadn't asked for a standing order to be set up. He decided to do some web research to find out whether anything similar had happened to anyone else. When he looked into ISAs in more detail, he realised that he wouldn't be able to reinvest the money in his ISA anyway – because it would count as an additional deposit, and would take him over his annual ISA limit.

He wasn't sure what to do next, so he brought his complaint to us.

**complaint upheld**

When we looked at the bank records for Mr R, it was clear that the problem had been caused by the standing order.

Mr R told us he hadn't set up the standing order – and the bank couldn't offer any evidence to show that he had done so. So we concluded it was likely that the bank had set up the standing order by mistake.

We noted that Mr R wouldn't be able to simply replace the money in his ISA – because it would have taken him over his annual limit. So we told the bank to put things right in line with our usual approach – which we publish on our website.

## ... she had missed out on the opportunity to make a final payment into her ISA

### case study 109/11

#### consumer complains that her bank didn't let her know that her limited issue ISA was about to be withdrawn

Miss C had recently been promoted, and she was finding that she had some money left over at the end of the month. She decided to open a cash-ISA to build up some savings – and went online to research the various products on offer. She took out a “limited issue” fixed-rate ISA with her bank in early April – and arranged to pay £200 a month into her account. In May, she phoned the bank to ask them to increase her monthly payments to £300.

In July, Miss C's usual ISA payment bounced back. She wasn't sure what had happened – so she phoned her bank to see what was wrong. They told her that her ISA had been “withdrawn from the market” at the end of May – and that it was now closed to any more money being paid in.

The bank also explained that there had been a 30-day period after 31 May when customers could make final payments into their account – and that was why her payment in June had gone through.

Miss C knew that the ISA could be withdrawn at any time. But she didn't think the bank had treated her fairly, and she decided to complain. She pointed out that her bank should have warned her that the ISA was about to be withdrawn. She also said that she had missed out on the opportunity to make a payment into her account during the 30-day extension – and that she couldn't make any more tax-free savings that year.

When the bank rejected her complaint, Miss C asked us to look into it.

#### complaint resolved

When we spoke to the bank, they told us that the precise date on which they had intended to withdraw this ISA from the market had been commercially sensitive information – and that they hadn't released that information publicly. They also pointed out that the ISA's terms and conditions said clearly that the bank could withdraw the product at any time – and without notice.

The bank told us that in these circumstances, it didn't believe it had done anything wrong.

We also spoke to Miss C about her understanding of the terms and conditions of her ISA. She confirmed that she *had* known that the bank could withdraw it without giving her notice. But she still felt that because she hadn't known the exact date on which they would do this, she had missed out on the opportunity to make a final payment into her ISA.

We explained Miss C's point of view to the bank. Following this conversation, the bank decided that because Miss C had spoken to them just a few days before the product was going to be withdrawn, they would pay the interest that she *would* have received if that money had paid into her ISA. The bank also paid Miss C £100 compensation for the inconvenience it had caused her.

## ... we needed to decide whether they should have told Miss Y personally every time the interest rate changed

### case study 109/12

#### consumer complains that ISA provider did not let her know that interest rate on her ISA could vary

Miss Y opened a postal ISA account in 2007. Over the years the interest rate varied and the provider sent Miss Y annual statements to show how much interest she had earned each year. Between March 2010 and March 2012 the provider reduced the interest rate from 3.25% to 0.25% through a series of reductions of around 0.25%. In March 2012 it reduced it again to 0.1%.

In April 2012 Miss Y got in touch with her provider because she wanted to withdraw some money from her ISA. She was surprised to find out that the interest rate had dropped – because she had thought she had a fixed-rate cash-ISA.

Miss Y complained to her ISA provider. She said it ought to pay her the interest she *would* have received if the rate had stayed the same as it had been when she opened the account. But the provider told Miss Y that they hadn't done anything wrong. They explained that the interest rate on her ISA was variable – and that they didn't have to tell her when it changed.

Unhappy with their reply, Miss Y asked us to investigate.

#### complaint upheld

Miss Y told us that she hadn't ever received the terms and conditions for her ISA – and so she hadn't known that the interest rate was variable.

We couldn't be sure whether Miss Y had ever received the terms and conditions. But we could see from the ISA provider's records that she had been sent statements each year. The statements clearly showed that the interest rate had varied each year – and Miss Y hadn't queried the interest rate with the ISA provider until she had tried to withdraw some money in April 2012. So we concluded that it was reasonable to have expected Miss Y to have known that the interest rate wasn't fixed.

We also took the view that the ISA provider had been entitled to vary the interest rate on this particular kind of ISA. But we needed to decide whether they should have told Miss Y personally every time the interest rate changed.

We took into account the relevant rules about interest rate variation that had been in force during the life of Miss Y's ISA. Before November 2009, a bank was required to tell a consumer personally about any significant change to their interest rate. That usually meant a change of 0.25% or more in one go, or a change of 0.50% or more over a rolling 12-month period compared with the Bank of England base rate.

## ... we were satisfied that the provider had provided general notification of the changes

When we looked at the changes to the interest rate on Miss Y's ISA we noted that this hadn't happened. The interest rate had fallen between 2007 and 2009, but only in line with the base rate. So we concluded that the ISA provider hadn't been obliged to send Miss Y *personal* notification about those interest rate changes before November 2009. And we were satisfied that the provider had provided *general* notification of the changes to the interest rate on her ISA – in this case, on its website.

On 1 November 2009, however, new rules came into force. Under the new rules, ISA providers are required to give *personal* notification to a consumer when there is a "material" change to their interest rate. To decide whether a change is material we take into account the amount of money the consumer has in their ISA and the size of the change in the interest rate.

At that time, Miss Y had more than £9,000 in her ISA. So we decided that the reductions in the interest rate from November 2009 *had* been material and that the bank should have given Miss Y personal notification of them – for example, by letter or by email.

So we told the bank to pay Miss Y the difference between the interest she had actually received on her ISA, and the interest she *could* have earned on her money if she had transferred it to the ISA with the best interest rate available in March 2010 – the date of the first "material" change.



Printed on Challenger Offset paper made from ECF (Elemental Chlorine-Free) wood pulps, acquired from sustainable forest reserves.

100% of the inks used in *Ombudsman News* are vegetable-oil based, 95% of press chemicals are recycled for further use, and on average 99% of waste associated with this publication is recycled.

# 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

## doorstep bother

**Our charity does a lot of work in our local community to help vulnerable people. We've been told that there is a "doorstep lender" operating on one of the estates we visit. Apparently he comes round once a week to collect his payments from residents. We've also heard that people have been finding it increasingly hard to pay because the interest rate seems to be changing all the time. How can we advise the people we help?**

Home-collected credit providers – often known as "doorstep lenders" – are licensed by the Office of Fair Trading (OFT). The consumers who have borrowed money should have been given a credit agreement that sets out clearly how much interest is payable and when.

If the lender has changed the interest rate without giving the consumer notice – or in a way that hasn't been agreed – this could mean that something isn't right. To get some guidance on whether a financial business is covered by the ombudsman service, consumer advice workers can call our technical advice desk on 0207 964 1400.

If the lender isn't licensed by the OFT, this could mean that they are acting illegally and Trading Standards and the police may need to be informed.

## it's good to talk

**I am an IFA who is part of a network – so if a complaint is made about me it's dealt with by the central complaints department. I've been told that if a consumer complains about me, I'm not allowed to contact them to discuss it. I find this very awkward – especially when the consumer is someone I have known for many years and I feel that we could sort it out before it comes to the ombudsman. Why can't I speak to them?**

The ombudsman service would never try and stop businesses from talking to consumers in the early stages of a complaint before it comes to us. In fact, we think it's the best way to sort things out.

But your contract with your network is a private matter – and it's not something we could get involved in. You might have a legal obligation to follow a certain process, so it's probably best to speak to your network about this.

