ombudsman news

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

sorting things out

Nowadays, trying to pin down what we mean by a "financial dispute" isn't always straightforward.

Who would have thought that a *financial* ombudsman would deal with problems about washing machines or car repairs? *ombudsman news* readers won't need reminding about the diversity of problems we get involved in because of things like section 75 of the Consumer Credit Act, or insurance claims.

If "financial" can mean a number of different things, then surely the definition of a "dispute" can be nailed down more easily? Although the legislation that established the ombudsman service talks simply about our resolving "certain disputes", and the regulator defines complaints widely, the disputes where we *can* exercise our formal powers are limited technically to those complaints where the financial business has issued a "final response" (or eight weeks have passed) and the consumer is still unhappy.

But of course in real life it's far more complex than this. Life rarely unfolds as a neat process. For example, at what point does a consumer move from just being unhappy to actually registering a "complaint"? And for businesses, if a customer is just trying to give you some feedback, when is it right to send them down the complaints process – and treat them as a "complainant"? And so on. Many needles, pins, and head-scratching is regularly involved in attempting to get clear-cut answers.

So perhaps a simpler approach is to think about how and when the ombudsman can best help *solve problems*. Increasingly, we're finding ourselves explaining to consumers at a very early stage how things work and what they can reasonably expect. We often find that a consumer just wants an explanation, and that

Financial Ombudsman Service

scan for previous issues

in this issue

Tony Boorman deputy chief executive and chief ombudsman

a good explanation can stop things escalating any further – into a full-blown complaint.

That's why people come to us at many different stages when they have a problem. What we can do to help them isn't limited just to those cases we resolve after an investigation, using our more formal powers. We can also sort out many people's problems quickly and efficiently by steering them in the right direction, and telling them what steps they can take themselves to get their problem sorted.

And of course many people, businesses and organisations use the information we publish about our approach to solve their problem – without any need for us to get involved at all.

But sometimes, just explaining things and pointing people in the right direction isn't going to be immediate enough to get an urgent problem sorted out. This was certainly true recently when many consumers – in the run-up to Christmas – suddenly found they had problems accessing the money in their bank accounts.

We already had recent experience of helping guide people through the practicalities of what to do with problems when bank computers fail (see *ombudsman news* 103 June/July 2012). So once again we've set up a small, experienced team to identify and help resolve the immediate, very practical problems faced by some of the affected consumers. Many of these problems might not be "disputes" in the traditional sense. But both we and the bank involved agree that what matters most in these cases is doing the right thing for the customer.

Finally, you may have noticed that my picture has appeared at the top of this page. You will probably know that Natalie Ceeney recently stepped down as chief executive and chief ombudsman after four years at the ombudsman service. I'm very much hoping to live up to her exacting editorial standards in *ombudsman news*. Please do get in touch if there are any topics you would like me to cover in the new year.

Tony

> *... we can also sort out many people's problems quickly and efficiently by steering them in the right direction*

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

switchboard 020 7964 1000

consumer helpline
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

debt collection

Debt-collection businesses are employed by all sorts of organisations to collect debts people owe for a range of things – from rent arrears and utility bills, to unpaid parking charges and trade debts. Debt-collection businesses are sometimes known as "credit-collection agents" or "debt-recovery agents".

Debt-collection businesses are currently licensed by the Office of Fair Trading – and the OFT produces guidance on how they should carry out their consumer credit activities. We take that guidance into account when we look into complaints about debt collection. We also consider any relevant law, as well as the facts and circumstances of the situation.

We often see similar issues arising in the complaints that consumers refer to us. For example, we see cases where the consumer says that the debt is nothing to do with them. In these cases we would expect a debt collector to provide evidence that clearly shows they have been seeking repayment from the right person.

In other cases we see, consumers complain about the way the business has treated them. Some consumers tell us that the business has tried to contact them too often, or has been rude or aggressive. Others tell us that the business has rejected their repayment proposals out of hand, or is refusing to be flexible.

Our job is to look at the evidence to decide whether the business has behaved fairly.

We are often able to settle complaints involving debt-collection businesses by informal agreement. If we find that the business has done something wrong, this might involve compensation for the trouble and upset they have caused the consumer.

Some consumers hope to have their complaint settled by getting their debt written off. But writing off the debt isn't necessarily the right answer. We are more likely to recommend a suitable amount of compensation, which we calculate by assessing what has happened and how the consumer has been personally affected.

We won't always tell a business to pay compensation. We might, for example, tell it to accept a reasonable offer of payment made by the consumer.

The case studies that follow illustrate some of the more common situations that we see in complaints involving debt-collection businesses.

Financial Ombudsman Service

case study 114/01

consumer complains that business is contacting him about a debt it hasn't proved he owes

Mr K received a letter from a debt-collection business. The letter asked him to reply immediately to confirm that he was the Mr K the business understood was living at that address – because it had "*an important personal matter*" to discuss with him.

Mr K phoned the number on the letter to find out what it was about. But when he spoke to someone at the business, he was told nobody would be able to talk to him about it – because he hadn't yet verified his identity.

Concerned that he might be being pursued for a debt, Mr K wrote to the business – using a template he had found on the internet – telling it to stop contacting him unless it had proof that he owed money. But a few days later, he received another letter from the business. This letter said that Mr K owed a sum of money on a credit card account – and asked him to get in touch to discuss repayment options.

Mr K was unhappy that the business had written to him again, and he wrote to them to complain. He pointed out that they still hadn't shown him any proof that he owed money to anybody, and that they were harassing him.

When the business didn't respond, Mr K asked us to step in.

complaint upheld

We asked the debt-collection business and Mr K to send us all the information that was relevant to the case.

When we looked at the debt-collection business's records, we were satisfied that they had contacted Mr K on the basis of information they had been given by their client, the credit card company.

We noted that they had traced Mr K using information they had requested from a credit reference agency – and had complied with data protection rules.

But we saw that in their first letter to Mr K, the business had *not* set out who they were and why they were contacting him – as they were required to do by the regulator. We could understand that this might have caused Mr K concern – and that he would have wanted to clarify the situation.

The regulator also says that if a debt is "*reasonably disputed*", a debt-collection business should investigate. But in this case, we saw no evidence that the business had investigated anything. When Mr K had questioned the debt, the business had simply sent him a demand for payment.

Taking everything into account, we decided that – even if it turned out the debt *was* Mr K's – the business had failed to act in line with the responsibilities set out by its regulator. We told the business to pay Mr K £50 for the trouble it had caused him.

... the business had not set out who it was and why it was contacting him

... she thought it should stick to the advice it had originally given her

case study
114/02

consumer complains that debt-collection business told her it would accept a reduced payment – but then withdrew the offer

Miss G was made redundant and went into arrears on her credit card. After a few months, the credit card provider passed her account – with a debt of around £3,000 – to a debt-collection business.

When she received a letter from the debt-collection business, Miss G phoned up to ask whether it would accept a partial repayment. The business said it was willing to settle the account for £1,800. But Miss G said she couldn't afford that much – and that she would need to think again about her options.

Shortly afterwards, Miss G found out that the claim she had made under her payment protection insurance (PPI) policy had been successful. So she rang the debt-collection business again to ask if she could settle the debt with the £1,200 payout she was expecting.

The adviser she spoke to confirmed that this was possible, and the call ended. But the adviser later phoned back to say that he had made a mistake – and that £1,200 wouldn't be enough to settle the debt.

Miss G complained to the debt-collection business, saying she thought it should stick to the amount it had originally told her. The business apologised, but did not agree to settle the debt for the lower amount. Unhappy with this response, Miss G referred her complaint to us.

complaint not upheld

We asked the business how the mistake had come about. It told us that the adviser was new at the time, and unfortunately had given Miss G the wrong answer. From the business's records, we saw that its adviser had apologised and clarified the situation – after checking with his manager – within half an hour of the original call. So we were satisfied that the business had contacted Miss G as soon as it could after discovering the mistake.

We explained to Miss G that because the business had got back in touch with her so quickly, we didn't think it was reasonable to expect it to accept the lower amount to settle the debt.

However, the business did accept that its mistake had unfairly raised Miss G's expectations – and during our investigation, it offered to pay her £150 compensation. We thought this was a fair offer in the circumstances.

... we thought it was likely that Mrs L would have known why the business was writing to her

case study 114/03

consumer complains debt-collection business is taking legal action against her – when she doesn't owe any money

In 2010 Mrs L received a letter from a debt-collection business. The letter said that Mrs L needed to pay the business the outstanding balance of a loan she had taken out in 2003 – which stood at around £10,000.

It was the first time Mrs L had been contacted by this particular business. She wrote back to say that she had never had any financial dealings with it – and that she didn't owe it any money. After that, the business sent Mrs L more letters about the debt – which she did not respond to.

In one of these letters, the business said that it was taking legal action to recover the money it said she owed.

Mrs L did not attend any of the legal hearings – and the business obtained a judgment against her. To try to enforce this judgment, it then took out a "charge" on Mrs L's house to secure the debt. However, when Mrs L challenged the proceedings, the business did not pursue the matter – and the judgment was cancelled.

Two years later the debt-collection business contacted Mrs L again – via its solicitors – asking her to settle the debt. Mrs L wrote back to complain. She said that the business was harassing her, and denied that she owed them any money.

The business rejected her complaint, and told her that it was taking further legal action against her.

Mrs L decided to refer the matter to us.

complaint not upheld

Mrs L told us that she didn't owe the business anything and she wanted compensation for the distress it was causing her.

She told us that she had paid off the loan she took out in 2003 – but she wasn't able to send us any documentation to show this.

We asked the debt-collection business for more information about how it had acquired Mrs L's loan account. It showed us evidence that the lender had passed on the debt in 2010.

We also found that the lender had secured a previous court judgment against Mrs L in 2005 – five years earlier. We noted that Mrs L had not challenged this.

When we asked the debt-collection business why it hadn't enforced this earlier judgment, it told us that it had made a mistake. It agreed that it shouldn't have started afresh in 2010, and explained that this was why it hadn't pursued the matter when Mrs L had challenged the proceedings.

However, the debt-collection business also sent us a copy of the most recent court order – from 2012. This showed that the business had replaced the lender as the claimant, and had been given leave to enforce the 2005 judgment.

When we raised the issue of the 2005 judgment with Mrs L, she told us that is was all in the past, and that it wasn't relevant to what was happening now. She said she had ignored the letters she received in 2010 because her loan agreement hadn't been with the debt-collection business – and she didn't believe she had a case to answer against it.

However, we thought it was likely that Mrs L would have known why the business was writing to her. In our view, by refusing to talk to the business, she had made the situation worse. We explained to Mrs L that the latest legal action was linked to the 2005 judgment – and that the new court order meant that any amount she owed was now payable to the debt-collection business. We also told Mrs L that if she wanted to contest the order, she would need to do so in court.

... the business insisted that it would keep phoning until a repayment agreement was reached

case study
114/04

consumer complains that debt-collection business is harassing him – and refusing to communicate in writing

Mr H took out a short-term loan of £3,000. When he didn't pay it back in the agreed time, the lender passed his account to a debt-collection business.

Two months later the debt-collection business phoned Mr H on his mobile phone and told him he had to repay the money. Mr H explained that his financial situation had changed – and that he wouldn't be able to settle the debt immediately. He offered to write to the business setting out what he could afford to repay, but the business refused – saying it wouldn't deal with him in writing.

Over the following weeks, the business called Mr H several times on his mobile. Each time, Mr H asked the business to contact him by letter or email instead. But they continued to phone him.

The business then began phoning Mr H on his work number and leaving messages with his colleagues. Mr H complained. He told the business that the number was a shared office line – and that not only had his colleagues found out about his situation, his employer had also warned that he could be disciplined if the calls continued.

He also said that the business was ringing him too often – and that they were aggressive and making threats. He asked again if the debt-collection business would communicate with him in writing.

But the business insisted that it would keep phoning until a repayment agreement was reached – and it continued to apply interest to his account.

Mr H was angry and beginning to feel desperate. He asked us to look into his situation.

complaint upheld

We asked the debt-collection business to send us the relevant phone records – so we could see how much contact there had been with Mr H.

The records showed that after it had first phoned him in May, the business had phoned him or left voicemails several times a day throughout May and June.

When we listened to recordings of the phone conversations, we noted that the business had also given Mr H misleading information – about both the amount he owed and the steps that could be taken to recover it.

We thought it was understandable that Mr H would want to keep a written record of his contact with the business. We pointed out to the business that the regulator considers it "*unfair practice*" to disregard debtors' reasonable requests about when, where and how to contact them.

We also pointed out that by giving out sensitive personal information about Mr H to his colleagues, the business was in breach of data protection rules. We appreciated that this had caused Mr H considerable embarrassment – as well as a lot of concern about the impact on his job.

... the insurer didn't let the debt-collection business know that they had sorted things out

We were satisfied that the business had been aware of Mr H's financial difficulties – and had known that he wanted to reach a settlement. In the circumstances, we decided that it should not have continued to add interest to his account. We told the business to refund all the interest and charges they had applied after Mr H had first told them about his change in circumstances – and not to add any more.

We also told them to pay Mr H £300 to compensate for the embarrassment and concern they had caused him. We also told them to work constructively with Mr H to agree a repayment plan for the remainder of the debt.

case study 114/05

consumer complains that debt-collection business chased him for payment following insurer's mistake

Mr E took out a home insurance policy, which he paid for by direct debit each month.

A few months into his policy, his insurer's IT system mistakenly flagged up his account as being in arrears. The insurer phoned Mr E to find out why he had missed a payment. He said that he hadn't. He explained that he paid by direct debit, that there was money in his current account, and that the payment had always gone through without a problem.

The insurer said it would look into what had happened. But while it was investigating, Mr E's contact details were passed on to a debt-collection business.

The debt-collection business sent Mr E a letter telling him that his debt had been referred to them, and that they would be seeking to recover the money on the insurer's behalf. Mr E ignored this letter because he was trying to sort the problem with the insurer directly.

Shortly afterwards, the insurer realised it had made a mistake and sent Mr E a letter offering him an apology and some compensation. But the insurer didn't let the debt-collection business know that they had sorted things out.

A few days later, the debt-collection business phoned Mr E to discuss how he would pay the unpaid premium. Mr E told them about the insurer's mistake – and said that he had been sent a letter and offered compensation.

The business asked Mr E to send them a copy of the insurer's letter. They told him that they would suspend action for two weeks while they waited for a copy of the letter to arrive.

But Mr E didn't see why he should do anything at all. He was very unhappy about being involved with a debt-collection business in the first place.

... once they knew that the account was settled, they hadn't phoned Mr E again

Two weeks later, when the debt-collection business still hadn't received a copy of the insurer's letter, they phoned Mr E again. He said he wasn't prepared to speak to anybody about the matter, but that he wanted to complain. He said that the business had been rude to him on the phone two weeks earlier, and that their phone calls amounted to harassment. He also said that the business should speak to his insurer to get *them* to explain what had happened.

Someone from the debt-collection business phoned the insurer to ask what was going on. The insurer told them that there had been a mistake and that no action needed to be taken.

The debt-collection business wrote to Mr E, saying that they wouldn't be in touch again. They also said that they had looked into his complaint, and that they had acted in line with "*industry guidelines*" each time they had been in touch with him.

Mr E was unhappy with the debt-collection business's response, so he asked us to look into his complaint.

complaint not upheld

When we looked at the evidence, we established that the insurer had instructed the debt-collection business to act on its behalf to recover the unpaid premium.

We noted that the debt-collection business had sent Mr E a letter to let him know who they were, and why they were writing to him. We listened to recordings of the first phone conversation between Mr E and the business. In our view, the business's representative was polite throughout the conversation.

We also noted that the business had asked Mr E to send them a copy of the insurer's letter. We thought that had been a reasonable enough request.

When the business got in touch with Mr E for the second time – and Mr E had refused to talk to them – the business had got in touch with the insurer to find out what was going on. Once they knew that the account was settled, they hadn't phoned Mr E again – but had written to him in response to his complaint.

Taking everything into account, we were satisfied that the debt-collection business had behaved fairly in the circumstances of this case. It had acted in good faith on information provided by the insurer. It had no way of knowing that the insurer had made a mistake in the first place – or that the matter had been settled shortly after the insurer had asked it to recover the money.

We explained to Mr E that the business *did* have the right to contact him because of the terms and conditions of his insurance policy. Mr E accepted that point, but he was still unhappy that the problem had arisen in the first place. We suggested that he contact his insurer, who would be able to look into the matter further.

ombudsman focus: listening, learning, improving – mobile phone insurance

In October's issue of *ombudsman news*, our chief ombudsman wrote about the importance of listening carefully to what unhappy people are saying – and using that feedback to improve products, services and relationships with customers.

It sounds good in theory. But can it really work in practice? *ombudsman news* asked Caroline Mitchell, lead ombudsman, to tell us more.

as a lead ombudsman, you're heavily involved in deciding the ombudsman's approach to different kinds of complaint. Do you have time to worry about complaints prevention?

I make time. We wouldn't be doing our job properly if we limited ourselves to just sorting out individual cases.

I don't accept that positives can't come out of a problem. As an ombudsman, it's my job to help consumers understand *why* something has happened, and to explain how and why we've reached our decision. Whatever the outcome for the consumer, we aim to help them move on from their problem so they can get on with their lives.

But just as important is helping businesses understand what's gone wrong, and if possible, suggesting how they could prevent it happening again in the future. This is really what we mean when we talk about sharing insight.

but aren't you limited in what you can do? You're not the regulator.

You're right. We're not the regulator. It's not our job to make the rules for businesses. And it's certainly not our job to fine or punish a business if we find that they've done something wrong. But it is our job to work closely with the regulators – usually the Financial Conduct Authority and the Office of Fair Trading – and let them know what we're seeing.

has the ombudsman's intervention ever brought about wider change?

I've seen it happen quite a few times. I'd be worried if I hadn't in getting on for 30 years of "ombudsmanning"! But the best recent example is probably mobile phone insurance.

tell me more ...

In spring 2012 we realised something was going on with complaints involving mobile phone insurance. The uphold rate – that's the proportion of complaints where we found in favour of the consumer – was astonishing. It was running at about 90% – higher even than for PPI complaints. So we decided to ask one of our teams of adjudicators to focus on just these cases. With everything in one place, we thought it would be a lot easier to see what was going on – and whether there was anything we could do about it.

what did you find?

We found a big disparity between consumers' general expectations, and the cover that their mobile phone policy actually provided – or the way their insurer had applied their policy terms when they made a claim.

like what?

Generally speaking, there are only three reasons you would want cover for your phone – loss, theft or damage. We were seeing complaints from people whose phone had been stolen – but their claim had been rejected because there hadn't been any physical violence involved. We saw claims for stolen phones that had been rejected because the consumer hadn't witnessed the theft. And we heard from consumers who had claimed for accidental loss, but whose claims were rejected because they *remembered* where they had left the phone – usually on a bus or a train.

Then there were people whose claims for loss had been rejected because the insurer said they had left their phone unattended – when they were adamant that they had just "lost it".

We also saw complaints from people who hadn't realised that their policy would keep on renewing automatically each year – and sometimes way beyond the end of their "airtime contract" or the point at which the phone had any value. Many of these people hadn't been sent anything to tell them that their policy was being renewed annually.

what about people whose claims were accepted? What did they complain about?

Some consumers were unhappy that they were given a refurbished phone as a replacement rather than a new one. But as long as the policy terms made it clear that a refurbished phone would be provided, we didn't have a problem with that. But we did expect the replacement phone to be a like-for-like replacement – for example, its warranty period should have matched the remaining warranty on the insured phone.

that makes sense. Were there any other issues you spotted?

You might not be surprised to hear that we saw a lot of complaints from people who hadn't even realised they actually had mobile phone insurance. This usually happened because the insurance had been added on automatically to the cost of the phone and the airtime contract. It's always disappointing to see cases like this – because businesses really should have learnt these lessons by now.

so you were seeing these issues coming up time and again – and you were upholding 90% of cases. What did you do about it?

Once we had identified the issues, we sent out a number of "lead decisions" involving the big players in the market – to clarify our approach in this area. We also sent out several "batches" of decisions that involved the same issue. This helped the businesses involved see what was actually going on – and encouraged them to sit up and take notice.

For example, early on we sent out a "lead" decision about a policy sold as part of a bank account. In this case, the insurer had rejected the consumer's claim because they hadn't registered their mobile phone under the policy – and the cover hadn't kicked in. The business involved accepted our approach, and it stopped applying that requirement to claims from that point on.

that sounds like it worked well for one or two businesses. But did it make any difference to the sector more widely?

At the time, the FCA was also carrying out a review of mobile phone insurance. So we got in touch with them, and with the Association of British Insurers. We told them what we were seeing, what our concerns were, and how we were approaching complaints about mobile phone insurance.

When the FCA finished its review, it published its findings and held an industry seminar to talk about the outcome. I spoke at the seminar and sat on the panel for a Q&A session.

how did the businesses respond?

While the FCA was doing its review, we had several meetings with the businesses who sold the most mobile phone insurance policies. And they were very receptive to what we were saying.

We worked closely with one business in particular – the one that had been involved in most of the complaints we'd been seeing. Since we met up with them and talked things through, that business has decided to stop selling compulsory insurance. They've changed their policy terms to reflect some of our recent decisions. They'll be sending annual renewal reminders to their customers. They have agreed to settle all their outstanding complaints in line with our decisions on similar cases. And in every complaint they receive, they tell the consumer that they are entitled to refer their case to the ombudsman service if they're not happy with the way it's been handled.

so what's happening now? Are you seeing any difference in the complaints coming to you?

We've already noticed that we're upholding a smaller proportion of complaints against that business. And we're able to progress cases much faster because we have better communication with them – and they understand our approach.

This year it looks as though we're going to have about half the number of complaints from that business compared with the number we've received in previous years. And we're seeing fewer complaints from other businesses too.

This is hugely satisfying. We have only been seeing about 600 mobile phone insurance complaints each year. But apparently there are about 13 million policies out there. So hopefully the progress that we, the regulator and the businesses have made will help customers who haven't – and won't – bring a complaint to the ombudsman. If that isn't a big impact, I don't know what is.

turn to page 14 for case studies illustrating the problems Caroline mentions in her interview...

mobile phone insurance

So far this year we have received 20% fewer complaints about mobile phone insurance – compared with the same period last year.

This reduction is perhaps partly due to the work we have been doing with the main players in the market. We have seen a real willingness in this sector to learn lessons when things have gone wrong – and we have worked closely with the businesses and the regulator to put things right that weren't working.

However, in the complaints we are seeing, we are finding in the consumer's favour in roughly three quarters of cases – so there is still some work to be done in this area.

Our lead ombudsman, Caroline Mitchell, talks about some of the work we have been doing so far in *ombudsman focus* on page 10.

The case studies that follow illustrate some of the most common problems we see in complaints involving mobile phone insurance, including:

- a consumer whose phone was stolen – but whose claim had been rejected because there hadn't been any "*force*" involved;
- a consumer whose claim for loss was rejected because the insurer said they had left their phone "*unattended*" – when the consumer thought they had just "*lost it*"; *and*
- a consumer who said he hadn't asked for mobile phone insurance – and that it had been added to his contract without his knowing about it.

Financial Ombudsman Service

... if an item is next to a consumer, it can't be said to be "unattended"

case study
114/06

consumer complains that business unfairly rejected claim for a stolen mobile phone – saying her phone was left "unattended"

Miss R was out in a bar with some colleagues. They were sitting at a table and Miss R's handbag was between her feet.

When Miss R left the bar a couple of hours later, she realised her mobile phone wasn't in her bag. She knew she'd had her phone earlier that evening – because she had used it to make a phone call outside the bar. And she remembered putting it back in her bag before she went back inside.

Early the next morning, she rang her mobile phone insurance company to say that her phone had gone missing. She put in a claim under her policy.

The insurer turned down Miss R's claim. It said that her policy excluded theft or loss of electronic equipment that was "*left unattended when it is away from your home*" – where "*unattended*" means "*not within your sight at all times and out of your arm's-length reach*".

The insurer told Miss R that, if her handbag had been where she said it was, they couldn't see how someone had reached into it without her noticing. So they said it was impossible that someone could have stolen her phone unless it had been left "*unattended*".

complaint upheld

We looked carefully at the wording of Miss R's policy. To be "*unattended*" in line with the definition in her policy, we took the view that Miss R's phone would need to have been both out of arm's-length reach *and* out of sight at the same time.

We thought that this definition was more restrictive than the everyday meaning of the word "unattended" – and unusual compared with similar policies on the market. Because of this, we would have expected the insurer to have pointed out the exclusion to Miss R.

We asked the insurer to send us all the documentation from around the time Miss R had taken the policy out. We could see no evidence that the insurer had drawn her attention to the exclusion when she took out the policy.

We also found no reason to doubt Miss R when she said that her bag had been between her feet the whole time she was in the bar. Even if that meant that her phone was out of her sight, it would still have been within her arm's-length reach – albeit at a stretch. We reminded the insurer of our established approach – that if an item is next to a consumer, it can't be said to be "*unattended*".

We told the insurer to deal with the claim in line with the policy terms, adding 8% interest from the date of the theft to the date of the settlement. We also told them to pay Miss R £50 for the inconvenience she had been caused by their delay in handling the claim.

case study 114/07

consumer complains that business added insurance he didn't want when he took out a mobile phone contract online

Mr J's mobile phone contract was about to expire. He did some research and took out a new contract online – and got a new handset for free as part of the deal.

About eighteen months later, he noticed that £6.49 had been taken from his bank account each month along with his phone bill payment. When he went back over his statements, he realised that he had been paying that amount each month since the beginning of his phone contract.

Mr J got in touch with the company he had bought the package from to ask what was going on. He was told that the amount related to a mobile phone insurance premium – which would have been added automatically to his phone package at the time he bought it.

Mr J complained to the company. He said he had been paying for insurance he hadn't asked for and didn't even know he had. When he asked the company to repay the money it had taken, it refused. It said it had only been able to offer him such a competitive deal on his handset because of the insurance sold alongside it.

It also told him that after the first month of cover – which was free – Mr J could have cancelled the insurance at any point. Unhappy with this response, Mr J asked us to look into the situation.

complaint upheld

We asked the company to provide a screen-shot of its website – as it would have appeared to Mr J when he was "checking out" online. This showed that the insurance had appeared in Mr J's shopping basket with a notice underneath saying that it could be cancelled later on. But there had been no option for Mr J to remove it from the package he was buying.

We pointed out that the regulator's rules on selling insurance say that a customer must be able to make "*an informed decision about the arrangements proposed*". The rules also say that simply stating a customer's cancellation rights isn't enough. They still need to give the customer enough information to help them make an informed decision about whether to take out the insurance.

We told the company that by selling mobile phone insurance in the way it had, its customers – including Mr J – were not given any choice. All they could do was cancel the policy after they had taken it out.

The company then told us that Mr J should have noticed the premium on his bank statement. But we thought that £6.49 was a sufficiently small amount that it was understandable Mr J hadn't noticed it among the other payments coming out of his account.

We also asked the company about its process for renewing mobile phone insurance policies. We found that it didn't send out notifications to its customers before renewal.

We felt that it was unrealistic to expect customers to actively opt out of an insurance policy they had no option but to take out – without any reminder. We told the company to refund all the premiums Mr J had paid – adding 8% interest to each one.

... it didn't send out notifications to its customers before renewal

... we found that the word "force" was not actually defined

case study 114/08

consumer complains that business rejected claim for theft of mobile phone – on the grounds that it wasn't "taken by force"

One Saturday morning, Mrs D was sitting in her local café. She was chatting to a friend on her mobile phone. After the call, she put her phone in her handbag, which was under the table next to her feet. But when she got home, she found her phone was missing. Thinking it must have been taken from her bag, Mrs D immediately called the police and her network provider to report it as stolen.

But when she called her mobile phone insurance provider to make a claim, it refused to pay out. It said the policy did not provide cover for accidental loss – and would only cover the theft of a phone "*if force, or the threat of force, had been used*". The insurer also told Mrs D that as she couldn't prove her phone had been stolen, it was just as likely she had lost it – or left it "unattended".

Mrs D disagreed with the decision and referred the matter to us.

complaint upheld

We asked the insurer to send us a copy of Mrs D's policy documents. When we looked carefully at the wording, we found that the word "*force*" was not actually defined.

We usually say that "*force*" does not necessarily mean "*violence*". For example, turning a handle and opening a closed door could constitute "*forcible entry*" to a property. So in our view, it would be reasonable to interpret the policy to mean someone reaching into Mrs D's handbag and removing her mobile phone amounted to the use of force.

We noted the insurer's argument that Mrs D could have simply lost her phone – or left it unattended. But we didn't think it had been fair for the insurer to reject the claim just because Mrs D couldn't prove otherwise.

We thought it was plausible that a thief could have removed Mrs D's phone from her bag without her noticing. And if her bag had been at her feet as she said, then the phone inside it hadn't been left "unattended".

Taking everything into account, we told the insurer to meet Mrs D's claim in line with the policy terms – and to add 8% interest on any amount it paid out from the date her phone went missing to the date of the settlement.

case study 114/09

consumer complains that insurer refused to replace his phone – because they couldn't establish whether it could be repaired

One evening Mr H dropped his mobile phone into a bowl of washing up water. The phone stopped working straight away, and he contacted his insurance company to make a claim.

The insurance company asked Mr H to send them proof of purchase – so they could check that he owned the phone. They also asked him to send the the phone so they could assess the damage. At first, Mr H couldn't find his receipt. But two months later he found it and sent it to the insurer – who then agreed to consider his claim.

The insurance company noticed that Mr H hadn't yet returned the phone, so they asked him again. But he said he no longer had it. He explained that he had asked his network provider whether the phone would be covered under the manufacturer's guarantee.

When the network provider told him that it wouldn't, Mr H said he had recycled the phone at a local charity shop.

The insurance company told Mr H that they would only replace a phone once they had established that it couldn't be repaired. And because they had no way of doing so, they said they were not prepared to replace it. However, they said they *were* prepared to refund the premiums for the remaining six months on the policy, which Mr H had paid up front.

Mr H was unhappy with this response. He insisted that the insurer should replace the phone – and he made a complaint. When the insurer rejected his complaint, he referred the matter to us.

complaint not upheld

We noted that there had been nearly two months between Mr H making the claim, and his finding the receipt. So we didn't think the insurance company had contributed to Mr H's decision to take other action in the meantime.

We noted that Mr H's policy document had said "*if we are unable to repair your electronic item, a replacement item will be provided*."

We accepted that Mr H had been told by his network provider that his phone couldn't be repaired *under the manufacturer's guarantee*. However, we explained that this wasn't the same as saying that his phone couldn't be repaired at all. It just reflected the fact that manufacturers' guarantees generally only cover faults – and not accidents.

We noted that Mr H had sent the insurance company photos of his water-damaged phone. And the company accepted that the situation was an accident – and was prepared to repair the phone under the policy. But without seeing the phone to assess the damage, we could understand why the insurer wouldn't replace it. In the circumstances, we decided their offer to refund Mr H's premiums was fair – and we did not uphold the complaint.

... without seeing the phone to assess the damage, we could understand why the insurer wouldn't replace it

... Miss B was only 12, so the insurer wasn't prepared to pay the claim

case study
114/10

consumer complains that business rejected claim for theft of mobile phone – relying on an age exclusion he wasn't made aware of

Mr B had agreed that his daughter, Miss B, could have her own mobile phone when she started secondary school. Shortly before term began, he took out a mobile phone contract and mobile phone insurance online. He registered Miss B as an authorised user of the phone.

One afternoon, shortly after Miss B got off the school bus, she was approached by two older girls who forced her to hand over her phone. When she told her father what had happened, he reported the incident to the police and contacted the insurance company to make a claim. But the insurance company told him that the policy "*excluded theft when the phone was in the possession of someone under 18 years of age*". Miss B was only 12, so the insurer wasn't prepared to pay the claim.

Mr B complained. He said he hadn't been made aware of the exclusion when he took out the insurance policy – and if he had been, he certainly wouldn't have taken it out. When the insurer rejected his complaint, Mr B asked us to look into it.

complaint upheld

We asked the insurer for a copy of the policy documents – and looked carefully at the exclusion the insurer had relied on when it refused to pay the claim. The exclusion said that there was "*no cover for theft or damage if the phone was in the possession of any third party outside of the policyholder's immediate family*" – defined as "*spouse, partner, parents, children, brothers and sisters (all over the age of 18) permanently residing at your address*".

Although this definition of the members of an "*immediate family*" wasn't unusual, we thought that the age limit was significant enough that it should have been brought to Mr B's attention when he took out the policy.

When we asked for evidence of how the policy was sold to Mr B, the insurer sent us screen-shots of the website he had bought it through. Under the heading "*What am I covered for?*" the website simply said: "*This policy covers you for theft, accidental damage and mechanical breakdown*".

And the section listing the policy exclusions referred only to "*immediate family*" – with no mention of any age limit.

We eventually found the age limit in the very last section of a long document under the heading "*important information*" – which began with references to the Sales of Goods Act and other technical information.

We didn't think it was reasonable to expect a consumer to have to read right to the end of a long document to find such a significant and unusual exclusion. We concluded that the insurer hadn't brought the exclusion to Mr B's attention as clearly as it should have done. And we didn't think that Mr B would have taken out the policy if the insurer had made him aware of it.

In these circumstances, we told the insurer to consider the claim as if the exclusion did not apply – adding 8% interest from the date the phone was stolen to the date of the settlement.

... we took the view that this should mean a like-for-like replacement

case study 114/11

consumer complains that insurer refused to replace her phone more than once in the same year – even after the replacement she was sent was faulty

Mrs M was getting her mobile phone out of her bag when she accidentally dropped it into a deep puddle. She knew straight away that her phone was damaged because the screen was blurred. She did her best to dry the phone out, but it still wouldn't work.

Mrs M got in touch with her insurer to make a claim. The insurer accepted her claim and sent her a replacement phone. It also sent her a letter explaining that the handset was a refurbished one, and that it came with a three-month warranty. Mrs M set up the phone and started to use it.

Unfortunately, five months later the replacement phone stopped working properly. Mrs M emailed her insurer to see if they could help. But the insurer told Mrs M that she was "*only entitled to one replacement phone a year*". They also told Mrs M that because she was claiming outside the new warranty period, they were not required to replace the phone.

Mrs M complained to the insurer. She pointed out that her replacement phone wasn't working properly – and that it didn't seem fair that she didn't have a working phone when she had been paying for insurance. She asked the insurer to replace the phone. When they refused, Mrs M came to us.

complaint upheld

We listened to both sides of the story and looked at Mrs M's policy in more detail.

The policy clearly stated that any replacement phone would be of the "*same age and condition*" as the phone that was being replaced. So we were satisfied that the insurer had acted fairly when it had sent the refurbished phone to Mrs M.

However, we also noted that Mrs M's original phone had come with a one-year warranty. She had only had the phone for five months when she dropped it – which meant that there were seven months left to run on the original warranty.

We could see from the insurer's records that Mrs M had got in touch with them five months after she had received the replacement phone to say she was having problems with it. But the replacement phone had only come with a *three*-month warranty.

Mrs M's policy said that any replacement phone had to be of the "*same age and condition*" as the original. We took the view that this should mean a like-for-like replacement. But the replacement phone had come with a shorter warranty, so we decided that it had not been truly like-for-like.

In these circumstances, we decided that Mrs M's *original* claim had not been settled properly. So we told the insurer to supply Mrs M with a like-for-like replacement for her original phone.

... we could also understand why the insurance company would want to ask more questions before deciding to pay out

case study 114/12

consumer complains that insurance company won't meet his claim after he is mugged

Mr D phoned his insurance company to say that his mobile phone had been stolen. When he was asked how it had happened, Mr D explained that the phone had been "crashing" a lot. He said that he had been on his way to the shop to have it looked at when he was pushed against a railing by two youths – who snatched his phone and ran off. He said he went to the police station to report the incident.

The insurance company told Mr D it would need more information – and arranged for a claims assessor to visit him at his home. A week later, Mr D received a letter from the company asking for some more documents – including a monthly statement for his mobile phone account.

Mr D was unhappy that he was being asked so many questions. He complained to the insurer, saying he didn't understand why they wouldn't just replace his phone. But when the insurer rejected his complaint, Mr D asked us to step in.

complaint not upheld

We asked the insurance company to show us the evidence it had used to make its decision. It sent us the report from its claims assessor – as well as a police report it had obtained with Mr D's consent. We noted that the two accounts Mr D had given weren't consistent with each other – for example, he told the claims assessor that he had been hurt badly by the attack, and gave a description of the youths. But he had told the police he hadn't been assaulted – and couldn't say what the youths looked like.

We asked the insurance company for more details about Mr D's policy. We saw that he had made a *successful* claim for the same model of phone six months earlier – and that the phone he was now claiming for was the replacement he had been sent.

The insurer told us that it couldn't understand why Mr D had taken the phone to the store rather than contacting the insurer directly – especially given how recently the insurer had sent Mr D the phone.

When the insurer asked Mr D to explain, he said he had phoned the store beforehand to confirm this was the best course of action. But he hadn't been able to give the claims assessor the phone statement showing this call. And the store had no record of the call either.

We understood that Mr D had been upset by what had happened – and that he felt he was being asked for a lot of information. But in the circumstances, we could also understand why the insurance company would want to ask more questions before deciding to pay out. And we didn't think the information it had asked for – for example, a phone statement – should have been particularly difficult for Mr D to provide.

We explained to Mr D that he needed to show it was more likely than not that things had happened as he had said. In the circumstances of this particular case, we did not think the insurer had acted unfairly – and we did not uphold the complaint.

... the intruder had used a degree of force to enter Mr J's property

case study 114/13

consumer complains that insurer rejected his claim for phone stolen by intruder – saying that there was no "force" involved

Mr J lived in a ground-floor flat. One night he was asleep in bed with his window slightly open. He was terrified when he woke up and saw an intruder in his bedroom.

The intruder grabbed Mr J's mobile phone from the top of his chest of drawers and escaped through the window.

Mr J phoned the police straight away to report the crime. The next morning he phoned his insurer. He spoke to an adviser on the insurer's claims helpline and explained what had happened.

A few days later he received a letter telling him that he wasn't covered – and that his phone couldn't be replaced. The letter said that Mr J's policy only covered him for theft: "*if force that resulted in damage to the premises was used to enter or leave the building*".

Mr J phoned the insurer to complain. He said he couldn't believe that they were refusing to cover him when someone had actually broken into his house and stolen his phone.

But the insurer wrote to Mr J saying that "*as no damage had occurred to show forced entry, the building was not secured*". The letter also pointed out that by leaving a window open – whether Mr J had been at home or not – "*the risk of theft was great enough that the theft was not covered as an insured event*".

Mr J was still very unhappy, so be brought his complaint to us.

complaint upheld

We looked at the police report from the incident – and we noted that the police did not dispute Mr J's account of what had happened. The report said that Mr J's window had been slightly ajar, and that the intruder had pushed the window further open so he could climb through.

Once we had satisfied ourselves that the theft had happened in the way that Mr J had described to the insurer, we had to decide whether the insurer had acted fairly in deciding that it was "*not an insured event*".

The policy exclusion the insurer had relied on appeared to us to be designed to protect the insurer where a consumer had been careless – by, for example, leaving windows open while they were out, or by leaving doors unlocked.

At the time Mr J's phone was taken, both his front and back doors had been locked. The only window that had been open was his bedroom window. So we decided that Mr J *had* taken steps to secure his home, and we did not think it had been careless of him to leave his bedroom window slightly open.

We accepted that no damage had been done when the intruder had entered and left Mr J's flat. However, we decided that that by opening Mr J's window further than he himself had opened it, the intruder *had* used a degree of force to enter Mr J's property.

Taking everything into account, we decided that the insurer had not acted fairly in the circumstances of this case. We told them to reconsider Mr J's claim – and to pay him £50 to make up for the inconvenience it had caused him.

... we thought that the phone was only "unattended" because it was lost

case study 114/14

consumer complains that insurer rejected claim for phone left on a train – saying it had been left "unattended"

Ms W caught the train to Manchester to do some shopping. While she was looking around in a department store, she decided to phone her sister to discuss ideas for a present for their mother. But when she looked in her bag for her phone, it wasn't there.

The last place she remembered having her phone was on the train. She had called her partner from the train and she hadn't used her phone since then. So she thought she must have left it on the train.

Ms W asked a sales assistant in the department store if she could use their phone. She phoned the lost property office at the train station she'd arrived into – to ask whether her phone had been handed in. Unfortunately it hadn't. She also phoned her network provider to ask them to lock down her number.

The next day Ms W phoned her insurer to explain what had happened – and to put in a claim. The insurer told her that she needed to report the loss to the police so she could get a loss reference number to support her claim. Ms W did what the insurer had asked her to do.

But when the insurer assessed Ms W's claim, they turned it down. The insurer said that her policy "*did not cover lost items that were left unattended in public places*". They said that because the phone was left on a train "*and not in a place that was inaccessible to the public, the subsequent loss or theft of the phone was not covered*".

Ms W thought this was nonsense. She complained to the insurer, saying that she'd taken out that particular policy because it would cover her if she lost her phone.

When the insurer rejected her complaint, Ms W asked us to look into it.

complaint upheld

We asked both the insurer and Ms W to send us copies of all the information they could.

When we looked through the policy documents, we noted that there were some inconsistencies between the wording in the terms and conditions, and the wording in the FAQs document and the summary booklet. The terms and conditions of the policy specifically *excluded* cover "*for items lost while unattended in a public place*". Whereas the summary booklet said "*don't worry if you lose your phone*" and the FAQ document said that loss would be covered – where "*loss*" meant an item being "*left in a public place or a place that people you don't know can easily access*."

We took the view that the supporting documentation was there to provide a more user-friendly format than the terms and conditions document. Although the documents might have been worded slightly differently, we took the view that they should have been consistent in what they said.

In this situation, we could understand why Ms W thought that she was covered for losing her phone if the supporting documents said so.

We also considered the insurer's point about Ms W's phone being "unattended". We thought that the phone was only "unattended" because it was lost. After all, Ms W had not left her phone on the train deliberately.

We concluded that because Ms W had bought the policy in good faith - thinking it would cover her if he lost her phone. So it seemed unreasonable for the insurer to turn down the claim.

In these circumstances, we told the insurer to deal with Ms W's claim.

Q? &A

featuring questions raised recently with our free, expert helpline for businesses and advice workers

frivolous and vexatious – so no referral, right?

I'm a mortgage broker and I've received a complaint from a former customer (via a claims company) about PPI linked to a mortgage. I have never sold PPI. Because this is a frivolous and vexatious complaint, when I write back I don't have to tell them about the ombudsman service, do I?

Because your business is authorised by the Financial Conduct Authority, it's covered by their complaints-handling rules – sometimes called the "DISP rules". These rules set out the procedures and requirements that businesses must follow when they're handling complaints from their customers.

The rules say that even when you feel that the complaint has no merit, you still have to give a final response within eight weeks – and tell the consumer that they can come to the ombudsman service if they are still unhappy.

The ombudsman service has the power to dismiss a complaint as "frivolous" or "vexatious" – which basically means that we shouldn't be looking into it. But it would be up to us to decide whether this particular complaint fell into that category – and only if the consumer went on to refer it to us.

packaged account problems

Our customer isn't happy about the monthly £6 fee that he's been paying for his current account. Our records show that his account was upgraded in 2008 to include benefits like mobile phone insurance and digital music downloads, but the consumer says he didn't ask for the upgrade. Unfortunately, we only have contact notes for the last three years, so we don't have firm evidence that we spoke to him. Would the ombudsman say that we should refund all the monthly fees going back to 2008?

Our adjudicators listen to both sides of the story – and ask both sides lots of questions. So the conclusions they come to are based on all of the available evidence, not just one particular set of records.

In this case we might, for example, ask the consumer if he had been receiving statements to see whether he could have noticed the charge sooner.

We could also ask the business whether the consumer regularly signs into his online banking account – which would give him another chance to see the charges and query them. We might also ask the business whether the consumer had used any of the benefits included in his account.

In some cases our adjudicators will suggest an outcome that isn't exactly what either party wants, but is fair in the circumstances. For example, in a case like this, a partial refund of the fees might be the right result.

Financial Ombudsman Service