

# ombudsman news

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

## theory and practice

I recently heard a phrase that I hadn't heard for more than a decade – long before my time at the ombudsman. I'm not sure many *ombudsman news* readers will have come across it, but the *Herfindahl Index* may well form a big part of a wider debate about the future of the financial services sector. In particular, its relationship with its customers.

Orris Herfindahl is credited with inventing the index that bears his name. It's a formula for measuring the degree of competition in a market – by analysing the market shares of the 50 or so largest players. The higher the index, the less competition in the sector.

Consumers' ability to choose between distinct providers can deliver much-needed customer-focused innovation.

But the financial services marketplace isn't quite that simple. "Information asymmetries" – suppliers knowing a lot more than consumers – and the long-term nature of many financial products add significant complexity to how competitive pressures are expressed.



Financial  
Ombudsman  
Service



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Tony Boorman

It's apparent that competition has worked in ways that some customers think are unfair. Better rates for new customers are perhaps the prime example. But more insidiously, a focus on the headline rate or price at the expense of a better understanding of value or risk.

From the cases we see at the ombudsman, we know that individual customers can feel that they actually have very little choice.

Whether they're a small business customer or someone relying on a payday lender, people seeking loans often feel at a distinct disadvantage – far from the empowered customers of competition models. And we've seen some of the worst examples of bad practice and customer detriment – think PPI and swaps.

Don't get me wrong. Increasing our ability to move bank – or to easily compare insurance providers – can only be helpful. But no one is suggesting they are a panacea to all the problems between financial services and its customers.

What Herfindhal *doesn't* measure is what it feels like to be a customer – and how reliant customers are on the advice and guidance businesses give them. As usual, our case studies provide down-to-earth, pragmatic insight into what happens in real life. And readers will be pleased to learn that you won't need a calculator to get the message.

Tony

*... individual customers can feel that they actually have very little choice*

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# payment protection insurance

In *ombudsman news* 104 – back in August 2012 – our case studies reflected the complaints about payment protection insurance (PPI) being referred to us at that time. The majority of these complaints were about how large financial businesses sold PPI policies on personal loans and credit cards. And more often than not, we upheld them.

But as Richard Thompson explained in issue 117 of *ombudsman news*, the PPI cases we are now dealing with involve policies sold in a wider range of contexts – where the outcome isn't quite so clear cut. And increasingly, we are asked to step in at a later stage – in cases where the settlement, not the mis-sale, is the point of dispute.

The following case studies illustrate our approach to complaints about mortgage payment protection insurance (MPPI), comparative (or “alternative”) redress, and the “set off” of PPI compensation.

## mortgage PPI (MPPI)

In issue 117, we explained that we uphold fewer complaints about MPPI than other types of PPI. This is because – in the cases we see – the advice or information the consumer was given about the policy is generally less likely to be lacking. And we're generally more likely to find that an MPPI policy offered valuable cover in the consumer's individual circumstances.

Nevertheless, we hear from consumers who feel that they were misled into believing that their mortgage offer would be rejected if they didn't take out MPPI. Other consumers tell us that they wanted MPPI, but are concerned that the policy they were sold wouldn't have ever paid out.

In these situations, we will try to establish what advice or information the business gave the consumer about the MPPI policy. Rather than focusing on one particular aspect of the sale, we will look at the process as a whole. We will carefully consider the consumer's circumstances at the time

the policy was sold – and assess whether and how the policy conditions could have affected a claim.

For example, we sometimes find that a policy doesn't cover claims relating to pre-existing medical conditions – but that the consumer had a pre-existing condition when the policy was sold.

We also hear from consumers who have heard they can't claim on the policy they were sold because they are self-employed. This isn't always the case – but we might still uphold the complaint if we decide that the policy terms and conditions make it extremely difficult for a self-employed person to claim.

We receive complaints from consumers who say they were told MPPI was compulsory – and are now questioning whether they were misled. We know that some businesses used to make taking out MPPI a condition of approving certain mortgage applications – for example, where the “loan to value ratio” (the size of the mortgage in relation to the borrower's income) was high.





Businesses were allowed to do this – so we won't automatically decide that the policy was mis-sold. But we will check that the consumer could benefit from the policy in the event of a claim. We will also consider whether the situation was clearly explained to the consumer – so that they could make an informed choice about whether the overall offer was right for them.

If we find shortcomings in the way an MPPI policy was sold – and decide that the consumer wouldn't have taken it out if they had received better advice or information – we generally tell the business to put the consumer in the position they would be in if they hadn't been sold the policy. This often involves a refund of the premiums with interest. Where limited records exist, we will make our decision on the balance of probabilities.

### **right of “set off” and comparative (alternative) redress**

If a consumer disagrees with how much compensation they should receive for being mis-sold PPI, we will check that the business has calculated the offer in line with our general approach – taking into account all of the consumer's individual circumstances.

However, we see cases where the *amount* of compensation isn't in dispute – but where the consumer isn't happy that the business has used the money to reduce arrears on another debt. The regulator allows businesses to “set off” PPI compensation against any arrears on the account associated with the mis-sold policy. When we look at a case, we will take this into account – as well as the broader legal position.

If the PPI and the arrears are on the same account, we will assess whether the settlement is right for that particular consumer. This involves looking carefully at the consumer's wider circumstances – for example, whether they have higher-priority debts or there are other pressing reasons why it might not be fair and reasonable for the compensation to be set off against any outstanding arrears.

We also see complaints where the business has accepted that a single-premium PPI policy was mis-sold – but wants to pay the consumer the difference between the policy that was mis-sold and a cheaper monthly-premium policy. In these cases, the business has decided that PPI wasn't completely wrong for the consumer – just the way they paid for it.

The situations in which it might be appropriate for a business to pay so-called “comparative” redress are set out in the regulator's guidance for handling PPI complaints. When we consider a complaint, we will make sure that the business has followed this guidance – and also that the outcome is fair on the consumer.



*... they said that if Mr C had been unhappy with the policy, he could have chosen not to buy it*

case study  
118/1

self-employed  
consumer complains  
that he can't claim on  
MPPI policy – and that  
it has been mis-sold

Mr C, a self-employed business consultant, took out a mortgage with his bank to pay for a home office extension. He also took out an MPPI policy that would cover his repayments if he stopped working because of unemployment or disability.

A few years later, Mr C was phoned by a claims-management company. After being told that some self-employed people had been mis-sold PPI, Mr C agreed that the claims manager could write to the bank on his behalf. In their letter, the claims manager complained that Mr C's ability to claim under the policy's unemployment cover was significantly limited because he was self-employed. They asked the bank to pay back all the money Mr C had paid towards the premiums.

The bank looked into Mr C's complaint. But they wrote back to say they didn't agree with the claims-management company. They said that if Mr C had been unhappy with the policy, he could have chosen not to buy it. Not satisfied with the bank's response, the claims manager referred Mr C's complaint to us.

**complaint not upheld**

The bank told us that, because the MPPI policy had been sold some years ago, they couldn't tell from their current records whether it had been recommended to Mr C or sold on an "information only" basis. However, from the statement that Mr C had given the claims management company, it appeared that he remembered very clearly that the person in the bank had advised him to take out the MPPI policy.

We didn't find any evidence that contradicted Mr C's account of what had happened – and decided that it was more likely than not that the bank had recommended the policy.

Mr C provided evidence to show that he was self-employed when he took out the policy. We now needed to consider whether the bank had made sure the policy was suitable for his needs – and had given him clear information about how it worked.

We asked the bank to provide the documentation that would have been used at the time of the sale. We also asked the claims management company to find out if Mr C still had any of the information he had been given. Unfortunately, neither side had records from that long ago.

However, the bank did manage to find a copy of the policy document – which set out the circumstances in which a self-employed person could claim for unemployment. We noted that there was no requirement for a self-employed person to permanently stop trading or become insolvent – which we have seen in some policies, and which we might consider to be onerous conditions.

Mr C's particular policy would allow a self-employed person to claim if they found themselves without enough work to meet their reasonable business and living expenses.

We checked the policy's other restrictions – for example, relating to medical conditions – and were satisfied that they didn't apply in Mr C's circumstances.

Overall, having carefully considered the policy terms, we didn't think that Mr C would have any more difficulty making a claim for unemployment than someone who wasn't self-employed.

We explained to the claims manager that, in our view, the policy the bank had recommended was appropriate for Mr C. We didn't uphold the complaint.

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## case study 118/2

### self-employed consumer complains that MPPI policy has been mis-sold

When Mr and Mrs M were buying a new house, they successfully applied to Mr M's building society for a mortgage. At the time, Mr M was doing good business as an electrician and Mrs M was a nursery assistant. But feeling that it would be worth protecting themselves in case their situation changed, they decided to take out the MPPI policy that the building society offered. They understood that this would cover their mortgage repayments if either of them became unemployed, or if they couldn't work because of an illness or an accident.

A few years later, Mr and Mrs M heard on the news that some self-employed people were having trouble claiming on their PPI policies. Concerned about whether their own mortgage repayments would be covered, they wrote to the building society.

They pointed out that Mr M was self-employed – and said they felt they shouldn't have been sold a policy that he wasn't able to claim on.

However, the building society didn't agree with this. They explained to Mr and Mrs M that the mortgage adviser had only given advice about the mortgage – and not about the MPPI. They said that Mr and Mrs M should have made sure the policy was right for them from the paperwork the adviser had given them.

Mr and Mrs M couldn't remember exactly what had happened at their meeting with the adviser. But they were still concerned that they had been wasting their money – and asked us to look into the complaint.

#### complaint upheld

We asked the building society to provide us with the documentation that Mr and Mrs M would have had to complete to buy the MPPI policy. This confirmed that, as Mr and Mrs M had told us, Mr M was self-employed at that time.

Despite what Mr and Mrs M had heard, this didn't automatically mean that the policy wasn't of any use to Mr M. To decide Mr and Mrs M's case, we needed to take a closer look at the policy in question – and asked the building society for a copy of the terms and conditions.

We noted that the policy *did* allow self-employed people to claim for unemployment. However, it would only pay out if a self-employed person had become unemployed because they had “*permanently ceased to trade*”. Looking at the detailed policy terms, this meant that Mr M would have had to file his final accounts and tax returns – and formally wind up his business – before making a claim.

It seemed to us that a self-employed person would have far more difficulty making a claim than someone who wasn't self-employed. Unlike someone who wasn't self-employed, Mr M couldn't claim if he became unemployed *temporarily*. And if Mr M was winding up his business, the requirement

to file accounts would have delayed the claim being paid – and possibly incurred accountant's costs – at a time when he would likely be financially stretched. In our view, the policy terms were significant – and onerous for Mr M.

The building society had a responsibility to provide Mr and Mrs M with clear, fair and not misleading information about the policy – so they could make an informed choice about taking it out. The building society couldn't provide us with sufficient evidence that they had done this.

We decided that if Mr and Mrs M had been given clear information about the terms relating to self-employment, they would have realised that the MPPI policy wasn't suitable for Mr M – and it was very unlikely that they would have taken it out. We upheld the complaint – telling the building society to refund all the premiums that Mr and Mrs M had paid, plus 8% interest.

*... it seemed to us that a self-employed person would have far more difficulty making a claim*

## *... Mr F, who had a heart condition, wondered if he would receive a payout*

### case study 118/3

#### consumer complains that they have been mis-sold MPPI – because business didn't make clear exclusion relating to pre-existing medical conditions

Mr and Mrs F were hoping to install a new fitted kitchen. They made an appointment with their mortgage provider, a building society, to ask whether they could take out a further advance on their mortgage to pay for the work. At the meeting, the building society's adviser agreed to lend Mr and Mrs F the extra money. He also gave them information about the building society's mortgage protection policy, which he said would cover their repayments if they couldn't work. Mrs F didn't apply – but Mr F decided to take out cover in case he couldn't work because of unemployment, illness or an accident.

A few years later, Mr and Mrs F saw a news feature about PPI – which mentioned that some people had been sold policies they couldn't claim on. This led Mr F, who had a heart condition, to wonder if he would receive a payout if he became ill because of this. And Mrs F, who was self-employed, didn't know where she stood. So they wrote to the building society, explaining they were concerned their MPPI policy wasn't actually protecting them – and asking for the money they had paid towards it to be refunded.

The building society looked into Mr and Mrs F's complaint. However, they weren't willing to refund the premiums. They said they had given adequate information about the policy – and hadn't misled Mr and Mrs F. Mr and Mrs F disagreed – and referred the matter to us.

#### complaint not upheld

We asked the building society to provide us with a copy of the terms and conditions of the MPPI policy – so we could assess whether it was right for Mr and Mrs F's circumstances at the time they took it out. First of all, we confirmed that the policy was in Mr F's name only – and established that as Mrs F wasn't covered by the policy, her employment status didn't affect her husband's ability to claim. So we didn't need to consider any further the policy terms relating to self-employment.

However, we needed to address Mr F's concerns about the effect of his heart condition on any potential claim – which meant checking whether his policy excluded claims for pre-existing medical conditions. Looking carefully at the wording of the policy, we noted that it would pay out for pre-existing conditions once the cover had been in place for 12 months. We also found that, unlike some PPI policies we see, Mr F's policy would allow him to claim after 12 months even if he had received treatment for his pre-existing condition in that time.



We asked the building society and Mr and Mrs F to provide us with any information or documentation they had relating to how the MPPI policy was sold. The building society told us that they no longer had records from that many years ago. Mr and Mrs F told us that they couldn't really remember much about what had happened – only that there had been a lot of paperwork to look at, and that they had felt quite overwhelmed.

Without any evidence from the meeting, we couldn't assess whether the policy terms had been drawn to Mr and Mrs F's attention. However, we considered whether any shortcomings in the information they were given about the policy would have affected their decision to buy it. We noted that the mortgage Mr and Mrs F had applied for had a term of 15 years. We thought that, on balance, it was unlikely that the one-year exclusion for Mr F's heart condition would have put them off taking out the policy.

Mr F told us that his employer offered good sickness benefits – and questioned whether he had been paying for duplicate cover. However, we found that the MPPI policy would pay out in addition to the benefits from Mr F's employer – and would also pay out for longer. Although we couldn't say whether the building society had sufficiently explained the MPPI policy, we thought it likely that Mr F would have felt it offered valuable benefits in addition to those his employer provided.

We understood why Mr and Mrs F had been worried about their MPPI – and why they had raised their concerns with the building society and with us. But we explained to them that, looking at their particular circumstances, we didn't think the policy had been mis-sold. We didn't uphold the complaint.

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## case study 118/4

### consumer complains that MPPI policy has been mis-sold – because business didn't make clear that it was optional

Mr and Mrs A applied for a mortgage in their local branch of a bank. Their application was approved – and Mr A, who was the main earner, also took out an MPPI policy. He understood that this would cover the mortgage repayments if he became unemployed or couldn't work because of an illness or an accident.

Around ten years later, Mr and Mrs A complained to the bank about the way the MPPI policy had been sold to them. They explained that they had recently found out that MPPI was an optional extra – whereas they felt the bank's adviser had led them to believe that it was a condition of taking out the mortgage. They said that they wouldn't have taken out MPPI if they had known they had a choice about it.



## *... we discovered that the policy completely excluded claims relating to pre-existing medical conditions*

The bank disagreed with Mr and Mrs A's recollections. They said that the adviser would have made clear that the MPPI was optional. However, Mr and Mrs A thought that the premiums they had paid should be refunded – and referred the matter to us.

### **complaint upheld**

We asked both Mr and Mrs A and the bank to tell us what had been said during the meeting with the mortgage adviser. Mr and Mrs A felt strongly that the adviser had told them that they needed to take out the MPPI policy with their mortgage. On the other hand, the bank told us that the adviser would have given information to Mr and Mrs A about the cover on offer and given them the option of taking it out – but hadn't advised them to do so.

Because the sale took place some years ago, we only had limited evidence about what had happened. We decided that we couldn't say for certain whether Mr and Mrs A had been misled into thinking that taking out MPPI was a condition of the mortgage offer.

However, we noted that, on our complaint form, Mr A had said that he had a digestive disorder. When we asked Mr A to tell us more about this, we found that he had been diagnosed some years before taking out the mortgage. Looking closely at the policy terms, we discovered that the policy completely excluded claims relating to pre-existing medical conditions – even if the policyholder hadn't recently received treatment. Because of this exclusion, we thought it was very unlikely that Mr A's mortgage repayments would have been protected if he couldn't work because of his condition.

We carefully considered the documents that the bank said Mr and Mrs A were given in the meeting – to see how the exclusion was presented. We noted that the exclusion was mentioned on the application form. However, compared with the rest of the text, it was in very small, dense print.

Whether or not the bank had recommended the policy, they still had a responsibility to provide Mr and Mrs A with clear, fair and not misleading information about the cover on offer. In our view, the exclusion for pre-existing medical conditions – which significantly affected Mr A's ability to claim – wasn't sufficiently prominent. And the bank couldn't provide any evidence that the adviser had brought the exclusion to Mr and Mrs A's attention in any other way.

We decided that if the bank had made clear the exclusion for pre-existing conditions, Mr and Mrs A would have realised that the MPPI policy wasn't right for Mr A – and it was very unlikely that they would have taken it out. We upheld the complaint, telling the bank to refund the premiums Mr and Mrs A had paid, adding interest.

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## *... both forms said that insurance was not a condition of the mortgage*

### case study 118/5

#### consumers complain that MPPI was mis-sold – because bank didn't make clear that it was optional

Mr and Mrs N – first-time buyers – successfully applied for a mortgage with their bank. They also took out MPPI to cover their repayments in case either of them became unemployed or couldn't work because of an illness or an accident.

A few years later, Mr and Mrs N heard that some businesses had admitted they had mis-sold PPI – and thought back to their own experience. They wrote to their bank, complaining that they had been told that their mortgage offer would be declined if they didn't take out MPPI – which they now knew wasn't the case. Mr and Mrs N said they felt that the bank had misinformed them – and taken advantage of their inexperience at the time.

The bank agreed to check their records. However, they then wrote back to say that Mr and Mrs N had been given a fair choice about taking out MPPI. Mr and Mrs N disagreed – and asked us to step in.

#### complaint not upheld

We asked Mr and Mrs N to tell us what they remembered about taking out their mortgage and the MPPI policy. They explained that they had arranged a meeting in a branch of the bank with a mortgage adviser – who they now believed had misled them.

The bank confirmed that their adviser had met with Mr and Mrs N on that date. However, we didn't have any evidence of what happened at the meeting. So we couldn't fairly decide what had been said.

We asked the bank to provide us with all the information that would have been available to Mr and Mrs N in the meeting. We noted that the mortgage and the MPPI policy each had their own application form – and both forms said that insurance was not a condition of the mortgage. Both forms asked the consumer to indicate whether they wanted the cover – and Mr and Mrs N had signed each form next to where the option was given.

In our view, the information on the form was set out sufficiently clearly and prominently for someone to understand that MPPI was optional. Although we couldn't say for sure how the forms had been presented to Mr and Mrs N, we thought it was unlikely, based on the evidence, that they had been misled.

We considered the terms and conditions of the MPPI policy – but didn't find any exclusions that affected Mr and Mrs N's ability to claim. We explained to Mr and Mrs N that, from the evidence we'd seen, we didn't think the bank had mis-sold their MPPI. We didn't uphold the complaint.

## case study 118/6

### consumer complains that business said MPPI policy was compulsory

When Mr V took out a mortgage with his building society, he also took out MPPI. This would cover his mortgage repayments if he couldn't work because of an accident, illness or unemployment.

Some years later, Mr V read a newspaper article explaining that many people had been told that MPPI was compulsory – when this wasn't actually the case. Thinking back to applying for his mortgage, Mr V was sure the adviser had said that his mortgage would only be approved if he took out MPPI.

Concerned that he had been misled, Mr V complained to the building society that the policy had been mis-sold. When the building society denied that they had done anything wrong, he referred the matter to us.

#### complaint not upheld

Mr V said he had definitely been told that the MPPI policy was compulsory. He remembered the mortgage adviser telling him that he needed to ensure he could meet his mortgage repayments if his income fell.

We asked the building society to provide us with all the information they had about Mr V's MPPI policy. The documentation we received included a copy of the mortgage offer. We noted that this clearly said that taking out MPPI was a condition of that particular mortgage.

We were satisfied from the paperwork that Mr V's options had been clearly set out – and that he had chosen the mortgage offer with compulsory MPPI.

However, we still needed to assess whether the adviser had sold Mr V cover that was suitable for him – and asked the building society for a copy of the policy terms and conditions. We noted that the policy restricted cover for people working fewer than 16 hours a week – and also excluded claims relating to pre-existing medical conditions.

But looking at the information Mr V had given about his circumstances at the time, we were satisfied that neither limitation applied to him – and that he wouldn't have had trouble making a claim.

When we explained the situation to Mr V, he was pleased to find out he was right about what he'd been told. But he accepted that the building society hadn't done anything wrong – and said he would let the matter go.

*... taking out MPPI was a condition  
of that particular mortgage*

## ... Mrs L wasn't sure that this "set off" was fair

### case study 118/7

#### consumer complains that business has set off PPI redress against arrears on a loan without PPI

Over a few years, Mrs L had taken out several personal loans with the same business – and later complained that PPI had been added without her knowledge. The business accepted that they had mis-sold single-premium PPI policies on three of the loans – and made Mrs L an offer to settle her complaint.

When Mrs L read the business's letter setting out the offer, she noticed that some of the money she would have received had been used to reduce the arrears on the loan she currently had with the business. This fourth loan didn't have PPI added to it. She queried the offer with the business – who replied that they were entitled to reduce her debts in this way because they had "right of set-off".

Mrs L wasn't sure that this "set off" was fair – and asked us for our view.

#### complaint upheld

The business told us that they were simply following the regulator's rules for handling PPI complaints. They also said that they had an "*equitable right in law*" to set off money they owe someone against money that person owes them.

We acknowledged that the regulator has agreed that, in certain circumstances, a business can use the redress on offer to reduce an account in arrears. But this rule can only be applied to an *associated* account – and then only if it is fair and reasonable. We pointed out to the business that, even though Mrs L's fourth loan was in arrears, that particular account wasn't associated with any of the mis-sold PPI policies.

We considered the law that the business had quoted – which allows one party to set off a debt they owe another party against a *closely connected* debt that the other party owes them. We needed to establish whether the arrears on Mrs L's fourth loan were closely connected to the redress she was owed for the mis-sale of PPI on the other three loans.

Looking at the history of Mrs L's borrowing with the business, we noted that the loans had been successive sales. This meant that, rather than set up a new loan each time Mrs L asked to borrow more money, the business had set up a new loan that included the original borrowing. Each of these loans – apart from the fourth loan – had had a new PPI policy.

From the point of view of calculating the redress, we accepted that there was a link between the mis-sold PPI policies and Mrs L's borrowing as a whole. To put Mrs L in the position she would be in if she hadn't been mis-sold PPI, the business would need to consider how much of the money she had carried forward each time she refinanced related to the cost of the PPI policies.

But we didn't agree that the arrears on Mrs L's fourth loan were closely connected to the redress they owed her. In our view, each time Mrs L had refinanced, her outstanding debt had become new borrowing under a new loan agreement. The redress that the business owed Mrs L was connected to the three loans on which PPI had been mis-sold – which no longer existed.

The redress *wasn't* connected to the debt Mrs L now owed the business – under a fourth and separate loan agreement.

In the circumstances, we decided that it wasn't fair for the business to use Mrs L's redress to reduce the arrears on her loan. We told the business to make sure their offer was up to date – and to pay the money directly to Mrs L.

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*... Mr T had lost his job and was experiencing financial difficulties*

## case study 118/8

**consumer complains that bank has set off PPI redress against loan arrears – rather than allowing consumer to pay priority debts**

When Mr T took out a loan with his bank, he was sold a single-premium PPI policy. A few years later, while the loan was still in place, he made a successful complaint that the PPI policy had been mis-sold. In their letter upholding Mr T's complaint, the bank explained that they would be using some of the compensation to reduce the arrears on Mr T's loan.

Since taking out the loan, Mr T had lost his job and was experiencing financial difficulties. He phoned the bank to complain about the way they had handled his compensation. Mr T said that he had been in touch with a debt charity, who had helped him work out which of his debts were a priority – so he could stop things spiralling out of control. He asked the bank to pay him the PPI mis-sale compensation directly so he could address these debts first.



However, the bank maintained they had acted correctly. Frustrated – and worried that he couldn't pay urgent bills – Mr T asked us to step in.

#### complaint upheld

When Mr T first contacted us, he sent us evidence of his financial difficulties – including overdue notices for his utilities and council tax bills. We saw that Mr T was being threatened with legal action relating to some of these debts – and that ultimately his home might be at risk.

We were satisfied that Mr T's financial situation was very serious. We didn't think the bank had fully taken his circumstances into account – given their responsibility to deal constructively and sensitively with customers in financial difficulty.

When we explained this to the bank, they agreed to pay him his compensation directly so he could deal with his priority debts. We also told the bank to pay Mr T £150 – in recognition of the insensitive way they had handled the situation and the worry their actions had caused.

.....

*... we were satisfied that Mr T's financial situation was very serious*

## case study 118/9

### consumer complains that bank has set off PPI compensation against arrears on credit card account

Miss J complained to her bank that she had been mis-sold PPI on a credit card. The bank upheld Miss J's complaint – but rather than pay her the compensation directly, they used it to pay off the arrears on her credit card account.

Miss J hadn't known that compensation could be used in this way. She complained to the bank – explaining that she was having financial problems and needed the money to cover her everyday living expenses. She asked the bank to reverse what they had done and to pay her the compensation directly.

## *... she had recently gone overdrawn on a few occasions and had run up charges*

The bank told Miss J that they were entitled to use her compensation to reduce her arrears – and they weren't willing to pay it any other way. Unhappy with this response, Miss J referred the complaint to us.

### **complaint not upheld**

Miss J sent us the letter the bank had sent her setting out how they had calculated her compensation. Looking at this, we were satisfied that the bank had followed our general approach – and that the offer was fair. And we confirmed that the credit card account that was in arrears was the same account that PPI had been added to.

However, although the regulator allows a business to set off compensation if the associated account is in arrears, the business would need to make sure it was fair and reasonable in the consumer's circumstances. So we could consider Miss J's particular situation, we asked her for information to support what she was saying about her financial difficulties.

Miss J sent us bank statements to show she had recently gone overdrawn on a few occasions – and had run up some charges.

She also showed us statements from another credit card account, which she hadn't been managing to pay on time.

But it didn't appear that Miss J had any urgent debts that were posing a serious threat to her circumstances. We also noted that the bank had already made some adjustments to help Miss J manage her finances – for example, agreeing that she could make reduced payments on the credit card account in question.

We appreciated that Miss J was having trouble with her finances. However, in all the circumstances of her case, we thought the bank had acted reasonably. We didn't uphold the complaint.

## case study 118/10

### consumer complains that alternative redress isn't fair – as she hadn't wanted PPI at all

Ms K was struggling to keep up her repayments on a number of debts – so she decided to take out a loan to sort out her finances and consolidate her debts. She phoned her bank and took out a loan to be repaid over five years. The bank sold Ms K a PPI policy alongside the loan.

Three years later, Ms K was taking out a credit card. While applying for it in her local bank branch, the adviser mentioned that she could take out PPI. During a further discussion with the adviser, Ms K found out that PPI was an optional product. This surprised her – because she remembered that taking out a PPI policy had been a compulsory part of her earlier loan. Confused, Ms K wrote to her bank for clarification.



The bank wrote back to Ms K – confirming that she had bought a single-premium PPI policy with her loan. Ms K questioned this – saying that she wouldn't have accepted anything that made the loan more expensive, especially as the loan was to help ease her debts. She said she felt that she hadn't been given the option not to take the policy out. But the bank maintained that Ms K had known the policy was optional and had agreed to buy it.

Ms K decided to complain. After looking into her circumstances further, the bank said they believed Ms K had agreed to a PPI policy – but accepted that the single-premium policy she was given was perhaps not the best policy for her.

They decided that a regular-premium policy would have been more suitable – and said that they would pay Ms K the difference in cost between the two policies.

Ms K didn't agree. She said that she wouldn't have taken out a PPI policy as she didn't feel she needed the cover it offered – and maintained that the policy's optional nature hadn't been explained. When she couldn't reach an agreement with the bank, Ms K came to us for help.

#### complaint upheld

The bank had already accepted that the initial policy wasn't right for Ms K. We had to decide whether *any* PPI was right for Ms K, and if it was, whether the bank's offer of "alternative redress" was fair.

Initially, we asked Ms K for her side of the story. She said that she hadn't been offered a loan *without* a PPI policy at any point during the phone call – so she didn't know the policy was optional. She also repeated the point she'd made to the bank – that the loan was to consolidate debts, so she wanted it to be as cheap as possible.

When we wrote to the bank, they couldn't provide the recording of the original phone call, so we asked to see the documentation that Ms K would have received about the loan.

We reviewed this, and noted that nowhere on the documentation did it mention that PPI was an optional product. Nor did it need Ms K to sign separately to acknowledge and confirm that she wanted PPI.

In our view, Ms K's arguments had been clear and consistent since she first contacted the bank. We thought it was likely that if she had she known that PPI was optional, she wouldn't have taken it out at all. We told the bank to pay Ms K full compensation – not alternative redress.

.....



## ... Mrs G maintained that the policies were added without his knowledge

### case study 118/11

#### consumer complains that he was mis-sold PPI on two separate loans

Mr G took out two loans within a few months of one another – each with a PPI policy alongside it. The first was a loan for 12 months to buy a car, and the second was a loan over 24 months to consolidate other debts. He received the money from the loans and over the months made his repayments without any problems.

A few years later, Mr G saw an advert from a claims-management company suggesting that many people had been mis-sold PPI policies but might not know it. Wondering about his own loans, Mr G contacted his bank. The bank wrote back, confirming that the two loans in question each had single-premium PPI policies in place.

Mr G was unhappy with this. He said that he hadn't known that PPI policies had been added to the loans – and that given the choice, he wouldn't have agreed to take them out. So he complained to the bank.

After investigating Mr G's complaint, the bank decided that Mr G had been made aware of the policies – citing the signed loan agreements as evidence. They said that they found no problems with the sale or suitability of the first policy.

However the bank thought that, as the second loan had been to consolidate debts, it would have been better if they had offered a more flexible policy for that particular loan. Given Mr G had already refinanced once, there was a risk that he may have needed to do so again – and so a more flexible policy that Mr G could cancel without penalty would have been more suitable.

The bank concluded that Mr G would still have wanted PPI alongside the second loan as well as the first. But for the second loan, they offered to pay Mr G the difference in cost between the policy he had taken out and a cheaper, regular-premium policy.

Mr G didn't think this was fair. He maintained that he hadn't wanted PPI at all. Unable to reach an agreement, Mr G brought the matter to us.

#### complaint not upheld

The first point we had to decide was whether Mr G had been made aware of the PPI policies that were added to the loans. The bank said that their staff advised Mr G to take out the policies, but Mr G maintained that the policies were added without his knowledge. We turned to the paperwork to see if this might shed any light on what happened.

We noted that – on both sets of paperwork – both Mr G and the adviser from the bank signed the loan agreements on the same day. This suggested the sale had taken place in Mr G's local branch of the bank.

We then looked at how the information had been presented to Mr G. On both sets of paperwork the layout was the same. The first page showed two prominent boxes – the first saying “YES, I would like to take [PPI]”, and the second saying “NO, I do not wish to take [PPI]”. Mr G had signed in the first box each time.

The second page broke down the costs of the loan and the PPI separately, and had a further place to sign to apply for the loans. We thought that as Mr G had signed in separate places to agree to the loan itself and the PPI policy, in addition to seeing the breakdown of costs, it was likely that Mr G had known about the policies, and their optional nature.

So we turned to the suitability of each of the policies. At the point of sale for the first loan, Mr G had been employed in a full-time job for just under a year. He had no medical conditions which might prevent any future claims from being successful. He also had two dependents. Mr G would have received six months' pay from his employer if he was too unwell to work.

Looking at the exclusions the policy contained, there was nothing to suggest that Mr G's circumstances would have prevented him claiming on the policy, should he need to. It would have also provided a benefit for 12 months – twice as long as Mr G's sick pay.

We agreed with the bank that this type of policy would have been suitable for Mr G. And as Mr G planned to repay the loan over 12 months (and there was nothing to suggest Mr G would repay his loan early) we didn't think Mr G necessarily needed the flexibility of a monthly-premium policy.

With the close proximity of the two policies, nothing major had changed in Mr G's life between each loan. The bank had already said that they thought Mr G would have wanted PPI on the second loan – but they thought that a different type of policy would have been more suitable.

Having already assessed that Mr G had, more likely than not, agreed to take out PPI, we thought that he would have been likely to take out a second PPI policy. And in our view, as long as it was more flexible, this policy wouldn't have been unsuitable for him.

We thought that the bank's offer was fair in the circumstances. So we didn't uphold the complaint and let Mr G decide whether or not to accept the bank's offer.

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## case study 118/12

### consumer complains that he wasn't properly advised before taking out a PPI policy

Mr M was buying a new car, mainly for his wife to use – as he was in the armed forces and would be away for long periods of time. He went to the local branch of his bank and applied for a loan to cover the cost of the car.

Because of the risks of his job, Mr M wanted to make sure that if anything happened to him, his wife would be protected. So while applying for the loan he spoke to the adviser about forms of financial protection. The bank advised Mr M to take out a PPI policy.

## *... the adviser used words like “safety”, “security” and “protection” rather than explicitly defining the cover*

A few years later Mr M was chatting with a colleague who had recently been injured. His colleague said that since his injury, he had been receiving financial support from their employer. This reminded Mr M of his PPI policy.

Mr M contacted the bank to see what protection he had. When they told him what his cover was for, he realised that his employer covered practically all the eventualities that the PPI policy did.

He was very disappointed, and felt that the adviser should have been more direct when explaining the ins and outs of the policy he had taken out. He felt he'd been misled, so he complained.

When they looked into the case, the bank pointed to the adviser's notes recording that Mr M *“was very interested in protecting his payments”*. The bank accepted that the policy Mr M took out included cover he already had through his employer. But they argued that, if he had received better information, he would have gone ahead with buying a cheaper policy with a reduced level of cover. In the circumstances, they offered to pay Mr M the difference between the cost of the two policies.

Mr M didn't think this was right – so approached us and asked us to look into it.

### **complaint upheld**

Both Mr M and the bank agreed that Mr M was advised to take out the policy. Because of this we needed to make sure the bank took reasonable steps to ensure the policy was suitable for Mr M's needs.

Mr M had relied heavily on what the adviser had told him rather than on any supporting documentation.

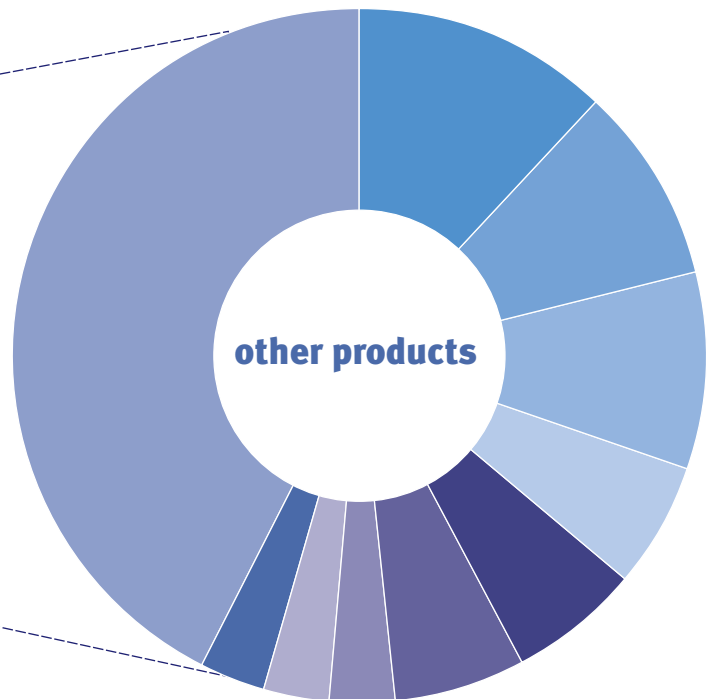
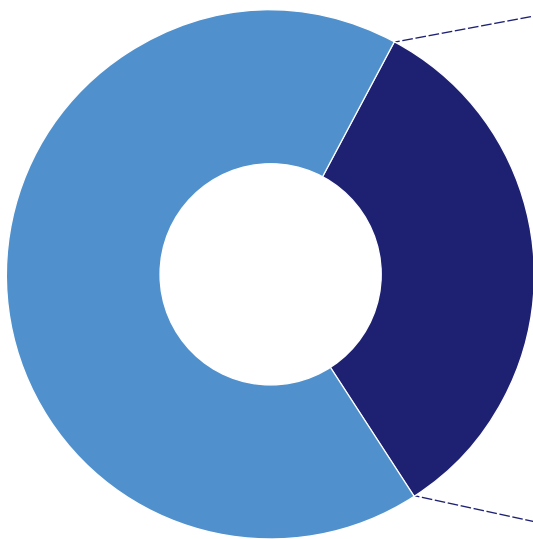
Mr M told us that the adviser spoke very generally about the policy, frequently using words like “safety”, “security” and “protection” rather than explicitly defining the cover.

Mr M had a stable job, with very good insurance cover and benefits. These facts – along with the limitations of the PPI cover – didn't seem to have been taken into account before the adviser recommended the policy.

So we took the view that there had been some failings in the way the policy had been sold to Mr M. We decided that if Mr M had been made fully aware that the policy offered very little over and above his existing cover, he would have decided against the policy.

We didn't agree with the bank that Mr M would have taken out a different type of policy – which still wouldn't have provided much more protection than the cover his employer already offered. So we didn't agree with the bank that alternative redress was a fair outcome to this complaint – and we told them to pay Mr M compensation in line with our standard approach to mis-sold PPI cases.

the financial products involved in complaints to the ombudsman service in April, May and June 2014



● payment protection insurance (PPI) 67%

● complaints about other products 33%

● current accounts 4%

● house mortgages 3%

● packaged bank accounts 3%

● credit card accounts 2%

● car and motorcycle insurance 2%

● overdrafts and loans 2%

● buildings insurance 1%

● mortgage endowments 1%

● term assurance 1%

● complaints about other products 14%

\* Complaints involving packaged bank accounts, card protection insurance, secured loans, cash ISAs and conditional sale were not shown as separate products in previous years.

PPI

current accounts

house mortgages

packaged bank accounts

credit card accounts

car and motorcycle insurance

overdrafts and loans

buildings insurance

# ombudsman focus: first quarter statistics

Every six months, we publish complaints data about named individual businesses on our website. This shows the number of new complaints – and the proportion of complaints we upheld in favour of consumers – for the 200 or so businesses that have each had 30 or more new cases and 30 or more resolved cases in each six-month period.

We also publish updates on our complaints data each quarter in *ombudsman news* – and in this issue, we focus on the first quarter of the financial year 2014/2015. During April, May and June 2014:

- ◆ Consumers referred 85,184 new complaints to us. Although this is fewer than we received in the same period last year (159,197), complaint numbers remain significant – and are 50% higher than in 2012.
- ◆ Two-thirds (67%) of all new complaints were about payment protection insurance (PPI) – and we continue to receive up to 5,000 new PPI complaints each week.
- ◆ The proportion of complaints we upheld in consumers' favour ranged from 2% (for complaints about SERPs) to 80% (for complaints about card protection insurance).
- ◆ Overall, we found in the consumer's favour in around half of all cases during the 13 weeks from 1 April 2014.

number of new cases			
Q1 (Apr to Jun) 2014/15	full year 2013/14	full year 2012/13	full year 2011/12
56,869	399,939	378,699	157,716
3,552	13,676	18,868	14,057
3,007	12,598	11,915	9,530
2,853	5,668	1,629	*
2,166	10,120	19,399	18,977
1,844	7,190	7,785	7,264
1,486	6,306	7,791	6,239
1,211	4,095	4,611	4,556

% resolved in favour of consumer			
Q1 (Apr to Jun) 2014/15	full year 2013/14	full year 2012/13	full year 2011/12
61%	65%	65%	82%
35%	33%	33%	31%
32%	29%	26%	28%
51%	77%	*	*
33%	30%	33%	54%
32%	38%	46%	49%
40%	35%	34%	37%
38%	44%	48%	50%



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

mortgage endowments
term assurance
travel insurance
hire purchase
deposit and savings accounts
whole-of-life policies
card protection insurance
home emergency cover
“point of sale” loans
personal pensions
portfolio management
contents insurance
income protection
inter-bank transfers
secured loans
self-invested personal pensions (SIPPs)
debt collecting
debit and cash cards
investment ISAs
private medical and dental insurance
warranties
cash ISA – individual savings account
payday loans
annuities
catalogue shopping
critical illness insurance
credit broking
share dealings
pet and livestock insurance
legal expenses insurance

number of new cases				% resolved in favour of consumer			
Q1 (Apr to Jun) 2014/15	full year 2013/14	full year 2012/13	full year 2011/12	Q1 (Apr to Jun) 2014/15	full year 2013/14	full year 2012/13	full year 2011/12
705	3,573	4,657	3,267	23%	28%	25%	28%
679	3,426	3,572	1,432	18%	19%	12%	23%
498	2,247	2,715	2,400	41%	53%	49%	52%
450	1,511	1,621	1,545	39%	42%	43%	43%
440	2,515	4,512	3,734	37%	41%	42%	44%
431	1,808	2,239	1,828	23%	21%	23%	31%
381	1,118	*	*	80%	77%	*	*
358	1,387	1,284	1,473	31%	49%	61%	69%
352	1,418	1,939	2,247	41%	38%	43%	45%
339	1,320	1,808	1,496	24%	31%	32%	35%
330	1,166	1,449	1,152	56%	61%	54%	63%
322	1,771	2,027	2,089	29%	39%	40%	51%
299	1,421	1,461	950	34%	30%	30%	41%
263	952	1,036	688	46%	36%	41%	42%
241	1,053	925	*	39%	32%	21%	*
241	969	620	498	53%	63%	61%	61%
234	557	817	576	34%	39%	44%	38%
225	1,177	1,285	836	39%	41%	45%	40%
207	929	1,528	904	44%	43%	30%	51%
197	988	949	513	42%	40%	38%	46%
197	754	903	881	41%	48%	62%	63%
196	842	*	*	44%	45%	*	*
189	794	542	296	62%	63%	71%	81%
189	601	624	511	19%	32%	29%	35%
184	792	950	695	57%	56%	58%	60%
182	906	1,370	817	24%	26%	21%	31%
170	649	711	627	68%	56%	64%	67%
168	694	609	549	24%	36%	42%	50%
163	720	830	554	36%	31%	52%	40%
162	691	882	779	34%	42%	37%	26%



commercial property insurance

endowment savings plans

cheques and drafts

unit-linked investment bonds

state earnings-related pension (SERPs)

roadside assistance

commercial vehicle insurance

electronic money

mobile phone insurance

specialist insurance

store cards

direct debits and standing orders

debt adjusting

occupational pension transfers and opt-outs

personal accident insurance

hiring/leasing/renting

merchant acquiring

guaranteed bonds

building warranties

“with-profits” bonds

guaranteed asset protection (“gap” insurance)

business protection insurance

income drawdowns

OEICs (open-ended investment companies)

FSAVC – free standing additional voluntary contributions

(non-regulated) guaranteed bonds

derivatives

conditional sale

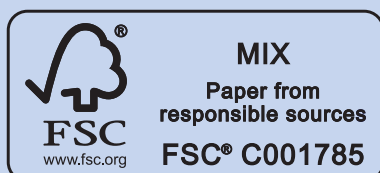


number of new cases				% resolved in favour of consumer			
Q1 (Apr to Jun) 2014/15	full year 2013/14	full year 2012/13	full year 2011/12	Q1 (Apr to Jun) 2014/15	full year 2013/14	full year 2012/13	full year 2011/12
162	740	720	629	40%	43%	41%	34%
144	655	973	875	14%	19%	21%	33%
144	569	686	670	47%	45%	45%	46%
136	791	1,030	856	50%	46%	46%	64%
132	527	476	294	2%	2%	2%	2%
131	668	490	364	39%	43%	42%	48%
127	561	599	436	35%	41%	43%	38%
125	435	400	403	45%	32%	29%	33%
125	551	615	599	52%	69%	71%	63%
124	406	825	791	52%	59%	66%	53%
122	466	650	476	28%	45%	51%	67%
115	534	651	538	46%	41%	45%	47%
114	530	484	462	61%	74%	69%	63%
98	428	399	331	47%	44%	51%	43%
88	477	495	322	31%	31%	39%	47%
85	291	304	240	25%	35%	38%	46%
79	352	235	206	19%	19%	23%	21%
75	419	580	352	14%	22%	28%	35%
74	384	206	129	39%	64%	39%	38%
64	304	675	542	38%	30%	20%	26%
62	247	309	213	16%	25%	28%	44%
56	274	261	160	36%	38%	44%	27%
52	169	189	94	35%	49%	49%	63%
44	219	370	141	42%	32%	47%	47%
44	172	95	76	35%	38%	48%	36%
43	122	336	484	42%	34%	40%	46%
43	81	57	72	27%	25%	23%	39%
39	225	86	*	46%	44%	43%	*



film partnerships
home credit
credit reference agency
spread betting
unit trusts
safe custody
debt counselling
foreign currency
sub total
other products and services
<b>total</b>

number of new cases				% resolved in favour of consumer			
Q1 (Apr to Jun) 2014/15	full year 2013/14	full year 2012/13	full year 2011/12	Q1 (Apr to Jun) 2014/15	full year 2013/14	full year 2012/13	full year 2011/12
<b>35</b>	201	84	**	<b>13%</b>	18%	**	**
**	138	98	41	**	33%	31%	47%
**	131	109	69	**	39%	41%	37%
**	126	148	165	**	49%	40%	23%
**	109	165	138	**	34%	40%	52%
**	105	120	70	**	57%	50%	52%
**	95	126	124	**	54%	56%	57%
**	94	113	74	**	31%	32%	25%
<b>84,711</b>	510,603	508,721	263,112	<b>55%</b>	58%	49%	64%
<b>473</b>	1,564	1,789	1,262	<b>41%</b>	41%	48%	48%
<b>85,184</b>	<b>512,167</b>	<b>508,881</b>	<b>264,374</b>	<b>55%</b>	<b>58%</b>	<b>49%</b>	<b>64%</b>



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# Q? &A

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

## question

**You mentioned that you uphold fewer complaints about mortgage payment protection insurance (MPPI) than about other types of PPI. I'm a claims manager, and my client wants to complain about being mis-sold MPPI. I think she's got a really good case – but how can I convince the adjudicator?**

## answer

First, take a look at our website. Our online PPI resource has a lot of guidance about how we investigate whether PPI and MPPI were mis-sold – including the factors we'll consider and the evidence we'll be looking for. Knowing what information we need to decide a MPPI complaint should help you clearly set out your client's case.

Of course, you'll need to make the case to the business involved before we can step in. Hopefully, given the opportunity,

the business will give a satisfactory response to your client's particular concerns. If not, it's important to think hard about your client's chance of success if you take things further. If you do think we'll see things differently to the business, then get in touch with us – making sure the complaint form and PPI questionnaire are fully completed, with as much input from your client as possible. Making general points and using information that isn't relevant to the case will waste everyone's time.

The more specifically you set out your client's concerns, the quicker we can get to the heart of what happened and sort things out fairly.

Finally, we're working hard to reduce the time it takes us to give people an answer about their PPI complaints. So please be patient – and we'll contact you as soon as we have news. Bear in mind that time spent dealing with regular update calls is time the adjudicator could be spending moving things forward.

## question

**I work in a consumer advice agency, and I'm trying to help someone who was sold MPPI back in 1999. He first had doubts about whether the policy was right for him in 2008. But it was only when a claims manager contacted him last month that he decided to complain. The broker who sold the policy says the complaint is outside your time limits. Is this right? Shouldn't the broker pay out?**

## answer

If we upheld the complaint, we might tell the broker to refund the premiums. But it isn't clear from what you've said that the broker did anything wrong. We would need to know more about why the consumer thinks the policy isn't suitable – as well as how it was sold. Only then could we make our decision.

Our time limits are set out in the Financial Conduct Authority's complaints-handling ("DISP") rules.

A business can object to our looking at a complaint if it reaches us more than six years after the event the consumer is complaining about – or, if it's been longer than that, more than three years after the consumer first knew (or could reasonably have known) that they had cause to complain.

In this case, it sounds like the broker could be right. The event the consumer is complaining about (the sale of the MPPI) happened

more than six years ago – and it sounds like the consumer became aware of the problem more than three years ago. But in exceptional circumstances, we might say our normal time limits don't apply – and that's a decision for us, not the business, to make. If you want to talk things through, give our technical advice desk a call.



Financial  
Ombudsman  
Service