

ombudsman news

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

in this issue

consumers in vulnerable
circumstances
page 3

ombudsman focus:
**our work with
consumer advisers**
page 19

Q&A **page 24**

listening and learning

We can learn a lot about financial businesses and their customers – how they're thinking and acting – from the complaints that are referred to us. But I think there's as much insight to be gained from the conversations we have outside any official complaints-handling process.

One way these conversations happen is through our technical advice desk – our expert team offering practical guidance to businesses, consumer advisers and others who resolve complaints day to day.

When I last visited the team, they'd just answered a call from the manager of a small car dealership, who'd received a complaint from a customer who'd been sold an insurance policy with their car.

The manager had never had a customer complain before – and he wasn't even sure if his dealership was responsible for what had happened. It was by searching online for help with dealing with complaints that he came across our website – and the number for our technical advice desk.

After talking things through – and explaining why we couldn't give a definite answer without hearing both sides – we were able to give the manager a clear steer on how to go about looking into what had happened. And we later heard he'd been able to settle things informally with his customer.

So what can we take from interactions like this? Well, each year, around 95% of the businesses we cover don't pay any case fees at all – because so few, if any, of their customers refer complaints to us.




Financial
**Ombudsman
Service**



follow us

 @financialombuds  Financial Ombudsman Service

 financial-ombudsman.org.uk

subscribe ombudsman.news@financial-ombudsman.org.uk

meet us

in September we're in:

- ◆ **Aberdeen**
- ◆ **Poole**

for more events see page 23



scan for
previous issues



Caroline Wayman

► For some of these businesses, that's because they're dealing with complaints effectively. But others, like the car dealership, simply may not receive many – if any at all. While that's obviously encouraging, it also means that receiving a complaint may be extremely stressful for the business involved – not to mention the “unknown” of having the ombudsman step in.

So our early contact with businesses – whether we're answering specific questions or offering general reassurance – is essential in helping us see the bigger picture of complaints. Fundamentally, we can learn how businesses – and not only their customers – are articulating problems, acting on them and feeling about them.

And if we know where businesses' questions and concerns lie, we can understand how best we can support them to resolve complaints at the earliest possible stage. Our technical advice desk is just one part of this support – and each year we talk face to face with hundreds of smaller businesses where they live and work.

The same goes for our conversations with consumer advisers and front-line organisations – which we highlight in this month's ombudsman focus. We know that the problems being raised and tackled at community level don't always reach us. Many are sorted out without us – but some may be left unresolved. By talking to the people who others turn to for guidance, we can better understand what's going wrong – and how we can work together to stop it happening again.

I'm convinced that these ongoing conversations are as vital to encouraging fairness as any decision we make. And I hope people at the front line of complaints – whether they're in an office or in a community advice centre – are reassured that we're here to listen.

Caroline

... we know that the problems being raised and tackled at community level don't always reach us

Financial Ombudsman Service
Exchange Tower
London E14 9SR
switchboard 020 7964 1000

consumer helpline
Monday to Friday 8am to 8pm and
Saturday 9am to 1pm
0800 023 4 567

technical advice desk
020 7964 1400
Monday to Friday 8am to 6pm

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

ombudsman news is not a definitive statement of the law, our approach or our procedure. It gives general information on the position at the date of publication. The illustrative case studies are based broadly on real life cases, but are not precedents. We decide individual cases on their own facts.

consumers in vulnerable circumstances

There isn't a typical "vulnerable" person – and people who others see as "vulnerable" might not view themselves in that way.

However, factors like age, physical or mental health, caring responsibilities, and life-changing events such as redundancy, relationship breakdown or bereavement could mean someone is put in a vulnerable position. And as a result, they could need extra care and support from the businesses and services they use.

It's clearly important that financial businesses bear this in mind when they're dealing with their customers day to day. Earlier this year the Financial Conduct Authority (FCA) highlighted the different ways consumers might be (or become) vulnerable. The FCA also talked about how to put in place strategies around customer vulnerability – with examples of good practice.

At the ombudsman, we see situations where something's already gone wrong. Realising there's a problem – and trying to get it put right – can be stressful at the best of times. But if the trouble has resulted from, or coincides with, already challenging circumstances, it may have a significant impact.

In the most extreme cases we see, people have been left without access to essential money, threatened with losing their homes or put at risk of even greater difficulties or vulnerability.

When a complaint reaches us, we'll consider how the business involved has responded to their customer's individual needs and circumstances.

Unfortunately, we often find situations have escalated (or deteriorated) because the business involved has rigidly applied rules and procedures – or hasn't realised the extent of their customer's vulnerability. Where a vulnerable customer has proactively approached a business for help, this can be particularly upsetting.

On the other hand, we see examples of excellent customer service – where a business has listened to their customer and acted sensitively and pragmatically, even if, on paper, they're not "upholding" the complaint.

The following case studies illustrate the types of situations we're called into where the consumers involved could be described as vulnerable. Understandably, these sorts of complaints may involve compensation to recognise the wider, non-financial impact of a business's error. We publish our approach to this, with examples, on our website.



Financial
Ombudsman
Service

*... if the insurer had done more to help,
we thought it was unlikely that Mr A would
have ended up on the streets*

case study
127/1

**consumer complains
that insurer declined
claim on grounds that
psychotic episode is
linked to depression**

Mr A was on holiday in Spain when he had a psychotic episode and was taken to hospital.

When he was able to, Mr A contacted his travel insurer to explain what had happened. The hospital doctor sent a statement to the insurer saying that, in her view, two recent events had contributed to Mr A's episode – his mother's death and his divorce.

However, the insurer said that Mr A's GP had told them that Mr A had a history of depression. The insurer believed that Mr A's psychotic episode was linked to his depression. And because his policy didn't cover conditions that he had before taking it out, they refused to pay his claim.

When Mr A found this out, he discharged himself from hospital. He slept overnight on the streets before his sister came out to Spain and brought him back to the UK.

Once he was back home, Mr A's sister helped him to complain to his insurer. She arranged for the GP to write to the insurer to explain that he felt the psychotic episode was a new development that Mr A hadn't experienced in the past.

Mr A's sister also pointed out that the hospital doctor hadn't mentioned depression when diagnosing Mr A's psychosis.

When the insurer maintained the two conditions were linked – and refused to pay the claim – we were asked to step in.

complaint upheld

We established that Mr A had been admitted to a private hospital on the advice of his holiday rep. The insurer said that if Mr A's problem hadn't been pre-existing, they would have been willing to cover his private fees until they could arrange for him to be moved to a public hospital.

Looking at the records the insurer had sent us, it seemed they'd been in touch with Mr A's family and the hospital doctor from the day after his admission. The insurer had been told by the hospital that if Mr A's fees weren't going to be paid, he would be discharged.

While Mr A had gone on to discharge himself, we couldn't see any evidence that the insurer had tried to discuss Mr A's options – either with the private hospital, with him or his family.

The insurer told us that they recognised Mr A was in a vulnerable position – but believed the hospital was at fault because they'd let him leave. The insurer said that after Mr A had discharged himself, it was unlikely they could have helped him anyway.

We recognised that it wasn't the insurer's fault that Mr A had become unwell and vulnerable in the first place. But in our view, Mr A could have reasonably expected them to offer assistance – for example, arranging to transfer him to a public hospital – even if they weren't going to pay his fees.

If the insurer had done more to help, we thought it was unlikely that Mr A would have ended up on the streets – in an even more vulnerable position.

We then turned to the evidence we had about whether Mr A's psychotic episode was linked to his depression.

Looking at the insurer's internal notes about Mr A's claim, we saw that their medical team had commented that depression and psychosis are “completely different”. But depression could cause psychosis – in which case, the patient would have “depression with psychosis”.

The insurer told us that their chief medical officer thought it was “extremely implausible” that Mr A's psychotic episode wasn't linked to his depression.

However, the hospital doctor hadn't diagnosed Mr A with “depression with psychosis”. She'd been very clear in her view that Mr A had “psychosis”, caused by the life-changing events he was going through. And the GP – who had known Mr A and monitored his health for a number of years – had confirmed that Mr A had never had a psychotic episode before.

We told the insurer that it was for them to show that the exclusion for depression applied to Mr A's claim – not for him to prove that it didn't. Given the evidence we'd seen, we decided that the insurer hadn't shown Mr A's psychotic episode had been caused by his depression. So we told them to pay the cost of his treatment, adding interest.

It was clear the unpaid claim had a far bigger impact on Mr A than simply not being able to pay for his treatment. So we also told the insurer to pay him £1,000 – to make up for the fact that their poor service when turning down his claim had left him in an even more vulnerable position.

case study 127/2

consumer complains that bank held her liable for credit card taken out during abusive relationship

Miss K, who had learning difficulties, had lived alone for several years with support from her mother. Miss K then began a relationship with Mr I, who moved in with her.

Unfortunately, Mr I became abusive and the relationship broke down. When Mr I had moved out, Miss K's mother noticed letters from a debt collection company relating to a credit card in Miss K's name – which her mother hadn't known Miss K had.

When Miss K's mother asked her, Miss K said that Mr I had made her open a number of accounts in her name – but that she hadn't known what they related to.

Miss K's mother contacted the credit card provider – a bank – to explain what had happened. She explained that Miss K's learning difficulties meant she wasn't able to make financial decisions alone – and hadn't wanted to take out the credit card.

But the bank refused to write off or reduce the debts, arguing that Miss K had understood what she'd been doing. Although Miss K's mother complained, the bank wouldn't change their position – so she asked us to look at her daughter's complaint.

complaint upheld

Miss K had clearly been through a very difficult time. While the bank couldn't have prevented that, we needed to decide if they'd responded fairly and reasonably to Miss K and her mother's concerns.

The bank told us that Miss K had phoned them to activate the credit card – and in their view, hadn't seemed "particularly stressed". They also said that Miss K had a number of other financial accounts, which it appeared she was managing well.

*Miss K's learning difficulties meant she
wasn't able to make financial decisions alone*



So they didn't believe Miss K had been under pressure to take out the card – and felt she understood she was responsible for the spending on it.

We asked Miss K's mother to talk through her daughter's circumstances. She sent us specialist evidence about Miss K's learning difficulties – which indicated that she had severe difficulties understanding and dealing with information, particularly numbers.

Miss K's mother explained that she'd always helped her daughter with her money – and with living independently in general. For some accounts and services, there was a formal authority in place – while for others the arrangement was more informal. But that was how Miss K had so far kept on top of her finances.

Miss K's mother was very upset at the suggestion that Miss K had authorised the transactions on the card. She told us that Mr I had frequently threatened Miss K – hurting her and damaging her property on a number of occasions, which had been reported to the police.

When we asked the bank what they knew about this, they said that Miss K's mother hadn't given them any evidence about Miss K's situation. They said that if she had, then they would probably have reached a different conclusion.

Looking at the bank's file, however, we saw that Miss K's mother had offered to provide information about Miss K's learning difficulties and personal circumstances. She'd been told by the bank that this wouldn't be necessary – as nothing would change their decision that Miss K needed to pay the credit card bill.

Following our involvement, the bank agreed to write off the debt and to close the account. We also told them to make sure that Miss K's credit file wouldn't be affected.

case study 127/3

consumer complains after insurer rejected his burglary claim because house was unoccupied while he was in hospital

Mr L was admitted to hospital after breaking his ankle. Because he had a degenerative condition, he remained in hospital for longer than usual – nearly two months in all – to recover.

Unfortunately, during this time Mr L's house was broken into. When he contacted his insurer to claim for the items that had been stolen, they told him that they wouldn't pay the claim because his house had been unoccupied for more than 30 days – which was excluded under the terms of his policy.

Mr L complained about the insurer's decision. He accepted that he hadn't technically been "occupying" his house. But he pointed out that he'd been in hospital the whole time – and had arranged for his son to visit the house several times while he couldn't be there himself.

... going by a strict interpretation of the terms of the policy, there was no question that his house had been unoccupied

When the insurer maintained that they wouldn't pay out, Mr L asked us to look into his complaint.

complaint upheld

Mr L explained that his admission to hospital had been completely unplanned. The hospital had told him that his recovery would take longer than someone without his degenerative condition.

And since he lived alone, the hospital needed to make sure he would be able to manage independently after he was discharged – but hadn't known how long that would be.

On the other hand, the insurer told us that it was reasonable to expect Mr L to have contacted them about his hospitalisation. They said that if he had done, they could have restricted or cancelled his cover.

Mr L's policy defined "unoccupied" as "not being slept in by the policyholder, their family or another authorised person for more than 30 days". Going by a strict interpretation of the terms of the policy, there was no question that his house had been unoccupied – meaning his claim for the stolen items wasn't covered.

However, we explained to the insurer that we'd need to look into Mr L's individual circumstances to decide whether their answer was fair.

Looking at what had happened to Mr L, he'd broken his ankle away from home and had been taken to hospital as an emergency. So he hadn't deliberately left his home unoccupied – or, in our view, acted carelessly in doing so.

He'd also arranged for his son to visit his house several times – which we thought showed he'd taken reasonable steps to protect his home, while at the same time dealing with his hospitalisation.

In the circumstances, we told the insurer that it was unfair for them to apply the exclusion – and told them to pay the claim in line with the remaining terms and conditions of the policy.

case study 127/4

consumer complains that bank transfers should have been blocked because of his dementia

Mr B received a series of calls asking him to transfer money to a charity fund in return for a share of a prize. Following these calls, he made two trips to his bank to transfer money by CHAPS – over £20,000 in total.

But the calls were part of a scam. And when Mr B's niece found out what had happened, she complained to the bank. She said Mr B had dementia – and because he was vulnerable, the bank shouldn't have allowed him to make the transfers.

The bank said that they were sorry Mr B had been a victim of fraud. But they said they'd done everything they could to warn him about transferring the money – and they'd had no choice but to carry out his request.

Mr B's niece felt the bank should be held responsible for the money Mr B had lost – so she asked us to look into the complaint.



complaint not upheld

We asked the bank to show us what they'd done to explain to Mr B that they suspected he was the victim of fraud – providing any evidence they had to show what had happened when he visited the branch.

The bank sent us notes from the branch visits and a statement from the cashier who'd met with Mr B – which said she'd discussed the transfer with Mr B and “expressed concern”.

According to the statement, the adviser had tried to phone the number that had called Mr B. When she couldn't get through, the adviser had told Mr B she suspected the calls and charity fund were fraudulent. But Mr B had apparently insisted at this point that he still wanted to make the transfer.

The records showed that the adviser had then talked to the bank's fraud advice team and a manager. The adviser had also written a letter for Mr B to sign before he transferred his money – agreeing that he was happy to make the transfer despite the bank's concerns. Mr B had signed a similar letter both times he had visited the bank to transfer money.

The bank hadn't known about Mr B's dementia. It didn't seem that he'd come across as confused or distressed – so we didn't think the bank staff could have been expected to realise he was vulnerable, as his niece had said.

We also considered the bank's wider duty of care towards Mr B – taking into account industry good practice guidelines. These suggest that businesses can – among other things – ask a customer why they want to make a transaction, or ask them to speak to a manager, if they're transferring a large or suspicious amount of money.

We explained to Mr B and his niece that banks have a responsibility to act on their customers' instructions. From what we'd seen, Mr B had given clear instructions that he wanted to make the transfers.

And since the bank had discussed the situation with him and made their concerns known, we felt they had done what they could to protect Mr B and his money.

While we were very sorry to hear what Mr B had been through, we didn't uphold his complaint about the bank.

... the adviser had tried to phone the number that had called Mr B. When she couldn't get through, the adviser had told Mr B she suspected the calls and charity fund were fraudulent

... the US hospital's records also indicated that he'd been very confused about why he'd been admitted

case study 127/5

consumer complains that travel insurer declined medical expenses claim because of non-disclosure of pre-existing problems

Halfway through his holiday in the USA, Mr S fell ill and underwent surgery for cancer.

When Mr S returned home he contacted his travel insurer to make a claim for his medical expenses. But the insurer told Mr S that they'd have to turn down the claim because he hadn't told them about his "pre-existing" health problems. They said that if he had told them, they wouldn't have offered cover in the first place.

Mr S told the insurer he hadn't known he had cancer before he went on holiday. He also said that he'd checked with his GP who had told him that he was healthy enough to go on holiday before he'd booked his flights or taken out the policy.

When the insurer wouldn't change their position, Mr S asked for our help.

complaint upheld

We needed to establish what questions the insurer had asked Mr S when he'd taken out the policy – and how Mr S had answered them.

The insurer sent us the call recording from when Mr S had taken out the policy. Mr S had been asked whether he'd been prescribed medication or attended a GP's surgery in the last two years – and whether he'd been treated or diagnosed with any cancerous, respiratory, heart or circulatory conditions.

Mr S had told the insurer he'd been to the doctor's for "little things" and "a nasty cold". The insurer had then asked "So nothing major?" – and Mr S had answered "no".

In light of what we'd heard, we reviewed the information we'd received from Mr S's GP. We could see that Mr S had been to the doctor's several times before his trip – and had had a scan to investigate some bowel problems he'd reported.

According to the records, Mr S had been "assured" that the scan had ruled out cancer. On a different occasion, he'd been told by his GP that he was fit to travel.

Mr S's medical records also showed that he had recently been diagnosed with dementia and had moved into a residential home because his memory loss meant he could no longer live independently. He'd recently been prescribed warfarin – which, according to the GP's notes, he'd been told was "nothing to worry about".

However, it appeared that Mr S's dementia had been causing him problems with taking the right dose of his medication. The US hospital's records also indicated that he'd been very confused about why he'd been admitted.

Given the evidence we'd seen about Mr S's dementia and confusion, we didn't think he'd deliberately or carelessly withheld information from the insurer. In our view, when

taking out the policy, Mr S had answered the questions to the best of his knowledge – particularly since he'd been reassured by his GP that there was no cause for concern.

We also thought the insurer had had the opportunity to ask Mr S further questions about the reasons he'd visited the GP. If they had done, they might have got a more accurate picture of his health.

In the circumstances, we told the insurer to deal with Mr S's claim, adding interest.

... the bank said that they now believed Mr C had “knowingly and actively” taken part in the scam

case study 127/6

consumer complains that bank accused him of involvement in fraud – and placed Cifas marker on his records

Mr C, a teenager, had his debit card swallowed by a cash machine. When his father called the bank on his behalf, he was told Mr C’s account had been closed because they suspected that it had been involved in a scam.

According to the bank, thousands of pounds of fraudsters’ money had apparently been paid into the account over the last six months.

Mr C then told his father that he’d been bullied by a fellow student at school, who’d forced him to hand over his card and PIN. Mr C believed the student had passed these details to fraudsters, who’d then used his account to run a scam.

When Mr C’s father explained the situation to the bank, they agreed to sort out Mr C’s account so the scam wouldn’t affect his records.

A year later Mr C tried to open a student account with a different bank – but his application was refused. The bank involved wouldn’t give a reason – but suggested that Mr C should ask the first bank if there was “Cifas data” held against him.

Mr C and his father contacted the original bank and established that following the scam, a Cifas fraud marker had been recorded against Mr C. They complained, pointing out that the bank had promised to remove any adverse information from Mr C’s records.

However, the bank said that they now believed Mr C had “knowingly and actively” taken part in the scam – and refused to remove the Cifas marker.

Unhappy with the bank’s response – and worried about the impact on his son’s finances in the future – Mr C’s father asked us to step in.

complaint upheld

We asked the bank why they hadn’t removed the marker a year on. They told us they’d reviewed what had happened and believed Mr C had “willingly” given over his details to the fraudsters.

When we asked Mr C and his father for information about the scam, they sent us a letter from the head teacher. According to this, the head teacher had seen texts sent to Mr C threatening to harm his family if he didn’t cooperate in handing over his details. This bullying had also involved Mr C being followed by a car and sent abusive messages on social media.

The head teacher confirmed that the matter was being handled by the police and that Mr C had been offered support as a victim of this crime. At no stage had Mr C ever been considered a willing participant in what had happened.

In light of this, it was clear to us that Mr C had been threatened into giving out his financial details – and hadn’t been knowingly or actively involved in the fraud. We took the view that the bank would probably also have reached this conclusion if they’d looked more carefully into Mr C’s individual situation.

We told the bank to ensure that the Cifas marker was removed from Mr C’s records – and they offered to pay £150 for the upset and inconvenience they’d caused, which Mr C accepted.

... we agreed with Miss J that the bank hadn't fully recognised the impact the incident had had on her

case study 127/7

consumer complains that bank didn't offer enough compensation for sending statements to ex-partner

Miss J had been living in a women's refuge after leaving her abusive ex-partner – and was under police protection.

After she moved out into her own flat, she phoned her bank to give them her new permanent address. During the call, Miss J found out that copies of her statements had just been ordered to the address where her ex-partner still lived.

When the bank said it was too late to cancel the statements, Miss J's mother visited her former home to try to recover them. Miss J's ex-partner wasn't there, but the statements had been opened.

Miss J complained, saying that her ex-partner must have requested the statements for her sole account – and that the bank didn't have authority to send them. She said she hadn't changed her address with the bank while she was in the refuge, but didn't need to because she used online banking and wasn't sent paper statements.

Miss J explained to the bank that she was extremely worried that her ex-partner could find her from the information on the statements – and had informed the police about what had happened.

Miss J made several further calls to try to establish how the statements had been sent, the bank accepted that there could have been an error – and offered Miss J £150.

At this point, Miss J asked us to step in – saying the bank didn't appreciate how serious their mistake was.

complaint upheld

After the complaint was escalated to us, the bank said they wouldn't have agreed to send statements to Miss J's ex-partner if he'd asked for them. So they said that Miss J must have ordered the statements herself.

The bank said that, in any case, Miss J's new address wasn't on the statements – so no harm could have been done.

We listened to the recordings of the calls Miss J had made to the bank. In our view, she'd been clear and consistent in explaining that she believed her ex-partner had ordered the statements – and the dangerous position she was now in.

During one call, she'd been transferred to a manager – who'd told her that the person who'd authorised the statements to be sent was “in training” and wasn't available to talk. Miss J had also been told that there was “no reason to get angry” and had been asked why she couldn't just stay in the refuge if she was worried.

Given the potentially very serious consequences, we didn't think Miss J would have ordered statements to be sent to her previous address – and decided it was more likely that the bank made an error.

We were also concerned at the way the bank had responded to Miss J's concerns. We pointed out that while Miss J's current address hadn't been on the statements, they did show where she went, what she spent her money on and where she got her money.

Miss J's ex-partner hadn't known which town she'd moved to – but it would have been quite easy for him to find out from the bank statements. On the advice of the police, Miss J had since moved to another address.

Given everything we'd seen and heard, we agreed with Miss J that the bank hadn't fully recognised the impact the incident had had on her. Regardless of whether her partner had actually traced her, the prospect of being found and harmed was clearly very distressing – not to mention the inconvenience of sorting things out and moving once again.

In the circumstances, we told the bank to increase their offer to £1,000.

... we pointed out that Mrs T wasn't disputing the fact that she owed money

case study 127/8

consumer complains after lender threatens repossession when she can't pay the capital on interest-only mortgage

Mr and Mrs T had an interest-only mortgage. They originally had an endowment policy, but surrendered it early to pay off other debts.

Towards the end of the mortgage term, Mr T wrote to the mortgage lender to say that he and Mrs T wouldn't be able to pay the capital balance yet. He asked if they could extend the term.

The lender extended the interest-only agreement for a further five years. In that time Mr T died and Mrs T continued to make the mortgage payments by applying to the DWP for help towards her interest repayments.

As the extended term came to an end, Mrs T realised she still wouldn't be able to pay off the capital balance. So she asked her daughter, Ms F, to talk to the lender on her behalf to see if she could continue paying on an interest-only basis until she died.

The lender told Ms F that new rules meant they couldn't extend the term again – and that Mrs T would need to pay the balance now. They suggested that Mrs T take out a new repayment mortgage on a new home to raise the necessary money to pay off the original mortgage.

Ms F explained to the lender that she'd been told by a financial adviser that, as her mother was over 80 and in poor health, she wouldn't be able to get another mortgage. And in any case, Mrs T didn't want to move home. Ms F asked the lender if her family could help pay off some of the balance of the mortgage. But the lender said that because the family weren't on the mortgage agreement, the lender couldn't accept money from them.

Ms F made a complaint. When the lender rejected the complaint and threatened to begin legal proceedings, she contacted us on behalf of her mother.

complaint upheld

The lender insisted that Mrs T owed them money and had to pay it back. We were concerned that they seemed to have missed the point of the complaint. We pointed out that Mrs T wasn't disputing the fact that she owed money – she was saying the lender was acting unfairly in how they were trying to recover that money.

Looking at everything that had happened, it seemed to us that Mrs T and her family had been proactive in trying to find a way to pay off the mortgage. Despite the fact that Mrs T didn't want to move home, the family had still made the effort to approach a financial adviser for a second opinion.

As well as this, Ms F had offered to pay off some of the balance on her mother's mortgage. And when the lender said she couldn't do this because she wasn't on the mortgage agreement, she also looked into "gifting" the money to her mother so that Mrs T could pay off some of the balance herself.

But she had been told that this would cause Mrs T's benefits to stop – even if she only held the money for a short time. And as Ms F wouldn't have been able to pay off the whole mortgage, Mrs T would have been left with the rest of the mortgage to pay, but no benefits to help.

We told the lender that under the regulator's rules, legal proceedings should always be the last resort – when all other reasonable attempts to resolve the position have failed. In our view, Mrs T and her family had made several reasonable attempts to pay the mortgage – which the lender had simply rejected.

The lender told us that they had to act in line with "mortgage regulations" and it wouldn't be fair to treat Mrs T differently to their other customers.

We explained that in our view, the rules didn't mean the lender couldn't use its discretion to take into account Mrs T's individual circumstances. And we didn't think it was fair to repossess the home of an elderly customer when there were other reasonable alternatives.

... Mr D insisted that he'd told the insurer about how the barn would be used

So we told the lender that Mrs T should be allowed to continue making interest-only payments – and that they shouldn't ask for the capital balance again while she still lived in the property. This meant that Mrs T could stay in her home until she died – and only then would the lender be able to recover the capital balance.

It was clear that the lender's actions had caused Mrs T a considerable amount of stress and upset. So we also told them to pay £500 compensation.

case study 127/9

consumer complains that insurer's mistake left him and his family living in fire-damaged property

Mr D and his family had recently moved to their new home on a farm. Mr D's wife had become ill and was unable to work – and the couple rented a number of farm buildings to other local businesses to supplement their income.

Soon after they moved in, a fire destroyed one of the barns and most of the contents, including machine parts stored by a neighbouring farmer. The fire also damaged parts of the family home.

Mr D made an insurance claim, but the insurer rejected it – saying the policy didn't include cover for premises used for business purposes.

Mr D questioned this with the insurer. He explained that he specifically remembered saying that he was going to be renting out the buildings when he'd taken the insurance out.

The insurer insisted that their records didn't show that business cover had been included. Mr D complained to the insurer, but they maintained he hadn't told them the barn was used for business purposes. Mr D then contacted us.

complaint upheld

Mr D told us that he and his family were living in a badly-damaged house – and he was faced with covering the repairs himself, as well as his neighbour's losses.

He explained that without the extra income from the barn, he was beginning to struggle financially.

When we checked Mr D's policy documents, it appeared that it didn't include business cover. But Mr D insisted that he'd told the insurer about how the barn would be used.

When we asked the insurer about how Mr D's policy was sold to him, they sent us screen printouts of the questions they routinely asked when setting up a policy. We could see there was a question about whether a property would be used for business purposes – and if the process had been followed, Mr D should have been asked this.



The insurer couldn't provide us with specific records from the phone call that they'd had with Mr D. They said that all the information had been recorded electronically – and was reflected in the policy documents that Mr D had been sent.

On the other hand, Mr D told us about the call in some detail. He explained that he and the insurer had discussed his new house – the fact it was a farm – and how helpful it was to be able to rent out the buildings. He also remembered talking about his wife's illness – and the insurer agreeing that renting out buildings was a good way of helping with the family's living costs.

Mr D couldn't remember being specifically asked about business use. He said that because he'd openly talked about his plans with the insurer, he'd assumed the insurer had taken them into account.

The insurer remembered having a discussion about Mr D's new home – and his wife's illness. The insurer also thought

that Mr D would also have been asked a specific question about business use. But there were no notes or other records to support this.

Mr D's account of the call was detailed and consistent. And given everything we'd seen and heard – we decided that his version of events was the more likely to have happened.

In our view, the insurer either hadn't asked a clear question about the use of the barn – or hadn't recorded Mr D's response correctly. And we didn't think it was fair for Mr D to lose out because of this.

It was clear this mistake had caused Mr D a great deal of stress at an already difficult time – leaving his children and ill wife living in a damaged home. Mr D had also taken out a loan to pay his neighbour for the damaged machinery.

In the circumstances, we told the insurer to pay Mr D's claim in line with the policy terms and conditions. And we also told them to pay £400 compensation to reflect the upset their mistake had caused – as well as covering the interest Mr D had paid on the loan.

case study 127/10

consumer complains that finance provider took car while he was in hospital

Mr E had taken out a hire purchase agreement on a car. He fell behind on his payments – and around the same time, he was admitted to hospital with mental health issues.

Mr E spent the next year in and out of hospital – and during that time, the finance provider repossessed and scrapped his car. When he was feeling better, Mr E complained to his finance provider. He accepted he'd owed them money when he was admitted to hospital – but felt that, given his personal circumstances, they shouldn't have scrapped the car.

Mr E was also very upset that he'd lost several possessions he'd had inside the car – including some of sentimental value that couldn't be replaced.

... Mrs E accepted he'd owed them money when he was admitted to hospital – but felt that, given his personal circumstances, they shouldn't have scrapped the car

However, the finance provider maintained it was their right to take the car because Mr E had defaulted on the agreement. Unhappy with this response – and upset about losing his car and his belongings – Mr E brought his complaint to us.

complaint upheld

We asked the finance provider for their records of what had happened between Mr E falling into arrears and his car being taken away.

We could see that shortly after the finance provider had first written to Mr E about his arrears, his mother had responded to say he was in hospital and unable to look after his finances at that time.

The finance provider had written back asking for formal authorisation to speak to Mr E's mother, a letter from his doctor, or a power of attorney. When they didn't receive a response, they instructed an agent to try to contact Mr E.

According to their records, it seemed that the agent couldn't trace Mr E – but had found his car. The agent had been told by neighbours that Mr E was in hospital.

Four months later the finance provider had issued a default notice to Mr E's address – including a consent form for Mr E to sign to give up his car. This time Mr E's mother had replied, enclosing a letter from the hospital confirming Mr E's situation and explaining that he couldn't manage his financial affairs.

It appeared that the finance provider had then sent a third party to collect the car. They told us that they'd done this because Mr E had paid less than a third of the total amount payable.

Having looked carefully at the records, it wasn't clear to us why the finance provider had acted as they had. For a start, Mr E's mother had told them that Mr E couldn't take care of his own finances – and that he was in hospital. But the finance provider had continued to send arrears notices to Mr E's address – even though they knew he wasn't there and the reason why.

We also noticed that when Mr E had bought the car, he'd paid an initial deposit of around half the total cost of the agreement – which represented a significant amount of the original lending. Given this – and looking at good industry practice and Mr E's circumstances – we didn't think it was fair that the finance provider had gone ahead and repossessed the car.

The finance provider told us that since Mr E's initial complaint, they'd written off the money he still owed. They also said they'd removed the default from his credit record, so he "wouldn't be disadvantaged" in the future.

We were encouraged that the finance provider recognised that they hadn't treated Mr E fairly. But we didn't agree that they'd fully made up for what had happened.

They'd taken the car without considering Mr E's individual situation – destroying his belongings in the process. They'd also failed to respond to his change in circumstances – for example, they hadn't tried to communicate with him differently while he was in hospital. And they'd continued to demand money from Mr E – rigidly following "process" instead of taking into account the difficult time he was going through.

In the circumstances, we told the finance provider to pay Mr E £750 for the upset their errors had caused. And after establishing the value of the items that had been in the car, we also told them to pay Mr E £150 to make up for the personal items he'd lost.

... she contacted us – explaining she'd been to her doctor's with stress caused by the situation she was caught up in

case study 127/11

consumer complains that poor handling of her insurance claim left her without a kitchen for a year

Ms O's home was flooded after a serious storm and heavy rainfall. Most of the ground floor was badly damaged – particularly the kitchen. So she made a claim on her home insurance policy.

Ms O's insurer visited her home, agreed the necessary repairs and arranged for a contractor to do the work. They also sorted alternative accommodation for Ms O and her six-year-old daughter while the work was being done.

A few weeks later Ms O was allowed back home. At first it seemed most of the damage had been repaired – but a few days later she noticed problems. The kitchen wall units weren't secure, the flooring wasn't level and there was still a strong smell of damp.

Unhappy with the contractors' work, Ms O contacted a local firm of builders who she'd used before. They believed the damp smell was coming from plasterboard damaged in the flood – which the contractors hadn't removed. They also found a leaking pipe, which they said was contributing to the problems.

The builders suggested that Ms O install air vents to try to get rid of the damp smell – but they refused to do any more work on the kitchen because they felt the contractors' workmanship was so poor.

Ms O then spoke to another builder who told her that the wrong type of plaster had been used for the repairs – and this had made the damp worse.

Ms O complained to her insurer, pointing out what both firms of builders had said. But the insurer said they wouldn't help her any further. They said that the issues with the flooring had existed before their contractors had got involved – and felt Ms O had damaged her kitchen herself while removing the wall units to install the air vents.

They also said that the leaking pipe was down to "wear and tear", and so wasn't covered by Ms O's policy.

Ms O sent the insurer the report of a third firm of builders, who said that the use of the wrong type of plaster had made the corrosion to the pipe worse. But the insurer said they weren't responsible. They also refused to arrange any more alternative accommodation.

By this time Ms O and her daughter had been living without a working kitchen for over a year. She contacted us – explaining she'd been to her doctor's with stress caused by the situation she was caught up in.

complaint upheld

Ms O sent us photos of how her kitchen had been before the flood – and how it had been left by the insurer's contractors. It was clear to us that the repairs hadn't been completed to a satisfactory standard. There were obvious faults with how the wall units had been fitted, the floor was no longer level and there were damp patches on the walls.

Ms O also sent us reports from the three independent builders who'd inspected the work first hand.

They had all concluded that the faults were down to poor workmanship when the kitchen was installed.

When we spoke to the insurer, they continued to maintain that Ms O had damaged her kitchen herself when removing the wall units to install air vents. They also argued that the leaking pipe had corroded over time – and that Ms O was at fault for failing to keep it in good condition.

However, we didn't think the evidence supported this view. We thought it was reasonable for Ms O to try to fix the damp smell – since she hadn't known at the time that there was still damp plasterboard in her kitchen.

We also noted the views of the independent builder who'd concluded that the unsuitable plaster surrounding the damaged pipe was responsible for the corrosion. They and other independent builders had also found other areas of damp – which they'd concluded were a result of flood damage that hadn't been properly repaired.

We pointed out to the insurer that they were responsible for their contractors' actions. And given everything we'd seen, we decided they'd acted unfairly in refusing to accept responsibility for putting things right – and for not taking care of Ms O and her daughter while their kitchen was clearly not in working order.

We told the insurer to arrange for the kitchen to be refitted – and to work with Ms O to ensure all faults that had been identified were properly repaired.

Because of the insurer's poor service, Ms O and her young daughter had been left in a vulnerable position for a considerable period of time. They'd had to manage their school, work and family commitments while the kitchen remained damp and damaged. In the circumstances, we told the insurer to pay Ms O £750 to recognise the ongoing disturbance and stress she'd had to deal with.

case study 127/12

consumer complains that bank shouldn't have allowed her to withdraw savings to transfer to fraudsters

Mrs N was in her late eighties and her husband had recently died. One afternoon she received a phone call from a man saying he was a police officer calling from a fraud helpline – and that her bank was under investigation for fraud.

The police officer told Mrs N to withdraw her money from the bank and transfer it to a new account the helpline had set up for her. He also told her to avoid talking to her bank as her branch was under investigation. Following the call, to comply with the police officer's instructions, Mrs N withdrew £6,000 in cash over three separate trips to her bank – and transferred the money at a local money-transfer shop.

Only after talking with a family member did Mrs N realise she'd been a victim of fraud – and complained to her bank that they shouldn't have let her withdraw the money. However, the bank told her that they'd taken "appropriate steps to intervene" when she made the withdrawals – so weren't prepared to refund her money.

Devastated and embarrassed about the whole situation, Mrs N contacted us.

complaint upheld

We asked the bank what had happened each of the three times Mrs N asked to withdraw her money. They said that their cashiers had questioned her "quite thoroughly". But they claimed there had been no reason for the cashiers to be overly concerned, as it hadn't seemed like a "typical scam situation".

We asked the bank for a statement from the cashier who'd served Mrs N on each occasion. However, they told us they couldn't provide this – saying it would be "impossible to give an accurate recollection" of what happened.

... it certainly didn't appear that the bank had questioned Mrs B "thoroughly"

On the other hand, Mrs N was able to describe in great detail what had happened when she took her money out. She said the cashiers had asked her why was withdrawing so much money. She said that, each time, she'd told them it was for personal use – and hadn't been asked any more questions.

We pointed out to the bank that good practice guidance says when an older or vulnerable customer wants to make an unusual cash withdrawal, the business should ask why it's needed. The business should also discourage large cash withdrawals – and if possible take the customer to a private area to discuss this.

While the bank had asked Mrs N why she was making the withdrawals, it certainly didn't appear that the bank had questioned Mrs B "thoroughly". And there wasn't any evidence that they'd warned her of the dangers of withdrawing so much cash, or spoken to her in private.

In our view, given Mrs N's circumstances, the bank should have done more to protect her – especially since they had an awareness of current scams and fraudulent activity which their customers, like Mrs N, wouldn't necessarily have.

Looking at what had happened, we decided it wouldn't be fair to tell the bank to refund the first £2,000 Mrs N had withdrawn. In our view, this in itself wasn't suspicious. The cashiers had asked Mrs N what the money was for – and had no reason not to believe her answer.

But Mrs N had withdrawn another £4,000 in two trips over three days. The bank accepted that this wasn't something she'd ever done before. Given how unusual this behaviour was, we took the view it should have alerted the bank that something could be wrong.

We decided that if the bank had done more at this point – following industry guidance and good practice – it was likely the fraud would have come to light during Mrs N's second trip to the branch. And she wouldn't have lost any more money.

So we told the bank to refund Mrs N £4,000, plus interest. We also told them to pay £500 to reflect the upset their actions had caused Mrs N – and the trouble she'd experienced while trying to get her money back.

ombudsman focus:

our work with consumer advisers

Each year the ombudsman's outreach team meets hundreds of people working at the front-line of their communities' problems and complaints – from national charities and local voluntary organisations, to trading standards, MPs and community leaders. In this *ombudsman focus*, we take a closer look at our work across the sector.

Rosh, why does the ombudsman work with consumer advisers?

It's important we raise awareness of our service among individual consumers directly – talking to people at national and regional events, from the 50+ show in London Olympia to agricultural shows in Northern Ireland, as well as sharing our experience with local and national media. But we know we can't reach everyone this way – and could risk missing some of the people who need us the most.



Rosh Johnson

ombudsman outreach team

Rosh studied law and worked as a paralegal before joining the ombudsman as an adjudicator. She later joined the outreach team where she's responsible for organising training events for consumer advisers and smaller businesses and for building relationships with consumer organisations, charities and businesses.

We also know that some people feel worried about contacting a business, or us, to make a complaint – perhaps because they're uneasy about what to expect or what they might need to know. But they may feel more comfortable explaining what they're going through – and taking the next steps – with someone in their community who they already know and trust.

So working together with consumer advisers – who have contact with millions of people all over the UK – is an important part of our work to help people understand things better and sort problems out earlier – without our direct involvement.

Where advisers have a closer understanding of our approach it means they can support people to sort things out with a business directly. And that understanding isn't only important when things have gone wrong. By raising awareness of our independent service advisers help their communities to build trust and engage confidently with financial services day to day.

Of course, while our adjudicators and ombudsmen are trained to identify where people may need additional support – for example where someone's experiencing poor mental health – we're not always best placed to resolve these complex issues.

But consumer advisers and others, like expert charities, can help us better understand what people are experiencing.

And where someone's dealing with a number of problems that can't be resolved in isolation – like debt and relationship breakdown – a consumer adviser's perspective can be extremely valuable. They'll have a wider view of what's going on in their client's life – including how our service fits in with the support of any other services and agencies that may be involved.

▶
*what does “outreach”
look like in practice?*

In the same way as we meet smaller financial businesses across the UK, each year we run our own practical workshops for consumer advisers. We’ll talk through what types of problems we can help with, what happens when someone contacts us, and how we decide what’s fair in individual complaints.

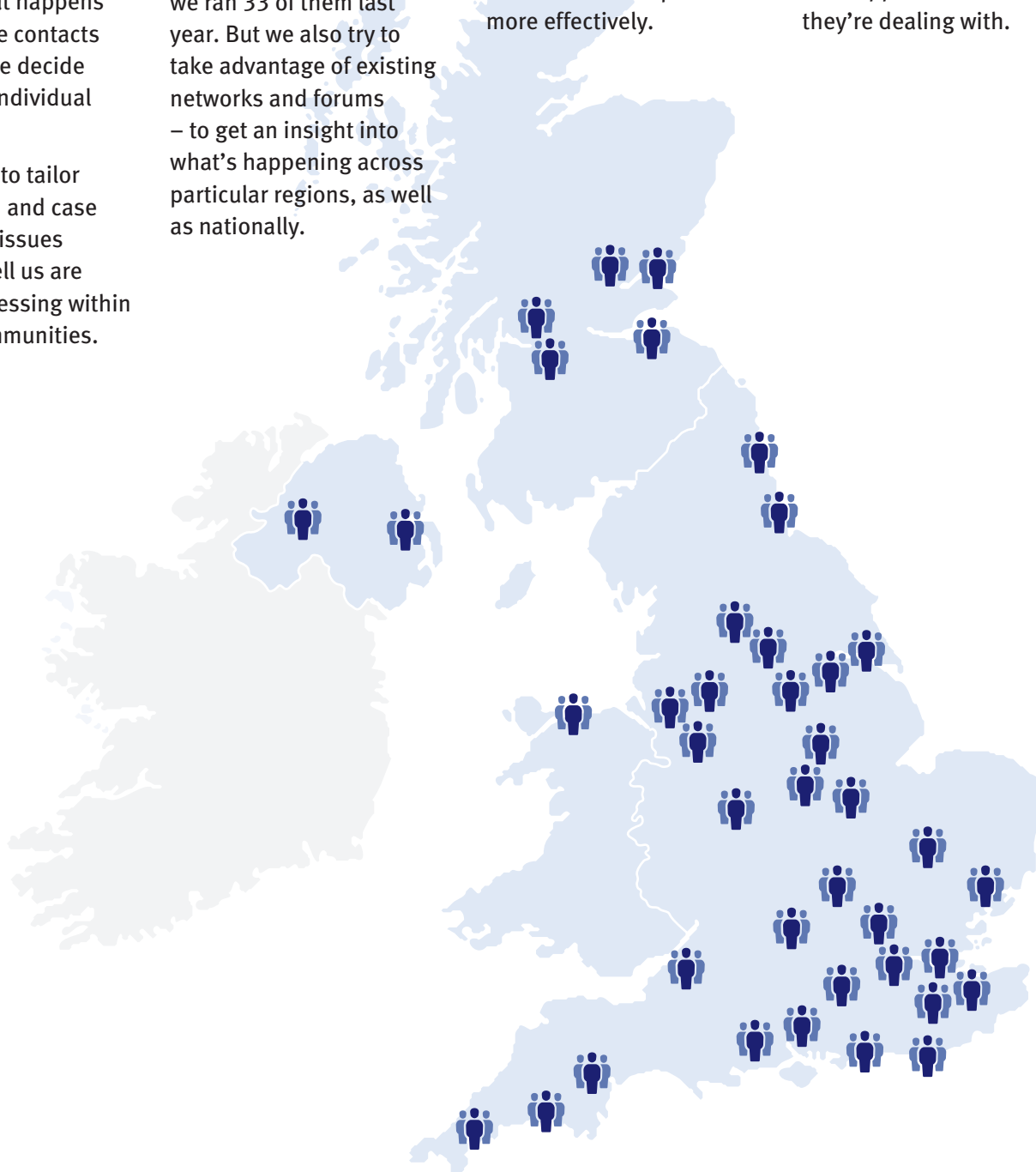
We make sure to tailor the discussion and case studies to the issues the advisers tell us are particularly pressing within their local communities.

For example, in some rural areas we’ve been asked to discuss problems ranging from people having trouble with their mortgage or payday loans, to “rent-to-own” home appliances and travel insurance.

These hands-on events are always popular – and we ran 33 of them last year. But we also try to take advantage of existing networks and forums – to get an insight into what’s happening across particular regions, as well as nationally.

So just as we visit local business groups and networks, we also visit consumer advice organisations, groups and forums. As well as listening to what they’re dealing with, we’ll share our own experience and discuss how we can work together to address wider problems more effectively.

Our technical advice desk is open to consumer advisers too. So even if someone can’t meet us in person – and we appreciate that taking the time out can be difficult – they can phone or email with their questions about how the ombudsman works or how we’d approach a situation they’re dealing with.



how do you use what you're hearing from consumer advisers?

Our outreach is an essential part of sharing our insight – with the overall aim of encouraging fairness in money matters. In the same way as our work with the businesses we cover, we want people to be able to resolve problems themselves – and ideally, to stop things from going wrong in the first place.

To do that effectively, it's essential that we pay attention to the issues within their communities that consumer advisers are telling us about – and share them with the rest of the ombudsman service. We'll look at the complaints that are reaching our service "formally" – and compare them with the issues that frontline advisers talk about themselves.

And any patterns and trends we see inform the conversations we go on to have with businesses and back out in local communities.

Where we don't receive as many complaints as we'd expect based on what we're hearing directly from consumer advisers, this may be because things are being resolved effectively without us. Or it could be that there's a lower level of awareness of our service among certain communities or particular groups of consumers.

Or it could be that, with a particular type of problem, there's some barrier or stigma around making a complaint. Or it could be that certain businesses aren't telling people about their right to get in touch with us.

Understanding things like this means we can really focus the support we give people on the front line – not only consumer advisers, but also the businesses involved. And if we're doing that well, we'll see fewer of those particular problems being officially referred to us.

what people say ...*David Hawkes, Advice UK*

Consumer advisers play a key role in raising awareness of the ombudsman and supporting clients with complaints.

The ombudsman has done a great job of informing advisers through their programme of workshops, attending events and publications such as *ombudsman news*. Now that debt advisers are regulated by the Financial Conduct Authority the ombudsman has been extremely helpful in telling debt advice organisations about their responsibilities too. Dialogue is very much two-way, though – with the advice sector needing to keep the ombudsman informed of current issues being experienced on the frontline. These clear channels of communication have been of real benefit.

Gary Greaves, East Midlands Housing Group

I'm a keen reader of *ombudsman news* and regularly use the technical advice desk for guidance. It's always useful to be able to talk things through with someone. And having a discussion is a great way of finding out if you've got things right or not, particularly when the query relates to what the ombudsman can look at.

Carol Brack, Age UK

The ombudsman's workshop that I went to in my local area gave me confidence that I can better help my clients with their money matters. The range of issues that the ombudsman can cover really surprised me, from catalogue loans to tractor insurance. We often don't have time to speak to other advisers from different organisations so the day was also a great opportunity to share stories and knowledge, so that we can work together to solve problems more effectively.

how we've worked with ...

Maidstone Financial Capability Partnership

Set up in January 2014, the Maidstone Financial Capability Partnership is a group of private, public and charity organisations, whose overall aim is to make Maidstone's residents more financially savvy.

We joined the Partnership – along with members including credit unions, social landlords, water companies and Citizens Advice Bureaus – to talk through our role and our approach to sorting out complaints. They recently gave us an example about how they'd prevented a resident from being scammed out of £9,000.

Hammersmith and Fulham Mind

It's estimated that one in four people will have a mental health problem at any time. So it's essential we understand how this could affect someone's financial position – as well as the support they need from financial businesses and services like the ombudsman.

Hammersmith and Fulham Mind have helped us to understand a range of mental health conditions, as well as communication considerations and reasonable adjustments relating to mental health.

In addition to helping us to recognise and respond to what people may be going through, this work helps Hammersmith and Fulham Mind meet their own objectives of decreasing mental health stigma and supporting people experiencing mental health issues.

Macmillan

The Financial Guidance Service offered by Macmillan Cancer Support provides tailored, telephone based guidance and support on all aspects of personal finance to anybody affected by cancer – patients, relations, friends or carers.

We work closely with Macmillan to ensure that the experienced Financial Guides on their helpline have a good understanding of our role and approach.

A customer of the Financial Guidance Service contacted Macmillan after complaining to his insurer that his critical illness claim had been turned down. He'd been given the all clear following an earlier cancer diagnosis – but was later treated for another unrelated condition. Following a second cancer diagnosis, his critical illness claim was turned down because he hadn't mentioned the other treatment.

After contact with our technical advice desk, Macmillan's Financial Guidance team supported their customer through his complaint – and because he'd had no cause to believe his treatment was connected to the cancer, his complaint was upheld.

upcoming events ...

for consumer advice workers

<i>working together with the ombudsman</i>	3 September	Aberdeen
	8 September	Belfast
	15 September	Edinburgh

for smaller businesses

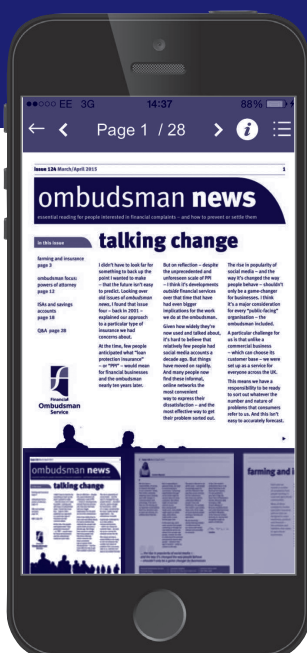
<i>meet the ombudsman roadshow</i>	2 September	Aberdeen
	16 September	Stirling
	22 September	Poole

national events for consumers

DNEX Exhibition (Disability North)	9-10 September	Newcastle
-------------------------------------------	-----------------------	------------------

For more information – and to book – go to *news and outreach* on our website.

want ombudsman news on the move? ... we've got an app for that



download for free

read every past issue of
ombudsman news –
including case studies
showing our approach and
the latest complaints trends



MIX
Paper from
responsible sources
FSC® C001785

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

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

Q? &A

My constituent complained to their bank and got a “final response” – but that was more than six months ago. I heard the rules have changed – are they still too late to come to you?

It’s always been the case that when a business sends their final response, they’ll explain their customer’s right to bring their complaint to us – and the six month time limit for doing so. If a business doesn’t explain these rights, then it’s not a “valid” final response and the time limit won’t apply.

Previously, if a complaint was referred to us six months after the final response was sent to the consumer, the business

could object to us looking into the complaint – but if they didn’t, we could go ahead and look into things.

But now – since the new rules have come into force – we’re only able to look into complaints referred to us after six months if the business agrees that we can. Businesses have to say in their final response letters if they would agree to us looking into a complaint if it came to us late. And if they agree, they can’t change their mind later on.

Just as before, we’ll always consider whether there were exceptional circumstances – such as serious illness or being out of the country over the six month period – which meant someone couldn’t contact us sooner. If that’s the case for your constituent, it would be helpful if they could explain what happened when they first get in touch with us.

I heard the new alternative dispute resolution (ADR) regulations don’t apply to trusts and charities. Does that mean you can’t help with their complaints anymore?

The new regulations set out some minimum standards for handling complaints from *individual* consumers.

But we’ll still be able to help trusts and charities with their complaints – and it’s important to us that everyone who uses us continues to receive the same level of service.

As always, to be able to help a charity or trust, we’ll need to confirm that their annual income – or net asset value – was less than £1 million when they complained to the business.

For complaints about pensions, should people go to you or the Pensions Ombudsman Service?

Broadly speaking, we look into complaints about how pensions were sold – and whether the arrangements were suitable for the individuals involved.

On the other hand, the Pensions Ombudsman Service looks into complaints about the administration or management of pension

schemes – or about pension schemes offered to employees by their employers.

The situation can be complex – so if someone’s in any doubt, they can contact either of our services. If we think the complaint would be better handled by the other, we’ll pass it on.

We’ve set out these arrangements in our memorandum of understanding.

Complaints about state pensions are dealt with by the Pension Service – part of the Department for Work and Pensions.



Financial

**Ombudsman
Service**