

# ombudsman news

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

## in this issue

crowd funding and  
peer-to-peer lending  
**page 3**

ombudsman focus:  
second quarter  
statistics  
**page 10**

Q&A **page 11**

## forward thinking

Whenever we publish our latest statistics on the complaints we're seeing, there's always plenty of interest in the biggest problems. The "top ten worst offenders" makes an eye-catching headline. And it's true that businesses and consumers alike can benefit from knowing what issues are being brought to us most often.

But it isn't just the big numbers that matter. In fact, although our data is usually dominated by a few products and a few providers, the smaller

numbers can provide some of the most interesting insight into what's going on in financial services. We've just got to ask the right questions.

For example, in areas where we receive few or no complaints, are businesses generally very good at treating customers fairly – or is it that those customers are less aware of the ombudsman? Do low but growing volumes of complaints indicate an emerging problem – or simply that a product or sector is growing in size or popularity?

Financial technology – FinTech – is a good example of a recent development that's sparked conversation within the financial services sector, as well as among those who watch it. As phrases like "robo-advice", "digital wallets" and "distributed ledger" enter the mainstream, there's understandably interest in the benefits these innovations could bring – as well as the problems that could arise.



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Caroline Wayman

In this *ombudsman news* we feature one particular sector that might be put under the FinTech umbrella: crowdfunding. While peer-to-peer loans and investments have existed for years, they're a good example of activities that new technologies have facilitated and changed. Compared with the recent level of interest around these types of lending and investments, we've received relatively few complaints. That's of course encouraging – as are suggestions that the UK is seen as one of the leading global hubs for FinTech.

On the other hand, we've identified a few areas where we think it would be helpful to share our insight. So, in the spirit of ensuring fairness as crowdfunding and the wider FinTech sector grow, we've used this *ombudsman news* to illustrate the broad themes of what we've seen.

As the world of money and finance continues to innovate and evolve, we'll keep talking about what we're seeing – whether it's in *ombudsman news*, or in our conversations with regulators, financial businesses and the many others with an interest in complaints and what we can all learn from them.

It's by working openly – and working together – that we'll keep financial services, whatever shape they take, rooted in fairness.

Caroline

... the smaller numbers can provide some of the most interesting insight into what's going on in financial services

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#### technical advice desk

020 7964 1400

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# crowdfunding and peer-to-peer lending

The UK's FinTech (financial technology) sector has grown rapidly over the past few years. Generally taken to mean the application of new technologies to financial services, FinTech ranges from mobile payments to "robo-advice" – and also includes crowdfunding and peer-to-peer lending.

Crowdfunding in particular has recently received attention as a way of raising money for projects – for example, a start-up fashion business or a documentary film. In some cases, the return isn't financial – with people receiving anything from a pair of handmade shoes to a mention in the credits of the film they're funding.

On the other hand, if people are making an investment in a business for a financial return, this will generally be regulated by the Financial Conduct Authority (FCA). And since 1 April 2014, running a "loan-based" crowdfunding platform – also known as peer-to-peer lending – has been a regulated activity and covered by the ombudsman.

As yet, we've seen comparatively few complaints involving either investment-based or loan-based crowdfunding. However, as part of our commitment to sharing our insight early on – to prevent problems arising in the future – our case studies in this *ombudsman news* illustrate some of the themes we've identified so far.

Overall, we've seen relatively more complaints about loan-based crowdfunding – or "peer-to-peer lending" – than we have about investment-based crowdfunding. And in general, we've found parallels here with complaints about more widely-used types of consumer credit.

In a number of cases, however, consumers have told us they weren't aware they'd borrowed money under a peer-to-peer arrangement. We've also seen complaints about goods and services bought with peer-to-peer loans – with some borrowers unsure about the recourse they have to the lender, compared with different types of credit they've used in the past.

In its recent call for input into crowdfunding rules, the FCA has explained that if a peer-to-peer borrower is an "individual" as defined in the *Consumer Credit Act 1974* (that is, a consumer or a sole trader or partnership of two or three, or certain unincorporated associations) borrowing less than £25,000 for the purposes of their

business, then their credit agreement is likely to be a regulated agreement.

But in these cases – aside from business investors – the people *lending* the money won't typically be doing so "in the course of a business". In these circumstances, the credit agreement – while *regulated* – may be considered *non-commercial*. And this means only limited *Consumer Credit Act 1974* requirements apply. However, there are FCA rules applying to peer-to-peer platforms – for example, to assess the borrower's creditworthiness and to give an adequate pre-contractual explanation of the credit agreement.

If we find shortcomings in how a consumer's finance arrangement was explained to them, we'll carefully look into whether and how they've lost out. In some of the cases we've seen so far, the peer-to-peer lending service involved had already tried to put things right.

▶

## case study 137/1

### consumer complains that peer-to-peer lending service won't allow him to return faulty car

Mr U was having trouble with a car he'd bought at his local garage. Despite a series of repairs under the extra guarantee he'd taken out, the lights on his dashboard weren't working properly. And before the problem could be resolved, the garage went into administration.

Mr U had bought the car with a peer-to-peer loan, and contacted the peer-to-peer lending service he'd used. He said he'd been sold a faulty car – and that he wanted to return it.

The peer-to-peer lending service said they'd cover the cost of collecting and inspecting his car to diagnose the problem. And if it turned out that there was a mechanical problem with the car that would have been covered by the garage if it hadn't gone bust, the peer-to-peer loan service would pay for the repairs.

Mr U didn't want his car to be inspected – and maintained he wanted to return it. When the peer-to-peer loan service wouldn't agree to this, Mr U contacted us.

#### putting things right

We asked Mr U for more information about the problems with his car. He said the lights had started playing up on the day he'd bought the car. And they'd continued to do so over the next few months, despite the garage trying to repair them.

Mr U explained that after the garage had gone bust, he'd spent a further few weeks trying to resolve the problem with the peer-to-peer service. During that

time, the lights hadn't been causing any problems. But he said that he'd had so much trouble with the car that he just wanted to return it.

Mr U was uncertain, now the garage had gone bust, where responsibility fell for sorting the problem out. We confirmed to Mr U that his loan agreement wasn't covered by section 75 of the *Consumer Credit Act* – as the peer-to-peer lending service had explained when he'd got in touch with them. Nevertheless, they'd offered to help him. And we thought it was reasonable that they'd want the car inspected – because they'd need to understand the nature of the problem before arranging any repairs.

We explained to Mr U that, in the circumstances, we didn't think the peer-to-peer service had acted unfairly.

*... we thought it was reasonable that they'd want the car inspected – because they'd need to understand the nature of the problem*

▶

## case study 137/2

### consumer complains that car bought with peer-to-peer loan was faulty before she bought it

Mrs B bought a used car with a peer-to-peer loan. Just under a year later, she noticed the car was making some strange noises – and a few days later, it broke down when she was on her way to work.

The mechanic who came out told Mrs B that the “timing chain” in the car’s engine had broken. Mrs B complained to the peer-to-peer lending service, who agreed to look into her concerns. But some weeks later – still waiting for a final answer – Mrs B referred the complaint to us.

#### putting things right

The peer-to-peer service were apologetic about the delay. They explained they’d been keeping in regular contact with Mrs B – but couldn’t get a response from the engineer who’d agreed to inspect the car, so they didn’t have his report.

Mrs B told us that the wait was causing a lot of stress and upset. She said she relied on the car for work – and getting two buses every morning and evening was far more time-consuming and inconvenient.

Mrs B also explained she’d only driven a few thousand miles over the last year. So she thought the problem with the timing chain must have been there before she bought the car.

During our investigation, the peer-to-peer lending service told us they’d found a different engineer to provide a written report. This engineer said the issue with the timing chain was very likely to be down to wear and tear.

In his view, if the problem had been there before Mrs B bought the car, she would have had trouble far sooner – rather than after nearly a year.

We clarified to Mrs B that, under her loan arrangement, the peer-to-peer lending service wasn’t responsible for the quality of the car. And we explained that, even if they had been, it was unlikely we’d agree the car was faulty when it was sold based on the evidence we had from the engineer.

The peer-to-peer service recognised that their delay in responding to Mrs B’s complaint had had an impact on her daily life. They offered £100 to make up for the cost of her bus fares and the disruption to her routine – which Mrs B accepted.

*... if the problem had been there before ~  
Mrs B bought the car, she would have had trouble  
far sooner*

►

**Some of the complaints we've seen about crowdfunding – both loan-based and investment-based – involve problems with fees, charges and the general administration of loans and investments.**

In most cases, we've found the issues involved aren't dissimilar to those we see in complaints from more traditional areas of credit and investments. And so our approach is broadly similar. For example, if there's a dispute about whether a piece of correspondence has been sent, we'll carefully check for evidence that it has been – and that it's been sent to the correct address.

However, a small number of consumers have complained to us about charges applied to their peer-to-peer loans that, in their view, are unfair or weren't explained. As our case studies illustrate, these complaints sometimes arise when borrowers come to repay their loans early.

### case study 137/3

#### consumer complains about fees when repaying peer-to-peer loan early

Mr E had taken out a peer-to-peer loan due to be repaid over four years. When his financial position changed six months later, he decided to pay off the loan early. When the peer-to-peer lending service gave the cost of repaying the loan, Mr E thought it sounded too much. When he queried it, the peer-to-peer lending service explained that he was being asked to repay the money he'd borrowed, as well as a £2,000 loan fee.

Mr E complained. He felt he was being charged an early repayment fee, which the peer-to-peer service hadn't told him about. The peer-to-peer lending service said it wasn't an early repayment fee – but a fee they charged on every loan. When they wouldn't change their position, he contacted us.

#### putting things right

Mr E said that, as he'd only had the loan six months, he didn't expect to have to pay the whole fee. He pointed out that the peer-to-peer lending service's website said there were no early repayment charges. In his view, he'd been misled.

For their part, the peer-to-peer lending service said they'd explained the position with the loan fee. They told us the fee wasn't an early repayment charge – but instead helped to cover their running costs, as well as contributing to a fund to protect lenders against unpaid loans.

We asked for a copy of the loan agreement Mr E had signed. The first page of the agreement showed the total amount borrowed was £27,000. And screenshots from Mr E's application clearly stated the fee would be repaid as part of the borrowing. In our view, it was clear that the fee was part of the credit, and that Mr E would have to pay it back.

We were sorry to hear Mr E was frustrated. But given everything we'd seen, we didn't agree he'd been misled – or that the peer-to-peer lending service had acted unfairly in asking him to repay the fee.

*... he was being asked to repay the money he'd borrowed, as well as a £2,000 loan fee*

## case study 137/4

### consumer complains about communication of error with peer-to-peer loan interest rate

Mrs C had taken out a peer-to-peer loan to fund some home improvements. Around six months into the loan, she noticed some figures she wasn't expecting on the online "dashboard" she used to manage her account.

Worried, Mrs C emailed the peer-to-peer lending service. They explained there'd been an "admin error" with the interest rate, meaning Mrs C had been paying too much each month. The figures Mrs C didn't recognise on the dashboard related to the lending service making adjustments to correct this.

Mrs C asked the peer-to-peer lending service to correct her online dashboard, so the real position would be clear. But they explained their system wouldn't allow them to change what was on

the screen. So, even though Mrs C was now paying the amount she'd originally agreed, the dashboard would continue to display the wrong information rate for the rest of the time she had the loan.

Mrs C complained. She said she didn't feel the peer-to-peer lending service had properly explained why she'd been overpaying. And as the dashboard couldn't be changed, she was worried the same thing could happen again without her knowing.

The lending service offered Mrs C £50 for the trouble they'd caused – but unhappy with this offer, she contacted us.

#### putting things right

We asked the lending service for more information about the overpayments. They explained that the interest they'd quoted when they'd offered Mrs C a loan had been rounded to two decimal places. But when she started paying

her instalments, the interest was being calculated to four decimal places. This meant Mrs C had been paying more interest than she should have.

The peer-to-peer lending service explained that this problem had only affected a very small number of loans – and Mrs C had been the only customer to complain about the dashboard. They said that changing the interest rate on the screen would require significant system changes, so they'd decided that paying the difference themselves was the most sensible solution.

Mrs C accepted that a system wouldn't be changed just for her. But she explained that she wasn't good with numbers and liked and relied on the dashboard because she could see at a glance what was going on with her loan.

Although she now understood what the peer-to-peer lending service was doing, she felt they hadn't explained it clearly at the time – and the situation

had been worrying and confusing.

From screenshots the peer-to-peer lending service had given us, we saw the mistake had only cost Mrs C a few pounds – which had now been repaid. However, looking at the email exchange between the lending service and Mrs C, we agreed that they hadn't explained the situation clearly enough. And we could understand why Mrs C, looking for reassurance the same thing wouldn't happen again, had gone on to escalate a complaint.

When we pointed this out to the peer-to-peer lending service, they acknowledged they could have been clearer about what had caused the problem – and how they'd gone about putting it right. They offered, in addition to the original £50, to cover a month's loan repayment to make up for the worry they'd caused – which Mrs C was happy to accept.

*... they'd decided that paying the difference themselves was the most sensible solution*

## case study 137/5

### consumer complains that crowdfunding platform didn't notify him about investment cooling-off period

Checking his bank account one day, Mr J noticed that £5,000 had been taken by a crowdfunding platform. He emailed the platform, explaining he remembered expressing an interest in investing in a local start-up business, but hadn't heard anything since. He said he'd now changed his mind about investing – so he was very upset the money had been taken.

The crowdfunding platform told Mr J that his money had already been invested. They said Mr J now had a contract with the start-up – and they couldn't get the money back.

The crowdfunding platform asked the start-up if they would be willing to refund Mr J – but the start-up refused. Unable to move things forward, Mr J contacted us.

#### putting things right

Mr J told us he thought he'd just been expressing an interest in investing – rather than definitely agreeing to it. He said he'd received an initial email from the crowdfunding platform – which, as he remembered it, referred to a cooling-off period before his commitment to invest was confirmed.

But he said he'd never received the promised follow-up email to confirm this had happened.

And he felt that, in the circumstances, the crowdfunding platform should refund him – whether or not the start-up was willing to.

We looked at the information that Mr J would have seen and said he agreed to when he signed up to the crowdfunding

platform. In our view, it was clear that once a particular project met its funding target, there was a specified cooling-off period in which a prospective investor could cancel their investment.

We also thought the information was clear that once the cooling-off period ended, the investor would have an agreement with the “investee” directly – and that the crowdfunding platform wouldn't have any further involvement.

However, we needed to establish whether the platform had done enough to make Mr J aware that the “funding round” had been successful and a cooling-off period had begun – and that after the cooling-off period ended, the investment would be finalised.

When we asked the platform what evidence they had, they sent us records from their system showing an email had been sent to Mr J, setting out the

position. They included a screenshot of the email itself and said they hadn't received any notification that it had bounced. We showed these records to Mr J – and he confirmed that the email address was correct.

In light of this, we decided it was more likely than not that the crowdfunding platform had sent the email in question, giving Mr J clear information about the process of making an investment, including the cooling off period. So – while we appreciated that Mr J was frustrated – we didn't agree the platform had acted unfairly.

*... he remembered expressing an interest in investing in a local start-up business, but said he hadn't heard anything since*



## case study 137/6

### consumer complains after crowdfunding platform makes changes affecting mortgage loans

Mr Q used a crowdfunding platform to invest £50,000 in mortgage loans. But a year later he received an email from the platform. This said they'd taken a decision to no longer deal with "retail" investors – including Mr Q – for longer-term investments such as mortgage loans.

The platform said that, as a result, they would now be returning the money people had invested, with interest. As they were still working to remortgage a number of loans, they would initially refund 80% of each investor's funds, with the remaining 20% to be repaid within a year.

Mr Q complained. He said he'd thought he could access his money whenever he wanted. He felt the platform should have given him notice that they were planning to hold on to his money – and that they should refund him immediately.

The crowdfunding platform apologised for the delay, but said they couldn't return all of Mr Q's money because it was still on loan. Unhappy with this answer, Mr Q contacted us.

#### putting things right

We asked to see the information the crowdfunding platform had given Mr Q about his investment. In our view, this was clear that customers could only access their money if other people were available to buy "the relevant mortgage loan parts".

We also looked at the emails the platform had sent to Mr Q. Again, we thought the platform had clearly explained what was

happening and why. Since they were no longer dealing with retail investors – and they hadn't been able to remortgage all the loans – there was no-one to replace Mr Q's investment.

The platform acknowledged that they hadn't given their customers advance notice of their decision. They said that they'd been trying to avoid a situation where some investors withdrew all their funds, leaving others with their money totally tied up. So they'd decided that returning a proportion of the funds to everyone was the fairest option.

We explained to Mr Q that, in light of everything we'd seen, we didn't think the platform's actions were unreasonable. Although Mr Q was disappointed, he was reassured by evidence provided by the platform that they were on track to refund him – with interest – within a year.

*... customers could only access their money if other people were available to buy "the relevant mortgage loan parts"*

# ombudsman focus: second quarter statistics

a snapshot of our complaint figures for the second quarter of the 2016/2017 financial year

Each quarter we publish updates about the financial products and services people have contacted us about. This data includes the number of enquires received, the number of complaints passed to an ombudsman for a final decision and the proportion of complaints resolved in favour of consumers.

In this issue we focus on data for the second quarter of the financial year

2016/2017, showing the new complaints received during July, August and September 2016 – as well as the complaints that we’ve received so far this financial year, between April and September 2016.

Between July and September:

- We handled 139,455 enquiries from consumers, taking on 79,532 new cases – with 9,783 complaints passed

to an ombudsman as the final stage of our complaints handling process.

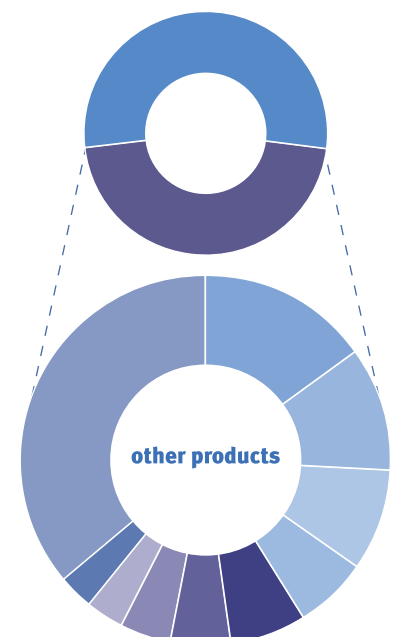
- PPI remained the most complained about financial product, with 42,907 new cases. Packaged bank accounts were the second most complained about product, with 5,317 new cases.

[view the full table on our website](#)

the financial products that consumers complained about most to the ombudsman service in July, August and September 2016

- payment protection insurance (PPI) 54%
- complaints about other products 46%

- packaged bank accounts 7%
- current accounts 5%
- car and motorcycle insurance 4%
- payday loans 3%
- house mortgages 3%
- credit card accounts 2.5%
- overdrafts and loans 2%
- hire purchase 1.5%
- buildings insurance 1.5%
- complaints about other products 16.5%



# Q? &A

## **Our customer has told us they've contacted the ombudsman. Should we send you all our records now?**

We can often resolve problems over the phone or by email within a few days – and sometimes within hours. In fact, of the 1.6 million enquiries we received last year, fewer than one in four needed a more detailed investigation.

Some people contact us about their concerns without having raised them with the business involved. We generally encourage people to talk

to the business first, with the option of contacting us again if they remain unhappy. However, if both sides agree, we can get involved and help resolve the problem at an early stage.

So what this means for your question is: hold fire. Even if we go on to investigate your customer's complaint to us, we'll let you know exactly what we need and when we need it. It's possible

we might ask for complete customer records. However, it's likely we'll be more specific – such as asking to see the wording of a particular policy term that's in dispute, or a recording of a conversation that's caused confusion.

If you're unsure what to send or when, speak to your point of contact at the ombudsman service – or call our technical helpline on 020 7964 1400.

## **A customer of ours has complained about an investment. I'm sure it was suitable for them – but I'm worried you'll find problems with the suitability report. Is there any point trying to defend the complaint?**

When we meet financial advisers at our workshops and roundtables, they sometimes raise concerns that we'll be looking for something very specific when we ask to see suitability reports. And it's true that we're likely to consider these reports carefully when we're deciding, given a customer's individual circumstances, whether they received unsuitable advice.

But we weigh up all the evidence we're given by both sides – including fact finds and other

documentation, as well as records and recollections of conversations. And if we do decide a business did something wrong, we ask how this affected the customer's actions and whether they're worse off as a result.

Of course, it's your call to make – looking at your records – as to whether you've acted fairly in the circumstances. Our online support, including our ombudsmen's previous decisions, can help give you a steer on our general approach.

In the coming months, we'll be working with the FCA and financial advice trade bodies to address a range of issues around suitability reports specifically. However, we'll look beyond individual bits of paper when deciding, on balance, what's most likely to have happened. If you think there's a problem with one piece of evidence – or something's missing – just let us know.

