ombudsman news

Financial Ombudsman Service

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essential reading for financial firms and consumer advisers

in this issue

about this issue

We begin this issue with a round-up of some of the investment cases we have dealt with recently, including several examples of the mortgage mis-selling complaints that continue to reach us in large numbers. Other cases we feature range from a complaint about a firm losing a customer's wedding certificate, to a dispute over the deduction of an early retirement penalty from the compensation a firm paid for mis-selling a personal pension.

Turning to banking matters, this issue looks at some of the difficulties that can arise when transferring money abroad – far less straightforward a process than many people assume. When things go wrong, the problem often arises from situations over which the bank arranging the transfer has no control. So it is understandable that banks should wish to limit their contractual liabilities for these transactions. However, we highlight a recent instance of a firm limiting its liability to the extent that we felt it was treating the customer unfairly.

... many firms tell us this gives them a better understanding of what we do.

edited and designed by the publications team at the Financial Ombudsman Service

.... it is perhaps no surprise that motor insurance features prominently in our caseload.

Other banking case studies in this issue of *ombudsman news* include a problem with internet banking, a firm's failure to cancel a cheque book, disputed transfers from the account of an elderly customer who was frail and confused, and a husband who forged his wife's signature on a cheque.

It is perhaps no surprise that motor insurance features prominently in our caseload, accounting for about a quarter of all the insurance cases we receive. In this issue we look at one of the most frequent causes of dispute – vehicle valuation. We also provide case studies to illustrate some of the complaints that reach us on this topic.

Finally, as regular readers know, we focus from time to time on aspects of our complaints-handling procedure. Many firms tell us this gives them a better understanding of what we do and of the important part they can play in helping us resolve complaints as quickly and as fairly as we can. This month we provide a brief outline of 'view letters' – a part of our process with which banks and building societies, in particular, may be unfamiliar.

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1 investment case round-up

A selection of some of the complaints we have dealt with recently on a wide range of investment matters.

■ 22/1

firm's loss of customers' marriage certificate – claim for compensation

When Mr D and his wife applied for life assurance, the firm asked to see proof of their ages. They sent in their birth certificates by recorded delivery. The firm returned the certificates after scanning them into its computer system. It then asked to see the couple's marriage certificate, which they duly sent – again by recorded delivery. Unfortunately, the firm completely lost track of the certificate after sending it to be scanned.

The firm apologised for losing the certificate and asked the couple for details of when and where they were married. It said it would arrange and pay for a replacement certificate. It also offered the couple £25 for the distress and inconvenience it had caused.

Mr D said that the firm's offer was not acceptable. He asked it to organise a thorough search and to provide him with evidence that it had done so. He said that the loss of the certificate could not be 'satisfied with a paltry sum' and that no copy could ever replace the original, which he considered 'unique' and the only document he had to 'commemorate' his marriage.

Mr D then replaced the marriage certificate himself and claimed a total of £361.52 from the firm as compensation, itemised as follows:

£11 – cost of replacement certificate
£100 – time off work
£250 – distress and inconvenience
52p – postage.

When the firm refused to pay, Mr D brought his complaint to us.

complaint upheld in part

We noted that the firm had admitted and apologised for its mistake and had offered to replace the certificate at no cost or inconvenience to Mr D. So we thought it unreasonable of him to claim £100 for taking time off work to replace it himself.

We also thought he was unreasonable to claim as much as £250 for distress and inconvenience. However, we thought that the £25 that the firm had offered was insufficient in the circumstances. The firm agreed to increase this sum to £75 and to pay the cost of replacing the certificate. Mr D accepted this offer.

... the firm completely lost track of the certificate after sending it to be scanned.

■ 22/2

mortgage endowment policy – mis-selling alleged

Together, Mrs A and her brother took out a mortgage endowment policy. When she discovered that the policy might not produce enough to pay off their mortgage, Mrs A complained to the firm. She claimed that the adviser had never mentioned this possibility to them but had told them the policy was 'guaranteed' to produce enough of a surplus for them to have a holiday or buy a car.

In her view, the adviser's only reason for recommending the mortgage endowment policy was that he would benefit from substantial commission on the sale.

complaint rejected

When the firm rejected her complaint, Mrs A came to us. There was no documentary evidence of the guarantee she described. But there *was* evidence (in the form of the 'fact find' completed at the time of the sale) that the adviser had assessed the pair's attitude to risk. On the basis of that assessment, the mortgage endowment policy had been a suitable choice for Mrs A and her brother.

Mrs A contested this, saying that the assessment was incorrect. However, she and her brother had both signed the 'fact find', confirming that its contents were correct. They had also been given policy documents explaining the risks involved in this type of investment. We therefore rejected her complaint.

■ 22/3

mortgage endowment policy – mis-sold and 'churned'

Mr and Mrs O complained to the firm that its representative should not have advised them to surrender the two mortgage endowment policies they had taken out with the firm some 10 years earlier.

When the firm looked at the complaint, it concluded that the policies had been mis-sold, since the couple had not wanted to take any risk with their investment. The firm offered them redress in accordance with guidance provided by the regulator. However, Mr and Mrs O refused this offer. They felt that the firm had ignored the main point of their complaint – that they had been wrongly advised to surrender the two policies.

The firm reviewed the case and concluded that the policies had been 'churned', (in other words that the adviser had persuaded the couple to surrender the policies simply to get more commission for himself by selling them new ones).

The firm then withdrew its previous offer and sent the couple a revised offer of redress, calculated according to its standard formula for cases of 'churning'.

... the policy was 'guaranteed' to produce enough of a surplus for them to have a holiday or buy a car.

… she said the firm should honour the figure it quoted over the telephone.

At this point, Mr and Mrs O referred their case to us. They thought that the firm should offer them compensation for the original mis-selling of their policies, as well as for the subsequent events.

complaint upheld
We agreed with the firm that the policies had been 'churned', and that a repayment mortgage would have been a more suitable option for Mr and Mrs O. But we did not think the firm should have withdrawn its original offer of compensation. We asked it to reinstate that offer and to offer the couple additional compensation for the churning of both policies.

■ 22/4
portfolio bond – surrender value misquoted

As Miss C needed a deposit to buy a house, she decided to cash in her portfolio bond. She telephoned the firm to ask how to do this. During the conversation, the firm's representative quoted a surrender value – the amount she would get when she cashed in the bond.

But when Miss C received the cheque for the proceeds, she was alarmed to find she had got much less than the amount the firm quoted on the telephone. It was so much less that she did not now have enough money for the deposit.

The firm told her that she had been charged a substantial surrender penalty and that it had applied a market value adjustment (MVA). This is a reduction that can sometimes be made if stockmarkets have fallen sharply and investments are cashed in early.

Miss C blamed the firm for her inability to go ahead with her house purchase. She said that since it had not told her about the deductions it would make, it should honour the figure it had quoted over the telephone.

The firm accepted it had made a mistake in not mentioning the amounts it would deduct. But it did not think this mistake was as significant as she claimed. It offered to reinstate the portfolio bond at the value it had before Miss C cashed it in. It also offered her £150 for distress and inconvenience. Dissatisfied with this, Miss C brought her complaint to us.

complaint rejected
The firm should have quoted the correct amount. However, it was within its rights to make the deductions. Its policy documents made clear the circumstances in which customers might have to pay a surrender penalty and/or an MVA when they cashed in their bonds. And Miss C had been sent these documents when she first took out the investment. Her inability to proceed with her house purchase was not directly attributable to the firm and we considered the firm's offer of redress for its mistake was adequate, in the circumstances.

... although we did not uphold this complaint, we thought the firm had handled it badly.

■ 22/5

unit-linked savings plan – alleged promise of additional bonus

After consulting a financial adviser, Mr and Mrs P took out a 10-year unit-linked savings plan. They were very disappointed at the end of the 10-year period to discover that there was no bonus for customers who held on to their savings plans for an additional year. They complained to the firm, saying they had only chosen the plan because the adviser told them they would get a sizeable bonus if they kept it for 11 years.

Initially, the firm appeared to agree that Mr and Mrs P were entitled to expect a bonus and it said it would look into the matter. However, it then rejected their complaint. It said that no bonus was on offer and there was no evidence that they had been misled into thinking otherwise.

complaint rejected

At the outset, the couple had been given written details of the plan, clearly setting out its features. There was no mention of any bonus payable after an 11th year. None of the other documents they had received over the time they held the investment referred to a bonus. And there was no evidence to support their claim that the adviser had told them they would get one.

Although we did not uphold this complaint, we thought the firm had handled it badly. Since Mr and Mrs P had suffered some distress and inconvenience as a result, the firm agreed to make them a modest ex-gratia payment.

■ 22/6

pre-A day mis-selling of mortgage endowment policy – whether product literature misleading

Mr J complained to the firm when he found there was a risk that his mortgage endowment policy would not produce enough to pay off his mortgage.

He had originally had a repayment-only mortgage with the firm, but had switched to the mortgage endowment policy early in 1986, after receiving promotional literature from the firm.

The firm rejected his complaint on the grounds that it had not given Mr J any advice, and that the information it provided had not included any guarantee about the plan's performance.
Mr J had taken out the policy before the Financial Services Act 1986 came into effect. At that time, the firm would have been obliged simply to provide information and explain the advantages and disadvantages of endowment mortgages, so that Mr J could make an informed choice.

Dissatisfied with the firm's response, Mr J brought his complaint to us.

complaint upheld

We agreed with the firm that its literature did not provide a guarantee. However, we thought that, when read as a whole, it was highly misleading. It mentioned the possibility of an additional lump sum. But it made no reference at all to the fact that the policy might not produce enough to repay the mortgage.

We concluded that the information was not balanced enough for Mr J to make an informed choice. We required the firm to compensate Mr J by putting him back in the position he would have been in if he had kept his repayment mortgage.

■ 22/7

personal pension mis-selling – whether early retirement penalty appropriate

Miss G believed she had been mis-sold a personal pension and she complained to the firm. It offered her compensation, calculated in accordance with the Pension Review guidelines. However, it deducted an 'early retirement' penalty because she had taken the benefits before she reached the age of 60.

Miss G said it was not appropriate for the firm to deduct this penalty, because it was the firm that had advised her to take the benefits early. When the firm insisted she should pay the penalty, she brought the complaint to us.

complaint upheld

We noted that Miss G had never expressed any wish to take early retirement and she had no immediate need for the pension income. There was every indication that, had she stayed in her occupational pension scheme, she would have chosen to wait until her normal retirement date before taking any benefits.

It was only because the firm had advised her to do so that she had taken the benefits from the personal pension scheme before she was 60. The firm had told her that falling annuity rates would mean her income from the personal pension would become even smaller if she waited until her normal retirement date.

We told the firm that it should pay Miss G the full amount of redress it owed her, without deducting the early retirement penalty.

... he had taken out the policy before the Financial Services Act 1986 came into effect.

2 transferring money abroad and unfair contract terms

Transferring money abroad is not a straightforward process and can give rise to complaints. Many of these complaints are about delays. But some are about money that has gone completely astray. And sometimes, when the money arrives, it is in the local currency even though a sterling transfer was specified. This can cause particular problems when the local currency is one that is not convertible back into sterling.

In a case we dealt with recently, although the firm arranging the transfer (the 'sending' firm) clearly stated the limitations on its liability, we decided that these limitations were not binding. They did not satisfy the 'reasonableness' test in the *Unfair Terms in Consumer Contracts Regulations* – which apply to contracts entered into by consumers from 1 July 1995.

... many of these complaints are about delays. But some are about money that has gone completely astray.

In the case in question, the firm's customer asked it to transfer some money to Pakistan. When problems arose, the sending firm refused to accept liability. It told the customer to claim directly against the firm it had used to make the transfer to the Pakistan bank.

The sending firm's conditions for dealing with the transfer stated that:

- it had sole discretion to decide the method by which the transfer would be transmitted, and could use any bank of its own, or another bank's, choice;
- it did not accept responsibility for any problems not directly caused by its own negligence or default;
- even if it was at fault, it would not be liable for any loss of business, goodwill or any type of consequential or indirect loss; *and*
- its liability would be limited to the amount of interest the customer lost during any delay or (if lower) to the amount of any direct loss.

We accepted that, in the course of a money transfer, difficulties can arise as a result of factors over which the sending firm has no direct control. The sending firm might have to entrust parts of the process to another bank, or to several different banks, abroad. European law includes special provisions covering transfers within the European Union but the situation is less clear-cut elsewhere.

... there was no reference to any risk that the payment might not arrive at all.

The sending firm frequently has the right to seek indemnity from the other bank or banks involved in the process (in other words, to obtain a promise that they will be liable for any damages or losses that they cause). However, it may be impractical to enforce indemnities in respect of banks in some foreign jurisdictions.

So we did not think it unfair for the sending firm to place reasonable limits on its contractual liability, provided it made those limits clear to the customer. It might otherwise have declined entirely to arrange transfers to certain destinations. But it was only reasonable for it to limit its liability to an extent that was necessary and proportionate.

The form that the sending firm gave the customer to complete stated that the amount of time it would take to complete a transfer could vary significantly – depending on the destination country and the amount and accuracy of the information supplied. But there was no reference to any risk that the payment might not arrive at all, or that it might arrive in a currency other than the one requested.

The sending firm reserved the right to choose the method of transfer and to use any bank of its own, or even of another's choice. But it sought to avoid any liability for what that other bank did – regardless of whether it was able to obtain indemnity from that other bank. And it purported to limit its liability to interest on the money, if that was less than the actual loss.

We decided that the terms in this case were not proportionate. They created a significant imbalance – to the customer's detriment – and so did not comply with the *Unfair Contract Terms in Consumer Contracts Regulations.* Schedule 2 of this says that a term is likely to be unfair if it has the effect of '*inappropriately excluding or limiting the legal rights of the consumer vis-à-vis the seller or supplier or another party in the event of total or partial non-performance or inadequate performance by the seller or supplier of any of the contractual obligations*'.

Paragraph 1.9 of the Office of Fair Trading's *Unfair Contract Terms Guidance* (February 2001) says: '*A disclaimer covering problems caused by a trader's suppliers and subcontractors is regarded in the same way as one covering loss or damage caused directly by his fault. The consumer has no choice as to who they are, and has no contractual rights against them. The business has chosen to enter into agreements with them, and therefore should not seek to disclaim responsibility for their default.*'

The fairness of the terms had also to be judged in the light of the circumstances when the contract was entered into. Unfair terms cannot be rendered fair simply because, for example, the intermediaries that the firm selected to carry out the transfer were reputable. So the exclusions and limitations of liability in this case did not bind the customer and we decided the case in his favour.

3 round-up of banking cases

A selection of some of the banking cases we have dealt with recently.

■ 22/8

money transfer abroad – responsibility for abortive costs

Mr B needed to pay some money in Italy on a particular date. A month beforehand, he asked the firm to transfer money from his UK bank account to a bank in Italy. The bank arranged the transfer but then, with just a week to go, it found the money had gone astray so it made a second transfer.

Both transfers arrived in Italy on the same day, just before the payment was due. It turned out that the first transfer had come through Portugal. Because of currency-exchange differences and the fact that he had to pay extra charges, Mr B lost £300 on the transaction.

When Mr B complained, the firm said it was not responsible; it had sent the money correctly and the problems had occurred abroad.

complaint upheld

We asked the firm for information about how it had made the first payment. It then discovered that it had, after all, given the wrong instructions. Mr B accepted its offer to pay him the £300 he had lost, together with £100 for inconvenience.

■ 22/9

cheques – stopped chequebook – cheque paid

Mr K was in dispute with a trader from whom he had recently bought some goods. Since he had paid with a post-dated cheque, he decided to put a stop on it. But the cashier at his branch told him that the firm could not stop the cheque because Mr K was unable to identify the cheque number. The cashier suggested that the firm could instead stop the whole book of cheques and Mr K agreed to this. He was therefore very annoyed when the firm went ahead and honoured the cheque.

complaint settled

Initially, the firm tried to argue that this was partly Mr K's fault – because he had not been able to identify the cheque number. We pointed out that since the firm was supposed to have stopped the whole chequebook, the number of the individual cheque was irrelevant. The firm then agreed to refund to Mr K the amount of the cheque and to pay him £150 for inconvenience.

... while she was in hospital, her husband forged her signature on a cheque for £2,000.

… he had left his chequebook and cheque guarantee card in the car of an acquaintance …

■ 22/10

cheques – forgery by husband but no loss

In 1998, Mrs T was injured in a road accident. While she was in hospital, her then husband forged her signature on a cheque for £2,000, drawn on her personal account, and paid it into their joint account.

Mrs T did not discover the forgery until the following year, by which time she and her husband were divorced. In 2002, after she had remarried, Mrs T reported the forgery to the police and complained to the firm. The firm rejected her complaint, saying that the money had been paid into the joint account; the financial position between Mrs T and her former husband must have been settled in the divorce; and Mrs T had waited several years before telling the firm what had happened.

complaint settled

We pointed out to Mrs T that it was unlikely she had suffered actual loss. The money had gone into the joint account and the financial issues between her and her former husband had been settled in the divorce proceedings, at which she had been legally represented.

However, we pointed out to the firm that although Mrs T could not establish an actual loss, it *had* paid out on a forged signature. The firm then agreed to settle the complaint by paying Mrs T £500.

■ 22/11

cheques – disputed payments

Mr E went abroad for two weeks. While he was away, his account went into unauthorised overdraft after some cheque payments went through. On his return, he complained that he was not liable for the overdraft. He said that, by mistake, he had left his chequebook and cheque guarantee card in the car of an acquaintance who had given him a lift to the airport.

complaint rejected

Our investigation revealed that all the cheques that had gone through while Mr E was abroad had been written by him before he mislaid his chequebook and card in the acquaintance's car. We therefore rejected his complaint.

■ 22/12

disputed banking account transfers – elderly banking customer

Mrs V, who was in her late 70s, had signed an authority permitting her son to operate her account with the firm. For some years, only modest transactions took place. But shortly before Mrs V died, her son turned all of her assets into cash and paid £35,000 of the proceeds into her account. Over a period of two weeks, he then made three transfers (totalling £35,000) from her account into his own account with the firm.

After Mrs V died, her daughter found out about the transfers and complained to the firm. It froze the son's account, leading him to complain as well. He said Mrs V had wanted him to have all her money, because he was the only one of her children who looked after her.

one complaint upheld and one rejected

We upheld the daughter's complaint. The nature of the transfers should have made the firm suspicious, and it should have tried to contact Mrs V. It would then have discovered she was frail and confused and living in a nursing home. We required the firm to pay the daughter £1,000 for the trouble and expense that arose as a result of the firm's allowing the transfers.

We rejected the son's complaint. Having discovered the situation, the firm was entitled to freeze his account in order to safeguard the money.

The dispute between Mrs V's children over the ownership of the money was a matter for the courts, not us, to decide.

■ 22/13

internet banking – account closed by mistake

Mr H did his banking over the internet and had both a current account and a savings account. He attempted an online transfer of £500 from his savings account to his current account. But a hitch in the firm's computer system meant that all the money was transferred out of his savings account and it was then closed.

When Mr H complained about this, the firm offered to reopen his savings account and to pay him £300. That sum covered the £180 interest that Mr H had lost (on the amount transferred and on the money he usually paid into the savings account), together with £120 for inconvenience. Mr H did not think this was good enough so he brought his complaint to us.

complaint rejected

We told Mr H that, while we accepted that everything had happened as he said, the firm's offer was reasonable in the circumstances.

■ 22/14

bank executor – deceased's funeral instructions overlooked

Mr C appointed the firm as his executor and left his will in the firm's custody. When he died, his sister – Mrs G – contacted the firm to check whether the will said anything about the funeral. By mistake, the firm said it did not. It was only after Mr C had been buried that Mrs G found that the will said that he wanted to be cremated.

The firm paid for Mr C to be exhumed and cremated, and it also paid for the first funeral. It allowed Mrs G to take over administration of her brother's estate and it offered her a further £200 as compensation. She rejected this sum as 'derisory' and brought her complaint to us.

complaint settled

We noted that the firm had already gone some way to make amends, as far as was possible in these difficult circumstances. Mrs G felt the firm needed to be 'punished' by being made to pay a considerable sum of compensation on top of this. We explained that we do not have the power to 'punish' firms in this way. We only have power to award enough compensation to put things right for customers.

The firm made a revised offer of £1,000, which Mrs G accepted.

... we explained that we do not have the power to 'punish' firms in this way.

4 motor insurance – vehicle valuations

We approach complaints about motor valuations in the same way that the former Insurance Ombudsman Bureau did. That approach has remained largely unchanged for many years and by now most firms should be aware of it. However, we still see a steady flow of complaints where firms appear to have handled matters differently – to the customer's disadvantage.

Where we feel that it would not have been necessary for the customer to complain if the firm had followed good industry practice, then we may sometimes require the firm not only to settle the claim fairly but to make the customer a payment for the distress and inconvenience it has caused.

Most policyholders assume that their insurance policy will enable them to replace with a similar vehicle a car that has been stolen or damaged beyond repair. Our approach mirrors this. We want to see firms making a reasonable assessment of the car's 'market value' – and then paying this amount. The 'market value' is the likely cost to the customer of buying a car as near as possibly identical to the one that has been stolen or damaged beyond economic repair.

This approach can come as an unpleasant surprise where policyholders have assumed they would get the amount that the car was worth when they first took out the insurance, regardless of the car's actual market value at the time of the incident giving rise to the claim.

... it would help if firms left this question out, or clearly explained its limited relevance to the settling of claims.

The fact that many insurers' proposal forms include a question about the vehicle's 'present value' undoubtedly causes confusion for many customers. For most transactions, the question has little relevance for the underwriting of the policy. So it would help if firms left this question out, or clearly explained its limited relevance to the settling of claims.

Of course there can be genuine debates about what represents a fair market value. Our starting point is to consider the approach the firm has taken. We would expect it to have consulted the normal trade guides and to have allowed for any difference from the norm in the car's mileage or condition. In most cases, the firm should have assessed the market value as equivalent to the 'guide retail price' (the price that a member of the public might reasonably expect to pay at a dealership).

Sometimes the firm will argue that it would be fairer to use the 'guide trade value' (the price that a motor trader might pay). Normally this will be less than the market price that the policyholder will have to pay to replace the car. However, the trade value may be a useful indicator where the car was not in 'guide retail' condition or where there is evidence that the customer intended to buy a replacement privately.

Other sources of reference may be relevant when making or assessing a valuation. For example, we would expect the firm to look at the price guides available to the general public, especially where these suggest significantly different results from the trade guides. Specialist publications can help in the valuing of unusual or 'classic' vehicles. And it can sometimes be useful to get evidence from an independent engineer (or even from a firm's in-house engineer), especially in relation to 'non-standard' vehicles.

Customers who dispute the firm's assessment of a car's market value often draw our attention to 'forecourt prices' advertised in local papers, and – increasingly – to prices quoted on internet sites. Generally we place little weight on such evidence. Advertised prices for cars are widely understood to be a starting point for negotiation, rather than a fixed price. And the information provided is often insufficient to ensure a like-for-like comparison of age, condition and mileage. But we do sometimes take local factors into account when deciding a relevant replacement cost. If, for example, the car has been bought recently from a reputable source, then this may be a sensible starting point for determining its market value.

Car owners often have a strong sentimental attachment to their cars. This attachment, together with the 'value' that they attribute to their vehicles – in terms of usefulness, reliability *etc* – means they sometimes have particular difficulty in accepting a perfectly fair valuation. For example, owners who have added special features and accessories, or carried out significant modifications, may dispute whether the insurer's valuation would allow them to purchase a car as desirable as the one they have lost. But it is a fact that special features may not add substantially to a car's market value. Indeed, in some more extreme cases they may actually reduce the value.

When a firm values cars that have been permanently modified, it may be appropriate to look at the closest equivalent vehicle, and to then make adjustments for the quality of the modifications. Policyholders may be disappointed if they are unable to replicate the exact modifications they made. However, our general view is that, provided the overall approach is reasonable, the firm is not required to cover the policyholder for the precise mixture of features of the previous – modified – car.

Finally, we see cases where the firm's enquiries after an accident reveal that a car is not quite what its owner believed it to be – and that it consequently has a lower value than the owner expected. It might, for example, be a 'grey import' (a vehicle bought from an importer who was not authorised by the manufacturer) or it may have been 'clocked'.

Where it becomes clear that the customer was aware of the car's true origins, the firm may be justified in rejecting the claim in its entirety. But in many cases, the customer is likely to have been the innocent victim of a fraud. We generally consider that customers should receive the vehicle's true market value, not the value of the car they *thought* they had bought. However, we may ignore problems that came to light only after the incident that gave rise to the claim (such as a hidden rust problem) if the owner was unaware of the problems and they would not have been apparent at re-sale.

... owners may dispute whether the insurer's valuation would allow them to purchase a car as desirable as the one they have lost.

… the firm's offer seemed to us to be quite generous.

case studies – vehicle valuations

■ 22/15

motor – valuation – unusually low mileage

Dr M's insurer valued her car at £2,040 after it was seriously damaged in an accident. She disputed this, saying that she had bought the car new eight years before for £7,500 and that it was now worth £4,500. The firm increased its offer to £2,500. Dr M refused to accept this. She said that the firm had failed to take account of the fact that the car had only 6,000 miles on the clock.

complaint rejected

Even considering the unusually low mileage, the firm's offer seemed to us to be quite generous. It was more than the car's 'market value' so there was no reason for the firm to increase its valuation.

■ 22/16

motor – valuation – proof of condition

Miss W insured her car in January 2001 and told her insurer that it was worth £10,000. After the car was stolen in June that year, the firm offered her £2,600. She objected – saying she had paid £9,500 for the car. When the firm looked into the matter further, it found that the car's previous owner had bought it as a wreck and then sold it to her for £1,000. When challenged about this, she said further work had been done on the car after she had bought it, to restore it to 'pristine' condition.

Although Miss W was unable to produce the car's service history and had no purchase or repair receipts to support her statement, the firm increased its offer to £4,100. It had referred to the published valuations for 'classic' cars, even though she had not taken out 'classic car' insurance. Miss W refused the firm's offer, saying she was prepared to accept £7,500. But the firm would not budge, so she brought her complaint to us.

complaint rejected

The firm was not liable for the £10,000 Miss W had said the car was worth. The firm's policy documents made it clear that if the car was stolen, the firm would assess and pay the car's 'market value'. This was the amount it would cost to buy a similar vehicle of a similar age and condition. In our view, the firm had valued the car properly. In fact, it had valued it as if it was in excellent condition, despite its high mileage and the lack of any service history. There was nothing to support Miss W's claim that the car was in 'showroom condition', so we were satisfied that the offer was very fair.

■ 22/17

motor – valuation – evidence of value – whether purchase price an accurate indicator of value

Mr Q's car was stolen just over a month after he had bought it. Since he had paid £18,495 for the car, he was extremely upset when the firm valued it at just £15,564.

He pointed out that his policy contained a promise that the firm would replace new cars if they were stolen or became a 'total loss' within the first 12 months. However, the firm said the car had not been 'new'. It said the car had been registered in the dealer's name before Mr Q bought it, and that this affected the car's value.

Eventually, the firm agreed to increase its offer to £16,524. Mr Q refused to accept this, arguing that the car had only five miles on the clock when he bought it. The firm would not change its stance, so Mr Q brought his complaint to us.

complaint upheld

The firm had no evidence to support its claim that the registering of the car in the dealer's name, only five weeks before Mr Q bought it, would have affected its value.

We required the firm to increase its offer to the full amount Mr Q paid for the car, and to add interest from the date of the theft.

... the car's previous owner had bought it as a wreck and then sold it to her for £1,000.

■ 22/18

motor – valuation – grey import – evidence of value

Mr T bought a new car for £25,000. It was a 'grey import' – in other words, a car that had been imported by a supplier who was not authorised by the manufacturer.

Just over two months later, after leaving the car in a public car park, Mr T was arrested and taken into custody. The following day, a fixed penalty notice was put on the car, which was still in the car park.

Some time later the car was stolen. The theft was eventually reported to the police in November by Mr T's friend, Mrs C. She subsequently made the insurance claim on Mr T's behalf in January 2001.

The firm valued the car at £17,950 and agreed to add interest to this amount. Mr T said the firm should pay him the full purchase price.

complaint rejected

In making a valuation, the firm had consulted a specialist trade guide for valuing 'grey imports'.

... there was nothing to support her claim that the car was in 'showroom condition'.

We were satisfied that the insurer's offer reflected the car's full market value, particularly since there was evidence that the car had suffered some damage before it was stolen.

We thought the insurer's offer to add interest to the amount it paid Mr T was very fair, since much of the delay was caused by his being detained after his arrest. We thought it probable that he had paid more than the car's market value when he bought it and we recommended that he should accept the firm's offer.

5 view letters

Many of the cases that reach us can be resolved without the need for a full investigation, which can sometimes be quite a time-consuming process. So instead of automatically undertaking a detailed investigation, we look to see if there are any other ways in which we can resolve matters fairly.

Part of the process can involve our sending firms a 'view letter' – something with which banks and building societies, in particular, may be unfamiliar.

After considering the initial information and arguments sent to us by both sides, a casehandler may well be able to form an opinion as to how best to resolve matters. Where this requires the firm to do something, the casehandler will usually speak to the firm over the telephone. If the firm accepts what the casehandler says, the casehandler will then put the proposal to the customer.

... part of the process can involve our sending firms a 'view letter'

But where the issues are complex, or the firm does not accept the points made over the phone, the casehandler may send the firm a view letter. This gives the firm the opportunity to consider carefully the casehandler's views. It then has the chance to respond with any further evidence or arguments that might change those views.

Sometimes, if a firm rejects the opinion set out in a view letter, it will say that it requires us to carry out a full investigation. But it is for the Financial Ombudsman Service – not the firm – to decide the most appropriate course of action. In some instances, a full investigation will be needed. But, particularly where the facts and the issues are clear, if the firm does not accept what we say in a view letter, the most appropriate step may then be for the case to go straight to an ombudsman, who will consider issuing a final decision.

Similarly, if the initial information and arguments show that the complaint is unlikely to succeed, casehandlers may send the customer a view letter. This gives customers the chance to consider carefully the casehandlers' views, and to send us any further evidence or arguments that might influence the outcome.

In the light of customers' response to the view letter, casehandlers may revise their view; or cases might go to a full investigation; or straight to an ombudsman, who will then consider issuing a final decision.

... it is for the Financial Ombudsman Service – not the firm – to decide the most appropriate course of action.

help and advice for firms and consumer advisers

our technical advice desk can

- provide general guidance on how the ombudsman is likely to view specific issues
- explain how the ombudsman service works
- answer technical queries
- explain how the ombudsman rules affect your firm.

phone 020 7964 1400
email technical.advice@financial-ombudsman.org.uk

our external liaison team can

- visit you to discuss issues relating to the ombudsman service
- arrange for your staff to visit us
- organise or speak at seminars, workshops and conferences.

phone 020 7964 0132
email liaison.team@financial-ombudsman.org.uk

ask ombudsman news

your questions answered

is fund-switch fair compensation for endowment mis-selling?

Q When my client complained that she had been mis-sold a mortgage endowment policy, the firm said the policy had been appropriate for her circumstances at the time. But it said the policy should have been invested in different funds. It offered to switch her, free of charge, into its with-profits fund and to credit her with the amount she lost through being in the 'wrong' fund.

My client is unhappy about this. It still leaves her with a policy that she thinks is unsuitable. And the policy is still likely to produce less than she needs when it matures.

A Firms need to follow the regulator's guidance when dealing with mortgage endowment complaints. And they should refer to our own *Mortgage Endowment Complaints Assessment Guide,* which shows suitable means of redress. (You'll find it on our website – www.financial-ombudsman.org.uk. Go to the publications page, click on 'technical briefing notes' and scroll down till you reach it.)

If the policy was suitable for your client's circumstances, but the choice of fund was inconsistent with her attitude to risk, then the firm's offer may be appropriate. But our experience to date suggests that the circumstances in which such an offer *is* appropriate are extremely rare. To be sure the original advice was entirely suitable, we would need to be satisfied that – even if she had been fully aware of all the facts – your client would still have taken out an endowment policy invested in the fund that the firm now suggests. If your client remains dissatisfied, she should refer her complaint to us.

ordering supplies of the ombudsman's consumer leaflet

Q How can my firm get copies of the leaflet that the FSA rules say we must send, at the appropriate stage, to any customers who complain to us?

A The leaflet you need is *your complaint and the ombudsman*. You can ring us up for an order form or download one from our website. The leaflet is available in packs of 25 at £5 per pack (including p&p). You will need to send a cheque with your completed order form.

Supplies of the leaflet are free to public libraries and consumer advice agencies (such as citizens advice bureaux and trading standards departments).

For more details about our publications please phone 020 7964 0092 or visit the 'publications' and the 'frequently asked questions' (FAQs) pages on our website – www.financial-ombudsman.org.uk