ombudsman
news

Financial Ombudsman Service

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essential reading for financial firms and consumer advisers

in this issue

insurance disputes involving personal possessions **3**

calculating compensation payments for mortgage endowment mis-selling – complex situations **8**

how satisfied are firms with our service? **12**

extending the term of repayment mortgages **13**

special events for mortgage and insurance intermediaries **19**

ask ombudsman news **20**

about this issue

Disputes involving mortgages dominate this edition of *ombudsman news*. We highlight some of the small but increasing number of mortgage endowment mis-selling disputes we are seeing where, because the underlying situation is far from straightforward, firms have been unsure exactly how to calculate the correct compensation. On page 8 we outline some of these complex scenarios and clarify the approach that firms should take.

We look, too, at some recent disputes involving repayment mortgages. These illustrate the kind of problems that can occur when the lender extends the original 'term' (or length) of the mortgage, apparently without the borrowers' knowledge or agreement. Since mortgage lending is usually repaid over a long period, it can be some years before the problem is discovered. Borrowers may then get a particularly nasty surprise if they find they are nowhere near as far along the road to paying off their mortgage as they expected.

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A different type of nasty surprise can await some policyholders when they put in a claim for personal possessions that are lost, stolen or destroyed while temporarily removed from the home. On page 3 we highlight some recent insurance disputes where the policyholders assumed they were covered for such eventualities – but their insurers told them otherwise.

Finally, '*how satisfied are you with our service*?' That's what we asked a broad cross-section of financial firms in a recent survey. On page 12 we present some initial findings, based on what they told us.

news **in brief**

ombudsman who's who

Details of all 23 of our ombudsmen are now on our website (www.financial-ombudsman. org .uk).

Just click '*about us*' and then select '*our ombudsman & senior staff*' from the column on the right-hand side.

services for **firms** and **consumer advisers**

our **external liaison team** can:

- provide training for complaints handlers
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phone **020 7964 0132**

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1 insurance disputes involving personal possessions

Customers sometimes assume that if they buy a standard household contents policy, all their personal possessions will be covered against *all* risks, anywhere in the world. This is rarely the case. Contents insurance policies do not generally cover your personal possessions while they are temporarily away from the home unless you have paid an additional premium for this additional level of cover. Where this is the case, we consider it good practice for firms to explain that if customers do not take up the optional additional cover ('*all risks*' cover) they will be left without cover for any contents that are temporarily removed from the home.

However, even when policyholders have bought '*all risks*' cover for their personal possessions, they may find that it doesn't, in fact, cover *all* risks. Most of these policies cover only those personal possessions that are designed to be portable or that are normally worn on the person, such as clothes, jewellery, sports equipment, musical instruments, *etc*.

If the policy does not make it clear which items are covered and which are not, then confusion is likely. Specific exclusions usually mean that the policy will not cover certain portable or wearable items, such as tools, laptop computers, software, spectacles, contact lenses, *etc*. And although certain items (such as sports equipment) may appear to be covered, the policyholder may find that the cover does not apply when the items are *in use* – rather than simply being carried or transported.

Complaints about personal possessions cover often arise after possessions are stolen from an unattended motor vehicle. Some policies don't cover such losses at all – others cover them up to a monetary limit of, say, £1,000. However, any cover is normally only provided if the stolen items were taken from a '*locked or concealed compartment*' (such as a glove box or boot).

Travel policies generally provide limited cover for certain personalpossessions. The usual restrictions apply where, for example, items are left unattended or are not worn or carried about the person.

The increased risk of loss or damage while travelling means that the limits in travel policies tend to be relatively small. Customers do not always realise that if their policy covers only part of their actual loss, they may be able to recover the balance from another policy, such as their household or purchase protection insurance.

... complaints about limitations of cover often arise after possessions are stolen from an unattended motor vehicle.

... customers must be able to understand the nature and scope of what they have bought.

Where customers do this, we will not allow insurers to escape liability for the balance by simply citing the standard clause about not paying out on '*claims covered by any other policy*'. This clause is designed to prevent policyholders from benefiting unfairly by claiming the *full* amount of their loss from two or more different insurers (a practice known as '*double recovery*'). The clause is not designed to prevent policyholders from legitimately spreading their risk between insurers.

If an insurer turns down a claim on the grounds of reasonable restrictions and limitations that it has stated in its policy in clear, plain language, then we are likely to support it. It is, after all, an insurer's legitimate commercial right to determine the limit of the risks it is prepared to cover. But customers must be able to understand the nature and scope of what they have bought. Where we find ambiguities in the policy, we will resolve the matter in favour of the customer. As always, the key for the insurer is to set out the policy details clearly, so that customers do not have any nasty surprises when they come to make a claim.

case studies – insurance disputes involving personal possessions

■ **35/1**

customer unable to recover full amount of claim under contents insurance policy – value of damaged property exceeded the policy limit – whether firm right to reject customer's claim for the balance under his purchase protection policy

Mr K accidentally dropped and damaged his new camera one afternoon when he was taking pictures of his family at a local carnival. The camera was worth about £4,000 and Mr K put in a claim under his household contents policy. He had paid an additional premium on this policy to obtain cover for his personal possessions while they were outside the home.

Mr K's contents insurer accepted the claim. However, it only paid him £1,500, as this was the policy limit. Mr K then tried to obtain the balance from his purchase protection insurer (firm C). Firm C rejected the claim on the grounds that its policy contained the following exclusion: '*This policy does not cover... loss or damage insured under any other policy or which would have been insured under another policy but for the application of a policy excess*.' Mr K then complained to us.

complaint upheld

The clause in this particular policy was similar to that found in many types of policy. We consider the purpose of such clauses is to prevent policyholders making a '*double recovery*' (claiming for the full amount of the same claim – from two different insurers). We did not consider the clause to be inherently unfair or

unreasonable, provided the firm applied it appropriately, so as not to exclude genuine losses that were otherwise uninsured.

Mr K had recovered only *part* of his actual loss from the contents insurer. We therefore considered that it was fair and reasonable for him to ask firm C to cover the balance – and for it to do so, subject to the policy excess and limit.

35/2

whether electricity generator came under policy's definition of '*personal possessions*'

When Mr J's electricity generator was stolen from a local stable, where it was being kept temporarily while in use, he made a claim under his household policy.

The firm rejected the claim. It said the generator was not covered when it was outside the home. The only *'personal possessions'* that the policy covered outside the home were '*Items which you... would wear or carry around for personal use, adornment or convenience ...*'. Mr J then complained to us.

complaint rejected

We felt that the firm's policy definition was worded sufficiently clearly to exclude Mr J's claim. The firm intended only to cover certain sorts of items – those that were portable. It could not reasonably be said that a bulky electricity generator was an item that you would carry around for '*personal use or convenience*'. We therefore rejected the claim.

35/3

customer's claim for stolen computer – whether firm correct to say computer did not fall within policy description of '*personal belongings*'

Miss G took her personal computer with her when she went to stay with a friend for a few weeks. The computer was a standard desk-top model, not a laptop. There was a break-in at the friend's house shortly after Miss G arrived and the computer was stolen.

Miss G put in a claim under the '*personal possessions'* section of her household policy but the firm turned it down. It said that her computer did not fall within the policy definition of '*personal belongings*' which listed '*Clothing and Personal Effects (including clothing, jewellery, watches, furs, binoculars, musical, photographic and sports equipment)*'. Miss G then complained to us.

complaint upheld

We decided that if the firm intended only to cover personal belongings that were designed to be portable, or that were customarily carried about the person, then it should have said so in plain language.

We pointed out that the policy definition included musical instruments. Some musical instruments, such as pianos, are

... the firm's policy definition was worded sufficiently clearly to exclude Mr J's claim.

... we felt the firm's decision was less than fair and reasonable.

not usually considered '*portable*'. However, the policy did not make any distinction between '*portable*' and '*non-portable*' instruments. So non-portable items *could* fall within the policy definition of '*personal belongings*'. The computer was a possession that was personally owned by Miss G. Since the policy did not specifically exclude computers, we decided the fair and reasonable solution was for the firm to pay the claim.

■ 35/4
customer's furniture destroyed in fire at '*storage facility*' – whether firm correct in rejecting claim on grounds that items were stored in a '*furniture depository*'

Mrs A put her furniture into storage while she was having renovations carried out after moving home. Unfortunately, all her furniture was destroyed when the storage facility burnt down. The owners of the facility held no insurance and had been declared bankrupt, so Mrs A put in a claim under her household insurance policy for £50,000.

Her policy covered her against loss or damage for '*personal possessions temporarily away from the home*'. However, there was an exclusion that said items were *not* covered while they were stored in a '*furniture depository*'. The firm cited this exclusion to turn down Mrs A's claim.

Mrs A argued that the storage facility was not a '*furniture depository*', but the firm still refused to pay the claim. However, it did offer her a goodwill payment of £5,000.

complaint rejected

We decided that a '*storage facility*' fell within the ambit of the phrase '*furniture depository*'. It was a place where furniture was deposited. We did not agree with Mrs A that because items other than furniture could be stored there, it could not be defined as a '*furniture depository*'. We concluded that the firm was not liable to meet the claim and that its goodwill payment had been very fair.

■ 35/5
bag stolen from parked car when left covered with a coat on front seat – whether firm right to dismiss complaint on grounds that bag had not been '*concealed*'

Mr D and his wife left their car in the car park while they were visiting a stately home one afternoon. They returned to the car later in the day to find that a thief had broken into it and stolen Mrs D's handbag. She had left the bag on the front seat, covered with a coat.

Mr D made a claim under the personal possessions section of his household insurance policy. However, the firm said it would not meet the claim because the handbag had not been left in '*a locked and concealed boot, concealed luggage compartment orclosed glove compartment*', in accordance with the terms of the policy.

complaint rejected

The policy exclusion had been very clearly stated and it was evident that the bag had *not* been left in a '*secure concealed compartment*'. The handbag could easily have been left in the boot. Even though the bag had been covered with a coat, it would have been obvious to an opportunistic thief that the coat could be hiding something worth stealing. We decided the firm acted reasonably in turning down this claim and we rejected the complaint.

■ **35/6**

firm turns down claim for sunglasses stolen from car – whether sunglasses had been '*effectively concealed from view*'

When Mrs M returned to her parked car after a brief shopping trip, she found that a thief had broken into her car. The designer sunglasses that she had left in the pocket of the door nearest the driver's seat had gone.

Mrs M put in a claim under the personal possessions section of her household policy but the firm turned it down. It said this was because the sunglasses had not been left in '*a concealed luggage compartment or closed glove compartment*'. Mrs M then complained to us.

complaint upheld

We considered that, strictly speaking, Mrs M's claim fell foul of the exclusion clause. However, we felt the firm's decision was less than fair and reasonable because the sunglasses had effectively been concealed from view. They would not have been visible to a passing thief and the door pocket was, in many ways, similar to a glove compartment. This thief just happened to strike lucky when he broke into the car. We therefore decided that the firm should pay the claim.

... we concluded that the firm was not liable to meet the claim and that its goodwill payment had been very fair.

2 calculating compensation payments for mortgage endowment mis-selling – complex situations

When firms calculate compensation in cases of mortgage endowment mis-selling, they are required to follow the guidance provided by the FinancialServices Authority (FSA) and by us. Broadly speaking, this involves comparing the customer's *current* financial position with the position they would have been in, if they had taken out a repayment mortgage instead.

We are seeing a small but increasing number of disputes where, because the customer's circumstances are far from straightforward, the firm has been unsure exactly how to work out the correct amount of compensation. This article takes a lookat some of these complex scenarios and clarifies the approach that firms should take in their calculations.

The scenarios we examine are where the customers:

- have already switched to a repayment mortgage; *or*
- switched to a repayment mortgage but kept their endowment policy going (usually as a means of making general savings); *or*
- kept their endowment policy going during a 'break' between mortgages.

customer has already surrendered policy and converted to a repayment mortgage

In this situation, firms should calculate compensation by:

- comparing the mortgage endowment policy with a repayment mortgage, up to the date when the customer converted to a repayment mortgage;
- using the endowment policy's surrender value as at the date of this conversion; *and*
- adding interest, from the date the policy was converted to the date when the firm pays the compensation.

For example, in a case that came to us recently, Mr C had taken out a mortgage endowment policy with the firm in 1998. He converted this to a repayment mortgage after the firm wrote to him in July 2001, warning that the policy was unlikely to pay out enough money to cover his mortgage. In 2003, he complained to the firm about its mis-selling of the mortgage endowment policy.

The firm agreed to uphold his complaint but was unsure how to calculate the compensation. We told it to calculate Mr C's loss by following the FSA's Regulatory Update 89 (RU89), comparing the cost of the endowment mortgage with a repayment mortgage, up to the date when Mr C converted to a repayment mortgage (July 2001) and using the surrender value that applied on that date. We also said it should pay Mr C interest on this amount, from July 2001 to the date when it paid the compensation.

customer has converted to a repayment mortgage but has retained the endowment policy

Firms are sometimes unsure how to treat cases where a customer has switched to a repayment mortgage but has kept the endowment policy going and has continued to pay the premiums. In such cases, much will depend on *why* the customer has done this.

For example, in July 2003, Mr G complained to the firm that provided and had sold him his mortgage endowment policy. At the same time, he switched to a repayment mortgage. However, he kept his mortgage endowment policy and continued paying the premiums.

When the firm rejected Mr G's complaint, he came to us. He told us he had only continued paying his endowment policy premiums because he thought he had to do this while the firm – and the ombudsman service – was dealing with his complaint. We found that the mortgage endowment policy had been unsuitable for Mr G's circumstances at the time the firm sold it to him, so we upheld his complaint. We required the firm to:

- calculate redress in line with RU89 up to July 2003 (the date Mr G switched to a repayment mortgage) and using the surrender value as at July 2003;
- add interest to the loss from July 2003 to the date when the firm paid the compensation;
- refund the premiums Mr G had paid into the endowment policy from July 2003 to the date when the firm paid compensation; *and*
- add interest to the sum of premiums paid from July 2003 to the date when the firm paid the compensation.

The outcome was different in the case of Mr M. He tookout a mortgage endowment policy in 1995 but converted to a repayment mortgage after the firm wrote to him in 1998, indicating a potential shortfall on his policy. He decided to keep his endowment policy and to carry on paying into it as a form of savings.

In 2002, Mr M received another letter from the firm, indicating that when the endowment policy matured it would be worth significantly less than Mr M had expected. He then complained to the firm about its mis-selling of the policy.

The firm agreed to pay compensation but it calculated Mr M's loss from the date when he first tookout the mortgage endowment policy to the date when he converted to a repayment mortgage. Mr M insisted that this was wrong. He said the firm should include in its calculations the entire period during which he had been paying into the endowment policy. Unable to reach agreement with the firm, he came to us.

We explained that the firm was only accountable for the loss that had occurred while he was using the policy to repay the mortgage. It had been entirely Mr M's choice to continue paying in to the policy, as a means of saving, after he had switched to a repayment mortgage. We told the firm that its offer was fair. It calculated compensation due to Mr M up to the date when he switched to a repayment mortgage in 1998, and it paid interest on this sum, up to the date when it made the compensation payment.

customer has kept endowment policy going during a '*break*' between mortgages

Another situation that can affect compensation calculations is where customers have had a '*mortgage break*' (a period when they were 'between' mortgages). These customers are in the position where, if theirs had been a repayment mortgage, they would have been able to repay it after selling their property and then would have no mortgage outgoings until they bought a new property.

Instead, having been (inappropriately) sold a mortgage endowment policy, as a flexible means of repaying current or future mortgages they kept the policy going after selling their property even though they didn't buy a new property right away. Their intention was to use the policy as a means of paying the mortgage when they eventually bought another property.

Where compensation is due in cases like this, the firm's calculation should take into account *all* the endowment premiums paid, including those when the policy was not being used for a mortgage. This is because the customer kept the policy for its initial purpose – repaying a mortgage.

Mr B's case provides an example of this situation. In 1996, he took out a mortgage endowment policy as a means of repaying a £50,000 mortgage with firm A. Four years later, he sold his property and moved abroad for a year. During this period, he kept up the payments on the endowment policy, knowing that he would need to buy a property when he returned home. In January 2001, he moved back to the UK and arranged a mortgage for a new property with a different firm – firm B. He planned to use the proceeds of his existing endowment policy, when it matured, to repay the new mortgage.

In July 2003, Mr B complained to firm A that it had mis-sold his policy. The firm upheld his complaint and offered to compensate him for his losses up to January 2000, when he had sold his first property. However, it said it did not consider it was liable for any loss that Mr B had sustained after that date. Mr B disagreed. He felt the firm should compensate him for the entire life of the policy.

We agreed with Mr B. He was continuing to use the policy for the purpose for which it had originally been sold – to repay his mortgage. There was no reason to believe that he had been aware of any potential difficulties with the mortgage endowment policy (in terms of a possible shortfall) when he returned to the UK and bought his second house. So we required the firm to compensate him, in line with RU89, for the entire life of the policy, including the period when he was abroad and was not using the policy in connection with a mortgage.

The table below summarises the compensation calculations for the three separate periods when Mr B's policy was, in turn, used as a means of replacing an initial mortgage, retained for future use, and used as a means of repaying a new mortgage.

date	cost of endowment mortgage	capital reduction on equivalent repayment mortgage	cost of equivalent repayment mortgage
period of first mortgage (March 1996 to January 2000)	£17,631.14 (interest plus endowment premiums)	£2,982.02	£16,860.49 (interest and capital repayment element)
period abroad with no mortgage (January 2000 to January 2001)	£1,020 (endowment premium only)	nil	nil
period of second mortgage (January 2001 to date of settlement in 2003)	£10,587.84 (interest plus endowment premiums)	£3,094.44	£10,942.95 (interest and capital repayment element)
total	£29,238.98	£6,076.46	£27,803.44

The loss was calculated as follows:

capital comparison

total capital reduction on equivalent repayment mortgage	£6,076.46	
minus surrender value in 2003	£6,000	£76.46

plus

comparison of outgoings

total cost of endowment mortgage and premiums	£29,238.98	
minus		
total cost of equivalent repayment mortgage	£27,803.44	£1,435.54

compensation payable	£1,512.00

3 how satisfied are firms with our service?

In our *annual review* last summer we published results from our research into how consumers rated our service – and we said that we would be carrying out similar research into what firms think about us.

This further research was carried out in the second half of 2003. It involved sending detailed questionnaires to 342 firms, asking for their comments and views – in confidence – on all aspects of our service. We are very grateful to the 147 firms who took the time and trouble to respond. These firms represented a cross-section of the financial services industry:

- 40% of responses came from independent financial advisers (IFAs);
- 22% came from investment product providers;
- 20% came from general insurers; *and*
- 18% came from banks and building societies.

the big issues

We are currently digesting the detailed feedback that we received, and analysing and considering the many comments, facts and figures. Butinitial findings show that:

- 70% of the firms that responded thought that the decisions we make are '*generally fair*';
- 85% felt able to challenge the views expressed by our adjudicators – but only 14% did so regularly;
- 90% agreed that the ombudsman service was a better alternative to the courts;
- 90% said they understood how we handle complaints; *and*
- 75% thought the ombudsman service had upheld a reasonable proportion of the complaints made against their firm.

doing things better

A number of firms said they had received inaccurately addressed correspondence from us. We are now looking at how we can keep our database of firms' addresses and contact details more up-to-date. We are also considering comments from some larger firms (mostly IFA networks) who said that it is difficult for them to identify cases from the initial information we send them when we receive a complaint against them.

We are already dealing with concerns raised by smaller firms about the case fee. We recently proposed (in our *plan & budget 2004/05*) that we would *not* charge financial firms case fees for the first two complaints against them that are referred to us each year. This will particularly benefit the large majority of firms whose customers only rarely refer complaints to the ombudsman service.

More generally, we are reflecting on the perception that is clearly held by a number of firms that we are '*too consumer-focused*'. Some firms are increasingly worried about the evidence they see of a growing '*complaints culture*' – with '*everyone trying it on*' ...

more feedback

We will be reporting back with more details as we work through the survey findings in greater depth. Our board has also recently commissioned an independent assessment of our service – reviewing our process and output in terms of quality, consistency and value. This assessment will be carried out by Elaine Kempson from the Personal Finance Research Centre at Bristol University.

So watch this space for more news and feedback on where we need to do things better in future – or even on where we may already be getting things just about right.

4 extending the term of repayment mortgages

When they take out a mortgage, borrowers choose the mortgage '*term*' – the period of time over which they will repay their loan. Often, they choose the longest period available, so as to keep their monthly repayments to a minimum. Frequently, borrowers choose a term thatenables them to make their final repayment just before they retire.

Problems can occur if – at some stage after the borrowers first take out their mortgage – lenders extend the term of the mortgage, apparently without the borrowers' knowledge or agreement. Mortgage lending is usually repaid over a long period, so it can often be some years before the borrowers find out what has happened. They are then understandably upset and anxious to discover they are not as far along the road to having paid off the mortgage as they expected. This will be a particular worry if retirement is looming.

Here are some of the most common situations brought to us.

a Borrowers discussed several possible mortgage terms with their lenders when they applied for a mortgage, and believed they had made their choice clear. However, it later became apparent that the lender had put in place a different – and longer – term than the one the borrowers recalled choosing.

... so it can often be some years before the borrowers find out what has happened.

b Borrowers have an existing mortgage and take out a further advance. The lender then re-sets the whole of the mortgage lending over an entirely new term.

The borrowers may say they intended the further advance to be repaid over the remainder of the *existing* term of their main mortgage. Or they may say that they agreed that the further advance should be on a longer term, but that they had not wanted the term of their main loan to be affected.

c The lender's mortgage system includes the facility to extend the term automatically if borrowers do not increase their payments after interest rate increases, or if there have been other underpayments on the account.

Borrowers then say that the lender did not make it clear to them that this would happen and that they believed the mortgage was still being repaid over the remainder of the original term.

d Borrowers suffered financial difficulty and the lender agreed that they could repay just the interest for a certain period, in order to help them through. When the borrowers started repaying the capital again, as well as the interest, the lender extended the term of the mortgage, so as to minimise the monthly repayments. The borrowers say they were never told of this, and that they assumed they were still repaying within the original term.

... we generally interpret any ambiguity in favour of the borrower.

When we look at complaints involving the first two types of problem listed on the previous page, we will want to examine two key documents, the borrowers' application for the mortgage or further advance and the lender's offer. If the offer clearly shows the term that is to be applied, and the borrowers have signed it, then that is usually persuasive evidence that the term is correct and that the borrowers are mistaken in their recollections.

But offers can sometimes be ambiguous, particularly where there has been a further advance. It may be unclear whether the term mentioned runs from when the further advance is made, or from when the original mortgage was taken out and also whether the new term applies to the original loan as well as to the further advance. We generally interpret any ambiguity in favour of the borrower – because it is the lender, not the borrower, who constructs the wording of the offer.

Firms will sometimes say that as the term that the borrowers requested on their application form was not available under the firm's mortgage system at that time, they amended the borrowers' instructions to the nearest equivalent that *was* available. From the lender's point of view, the borrowers are no worse off – as they could never have had the term they applied for.

However, that does not take into account the question of whether borrowers arranged their finances on the basis of the term they believed was in place – rather than on the basis of the term that was actually arranged for them. If we are satisfied that borrowers have been financially disadvantaged in that way, then we may conclude that they should be compensated for their loss and inconvenience.

Firms often argue that borrowers should have realised – from the size of the repayments they were making – that they would not have paid enough to clear the mortgage within the term they had in mind. However, it is only in rare cases that we think a borrower could reasonably have been expected to know, from their monthly repayments, that they were not paying enough to clear the mortgage within what they assumed to be the mortgage term.

An exception might be where the lender had provided printed illustrations for a new mortgage, clearly showing the repayment for the term the borrowers had chosen, and this differed greatly from the amount the borrowers were paying. In such cases, we may conclude that the borrowers should have realised that the repayments they were being asked to make were incorrect.

Where the extension of the mortgage term has come about because of a feature of the lender's mortgage system, we will need to be satisfied that the borrowers were made aware that their mortgage term would be changed. If, for example, the lender can provide a copy of any information about the change that it sent

... it is important that the lender makes it absolutely clear what it is offering to do.

the borrowers, then that will often persuade us that the borrowers knew of the extension at the time – but may since have forgotten.

But the fact that borrowers were advised, on one occasion, that their mortgage term had been extended is not normally enough to entitle the lender to make later, additional extensions to the term without telling the borrowers what it has done.

It is not unusual for borrowers to ask if they can pay just the interest for a period, to help them over a period of financial difficulties. When the time comes for them to resume paying both capital and interest, the lender may think it will '*help*' by extending the term of the mortgage, so that the repayments are smaller than they would otherwise have been.

In such cases, it is important that the lender makes it absolutely clear to the borrowers what it is offering to do, and what effect that will have on the time it will take to pay off the mortgage. Ideally, the lender should do this in writing, so that everyone understands the position clearly. Borrowers will not accept that they have been '*helped*' if they later find that their mortgage payments will continue for years longer than they had expected.

The lender will sometimes argue that the borrowers could not have afforded the higher repayments that would have been required to keep up with the original term. But we will not start from that assumption. If the borrowers were able to keep up with their capitaland interest repayments once they recovered from the temporary period of financial difficulty, then we would need to be persuaded that they would not have managed to make the higher repayments needed to repay their mortgage within the original term.

Whatever the reason for extending the term, if we conclude that the lender made the extension and that the borrowers were unaware of it at the time, we will apply the principles explained in our '*Redress for Mortgage Underfunding*' guidance note when looking at how should be compensated. The guidance note is available on our website www.financial-ombudsman.org.uk – just click on '*technical briefing notes*' and scroll down the list until you come to it.

Where a firm has extended a mortgage term without the borrower's authority, and would like to make the borrower a settlement offer, it should use the information in that guidance note as a basis for their offer. It may help to show the guidance note to the borrower as well. However, they should take care to show the full note, not simply to quote parts of it, as excerpts can be misleading when taken out of context.

There will always be cases where a borrower or lender considers that special circumstances warrant a deviation from the general approach outlined in the guidance note. Where the two parties are unable to agree on a fair approach, the case may be suitable for mediation by one of our case handlers.

... the firm had extended the term of the couple's mortgage without telling them.

case studies – extending the term of repayment mortgages

■ **35/7**
customers in arrears with mortgage repayments – when firm '*capitalised*' the arrears it also increased mortgage term, without telling the customers

Mr and Mrs L fell into arrears with their mortgage repayments after Mr L was out of work for some months. Once Mr L got a new job, the couple were able to start paying the full amount that they owed each month. They also made some extra payments to reduce the arrears.

Several months after they had resumed their full repayments, the firm invited Mr and Mrs L to a meeting to discuss their mortgage. It offered to '*capitalise*' the remaining arrears (add them to the mortgage) so that the couple's account would appear up-to-date.

Mr and Mrs L were very pleased with this suggestion, and agreed that the firm should go ahead. A few days later, the firm wrote to the couple, confirming that the arrears had been capitalised and telling them what their monthly repayment would be, from the following month onwards.

Five years after Mr and Mrs L started making the repayments at the new monthly rate, they decided to apply to the firm for a further advance, so that they could build an extension to their house. But when they visited the firm to discuss their new borrowing, they were shocked to find that the term of their existing mortgage was more than two years longer than they thought. They discovered that when the firm had capitalised the arrears it had also extended the term of the loan, so as to keep the couple's new monthly repayment broadly the same as it had been before.

Mr and Mrs L were very unhappy. They had not wanted to extend the term of their mortgage and were particularly annoyed that the firm had done this without telling them. They said that they would have preferred to make higher monthly repayments – and could have afforded to do this without difficulty.

complaint upheld
The firm considered that it had helped Mr and Mrs L by extending the term. It also said that the couple must have realised that the term had been altered, as the monthly repayment they were asked to make *after* the capitalisation did not differ greatly from the amount they had to pay before.

We were satisfied that Mr and Mrs L had *not* realised that the firm had altered the term. The firm had not given them any indication that it had done this. And we did not accept that the couple were in a position to know, from the size of their monthly repayments, that the mortgage term had changed.

We were also satisfied that Mr and Mrs L could easily have managed the increased repayments, if the firm had left the original mortgage term in place. So we did not accept that the extension had been necessary or helpful. On the contrary, it had denied the couple the opportunity to keep their mortgage to their chosen term.

We explained this to the firm, and asked it to compensate Mr and Mrs L in accordance with our '*Redress for Mortgage Underfunding*' guidance note.

■ **35/8**

customer has 25-year mortgage – firm extends the term, without customer's knowledge, each time customer takes out a further advance

Mr W took out a repayment mortgage with his firm in order to buy a house. He was gradually renovating the place and took various further advances during the first five years of the mortgage, in order to pay for the improvements.

Once the renovations were complete, Mr W started making extra repayments of £250 a month, with the intention of paying off his mortgage more quickly. He hoped to retire early and did not want to have any mortgage debt still left to pay after he stopped work.

It was nearly two years after he had been making these extra repayments when Mr W found out that the remaining term of his mortgage was almost five years longer than he had thought.

It transpired that each time Mr W had applied for a further advance, the firm had put the *whole* of the borrowing on a new 25-year term. He had assumed that when he had written '*25-year term as before*' on the application form, the firm would have understood this to mean that he wanted to pay off the additional borrowing within the 25-year term of his *original* mortgage. He had no idea that it had been extending that original term each time it had given him an advance.

Mr W complained to the firm, but it did not agree that it was responsible for the problem, so he came to us.

complaint upheld

The firm considered that Mr W had '*gotthe terms he asked for*', and that he was, in any event, well ahead of schedule in repaying his loan. So it did not acceptthat he had been caused any real loss by what had happened.

We thought that the questions on the firm's application form were confusing, particularly in relation to the customer's required term. The form also failed to make clear that the *whole* of the existing mortgage loan (not just the further advance) would be spread over the term that the customer requested when applying for the further advance. So we did not agree with the firm that Mr W had '*got the terms he asked for*'.

We were satisfied that Mr W could have paid the higher repayments needed to pay off all of his borrowing within the remainder of the original 25-year term. And we were satisfied that he could also have continued making his additional

voluntary monthly payments of £250 to help pay off his mortgage as quickly as possible. So we considered that he had suffered a loss as a result of the firm's extending the mortgage term, since he would have been still further ahead with his repayments if it had left the original term unaltered.

We told the firm to compensate Mr W, in accordance with our '*Redress for Mortgage Underfunding*' guidance note.

■ 35/9
whether firm at fault for following solicitor's instructions to extend mortgage term at same time as firm transferred mortgage from joint names to sole name

Three years after Ms B and her partner took out a 20-year joint mortgage from the firm, they split up. They agreed that Ms B would keep the flat and that the mortgage would be transferred into her sole name. Ms B's solicitor liaised with the firm and prepared the forms needed to transfer the mortgage into Ms B's sole name. The transfer was completed within a few months.

Two years after that, Ms B started looking into the possibility of moving her mortgage to a different firm. She was surprised to find that the amount outstanding on the mortgage did not appear to have gone down much since it had been transferred to her sole name.

She made some enquiries and discovered that the firm had placed the mortgage on a new 25-year term at the time of the transfer. She complained to the firm, saying she had not wanted it to extend the term and had not asked it to do this. She added that the firm should have realised that the new term would not be suitable for her, so should have discussed this with her before making the change.

The firm did not agree that it had done anything wrong. It said it had simply put in place the mortgage term asked for on the transfer forms. It also said that it was not reasonable to expect it to question the advisability of extending the term, given that Ms B's solicitor had been acting for her.

complaint rejected

When the complaint was referred to us, we looked at the transfer forms. They clearly stated that Ms B wanted a 25-year term, from the date of the transfer. We accepted that it was Ms B's solicitor – not Ms B – who had completed the forms, but she had signed them. We did not consider that, in these circumstances, the firm had any duty to query the length of the term requested.

The monthly repayment that the firm had asked Ms B to make *after* the transfer was appreciably lower than the amount she had been paying before. We felt that as Ms B was an accountancy professional, she should have realised that this was significant and should have queried it at the outset if it did not tally with her understanding of the new arrangements.

Ms B was clearly very disappointed that she had not paid off as much as she would otherwise have done in the years that followed the transfer. However, we did not consider that the firm was to blame. We were satisfied that it was entitled to act on the signed forms that it received from Ms B's solicitor. We therefore rejected the complaint.

the financial ombudsman and you

special events for mortgage and insurance intermediaries

We're holding a series of *free* events for mortgage and insurance intermediaries. These firms will be covered by law by the Financial Ombudsman Service when they start to be regulated by the Financial Services Authority.

The aim is to help these firms find out more about how the ombudsman service works – and about what being covered by us involves.

The events also give firms a chance to consider the benefits of joining us voluntarily – ahead of regulation.

So whether you're interested in joining the ombudsman service, or you simply want to find out more about what will be involved in the future, why not come along and meet us?

Each event begins at **10.50am**, when you are welcome to join us for a cup of tea or coffee. There will be a presentation at **11.00am** (lasting approximately 50 minutes) followed by an informal question and answer session.

There's no need to book – just turn up on the day at the venue that's most convenient for you.

events details

Each event begins at **10.50am** with a brief presentation at **11.00am**.

date	area	venue
16 Mar	Maidstone	Marriott Tudor Park Hotel, Ashford Road, Bearsted, Maidstone ME14 4NQ
30 Mar	London	Novotel Hotel, 1 Shortlands, Hammersmith, London W6 8DR
6 Apr	Belfast	Europa Hotel, Great Victoria Street, Belfast BT2 7AP
21 Apr	Brentwood	Holiday Inn, BrookStreet, Brentwood, Essex CM14 5NF
27 Apr	Liverpool	Marriott Hotel City Centre, 1 Queen Square, Liverpool L1 1RH
5 May	Swansea	Ramada Jarvis Hotel, Phoenix Way, Enterprise Park, Swansea SA7 9EG

We are planning further events in other parts of the country, so if none of the locations listed is convenient for you, keep an eye on our website for details of other events.

ask ombudsman news

case dismissed – so why must I pay?

Q You said in a recent edition that you don't charge a case fee if you decide to dismiss a complaint '*without consideration of its merits*'. So why have you sent my firm an invoice for a case that you dismissed this way?

A In *ask ombudsman news* (issue 33), we confirmed that we don't charge a case fee where we consider it *readily apparent* that the complaint should be dismissed without consideration of its merits (for example, because the complainant clearly hadn't suffered financial loss or material inconvenience). Staff on our front-line – in our customer contact division – will often be able to identify such cases early in the process, before we start more detailed work on them. Where, at this early stage, we can decide that we should dismiss a complaint, we don't charge a case fee.

But sometimes it *won't* be readily apparent that the complaint can be dismissed at this stage. We may still need to investigate to be sure that we've got to the bottom of the complaint, have satisfied ourselves about the facts – and are acting properly in dismissing it. As we said in *ombudsman news* issue 33, first impressions about a complaint can be deceptive. Where we cannot readily dismiss a complaint, we charge a case fee – even if, after a close study of the facts, we later decide to dismiss the complaint.

right rate for mis-selling calculation?

Q I've heard that you've said firms should use Halifax's standard variable rate when doing the calculations in mortgage endowment mis-selling cases. Is this true?

A No. A firm should only use the Halifax standard variable rate in these circumstances if it has been impossible for it to establish what the actual rate of interest was for that particular consumer.

Normally, the firm will know who the mortgage lender was, and will be able to get exact details of the mortgage in question – in order to establish the specific interest rate(s) that applied. It is only if the firm cannot trace the original mortgage lender, or if there are difficulties in getting details of the actual mortgage, that it should use the Halifax standard variable rate (which would have been broadly similar to other rates at the time).

If a firm uses the Halifax rate in these circumstances, then we expect it to tell the consumer – and to explain that the calculation is, by necessity, approximate. The consumer still has the right to request an exact calculation, if they can provide details of the actual rate(s) that applied in their case. But the consumer can't ask for an exact calculation and then opt for the approximate Halifax-rate based calculation, if, from the consumer's point of view, the Halifax rate gives a more favourable outcome.