ombudsman news

essential reading for people in the financial services and consumer advice sectors

Financial Ombudsman Service

settling financial disputes, without taking sides

issue 55

August 2006

leaving it too late...

Walter Merricks
chief ombudsman

The holiday season may be upon us, but it's also the time of year when I have to start thinking about what our workload might look like in the next financial year – to prepare for next year's budget, covering the period to March 2008.

The pattern of mortgage endowment complaints is crucial for us, and one thing is clear. We will be seeing a large rise in disputes that turn on whether firms have correctly applied a time bar, where consumers have left it too late to complain. For many firms, applying time limits is a matter of being able to draw a line under their liabilities. The FSA, and the Treasury Select Committee, accepted that it would be unrealistic to expect firms to respond to these claims for ever, and that time limits were inevitable.

But for consumers who miss a deadline – particularly when it was not drawn to their attention – a firm's refusal to look at the merits of their complaint generates an understandable sense of grievance.

Firms aren't normally prejudiced by a consumer's delay in submitting a claim, if it's one the firm would have had to meet if it had been submitted in time. But if a firm rejects a claim simply saying it is too late – and the matter is then referred to us – we are restricted to checking whether the firm has applied the time limit rules correctly. If it has done so – then we are unable to look into the complaint. So absent-minded or ···>

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disorganised consumers may well be left feeling that they're paying a disproportionate penalty for their failure to meet the time limit – and that firms could be escaping their proper obligations.

When we reject a complaint, we try to give comprehensible reasons. My guess is that next year – however hard we try to explain the position – we will be spending a lot of time giving dissatisfied consumers answers they'll find very difficult to accept. Time-barred endowment complaints may look open and shut, but their emotional content may be more explosive. And I'm not sure how we'll explain the impact of that to those who scrutinise our budget.

Walter Merricks
chief ombudsman

news update **news update** news upd

pension mis-sales outside the pensions review

no change to redress methodology assumptions

In issue 50 of *ombudsman news* (Nov/Dec 2005) we explained that we had used our 'wider implications' process in deciding how to approach the calculation of loss for pension mis-sales not covered by the industry-wide pensions review.

The outcome was that we would continue to use the pensions review methodology, but ask PricewaterhouseCoopers LLP (PwC) to advise on appropriate assumptions. We published the assumptions, fixed as at 1 October 2005, in *ombudsman news* and on our website.

We recently asked PwC to tell us whether the October 2005 assumptions needed updating. They recommended that the assumptions should not be changed at present. Further details, and PwC's report, can be found on our website.

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complaints against mortgage intermediaries

This article outlines our experiences to date in dealing with complaints involving mortgage intermediaries, and includes several recent case studies. It also sets out some key points that we hope mortgage intermediaries may find helpful.

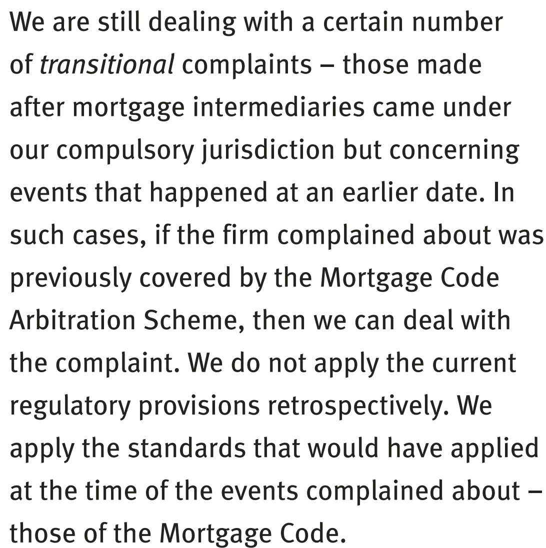
We have seen a steady but fairly moderate stream of cases involving mortgage intermediaries since they joined our *compulsory jurisdiction* when they became regulated by the Financial Services Authority (FSA) in October 2004. Matters complained about have – in the main – been advice, charges and administrative failings. That accords fairly closely with the sorts of complaints we were already used to seeing about mortgage lenders, who were covered by our jurisdiction *before* October 2004.

Most of the mortgage intermediary cases referred to us have been resolved informally at an early stage in our process – again reflecting our experience of the same sorts of complaints against mortgage lenders. And we have found most mortgage intermediaries are happy to discuss cases (and how to resolve them) directly with our case-handling staff, often saying how useful they find it to be able to do this.

Some of the smaller mortgage intermediary firms, particularly those with no previous experience of dealing with us, have needed a greater degree of information from us than the larger firms. We have tried to meet the needs of these intermediaries by ensuring they are aware of the different stages in our process, and by keeping them regularly updated about progress of the complaint in question – in much the same way as we keep consumers informed.

From our experience, it would appear that some smaller firms have found it difficult to present their arguments with the necessary degree of professional detachment. This has been especially evident where the individual dealing with the complaint for the firm has also been the subject of the complaint. This lack of objectivity has not affected the eventual outcome of the complaint, when referred to us. However, it has sometimes had an adverse effect on the length of time it has taken us to achieve that outcome.

... we do not apply the current regulations retrospectively



We are still dealing with a certain number of *transitional* complaints – those made after mortgage intermediaries came under our compulsory jurisdiction but concerning events that happened at an earlier date. In such cases, if the firm complained about was previously covered by the Mortgage Code Arbitration Scheme, then we can deal with the complaint. We do not apply the current regulatory provisions retrospectively. We apply the standards that would have applied at the time of the events complained about – those of the Mortgage Code.

If the firm was *not* previously covered by the Mortgage Code Arbitration Scheme, then we cannot consider any complaints against it which concern events that took place before the firm joined our compulsory jurisdiction. Some consumers find it difficult to understand this and can be reluctant to accept that we cannot help in their particular case.

When dealing with transitional complaints, we often find that the firm holds few paper records of its discussions with the customer, or of what was agreed. Some firms find it difficult to understand why we ask to see any written records, since there was no specific record regime in force at that time. But since contemporaneous written records are normally very persuasive evidence, we always ask both parties whether they have anything in writing that might back up their case.

Regardless of when the transaction took place, we apply our usual approach – which is to decide what we think probably happened, on the basis of such information and evidence as the parties are able to provide.

Some mortgage intermediaries, particularly small firms with little experience of our procedures, can be very unsure about how to present their case to us. As a result, some of them spend much longer than is strictly necessary in dealing with our requests. Others fail to make their case effectively because they are concentrating on the wrong things.

We hope that mortgage intermediaries may find the following key points helpful. They are all matters we frequently stress when we talk to firms generally about our approach to handling complaints.

... some small firms can be very unsure about how to present their case to us

helping you to help us

answering questions from the ombudsman service

- Remember that the ombudsman service is impartial. There is no need to be defensive in your response. Our questions are designed to find out what actually happened – not to trick you.

- If an adjudicator telephones you to discuss a case, this will be simply to check a small point quickly or to establish if it may be possible to resolve the dispute informally. Our adjudicator will probably have had a similar discussion with the consumer.

- Always provide the information that the adjudicator has asked for, not what you hoped they would ask for. Otherwise, we will have to contact you again – which delays matters as well as wasting your time and ours.

- If you have other relevant information or evidence that you believe the adjudicator needs to see, then provide that as well – and explain why you have done so. If you are unsure, you can always telephone the adjudicator to check first.

- Never ignore a question that you cannot (or would rather not) answer. The adjudicator will notice this and follow it up.

case studies complaints against mortgage intermediaries

55/1

whether mortgage intermediary's actions were responsible for customer's adverse credit rating and inability to obtain as low a rate of interest as expected

Mr A asked the firm to arrange a re-mortgage so he could repay some unsecured debts and reduce his monthly repayments. He said the firm had advised him that he could safely ignore letters from his existing mortgage lender about his mortgage arrears, since they were simply the result of '*administrative muddle*'.

But Mr A's existing lender then registered adverse credit reference information against him. There was a delay before he was able to obtain a re-mortgage and he was charged a higher rate of interest than he thought he could have obtained without the adverse credit reference.

Mr A blamed the intermediary, complaining that he had lost out because of its advice to ignore the letters about his arrears. When the firm rejected the complaint, Mr A came to us.

complaint upheld in part

We were satisfied, from our investigation, that the intermediary had indeed told Mr A not to bother replying to the arrears letters. Mr A had acted on that advice. The firm accepted that this had caused Mr A some inconvenience and embarrassment, and it agreed to pay him £200.

However, we discovered that Mr A had not been entirely open with the firm. He had other credit problems that he had not mentioned. So we were not persuaded that the firm's incorrect advice had been responsible for the delay, or for Mr A's having to pay a higher interest rate for the re-mortgage, and we did not uphold that part of his complaint.

55/2

whether intermediary's delay in processing mortgage application resulted in customer having to pay substantially increased price for her property

Ms M complained about an intermediary firm's handling of her mortgage application. She said it had suddenly withdrawn from the transaction without any warning or explanation. She complained that as a direct result of this she had been forced to pay £5,000 more for her property than the amount originally agreed.

complaint mainly rejected, mediated in part

Our investigation did not identify any delay on the firm's part in processing the mortgage application. And we were not persuaded (from the evidence Ms M provided) that the increased purchase price of the property was linked to anything the firm had done (or failed to do). So we rejected this part of Ms M's complaint.

The firm told us that, from the outset of its dealings with her, Ms M had been persistently rude to its staff. It was because of this rudeness that the firm had decided not to proceed with the transaction.

We accepted that the firm was not obliged to continue dealing with a customer who was habitually rude to its staff. However, Ms M did not appear to have any idea that her manner had caused offence. And the firm admitted to us that it had never mentioned to Ms M the effect that her behaviour was having.

In our view, when the rudeness first became a problem, the firm should have spoken to Ms M about it. The firm accepted this. It also accepted that it should have warned her that it would not continue to do business with her if she did not modify her behaviour. It agreed to our suggestion that it should pay Ms M £100 for the inconvenience caused by its sudden withdrawal from processing her application.

55/3

whether intermediary failed to meet consumers' timescale for arranging their mortgage, resulting in additional costs for them

Mr and Mrs J's complaint concerned the firm's handling of their application for a re-mortgage. They said they had made it clear from the outset that this transaction had to be completed within a fixed (and rather short) timescale.

In their view, the firm's failure to arrange the mortgage within that timescale had caused them to incur additional costs. The couple also complained that the firm had not made it clear to them what fees it would charge.

complaint rejected

We were satisfied that Mr and Mrs J, and some third parties, had always been in agreement that the re-mortgage needed to be

completed within a tight schedule. However, we found no evidence that Mr and Mrs J had ever told the firm this.

The firm had not dealt with the application as quickly as Mr and Mrs J had wanted. However, it had still handled the application in a timely manner and we did not consider it was at fault. And we were satisfied from the evidence the firm provided that it had explained and documented its fees clearly at the outset. We therefore rejected the complaint.

55/4

whether mortgage intermediary acted correctly in charging a fee even though it never completed customer's mortgage transaction

Ms D asked the intermediary firm to arrange a mortgage so that she could buy her council house. In the event, she did not go ahead with the purchase so the mortgage was never completed. However, in accordance with the agreement Ms D had signed, the firm sent her an invoice, charging a substantial fee.

Ms D refused to pay. She insisted that the firm had told her she would only have to pay a fee if she went ahead with the mortgage.

The firm rejected her complaint, saying that according to its terms of business, she had to pay a fee whether or not the mortgage was completed.

complaint upheld

We thought the terms and conditions relating to the firm's fee were *onerous*. There is a legal rule that a particularly unusual or onerous term, which would not generally be known to customers, is only binding on the customer if the firm has brought it fairly and reasonably to their attention before the contract is made. So it is very important that any such term is expressed clearly and placed in a reasonably prominent position in the agreement.

In this instance we found that the terms and conditions relating to the firm's fee were not given any prominence. We also found that the wording was ambiguous. So, applying ordinary legal principles and the relevant Mortgage Conduct of Business rules, we decided the firm was not entitled to insist that Ms D paid the fee.

The firm agreed with our recommendation that it should waive the fee, apologise to Ms D and pay her £250 for the inconvenience and worry she had been caused. It later told us that in the light of our comments on this particular case, it had amended the wording of its agreements in order to clarify the terms and conditions.

55/5

whether we can deal with complaint about mortgage for an investment property taken out before mortgage intermediaries joined our compulsory jurisdiction

Mr K, who worked abroad, wanted to buy a property in the UK that he would let out to tenants. He asked the intermediary to arrange a mortgage for him.

Mr K subsequently complained that the mortgage the firm had recommended was unsuitable for him. And he said that

because he had only realised this at the last minute, the firm's poor advice had wasted his time and money.

complaint outside our jurisdiction
The events complained about had taken place before mortgage intermediaries joined our compulsory jurisdiction. We can only deal with such complaints if they fall within our 'transitional' jurisdiction.

The firm had previously subscribed to the Mortgage Code. However, the complaint was not one that would have been eligible for consideration by the Mortgage Code Arbitration Scheme. This was because the mortgage was intended for an investment property. Under the transitional rules, this was therefore not a complaint that we could deal with.

55/6
whether intermediary misled customers about amount they could borrow and time required to process their mortgage application

Mr and Mrs G complained about the intermediary firm they had asked to arrange their mortgage. They said the firm had misled them about both the amount they would be able to borrow and the length of time it would take to process their application.

The couple said the resulting problems with their application had forced them to obtain expensive bridging finance in order to complete their property purchase. They thought the firm was directly responsible for their incurring this additional expenditure.

complaint upheld in part
Mr and Mrs G made their complaint to firm A. This was the lender to which they had applied for the mortgage. Firm A had outsourced the administration of applications to a separate entity, an intermediary – firm B. However, firm A was responsible for firm B's actions in carrying out the mortgage application process.

Our investigation showed that firm B had indeed given Mr and Mrs G misleading information about the mortgage application. And we were satisfied that this had caused the couple a considerable amount of worry and inconvenience. We therefore recommended that firm A should pay the couple £400 compensation.

However, we established that the couple had chosen to go ahead and exchange contracts for the property they wished to buy, even though they knew they had not been offered a sufficiently large mortgage to meet their needs. So we did not agree that the firm should bear the cost of the bridging finance.

... the firm said he could safely ignore letters about his mortgage arrears

Estelle Clark quality director

quality driven

The Financial Ombudsman Service's quality director, Estelle Clark is responsible for developing and implementing initiatives relating to the quality of the service we provide. We spoke to Estelle and found out more.

quality is clearly an important concept, but can seem quite abstract. What are your thoughts on this?

It's essential for any organisation to have confidence in the quality of the work it produces. But quality is not an easy thing to measure.
Of course – if things go wrong, it's important to identify the cause of the problem and prevent it from happening again. But what should be central to the way any organisation works is getting things right in the first place. Quality assurance helps ensure that happens.

Accurate quality-checking is necessary to maintain standards across the organisation.
It allows managers to give feedback to their team members, provides statistics which reflect our performance, and allows us to continuously improve our service.

so is this something the Financial Ombudsman Service has always done?

Yes – we have always kept an eye on quality and consistency by reviewing 'closed' cases and making sure they had been dealt with properly.
And ombudsmen have always given adjudicators feedback on cases which have been referred for a final decision. So there was definitely a strong background of good practice.

But the present-day ombudsman service was formed from various different bodies, each of which had their own different ways of checking on quality. So there were some differences in the ways quality was monitored across the organisation. My job is really to pull all that together and ensure we're performing at the best level we can.

how did you know where to start?

One of the first things we did was to build some IT processes directly into our automated casework system. This enabled us to perform quality checks on randomly selected cases.
It meant we could then make these checks while cases were still being worked on, as well as continuing to check on those which had been completed.
We also decided to develop two complementary processes – quality assurance and quality audit.

do they focus on different areas of casework?

No, they look at the same information but from a different perspective. Let me start with quality assurance.
This focuses on cases while they are still in progress.
It picks up any cases which we feel are at risk of falling outside our quality standards.

This can be because of a number of things – from the length of time the cases have been 'open' to the number of adjudicators who have worked on them.

We are able to alert managers to cases which potentially fall into this category by using a 'dashboard' of reports. This is a way of presenting and summarising data on a weekly basis, in a format that has maximum clarity and impact. The data includes key information, such as which cases are taking longer to resolve or have not moved on for a certain amount of time. It allows us to see both individual cases and themes, together with any wider issues involving particular teams or adjudicators. And because the checks are weekly, we can catch any potential problems and take remedial action quickly.

how do you do that?

Well we can see if the case itself is a particularly difficult one, if the delay or problem is reasonable, or if the adjudicator dealing with it needs a steer to help move things on. If we see similar issues cropping up, it could mean that our IT system or internal guidance needs updating, or that the individual or team needs more direction in general. If we find that the system itself is OK, then we can bring in more specific support and training.

so quality assurance looks at cases while they are still being worked on and measures them against acceptable standards?

That's right. Most importantly it allows us to identify problems before they occur. That means we can provide organisational and individual support – on top of the system improvement which is always taking place.

What's really useful when dealing with cases of differing complexity is that the testing process can be tailored to the case. A straightforward complaint will not need the wider and more stringent testing measures that a very complex one will. For example, mortgage endowment complaints – where no financial loss has yet actually crystallised – aren't expected to be resolved within the same time-scale as, say, complaints about critical illness insurance, where matters may be more urgent.

are the systems and processes amended where necessary?

Yes – although there will, of course, be occasions where the process itself is fine, but the person in charge of the case may need a little extra guidance – which we can then easily provide. This system is so effective precisely because it allows us to nip any potential problems in the bud.

if the quality assurance system works, why do you need an audit as well?

Ah yes – the audit. That's the second of the two quality processes we have in place. The audit takes place at the end of the process and looks at complaints which are already resolved and closed. It assesses the quality of a random sample of cases by reference to around 40 'critical-to-quality' areas, grouped under four main headings. These are '*investigation and outcome*', '*communications*', '*processes and procedures*' and '*delays and updates*'.

The size of the samples means that we are able to produce a 'quality index' covering all aspects of our casework, as opposed to the area-specific measurements that the earlier checks give us.

what sort of things are you looking to find in the audit?

Well we hope to find nothing at all! We don't aim to find problems in our audit – we hope it will show that everything is of the highest standard. But the audit is very thorough. If we're looking at – for example – timeliness, then any instance of insufficient communication with the consumer or firm will get flagged up.

We don't use the audit as our main method of quality checking – there's a limit to what we can do once a case is closed. But it's a very effective way to quality-check our quality-checks. It's important to have double protection in this type of public-facing organisation. It's like wearing a belt *and* braces I suppose!

what happens with the information afterwards?

This information is fed back to our case-handlers and managers and used as part of the quality assurance process.

We can use it in other ways too. There are certain things that can't really be measured in absolute terms – such as an adjudicator's ability to empathise with the people they are dealing with. By comparing feedback from our customer satisfaction surveys with the results of our quality audit, we can ensure we're focusing on the areas that really do matter to our customers. If there are discrepancies, then we can rethink what we are looking for with the audit.

do you get feedback directly from the firms as well?

You mean apart from the feedback we get through our external liaison work at roadshows and other events? Well, following on from the surveys we have conducted previously, we are extending our market research by carrying out surveys of firms on a quarterly basis. These will give us a more structured way of gathering this information than we have had in the past.

do these surveys measure the standards of your case-handling as well?

It's important when you set standards that they properly reflect the real concerns of the people who use your service – not just your own internal opinion and perspective. The surveys give us that external perspective on the standards we've set ourselves. They're a way of helping us double-check whether we're getting it right.❖

... it's a very effective way to quality-check our quality-checks.

complaints about investment advice – where the investor did not own the funds invested

In some of the complaints about investment advice that are referred to us – the investors needed – quite legitimately – to invest money that they did not own. For example, the money may have been held within a trust, or it may have been held informally for the benefit of a minor. And in some cases, either acting independently or at the firm's suggestion, an investor may have borrowed part – or all – of the sum invested.

When making investment recommendations, financial advisers are required to ask investors a number of questions about their personal circumstances and financial needs, to ensure that any recommendation is suitable for the individual concerned. But if the investment is being made, quite legitimately, with money that does not actually belong to the investor, then there are clearly other factors that firms will need to consider.

In the complaints of this type that are referred to us, we are likely to look at whether the firm took the source of the money into account. We are also likely to look at whether the recommended investment was properly explained to the investor.

... there will be an added element of risk if the money being invested has been borrowed.

A particular consideration for firms to bear in mind could, for example, be a greater than usual need to preserve capital – if the money is pledged to one party but another party is being allowed to benefit from any ongoing investment income, as in case 55/10 on page 15 of this issue.

Another important factor that firms will need to consider is that there will be an added element of risk if the money being invested has been borrowed. With equity release schemes, for instance, there is the risk that a lifetime mortgage may so deplete an investor's capital that this cancels out the benefit of any investment income or growth.

And there could be additional risk where investors *leverage* their investment (in other words – borrow money to invest, in the hope that the investment return will exceed the total cost of the loan). As well as running the risk that this will not happen, such investors run the risk of increased losses because they will have to repay the loan in full, regardless of how the investment performs.

The following cases show how we have dealt with some recent complaints about investment advice, where the investor did not own the money they invested.

case studies
complaints about investment advice – where the investor did not own the funds invested

55/7
whether firm misrepresented level of risk when advising trustees on investment intended to produce increased income for beneficiary

Mrs O wanted to increase the amount of income she received from the trust set up under her late husband's will. So after taking investment advice about how best to achieve this, the trustees put some of the trust's money into risk-based investments.

Unfortunately, the recommended investments did not perform at all well. As a result, Mrs O had to accept a smaller level of income from the trust – rather than the increased amount she had expected. The trustees complained to the firm, saying it had misrepresented the level of risk involved.

complaint upheld
It was clear from the documentary evidence we saw that the trustees had agreed to accept a low level of investment risk, with the aim of achieving a higher level of income for Mrs O. However, the recommended investments carried a very high level of risk.

We were satisfied that the firm had failed to make this clear to the trustees. We therefore asked the firm to offer redress, based on the amount of income Mrs O would have received if it had recommended a less risky investment.

55/8
whether firm's advice appropriate for investor who borrowed two-thirds of the total sum invested and suffered large loss when forced to repay loan

Mrs B was a reasonably experienced investor and was prepared to take a greater than average amount of risk with her investments. She asked the firm for advice on investing £50,000 of her own money.

She later told us that, as well as giving her a recommendation for investing this amount, the firm had suggested she should take out a loan for £100,000. She said the firm told her she could then put this sum in an offshore bond, together with the £50,000 of her own money. (This was therefore a *leveraged* investment – one where the investor borrows some of the total sum invested, in the hope that the return on the investment will exceed the cost of the loan.)

Unfortunately, the investment did not perform as expected. The loan provider, which had a legal charge over the bond, arranged for it to be encashed. It then used the proceeds to repay the loan – as it was entitled to do.

Once the loan had been repaid, Mrs B was left with just over £6,000. Shocked by the extent of her loss, she complained to the firm, saying she would never have agreed to the arrangement if she had realised just how risky it was.

complaint upheld
The firm's initial recommendation – for investing Mrs B's own money – had been properly documented and we were satisfied that it was suitable for Mrs B.

But the firm denied recommending that Mrs B should borrow – and invest – the £100,000. Mrs B did not appear to have been given any written confirmation of this advice. However, we noted that the loan documents had been signed by both Mrs B and the firm's representative. We were therefore satisfied that Mrs B *had* taken the loan on the firm's advice.

We were also satisfied that the overall arrangement failed to match either Mrs B's risk profile or the balanced description of the investment in the firm's original recommendation.
We asked the firm to base redress on the position Mrs B would have been in – had she placed the money in a suitable investment.

... the firm suggested she should borrow £10,000 and put it in an offshore bond.

55/9

whether firm acted appropriately in recommending high-income bond to couple seeking means of repaying short-term interest-only mortgage

Acting independently, Mr and Mrs T arranged a short-term interest-only mortgage. They then approached the firm and asked it to recommend an investment that would produce enough income to cover their interest payments on the mortgage.

The firm recommended a high-income bond. Although this offered an attractive and guaranteed income, it placed the capital at risk.

The investment failed to perform as expected and when the bond matured, the couple found they had lost a substantial amount of their capital. They complained to the firm, saying they would never have gone ahead with the investment if they had realised it carried such a high level of risk.

complaint upheld
The firm could not be held responsible for the couple's decision to take out the interest-only mortgage. Mr and Mrs T had arranged this on their own initiative before consulting the firm. However the fact that Mrs and Mrs T were investing borrowed money increased the degree of risk. The firm should have taken this into account.

... she said she never realised just how risky the investment was.

The bond was for a shorter investment term than the mortgage. And it exposed Mr and Mrs T to the risk that, when the bond matured, their borrowed capital would have declined in value. We were not satisfied that the firm had given sufficient consideration to how the couple would pay the mortgage interest if this happened. We said the firm should pay redress – putting the couple in the position they would have been in if they had invested in a product that preserved their capital.

55/10

whether member of Lloyd's underwriting syndicate was wrongly advised to put funds – on which Lloyd's had a 'call' – into with-profits bonds

As a member of an underwriting syndicate at Lloyd's of London, Mr D had provided a guarantee that he would make certain funds available if Lloyd's made a 'call' on them.

For some while Mr D kept the funds in a deposit account. However, he then decided that it might be a good idea to invest the funds in order to get an income. As a concession, Lloyd's agreed to this.

After taking investment advice, Mr D put the money into several with-profits bonds. Several years later Lloyd's made a 'call' on the money, so Mr D had to cash in the bonds.

Unfortunately, the bonds had done not at all well. And because Mr D was cashing them in before the end of their term, the product provider applied an MVA (market value adjustment – a charge often levied on those who cash-in a with-profits investment before the end of its term).

As Mr D found he was left with less than the amount he had invested, he had to borrow additional funds in order to meet his commitment to Lloyd's. After complaining unsuccessfully to the firm that it had given him unsuitable investment advice, Mr D came to us.

complaint rejected

It was clear from the documents we saw that the firm had been aware the money Mr D was investing was needed to support his liability to Lloyd's.

The firm had fully explained the possibility that he would have to pay a charge (the MVA) if he cashed in the bond before the end of its term. It had also explained how this could affect the final amount he received. And it had emphasised to Mr D that he would still be liable to Lloyd's for the full amount on which it had a 'call', even if the bonds produced a shortfall.

Mr D had appeared happy to take the risk in return for the income he expected to receive from the bonds. In the circumstances of this particular case, we did not think that the firm's recommendation had been inappropriate. We therefore rejected the complaint.

ask ombudsman news

claiming for a 'cloned' car

the manager of a consumer advice centre writes ...

Q A client of ours put in a claim under his comprehensive motor policy after his car was stolen. When the insurer looked into the claim, it found the vehicle (bought by our client in good faith – second-hand) was itself a stolen car that had been 'cloned'. The insurer says that because of this it won't pay the claim. How does the ombudsman service deal with this kind of dispute?

A Cloning is the vehicle equivalent of identity theft. It's a growing problem in the second-hand car market. Criminals replace the number plates on a car – usually a stolen car – with the number plates of an almost identical car of the same make, model and colour. They usually change other identifying features as well, including the engine number.

When we look at disputes involving a cloned vehicle, we try to establish whether it is reasonable to assume that the consumer bought the vehicle in good faith and was unaware of its false 'identity'.

Carrying out an 'HPI' check (which looks into a vehicle's history) is a sensible precaution for any prospective buyer of a second-hand car. Unfortunately, since the check looks at information about the original (legitimate) vehicle, it is unlikely to uncover the fact that a car has been cloned. Even so, one of the things we will usually consider is whether the consumer undertook this check.

Other matters that we usually consider, as indications of whether the consumer acted reasonably and in good faith at the point of purchase, include whether they:

- had a vehicle registration form; *and*
- received a purchase receipt showing the seller's contact details (even if these details are subsequently found to have been false).

We will also note whether the purchase price was comparable to that of other vehicles of a similar make, model and age.

We would usually expect the insurer to deal with the claim if:

- the answers to our enquiries satisfy us that the consumer reasonably believed their purchase was legitimate; *and*
- the consumer has a comprehensive or third party, fire and theft motor insurance policy – with the premium paid.

The fact that a vehicle has been cloned means that it does not have a complete and untainted history – and this may affect the amount the insurer should pay when meeting a successful claim. To some extent there are similarities with the situation involving vehicles that have been rebuilt following a technical 'write-off'.

With a stolen, cloned vehicle, if the policyholder clearly took all reasonable steps to ensure the authenticity of the vehicle they were buying, they have a *defeasible title* to the vehicle and should receive the full market value of a similar vehicle with an unblemished history. Some deduction might be appropriate where policyholders acted in good faith but failed to take reasonable steps that would probably have alerted them to the problem.

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