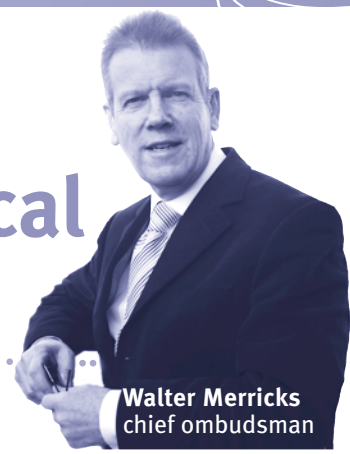
ombudsman news
essential reading for people in the financial services and consumer advice sectors

Financial Ombudsman Service

settling financial disputes, without taking sides

issue 57

goodwill gestures: cynical or pragmatic?



Walter Merricks
chief ombudsman

A leading consumer representative recently asked what I thought about a financial firm taking a commercial decision to settle a complaint, while not admitting liability. I said there didn't appear to me to be much wrong with that. Making a gesture of goodwill to a long-standing customer, to avoid being drawn into an argument, can be beneficial to both sides – as well as helpfully reducing our own workload.

'*But what*,' my questioner persisted, '*if a firm systematically offers settlements to complainants in a series of similar cases, in order to dodge a contentious question of liability? Doesn't that mean the firm knows it is liable, and its failure to admit it is just cynical?*'

By then I guessed she was leading me towards the issue of bank default charges. So I admit I ducked the question by saying that our aim is to resolve the disputes that come to us – and that wider questions about fair treatment of customer complaints are matters for the FSA (Financial Services Authority). Although the FSA regulates banks' deposit-taking and complaints-handling, its statutory remit does not cover the conduct of their lending. This is more a matter for the OFT (Office of Fair Trading), which has announced that it is investigating the issue of bank default charges.

in this issue

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Meanwhile, I know that banks are writing off default charges of customers who complain to us – with the result that we have not had to issue any formal decisions in complaints of this type. And the press say the banks are also not defending themselves against those consumers who adopt the more complex route of taking court proceedings.

Of course, the issue *will* become one for us – if the OFT's work does not result in a swift regulatory solution that deals with past charges as well as with future ones, and if the banks stop settling cases.

It's understandable that the regulators do not want to be accused of becoming price-fixers. Nor do we. But for certain charges, the law on contract variations and penalties demands a reasonable relation between cost and price, and requires those who seek to justify the price to produce evidence of their actual costs.

The FSA has rightly placed emphasis on the principle of '*treating customers fairly*'. Treating them lawfully, and being prepared to stand accountable for that, is surely an important part of that principle.

Walter Merricks chief ombudsman

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interest-rate complaints

The complaints we see about interest rates tend to fall into two main categories – complaints about the interest rates that businesses providing financial services charge on borrowings, and complaints about the rates that these businesses offer on savings.

Although interest-rate complaints form a relatively small proportion of our overall caseload, they raise a variety of different issues from which some useful common themes can be drawn. We have summarised these themes in the series of questions below. Businesses providing financial services may like to keep these in mind when considering complaints about interest rates.

As our case studies show, we are often able to resolve interest-rate complaints by informal mediation. Our approach will depend very much on the circumstances of the individual case. However, the set of questions below, together with our case studies, give a broad indication of how we are likely to look at different types of interest-rate complaints and – where appropriate – of what might constitute a fair settlement.

- Was all the written or spoken information given to the customer about the interest rate clear and accurate?
- Is any change in the interest-rate charging structure a fair reflection of a change in the underlying lending risk?
- If an interest rate has been varied, has the law (and any relevant code of practice) been complied with?
- If the interest rate was individually set for the customer, is there proper written evidence of how the rate was arrived at?

... is there proper written evidence of how the rate was arrived at?

case studies
interest-rate complaints

57/1

whether interest charged on a mortgage loan constituted an '*extortionate credit bargain*'

Mr J was in his sixties and ran a small chain of dry cleaners. He had taken a 'roll-up' mortgage after experiencing a substantial business failure and being threatened with bankruptcy by a creditor.

With a 'roll-up' mortgage, the customer does not have to make any monthly repayments. The interest on the mortgage is rolled up into a debt to be repaid when the mortgaged property changes ownership or the customer dies, whichever happens first.

Several years after taking out the mortgage, Mr J complained to the mortgage lender. He said he had recently calculated the level the debt was likely to reach over his lifetime. He had compared this with the original amount he had borrowed. And he had then calculated what the total cost of the loan might equate to, if it was expressed as an annual percentage interest rate.

Mr J felt the resultant '*true*' rate would be '*unenforceable*'. So he asked the mortgage lender to write off the debt and remove the legal charge over his house. When the mortgage lender refused, Mr J referred the complaint to us.

complaint rejected

We were satisfied that Mr J had fully understood the mortgage terms, when he took out the mortgage. And Mr J accepted that – at the time – the loan had been just what he needed to enable him to retain the home he had lived in for many years.

We were also satisfied that the interest rate Mr J was charged – the lender's standard mortgage rate plus one percent – was in accordance with the mortgage agreement he had signed. We did not agree with Mr J's interpretation of the '*true*' rate of interest.

It was clear that Mr J had been under considerable financial pressure at the time he took the loan. However, the mortgage lender hadn't been responsible for this pressure. And we did not agree with Mr J's assertion that the lender had taken unfair advantage of Mr J's position. Mr J had sought advice from his own solicitor before agreeing to the mortgage terms.

The lender had sent Mr J annual statements which showed the new balance and how it had accrued. The statements also included words to the effect that he was free to alter his loan to a repayment basis at any time, should he wish to do so.

We could not see any reason why the loan was '*unenforceable*' and we rejected the complaint.

57/2

interest rate on card account downgraded after bank introduced a new savings product

Mr D had a sizeable amount of money in a card account with the bank. The bank had marketed this account as '*a good place for savings*' as it paid interest if the account was in credit – although there was a credit limit for any borrowing on the card.

Initially, the account paid a good rate of interest for credit balances. But a couple of years later, after introducing a new savings product, the bank substantially reduced the

interest rate it paid on the card account. It was some while before Mr D realised what had happened. But he then changed accounts and complained to the bank. He said it had not given him proper information about the change in the rate and that, as a result, he had lost out on a significant amount of interest.

complaint resolved informally
We looked at how the bank had communicated with Mr D about the changes to the card account. In our view, it had not followed the relevant provisions of the *Banking Code*. And it had failed to make Mr D fully aware of the implications for credit balances kept in the card account.

After we explained our views to the bank, it agreed to our suggestion that it should pay Mr D £2,200. This was the total amount of interest he would have received if he had transferred his money to the new savings account as soon as it was introduced.

57/3

lender gives confusing and unclear information about interest rate on a loan

A school caretaker, Mr B, had debts totalling around £2,350. The lender encouraged him to take out a loan to re-finance the debt. But once the new loan had gone through, Mr B found he was being charged a very high rate of interest. And he was concerned to learn that the repayments would be much higher than he had expected.

After complaining unsuccessfully to the lender, Mr B came to us. He said the lender had assured him the new arrangement would be to his advantage. However, he was now committed to a level of repayment that he couldn't afford.

complaint resolved informally
We were satisfied that Mr B was financially unsophisticated, and had relied heavily on the lender's advice to take the loan. The interest rate, at 49%, was very high – much higher than the highest rate he had been paying before. It was difficult to see how the re-finance could ever have been to Mr B's advantage, as the lender had claimed.

The lender could provide no evidence about how it had arrived at the interest rate it was charging on the new loan. And we thought the description in the loan agreement about what Mr B would have to pay in interest was misleading.

As soon as we explained to the lender our concerns about the serious shortcomings we had identified, the lender offered to write-off the debt. So the complaint was resolved informally, to Mr B's satisfaction.

57/4

customer complains after discovering the bank offered her neighbour a better rate of interest than she had obtained, for a similar loan

Mrs G arranged a personal loan through the local branch of her bank. A few weeks later she discovered that her neighbour, Miss D, ⇢

had also just taken out a personal loan through that same branch. However, Miss D had been given a cheaper rate.

When the bank rejected Mrs G's complaint about this, she came to us.

complaint dismissed

Mrs G agreed that the rate on her loan had been clearly set out in the loan agreement, and that she had been happy with it at the time. But she said she felt she had been unfairly discriminated against now she knew the bank had charged her a higher rate than it had charged Miss D.

We accepted that, because of the duty of confidentiality the bank owed to Miss D, it was not possible for it to explain to Mrs G how it had arrived at the rate it offered Miss D (whose overall financial situation may well have presented a lower lending risk).

There was no evidence of any maladministration. Mrs G confirmed that the information the bank sent us about her loan application was correct. And the bank was able to satisfy us that it had applied its normal criteria when calculating the rate of interest it was prepared to offer.

So we explained to Mrs G that, in deciding the rate it would charge her, the bank had been legitimately exercising its commercial judgement. We do not get involved in such matters and (as our rules permit in such cases) we dismissed the complaint without considering its merits.

57/5

whether lender took unfair advantage of a business customer's situation

A clothing importer, Mr K, had already borrowed substantially from the bank. So when his main customer sought to re-negotiate its terms in a way that would have made the business unprofitable, Mr K decided to bring forward his retirement and wind up the business.

He planned to repay his debt to the bank by selling his main business asset. This was a warehouse – over which the bank already had a legal charge. To allow time for the sale of the warehouse, Mr K asked the bank if it would leave the debt outstanding, with interest to be rolled up, for a further period.

The bank agreed, saying it would charge Mr K the same rate of interest as before, but would increase its monthly service fee. The bank told Mr K it would review the terms again after six months, if the sale had not gone through by then.

Six months later, with the warehouse still unsold, the bank again agreed to extend the arrangement. But it imposed a charge of 15% a year, pro-rata, on the average monthly balance, in place of the previous interest rate and monthly charge.

Three months after the warehouse was eventually sold and the balance had been repaid in full, Mr K complained to the bank. He said the changes it had made to the borrowing costs were unfair, as its own risk and exposure had not been materially affected by the delay in the sale.

... the bank had taken unfair advantage of the situation.

The bank argued that, without its assistance, Mr K would have had to agree to a forced sale of the warehouse at a much reduced price. So it said he was better off overall, in spite of the much larger charge for credit.

complaint upheld in part

We looked at the bank's internal notes about its arrangements for the extended borrowing. Although the borrowing remained secured at all times, we accepted that – at the first review – the bank had been entitled to ask for the increased monthly fee. In return, it had allowed the borrowing to increase (without requiring any interim payments) in order to help facilitate a good sale.

Given Mr K's decision to wind down the business and sell off its assets, the essential nature of the lending had changed and become inherently more risky. So the changes made at the first review seemed fair to us, and appeared to provide a broadly equivalent benefit to both sides. We decided that those changes should stand.

However, we were concerned that the rate substituted at the second review did not appear justified on any proper commercial ground. It was clear from its internal notes that – by then – the bank knew the sale of the warehouse was assured. Another of its customers was buying it and had successfully completed all the business-borrowing formalities. So there was no real additional increase in risk, and the bank knew the debt was almost certain to be discharged very shortly.

We considered that – at the second review – the bank had taken unfair advantage of the situation. So we said it should refund the increased costs that it charged Mr K's business after that review.

57/6

whether lender took unfair advantage of a business customer's situation

Mr L was a partner in an interior design business that had a large 'on demand' borrowing facility with the bank.

The partnership had experienced financial difficulties and the size of its borrowing had been causing the bank concern for some time. The bank arranged a meeting with the partners, at which it asked them to repay the debt in full within six months, either by injecting funds from elsewhere or by re-financing to another bank.

Six months passed and the partnership had not been able to repay the debt. The bank agreed to renew their borrowing facility for a further two years at the same interest rate as before (2.5% above the base rate).

But at the end of that two-year period the bank told the partnership it wanted to increase the interest rate to 4% above base rate. Mr L argued that this increase was not in keeping with the duties the *Banking Code* imposed on the bank to take a '*sympathetic and positive*' approach to cases of financial hardship.

And he said that – by increasing the interest rate – the bank was unfairly forcing the partners to alter their '*preferred approach*' to the re-financing of their debts to an approach that '*suited only the bank*'. When the bank rejected the complaint, Mr L came to us.

complaint rejected

We were satisfied that the bank had clearly communicated its requirement that the borrowing should be repaid in full.

We thought the bank had been very patient, in the circumstances. And we accepted that the bank faced an increased risk because of the reduced profitability of the partnership – together with its failure to take steps to re-pay or re-finance its borrowing. This justified the bank's review of the interest rate it charged.

The bank's internal notes showed it had made a proper commercial assessment before setting the new rate, taking into account all the relevant factors.

Mr L's response to our questions made it clear that, even though he and his partner knew the bank wanted the borrowing repaid as quickly as possible, they had made a conscious decision to proceed slowly with any re-financing or injection of cash.

We appreciated that, for various reasons, allowing matters to proceed slowly was more advantageous for the partners. They would have preferred their borrowing arrangements – and the interest they paid – to remain unchanged. But this did not mean the bank was obliged to agree with them.

We did not agree that the bank had taken any unfair advantage of the partnership's circumstances when it decided to increase the interest rate, and we rejected the complaint.

... we thought the bank had been very patient.

getting off on the right foot

Paul Kendall
head of customer contact division

The ombudsman service customer contact division is our front-line for consumer enquiries. As the first port-of-call for most people dealing with the ombudsman service, it handles well over 600,000 phone or written enquiries a year.

Paul Kendall, who runs this area, tells us how his team deals with the deluge of new disputes arriving daily. He also explains the important role the team plays in helping to resolve as many problems and complaints as possible at this early stage.

what makes the role of the customer contact division so special?

The ombudsman service was set up to deal with a high number of complaints concerning a wide variety of financial matters. But we always knew we were going to get lots of general enquiries as well. Because of that, our front-line had to be more than just a processing function which issued and received complaint forms.

It's true that some callers are already at the stage where they're ready to register a full-blown complaint with us. They've complained to the firm, had their final response, been on our website, completed our complaint form – they know exactly what they're doing, and they probably just want to check who to send their form to!

But many of those who contact us want more in the way of practical help. Some may be confused about what has happened to them and are very unsure what to do about it. Some aren't really at all sure if (or how) we can help them.

If you don't have a well-designed, friendly and helpful front-line – then what may have started as a simple misunderstanding can escalate, and things can get blown out of proportion.

We're not dealing with a standard process where we just follow the same 'script' each time. That wouldn't work because every time the phone rings it's something completely different. Having said that, because of the amount of contact we have with consumers – we do quite quickly have a pretty good idea what most complaints are going to be about. Then we can help callers understand whether they have a genuine complaint – and how to go about resolving it if they do. So that's what we're trying to achieve.

do you think the phone is still important in this age of email and internet?

I think it is really important, especially as the first point of contact. That initial contact should be made easy as possible. The customer is often not sure what to say to the firm, what the correct terminology is, or how to get their question across. The phone's a very good medium for instant reassurance if someone is worried or concerned.

Customers often just want to find out if they have a complaint or if '*this is just the way it is*'. We can often nip potential problems in the bud just by providing a simple explanation or some reassurance.

Some callers are satisfied with an informal chat over the phone with someone who's impartial and at arm's length to their problem. Others need a more formal and in-depth investigation. Phone conversations allow us to provide those proportionate responses and to let people know immediately what the next steps are.

does it make it difficult when consumers misunderstand the role of the ombudsman service?

It's certainly true that some consumers assume we're here to act as their champion – and that our role is just to fight the industry on their behalf. If they find we're not in agreement with everything they say, we're sometimes accused of not being independent! So it's important to stress that our work is impartial. We can empathise with people and understand their frustrations, but that doesn't mean we share their opinions or 'take sides'.

Answering the reasonable question: '*have I got a complaint here?*' isn't easy. We have to remember there are two sides to every argument and what we hear at this stage is only one version of events. But an ambiguous answer might discourage complaints – or force people to pursue a complaint that has no real chance of success. We don't want to raise false expectations. So front-line staff have to tread a careful path.

how do you avoid raising false expectations?

We establish the nature of the complaint very quickly. The first thing we check is eligibility. Despite the fact that our remit is fairly broad, there are some money-related and debt queries and problems that are simply not for us. About 25% of callers are contacting us about matters that aren't covered by the ombudsman.

With the issues that *are* for us – we will always look for opportunities to resolve problems as early as possible. As I've already mentioned, sometimes we might only need to give a clear explanation of how a financial product or service works. The consumer may then feel confident enough to go back and reach a satisfactory resolution with the firm.

We have people here with extensive product knowledge and we try to settle disputes early on, where we're certain that a complaint is very unlikely to be upheld, or where the firm has already made a reasonable offer. We're careful only to do this where there is clearly no point in the customer pursuing the matter further.

do the calls come in quite a steady flow?

Monday mornings are always our busiest time. This is partly as a result of articles that have appeared in the papers over the weekend, but also because many people only get a chance to catch up on things at the weekend. On average, we handle somewhere in the region of 1,400 calls and 1,300 written enquiries each day – but at peak times these numbers can suddenly increase rapidly. We use resource-planning software to help predict and manage the number of staff we need to take calls.

Consumer contact staff will normally spend about half their time handling calls and half dealing with written correspondence. This allows them to take complete

'ownership' of front-line cases. Once they take an enquiry they are responsible for it, either until it is resolved early on (by us or the firm), or it goes through to our casework area for more detailed dispute-resolution work by adjudicators.

how do you deal with sudden floods of phone calls?

Our response is pretty immediate. The moment there are phone calls in the queue, a message goes out asking those working on correspondence and other work to log-in to the phones. We answer 80% of our calls within 20 seconds. No more than 2% of calls are abandoned (where people ring off before we answer them) and we send a full response to any written enquiries within five working days. In five years of working here I've never heard anyone complain they couldn't get through to us.

I know that people who ring call centres are already expecting the worst – having to wait in a queue for a long time, listening to cheesy music, pressing lots of buttons to get through to anybody. We're reluctant to ask callers to press a button before speaking to a human being. But because we cover such a wide range of complaints – from pet insurance to stocks and shares – we do have to ask whether the caller's enquiry is about banking, insurance or investment before we can put them through to an appropriately-trained member of staff. But then they're in!

how do you find out how your customers rate you?

We carry out regular customer satisfaction surveys of our front-line work in the customer contact division. We generally receive positive scores of over 95% in response to questions about call times, staff knowledge, clear explanations and meeting expectations.

We also have a quality assurance system which maintains and improves the quality of our service. Random checks are carried out for both phone and written work and the results are fed back to staff and managers.

what experience do front-line staff come with, and how much training do you give?

We invest significantly in the people that work on our front-line. They generally have previous experience in financial services – for example in customer services or complaints-handling. Having high-quality, well trained and motivated staff handling our initial enquiries is essential for providing a good service to firms and to consumers. And also for the smooth running of the organisation as a whole.

We start with induction training – a four-week classroom-based programme covering systems, products and front-line call-handling in a certain area – banking for example. Each new starter has a 'mentor' who eases them into the work and helps assess their progress.

After three months we can start training them for a broader range of front-line enquiries. Most people should be fully competent in all three broad areas (banking, investment and insurance) within a year.

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Many of our adjudicators started life at the ombudsman service in the consumer contact division. The knowledge and skills they acquire here are an excellent foundation for that role.

what information about complaints do you log at this stage?

At this early point of the process, many of the consumers haven't actually started the complaints process with the firm they're unhappy with. That's because they're either not sure *how* to do so or they've not really decided what they want to do.

But we're often able to get the two sides 'talking' and the issue resolved at this stage – especially if we spot that the problem stems from a simple misunderstanding that can quickly be ironed out. We also keep a record on our system of all the relevant information. That's another good thing about being on the phones. We'll have all the information in one place. And as I mentioned earlier, once we've dealt with a person on the phone, we 'own' the complaint – the customer will have a case reference number and the name and direct-line number of the person here who knows about their complaint.

how can you help consumers who may have difficulties complaining?

It can be a big thing for someone who's been a customer of a firm for many years to suddenly have a complaint. They often really don't know where to begin, and we can help them with that. So it's important that we're accessible. I've already mentioned the minimal use we make of automated phones and queuing systems – which we know puts people off.

We are sometimes contacted by people who don't speak English as their first language – so we provide an instant interpretation service. We also use the TypeTalk service for those with hearing difficulties – and can arrange for the translation of written documents into other languages, Braille, large print, or audiotape. People with dyslexia sometimes find it easier to read print if it's on different coloured paper, so we've arranged that in the past as well.

I think we do everything we possibly can to ensure everybody can use the Financial Ombudsman Service. There's an answer to most situations – you've just got to keep an open mind.

what do you think the future challenges will be?

We've got a several challenges ahead. Taking on complaints about businesses with consumer credit licences from next April involves a lot of planning. How are we going to deal with these businesses? How will they react to us? Are the complaints going to be what we're used to dealing with?

We are also reviewing our 'telephony infrastructure'. Although we have the latest software, our equipment is six years old and we need to think about replacing it. The other thing we're keen on moving towards is a completely 'paperless' office.

When I joined five years ago we had to deal with about two and a half thousand calls each week. At our peak we're now dealing with over three times that. We've grown dramatically, we've implemented lots of changes. In fact, the structure of our front-line has completely changed. The last five years have been pretty hectic and we've achieved a lot. But if there was nothing on the horizon to look forward to, it would be pretty dull! ❖

the wider-implications process

In carrying out their different roles, both the Financial Services Authority (FSA) and the Financial Ombudsman Service become involved with how financial firms behave towards their customers. And – inevitably – issues sometimes arise that are likely to have implications for a large number of consumers or firms.

The wider-implications process provides a clear procedure to help these two organisations identify and deal with such issues – and coordinate their approach – in the light of their independent roles and legal responsibilities.

Stuart King, head of retail intelligence at the Financial Services Authority, and **David Thomas**, corporate director at the Financial Ombudsman Service tell us more.

why is there a need for such a process?

The FSA and the ombudsman service have different roles. The FSA regulates and supervises firms. The ombudsman service resolves individual disputes as an informal alternative to the courts.

A robust complaints regime, giving consumers confidence that individual complaints will be dealt with promptly and fairly, is a vital factor in allowing the FSA to regulate in a risk-based way – focusing its limited resources on the big risks that matter most. The ombudsman service has to consider *all* the cases it receives. It cannot lay some of them aside as not a priority, or wait to see how an issue evolves.

The FSA regulates mainly through rules and – increasingly – through principles. The ombudsman service is required to apply the 'fair and reasonable' criterion; taking into account the law, regulatory rules, codes and good industry practice at the time. So ombudsman decisions often turn on legal principles and contract interpretation, as elaborated by courts, rather than on the detail of FSA rules or principles.

what are 'wider-implications' cases?

These can arise when an issue emerges and the ombudsman service starts receiving complaints about it while the FSA is considering the potential regulatory aspects.

The FSA and the ombudsman service regularly exchange information with consumer and industry bodies, both individually and through the three liaison groups established in connection with the ombudsman service's work in the banking, insurance and investment sectors. And the wider-implications process provides the

FSA and the ombudsman service with a clear procedure through which they can focus on, identify and deal with issues that are likely to have implications for a large number of consumers or firms.

how does the wider-implications process work?

The full process, together with a wealth of other information, is set out at www.ombudsmanandfsa.info – the dedicated web pages produced by the FSA and the ombudsman service. These shared web pages can be accessed directly or by links from the FSA and ombudsman service websites.

The process is triggered when a possible new wider-implications issue is identified by the FSA, the ombudsman service or an interested party (such as a consumer or industry body). The issue is likely to be one affecting a number of consumers or firms. The process is not for one-off consumer complaints, nor for a party who is unhappy with an ombudsman service decision in an individual case.

The shared web pages explain how wider-implications issues can be raised by industry or consumer groups, and provide named contacts in both the FSA and the ombudsman service.

When a potential wider-implications issue is raised, the FSA and the ombudsman service will decide whether the issue *does* raise wider-implications and is suitable for the process. If so, the FSA will consider whether a regulatory solution would be more appropriate than the ombudsman service deciding individual cases.

Actions open to the FSA include taking supervisory or enforcement action, securing redress or making rules or guidance. Alternatively, the FSA may offer the ombudsman service material concerning the interpretation or application of FSA rules, for the ombudsman to consider when deciding individual cases.

If the FSA decides that a regulatory solution is not the most appropriate way forward, then the ombudsman service will consider consulting industry and consumer experts before reaching a decision on individual cases. Alternatively, if the firm agrees to pay the complainant's legal costs, the ombudsman service will consider whether the issue is more suitable for a test case in the courts.

how successful has the process been?

The current process was widely welcomed when it was introduced two years ago. And since then, it has successfully tackled nine wider-implications issues. www.ombudsmanandfsa.info provides case studies on all of these, including:

- **fraudulent diversion of cheques**
  After getting customers to make out cheques in favour of banks and building societies, supposedly for investment, a fraudster then diverted the cheques into his own accounts with those institutions.

  The FSA reached an agreement with the bodies representing banks and building societies to reduce the scope for fraud in most situations by phasing out – by October 2006 – the payment into a third-party account of cheques made out simply to a bank or building society.

- **closed with-profits funds**
  This case study explains how the ombudsman service and the FSA cooperate when the ombudsman service receives a complaint about the investment policy of a closed with-profit fund – in the light of the FSA's regulatory overview of whether the fund's approach to investment was a legitimate exercise of commercial judgement, aimed at the interests of its policyholders as a whole.

- **section 75 and electronic money institutions**
  This examines whether section 75 of the *Consumer Credit Act 1974* gives a credit-card holder a claim against the card-issuer when the card is used to fund a payment through an electronic money institution – for example, for a purchase through eBay – and the person ultimately receiving the payment details.

- **redress assumptions in certain pension cases**
  For cases covered by the Pensions Review, the FSA laid down certain assumptions to be used in calculating redress (for example, the discount rate to be used to value future benefits).

  The ombudsman service, in conjunction with the Financial Services Compensation Scheme and the relevant industry body, used independent experts to establish redress assumptions for similar cases falling outside the Pensions Review – to facilitate consistency for all concerned.

Case studies are usually published once an issue has been resolved, but some issues justify an interim report. The shared web pages include interim reports on mortgage exit administration fees and contracting out of the State Earnings Related Pension (SERPS).

The shared web pages also provide information about issues which the FSA and the ombudsman service decided were *not* suitable for the wider-implications process. These include issues that were purely hypothetical or concerned one-off individual cases, or where regulatory responsibility lay elsewhere – such as with the Banking Code Standards Board rather than the FSA.

how do you see use of the wider-implications process developing?

The process has been successful in dealing with a number of complex issues. We encourage firms and consumer bodies to raise issues which have potentially wider implications or to raise questions about how the process works, if they are unclear.

As part of its move to a more principles-based approach to regulation, the FSA is committed to reducing the number of detailed rules in its *Handbook*. The FSA's approach to simplifying its *Conduct of Business sourcebook*, in the context of implementing MiFID (the Markets in Financial Instruments Directive – part of the European Union's Financial Services Action Plan), will reflect this approach and the FSA will be consulting on its proposed changes in this area later in the year.

The FSA and the Financial Ombudsman Service work together closely on the impact of changes to the FSA's *Handbook*, including considering where the removal of detailed rules may affect the approach the Financial Ombudsman Service takes to considering individual cases. The FSA recognises that, as it moves to a more principles-based approach, there is likely to be an increase in the number of wider-implications cases where it considers possible regulatory action.

ask ombudsman news

insuring satellite navigation systems

an insurer asks:

Q Should satellite navigation equipment be considered as '*personal possessions*' under a domestic contents policy – or as a '*vehicle tool*' under a motor policy?

A We've seen only a very few cases to date involving insurance cover for satellite navigation ('satnav') equipment, although we are getting an increasing number of enquiries about it.

It is for insurers – not us – to define the nature and scope of their cover. If insurers state clearly that they do not cover satnav equipment, that is a commercial underwriting decision and not a matter in which we would intervene.

In the few complaints we have seen to date involving satnav equipment, we have taken what we believe to be the common-sense view, where it has been unclear whether the device was covered under the contents or the motor policy. This is that if the device can only be used – and *is* only used – in a car, then (unless the insurer can establish a valid reason why not) it should be covered under the motor policy.

However, a device that can be used – and has been used – *outside* the car (for example, by walkers using it as a 'GPS' – global positioning system) should normally be covered as a '*personal possession*' under a domestic contents policy – unless the insurer can establish a valid reason why this isn't appropriate.

In cases where an insurance policy fails to make clear which items are covered and which are excluded, we apply the interpretation most favourable to the customer, on the basis that the customer did not draft the contract. This is a long-established approach to the interpretation of unclear or ambiguous contract terms – set out both in common law and statutory regulations (for example, the *Unfair Terms in Consumer Contracts Regulations 1999*).

We believe it important that insurers adapt to advances in technology and new consumer trends – and ensure their policies are updated regularly to define clearly the scope of the cover they offer. Any changes to existing cover should, of course, be highlighted when the policy is renewed, so there are no nasty surprises for customers in the event of a claim.

keeping it confidential

an independent financial adviser emails ...

Q I felt I'd dealt very fairly with a complaint from one of my clients. However, it looks as though he's going to refer it to you. I've never had a complaint made to the ombudsman before and I'm rather concerned about the information you'll be wanting from me. Can I be sure anything I say will be treated in confidence?

A We will have regard to your rights of privacy – and we do not automatically copy to both sides all the information we have on a case. But in general, you should assume we may disclose to the customer any information you give us about the complaint.

If you think some of the information should be kept confidential between you and us, you should mark that information clearly and tell us why you don't think we should pass it on to the customer. We will consider your request but we may not agree to it – unless there is a strong case for confidentiality – such as security reasons.

We take the same approach to information the customer gives us. By signing our complaint form, the customer authorises us to exchange information with you about their complaint.

We may publish information about complaints – for example, as case studies in *ombudsman news* – but we do not release the names of the individual consumers or businesses involved. And we are empowered to pass on information about businesses to the FSA or to other regulatory or government bodies, in certain circumstances.

For more information – take a look at the special section '*information for businesses covered by the ombudsman service*' on our website (www.financial-ombudsman.org.uk/faq/businesses). This answers a wide variety of frequently-asked questions about the ombudsman service and how we operate.

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.