ombudsman news

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

Financial Ombudsman Service

settling financial disputes, without taking sides

issue 62

pensions progress

It is almost certainly a very good thing that – ten years ago – the instinct of some government ministers to sweep the Pensions Ombudsman into the new one-stop Financial Ombudsman Service was halted. It might have looked tidy, but there are significant differences between occupational pensions and other retail financial products when it comes to dispute-resolution.

Paul Thornton, who carried out the recent review of pensions institutions for the Department of Work and Pensions, was initially cautious about how a merger of the Pensions Ombudsman with our own scheme could work. Eventually, however, he saw the benefits of operational integration, so long as pensions complaints were subject to a separate jurisdiction within the Financial Ombudsman Service. We already have a model in our consumer credit jurisdiction, which has distinctive rules and funding arrangements but benefits from being managed within a single organisation.

Since we were set up, both we and the Pensions Ombudsman have tried to make the present system work, despite having a shared jurisdiction with untidy boundaries. '*They sold me the wrong pension and then messed it up*' forms – potentially – two complaints for two different ombudsmen. So I welcome the government's decision to end the potential confusion and merge the two organisations.

Of course this will have to be handled with great care by all concerned. Not all stakeholders who responded to the Thornton Review wanted to see a merger. But it must help that the new Pensions Ombudsman charged with overseeing this is to be Tony King, currently our lead ombudsman for pensions and formerly casework director at the Pensions Ombudsman office. We will be letting him go with our warm wishes – and on a long piece of elastic.

Walter Merricks chief ombudsman

in this issue

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

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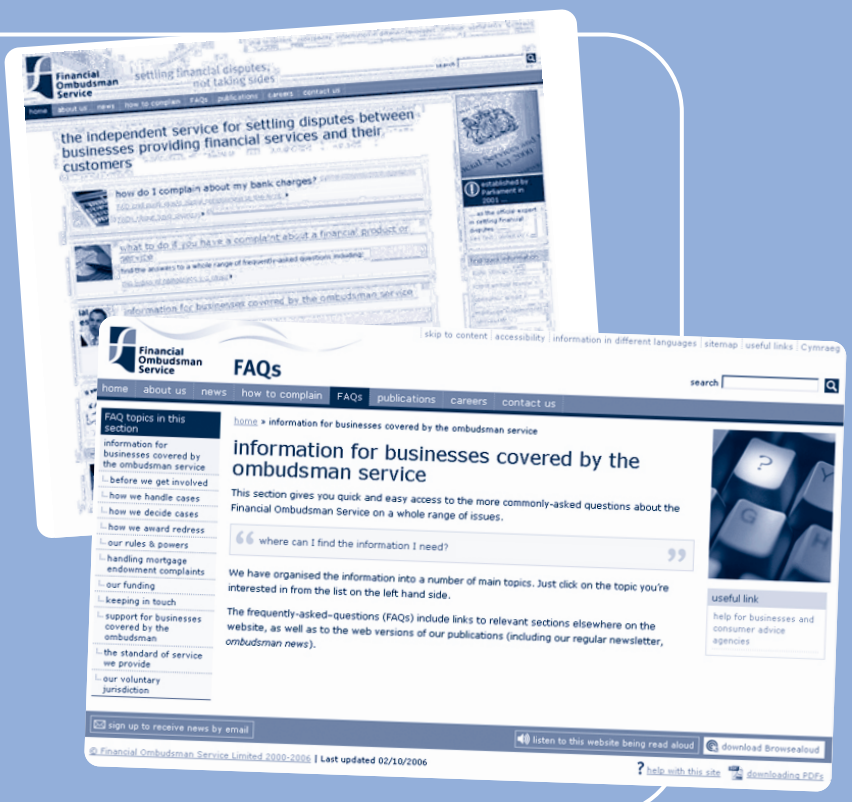
did you know...

our website gives you free access to over 1,000 pages of up-to-date information?

This includes a special section – *information for businesses covered by the ombudsman service* – giving quick and easy access to the more commonly-asked questions on a wide range of issues relating to the financial ombudsman service.

You'll also find all our publications available online, so – for example – you can browse through case studies in earlier editions of *ombudsman news*, refer to technical briefing notes on a specific subject, or check out our expected workload for the year ahead.

www.financial-ombudsman.org.uk



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disputes involving Section 75 of the *Consumer Credit Act 1974*

Each year, we receive a significant number of complaints that involve Section 75 of the *Consumer Credit Act 1974* – under which, in certain circumstances, the provider of credit is equally liable with the provider of the goods or services where there is a breach of contract or misrepresentation.

Up until now, almost all these complaints have involved credit card transactions (both at home and abroad). However, going forward we expect our work in this area to expand, reflecting our new consumer credit jurisdiction and the extension of our existing jurisdiction to include complaints about point-of-sale loans and store cards.

We often encounter some common misunderstandings when assessing these cases. The first is the belief among some lenders that consumers can only claim against them after they have first sued the provider of the goods or services. In fact, no such requirement exists and consumers can choose which party to claim against.

Where consumers come to us to check the position, we can point out the lender's mistake. But of course we cannot know how many consumers take the lender's assertion at face value and then spend time and effort trying to pursue a trader who may prove difficult to trace. If it seems to us that the lender has misled the consumer about the provisions of Section 75, and this has caused the consumer unnecessary expense or inconvenience, then this is likely to be reflected in any award we may make.

... we often encounter common misunderstandings when assessing these cases.

The second misunderstanding we frequently come across is the belief by some consumers that Section 75 entitles them to a refund on any purchase made with credit. Some consumers also confuse the rights given to them by Section 75 with the automatic insurance coverage that some credit card issuers provide.

For Section 75 to apply, in the first instance the following four conditions must all be satisfied:

- The cash price of the goods or services bought by the consumer must be at least £100 and no more than £30,000.
- The amount of credit provided to the consumer towards the purchase must not exceed £25,000, and must have been provided to an 'individual' (which includes sole traders, small partnerships and unincorporated businesses, as well as ordinary consumers).

- The provider of credit must be in the business of lending money, and the credit agreement must have been made in the course of that business.
- The credit must have been provided to the consumer under pre-existing arrangements between the provider of credit and the supplier of the goods and services.

If all these conditions are satisfied, there is a 'lender-borrower-supplier' chain and the lender will have equal liability for misrepresentation or breach of contract by the merchant. There is no automatic entitlement to a refund under Section 75 where, for example, the customer has simply changed their mind.

In April 2008, the current maximum financial limit of £25,000 for regulated credit agreements will be removed. The effect of this has not been entirely understood by some consumers and consumer advisers, who have asked us to deal with claims in respect of much larger cash value purchases in 'anticipation' of unlimited Section 75 coverage next year. In fact, the cash price limits within Section 75 will not be affected by the changes in April 2008 – so we will still be unable to consider claims about purchases costing more then £30,000.

The following selection of recent Section 75-related case studies illustrates some of the issues we have had to decide.

case studies
disputes involving Section 75 of the *Consumer Credit Act 1974*

- **62/1**

dispute over the return of a deposit for a car hire contract

Mr M hired a luxury car for the weekend. He said that when he booked the car, by phone, he was asked to pay a £1,000 'holding' deposit that would be refunded in full when the car was returned undamaged. He paid this with his credit card.

Mr M returned the car in good order at the end of the hire period, and said he was told the deposit would be refunded in full within a month. However, that did not happen and when he contacted the hirer he was told that his £1,000 was 'forfeit' because he had returned the car a day late.

Mr M disputed this. He pointed out to the hirer that even if he *had* returned the car late, under the contract he would be liable only for a further £115 daily charge – not £1,000. However, the hirer still refused to refund the £1,000 so Mr M contacted his credit card provider.

The credit card provider said it was unable to help. It told Mr M that it did not accept any liability under Section 75 and that, in any event, Mr M had not produced sufficient evidence to show he had returned the car on time.
Mr M then referred the dispute to us.

complaint upheld

We looked at the written contract that Mr M had entered into with the hirer. This made no mention of the terms on which the £1,000 deposit had been paid. There was nothing to suggest the deposit would be forfeited if the car was returned late.

The contract *did* say that an extra £115 would be payable for each day or part day that Mr M delayed returning the car. However, Mr M provided credible information backing up his claim to have returned the car on time.

Mr M's evidence about what he had been told by the hirer when booking the hire was consistent and convincing, and we accepted that he had paid the deposit on the basis of an assurance that it would be refunded once he returned the car undamaged.

We found that the card provider was liable under Section 75 and we said it should refund Mr M the £1,000 deposit. We also told the card issuer to adjust the interest on Mr M's credit card account, so that he was not out-of-pocket because of the delay in returning the deposit.

62/2

consumer makes purchase of land in her sole name but using the additional card she was given on her husband's credit card account

Mrs L negotiated with a land-holding company to buy a plot of land. She said she agreed to buy the land on the basis of a spoken assurance from the company that she would be able to obtain planning permission for the plot.

After completing the purchase, Mrs L discovered from the local authority that she was unlikely ever to get planning permission to develop the land. As she had used a credit card to pay the deposit, Mrs L considered that the credit card provider was liable to her under Section 75 for the cost of what she now considered to be 'worthless' land. However, the card provider disagreed, so Mrs L brought her complaint to us.

complaint rejected

Mrs L had bought the land in her sole name, intending to develop it as her own project. But she had paid the deposit by using a credit card account in her husband's sole name. Even though her husband had allowed her to have an additional card (carrying her own name) on the account – the account itself was in Mr L's name and it was Mr L – not his wife – who had had been provided with credit.

Because of that, the linked 'chain' of lender, borrower and supplier required for Section 75 to operate was not present, so we could not uphold Mrs L's claim against the credit card provider.

62/3

dispute involving the quality of workmanship in kitchen refurbishment paid for by credit card

Mr H was extremely disappointed with the expensive polished granite worktops he bought from a retailer who specialised in designer kitchens. He felt the worktops had been poorly cut and badly finished.

After trying unsuccessfully to get the retailer to put matters right, Mr H decided to make a claim to his credit card provider under Section 75. He had paid for the worktops – and for their installation – with his credit card.

The credit card provider told Mr H that it could not accept his claim, as it did not consider that poor workmanship constituted a breach of contract. Mr H then referred the dispute to us.

complaint upheld

Mr H sent us detailed photographs of the fitted worktops and we agreed that they were unsatisfactory. Not only did they not fit properly into the space they had been cut for, but they were not functional – since they were not level. They were also very clearly marked with grooves and scratches where the workmen had tried to force them into place.

In law, Mr H was entitled to assume that the terms of the contract included an agreement that the worktops would be supplied and fitted to a satisfactory standard, taking into account the price and description. So we were satisfied that – contrary to what the credit card provider believed – there *had* been a breach of contract.

Mr H said he had looked into the cost of putting right the problems with the worktops and had received a quotation of £1,200. He wanted his credit card provider to cover that cost, and we thought that was fair in the circumstances. When we explained our views to the credit card provider – in particular that there had indeed been a serious breach of contract – it agreed to meet the costs, once Mr H supplied the written quotation.

62/4

dispute involving electronic goods bought abroad using a credit card

At the start of his holiday in Spain, Mr J used his credit card to buy a digital camera with electronic accessories. He later told us that towards the end of his holiday he realised the camera was not as good as he had expected, and did not have all the features the retailer had described to him. He therefore returned to the shop and asked for his money back, but the retailer refused and became abusive.

Once Mr J got home, he wrote to his credit card provider and asked for a refund under Section 75 – saying he had bought the camera on the basis of a misrepresentation by the retailer. The card provider said it was unable to help, so Mr J referred the matter to us.

complaint rejected

Mr J was able to argue that Section 75 applied in this case because of a decision of the Court of Appeal in March 2006 that transactions made abroad are covered by Section 75. Pending a final decision on the matter by the House of Lords, this represents the current legal position.

During our investigation of the complaint, we asked Mr J some questions about his second visit to the retailer to return the camera. We had noticed from his credit card statement that on the same day he had made another – larger – purchase from the same retailer.

Initially, Mr J was reluctant to discuss that purchase. Eventually he told us that he had bought a more expensive digital camera. He was unable to explain why he had bought another camera from the same retailer he had accused of misleading him about the first camera, and of later becoming abusive.

After considering the evidence, we thought it unlikely the first camera had been sold on the basis of a misrepresentation. From what Mr J told us, it seemed more likely that having initially bought a cheaper camera, he had changed his mind and decided he would prefer the more expensive one. He had returned to the retailer hoping for a refund of the cost of his initial purchase when he bought the second camera. We rejected the complaint.

complaints-handling and the smaller business


Caroline Mitchell
lead ombudsman

Generally, the Financial Ombudsman Service tends to uphold proportionately fewer complaints against smaller businesses than it does against larger firms. Our lead ombudsman for investment, **Caroline Mitchell**, talks about some of the possible reasons for this, and the successful approach that many smaller businesses are taking to complaints-handling. She also outlines the practical assistance available to them from the ombudsman service.

who are we talking about when we refer to 'small' businesses?

We don't just mean independent financial advisers. We're also including mortgage brokers, general insurance brokers, smaller building societies, fund managers and stockbrokers. Then, too, there are a wide variety of what you might call 'occasional' users of the ombudsman service, including – for example – many businesses with a consumer credit licence who only do financial services work 'on the side' – as an adjunct to their main line of business.

The actual size of the business itself is irrelevant. It's really about how many complaints – and how much direct contact – a business has with us.

it's evident that some businesses have more difficulties than others in viewing complaints positively and constructively. Is this a particular issue with smaller businesses?

Complaints happen whatever business you're in, regardless of size. And there's always something you can learn if you're able to stand back a little and take a practical approach. I'd say that smaller businesses are generally pretty good at seeing the bigger picture.

It's important not to take things personally. That can be difficult if you're a small operation and you've worked long and hard to build up a good relationship with your customers. It can be a particular challenge if – as will be the case for many small businesses – the person being complained about is also the person who's responding to the complaint.

We see cases where advisers and their clients have had a very long-standing business relationship. If that breaks down, the complaint can get very personal, with unhelpful accusations and recriminations on both sides. Luckily, most advisers deal with complaints very professionally. They're the ones who retain their clients afterwards!

Indeed – by dealing effectively with a complaint they can even strengthen the relationship. By being objective and by working with us from the start, many smaller businesses are very successful at preventing their customer's problems and concerns from ever escalating into full-blown disputes.

A lot of smaller businesses are quick to see the practical advantages of our service. They know we're here to help solve problems, and that means we're helping them as well as their customers. They accept that unresolved customer complaints have got to go somewhere, and by-and-large we're quicker, more predictable and significantly more cost-effective than the courts.

And of course, because we're a private dispute-resolution service we handle complaints in confidence. This reduces the possibility of potentially damaging publicity associated with legal action in the local court.

the ombudsman service has been focusing over the past year on how it communicates with smaller businesses – why's that?

It makes sense to try and ensure all the businesses we cover are fully aware of how we operate and how we can help. It's a fact that ten of the UK's largest financial services groups accounted for over half of our workload in the past year. So if you're dealing with complaints in one of those big firms, you'll be in pretty regular contact with us and be well up to speed with how it all works.

We don't have that same degree of contact with the businesses that rarely have complaints referred to us – the 'smaller businesses'. But their customers have just the same right to bring a complaint to us as the customers of the larger firms. We want to be sure our process works as effectively for smaller businesses as it does for those that have quite a high volume of complaints. So last year we set up a high-level internal taskforce to help us focus on the different needs and concerns of smaller firms and on how best we can accommodate them.

what's happened as a result?

One of the things we did was some phone-based research. It really helped us see things from the perspective of smaller businesses. There were also a number of other projects and initiatives. In response to the comments and suggestions we received from smaller businesses, we've adapted some of our procedures. For example, businesses who have several different complaints with us at the same time now have the option of having these cases coordinated by a single adjudicator. That's something a number of smaller businesses said they'd find useful.

Other initiatives include the new section of our website, answering the hundred questions most frequently asked by smaller firms. We also introduced the series of *quick guides* which are available for downloading from the website.

do smaller businesses need a more individual approach from the ombudsman service?

We've always done our best to be flexible and to work in a way that meets individual needs, regardless of the size of business concerned. For example, when looking into a complaint we'll often be in fairly frequent contact with a business. Some people don't like us emailing them, while others prefer a quick email or phone call to a long letter. So if a business finds it more helpful for us to contact them in a particular way, we'll do that – it only has to tell us.

Our commitment to regional outreach – getting out and about and visiting businesses in their own local areas – is a good example of how we try to listen to the needs of smaller firms.

We recognise it's not usually practical to expect people to travel far if they have a small business. And we know that many smaller businesses take part in their own regional forums and have close-knit networks as a way getting together to discuss matters of mutual concern and share experiences. So we will often offer to go out and talk to groups of businesses. We're more than happy to meet businesses across the UK in this way, whenever we can.

We also run regional seminars and go out and about with our roadshows. The people we meet seem to appreciate that we've made the effort to get out to see them – it's reassuring to find we're not distant figures in an ivory tower!

you said many smaller businesses seem to be good at preventing customers' problems from escalating and becoming formal complaints.

Yes. This is something the ombudsman service has always been keen to encourage. It's certainly the case that small businesses tend to make great use of our technical advice desk – the service we provide for businesses and consumer advice agencies, where we offer information and informal guidance on complaints-related issues.

Our technical advice desk can act as a sounding board, letting businesses know informally if their proposed solution to a particular problem appears to be fair and likely to resolve the problem. Or we can suggest ways of dealing with particular issues that we know other businesses have found effective in similar situations. Bear in mind, we've seen thousands of complaints. Often, the same issues affect similar firms across the UK. It's rare that we've *not* seen a complaint before about a particular issue or product.

Many smaller businesses tell us they find *ombudsman news* a very useful resource. The case studies give concise illustrations of our approach to a wide range of different complaints. There's also a huge amount of practical information on our website (www.financial-ombudsman.org.uk).

Most of the businesses I deal with seem to appreciate that we're not actually a huge, faceless bureaucracy – we're human beings and they can pick up the phone and talk to us. An IFA recently commented on just that, when I contacted him directly to sort out some practical issues arising from a decision I'd made – involving some pretty technical calculations.

Sometimes I'm contacted by a business that's unhappy with a decision made on an investment-related dispute by one of my team of ombudsmen. I have to explain that I cannot overturn an ombudsman's decision. What I *can* do is explain or elaborate on our approach – and that generally means we get a constructive response in return. Anything that leads to greater all-round understanding can only be a good thing.❖

payment protection insurance complaints

Payment protection insurance (often referred to as 'PPI') is intended to provide cover against risks that might lead to an individual having difficulties making the repayments for their mortgage, credit card debts, or loans. It is a feature of this type of insurance that it pays out for only a limited period and is seldom intended to pay off the whole debt.

Complaints about payment protection insurance have always formed a regular part of our workload and have tended – in the main – to involve situations where an insurer has refused to pay a claim.

Increasingly, however, we are starting to see complaints about other aspects of this type of insurance. These include complaints about the administration or operation of the policy, or about the sale of the policy by an intermediary (often the bank/building society or other institution making the loan or the provider of the goods or services for which the loan is being taken out).

The following case studies illustrate how we have dealt with some recent complaints involving payment protection insurance.

... the bank said he could only have the loan if he also took the insurance.

case studies
payment protection insurance complaints

62/5
whether bank followed correct process in selling payment protection insurance to cover customer's loan repayments

Mr F took out a loan from his bank to consolidate his debts, which included an existing loan with the bank. The bank also offered him payment protection insurance to cover his monthly loan repayments if he became unemployed or incapacitated. The insurance premium was payable as a lump sum of £1,700. The bank added this to his loan for £7,800, which was to be repaid – with interest – over 60 months.

Mr F's financial situation improved over the next year and he asked the bank if he could pay off the entire amount outstanding on his loan. The bank agreed, but told him he would not be entitled to any pro-rata refund of the amount he had paid for the insurance.

He later told us that it was only as a result of this conversation that he realised just how much the insurance had cost him. And he said it was only at this stage that he discovered the insurance had been optional, as the bank had told him he could only have the loan if he also took the insurance.

The bank rejected Mr F's complaint about its sale of the policy and its refusal to give him a pro-rata refund, so he referred the matter to us.

complaint upheld

The bank denied there had been anything wrong with the way in which it had sold the policy. And it said it had been correct to refuse Mr F a pro-rata refund of his premium. This was because the policy contained a valid and enforceable term saying that customers were not entitled to a pro-rata refund if they cancelled their policy before the end of the term.

The bank could not produce any record of the meeting at which Mr F claimed he had been told that taking the insurance was a necessary condition of getting the loan. However, the bank said it never insisted on a customer taking out payment protection insurance with a loan. The representative concerned no longer worked for the bank and was not available to comment.

The bank could not find a signed copy of its agreement with Mr F, detailing his acceptance of the loan and the payment protection policy. It did, however, produce a copy of the standard agreement that it said Mr F would have been asked to sign, as part of its normal procedure.

In our view, in selling the payment protection insurance, the bank was acting as an insurance intermediary. It therefore had a responsibility to ensure Mr F was able to make an informed choice about whether or not to take out the policy. It also had a responsibility to draw his attention to significant features of the policy. We thought that in this instance it should have stressed that:

- the policy was to be paid by a single lump sum premium covering the whole of the policy term
- no pro-rata refund was payable if the policy was no longer needed *and*
- the cost of the lump sum premium was to be funded by means of a loan, on which interest would be payable.

We saw no evidence that these features had been specifically drawn to Mr F's attention, either during the sales process or in any of the documents he was given. The bank said that Mr F had taken payment protection insurance on the two previous occasions when it had given him a loan, so he must already have been fully aware of how these policies operated. However, it was clear to us from Mr F's response to our questions that he had no understanding of how the policies worked.

We accepted Mr F's evidence that he had wanted the loan in order to consolidate his debts and reduce his outgoings, and would not have added to the overall cost of his loan by taking the insurance if he had realised it was optional.

We decided that the bank's sales process in this case had been flawed, and that the bank had failed to bring significant features of the policy to Mr F's attention. We upheld the complaint and required the bank to refund the full amount of the premium, plus all the interest that Mr F had paid on this amount.1

62/6

whether lender mis-sold payment protection insurance in connection with a loan

Some eight months after he had taken out a loan, together with payment protection insurance, Mr M asked the lender to clarify details of the policy benefits and restrictions. As a result of what he was told, he asked the lender to cancel the policy and refund all the money he had paid for it.

Mr M had concluded that the policy was unlikely to be of any value to him. He was 66 years old and the loan ran until he was 71. Although the policy offered cover for death, temporary total disability and hospitalisation, any pre-existing medical conditions were excluded from cover and the death benefit only covered policyholders up to the age of 70.

The lender was only prepared to offer Mr M a refund equivalent to 75% of the cost of the policy. He insisted that he should have a 100% refund and eventually he referred the dispute to us.

complaint upheld

Mr M had arranged the loan over the telephone. He said he had thought the insurance was compulsory, as the cost of the premium had been automatically included in the details quoted to him over the phone. He had not been asked any questions about his health and had not been told that the policy would not cover him for any pre-existing medical conditions.

The lender said it had no record of the specific telephone call during which the loan was arranged. However, it sent us a copy of the script that it said its representative would have followed. We considered the exclusion from cover for a pre-existing medical condition to be a significant feature of the policy. It therefore needed to be drawn specifically to consumers' attention. However, the script made only a passing reference to the fact that '*entitlement to benefit could be affected*' if the consumer suffered from a pre-existing medical condition. This was not given any particular prominence.

We noted that Mr M had asked the lender to cancel the policy as soon as he realised the implications of the exclusion for pre-existing medical conditions. So we accepted that he was unlikely to have taken the policy if he had fully understood the significance of the exclusion at the time of the sale.

The script *did* mention that the insurance was not compulsory. However, it did *not* highlight that:

- the cost of the premium was payable up-front and was added to the loan,
- policyholders were not entitled to a pro-rata refund if they cancelled the policy after the initial 30 days; *and*
- the death benefit applied only until the policyholder reached the age of 70.

In the circumstances, we decided that the policy had been mis-sold. We required the lender to refund the whole of the insurance premium, together with all the interest charged on the premium from the outset of the policy.

62/7

insurer rejects claim for sickness benefit made under a payment protection policy because the policyholder's incapacity related to a pre-existing condition

Mr J arranged a personal loan from his building society and took out a payment protection policy to cover his repayments for periods of sickness or unemployment.

Six months later he had an accident at work and put in a claim under his policy for sickness benefit. However, the insurer refused to meet it. It said the accident was related to a pre-existing medical condition and that such conditions were not covered by the policy. Mr B then referred his complaint to us.

complaint rejected

The insurer said Mr J's medical records showed that on several occasions before he had taken out the policy he had received treatment for his knee. It was this same knee that Mr J injured in the accident that gave rise to his claim. After making further enquiries, we were able to confirm that this was indeed the case.

Mr J did not think the insurer's stance was fair. He accepted that the building society had told him there was a policy exclusion for pre-existing medical conditions. However, he said that since the building society had not asked him any details about his health, he had not understood how the exclusion would affect his own particular circumstances.

We explained that we do not consider it necessary for consumers to be asked about their medical history when they apply for a policy that excludes pre-existing medical conditions. It is enough that they are made aware that the policy contains such an exclusion – and are given clear information about how it will operate. We accepted that Mr J had acted in good faith. However, we felt that in the circumstances it was fair and reasonable for the firm to refuse the claim. We rejected the complaint.

62/8

whether bank mis-sold payment protection policy in connection with a loan

Ms B applied for a bank loan in order to consolidate her existing debts and reduce her monthly outgoings. The bank agreed to lend her the sum she needed. It also arranged payment protection insurance to cover her monthly loan repayments if she became unemployed or incapacitated.

There was a one-off premium for the payment protection policy, amounting to just under £3,000. This sum was added to the underlying loan of just over £11,000, which was to be repaid – with interest – in 84 monthly instalments.

Two years later Ms B asked her father's advice on cutting her expenditure, as she was still experiencing financial difficulties. She later told us that it was only at this stage, after her father had looked closely at her loan arrangement,

that she realised how much she had been paying in total for the insurance. It was also at this stage that she discovered the insurance had been optional.

When the bank refused her request to cancel the policy and give her a pro-rata refund of the premium, Ms B brought her complaint to us.

complaint upheld

Ms B insisted that she would never have agreed to take the insurance if she had known how expensive it was. She said the bank had been aware she had only taken the loan because she was anxious to try and manage her existing debts. So she did not think it should have made her add to her outgoings by taking the insurance.

The bank was unable to provide evidence that the adviser who sold the policy had told Ms B the insurance was optional. However, it said the adviser would have followed its normal sales process, which included an explanation of the implications of opting for the insurance cover.

The bank pointed out that Ms B had signed a loan agreement which included a full breakdown of the figures. She had also been given 30 days in which to study the details of the policy and cancel it without penalty if she was not happy with it.

After reviewing the evidence, we came to the view that there was nothing in the bank's sales process that drew consumers' attention to significant features of the policy. These features included the onerous cancellation conditions and the fact that payment for the policy had to be made up-front by means of a single premium, funded out of a loan on which interest would be charged.

It was evident that Ms B had no experience or knowledge of how insurance worked. There was nothing in the bank's documented sales process that explained – in basic terms – how the policy operated. And the sales process did not allow for any response to situations such as this, where the consumer had expressed a particular need to reduce her outgoings as far as possible.

In the circumstances, we took the view that the policy had been mis-sold and that Ms B was entitled to a refund of the full amount she had paid for the insurance, plus the interest she had paid on this amount.

62/9

insurer refuses to pay claim made on a payment protection policy as it says unemployment benefit is payable only in cases of redundancy

When Ms G took out a loan to buy a new car, she also bought a payment protection policy to cover her repayments in the event of her unemployment, disability or death.

Some three years later, after losing her job, Ms G put in a claim under the policy for unemployment benefit. However, the insurer refused to pay out. It said the policy only provided cover for unemployment that was the result of redundancy. Ms G had not been made redundant but had been dismissed from her job for under-performance.

Ms G said that the possibility of unemployment had been a particular concern when she took the loan. When she had taken out a mortgage a few years earlier, she had checked that her mortgage payment protection insurance covered her in case she lost her job. She had wanted similar cover when she took out a loan to buy her car and had thought the policy she was offered covered any period of unemployment, irrespective of the cause.

In the circumstances, the insurer offered to refund the insurance premium in full. However Ms G objected strongly to this. She said the insurer should instead pay her the unemployment benefit. Unable to reach agreement with her insurer over this, Ms G brought the dispute to us.

complaint upheld

The insurer pointed out that it had sent Ms G a copy of the full terms and conditions as soon as she had said she would take the policy. This document stated clearly that the policy only provided unemployment cover for instances of redundancy.

... she would never have taken the insurance, if she had known how expensive it was.

Ms G admitted that she had not read the full policy terms and conditions. She said she had relied solely on what she had been told when she was sold the insurance, and she had not been told there were any restrictions on the circumstances in which the unemployment cover was provided.

After reviewing the evidence, we accepted Ms G's argument that she had been specifically seeking cover for unemployment before agreeing to borrow the money to buy the car.

We noted that the insurer's summary of the policy terms, which had been shown to Ms G at the time of the sale, referred several times to the fact that the policy covered unemployment. However, the summary did not mention that this cover was only available for unemployment resulting from redundancy. We thought this was misleading.

The document that Ms G was sent after the sale, containing the full policy terms and conditions, only mentioned once that unemployment cover was limited to instances of redundancy. And it did not give this information any prominence.

We upheld Ms G's complaint and required the insurer to pay her the full amount of benefit she *would have* received under the policy if her unemployment had been caused by redundancy.

guidance on motor valuations

a motor retailer emails ...

Q When dealing with insurance disputes over the valuation of vehicles that have been written-off, how does the ombudsman service check that valuations are correct? Is there a particular industry guide that you use?

A When checking the latest values of vehicles we take account of a number of factors, including mileage, optional extras and vehicle colour. We may also consider any particular facts that the policyholder or insurer may point out to us – as well as regional and seasonal variations, where they are relevant.

In selecting sources of guidance on valuations, we have to bear in mind what is easily available both to the industry and to the general public, including on-line valuations.

We do not favour any one specific guide over any other, but make use of three of the major industry valuation guides – *Glass's*, *Parker's* and *CAPcalc*. By using all three options we seek to avoid individual guide differences and discrepancies and are able to form an overall view of the best estimate. This ensures that every valuation dispute we deal with receives a full and thorough market assessment.

ombudsman's consumer leaflet

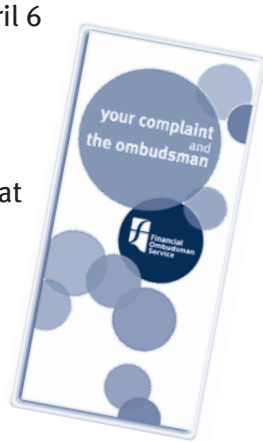
an independent financial adviser writes ...

Q Can you please let me know how to get hold of copies of the ombudsman consumer leaflet we have to send out if we get a customer complaint?

A Our consumer leaflet, *your complaint and the ombudsman service* – as required under the FSA rules – is available in packs of 25 at £5 per pack (including postage and packing).

To obtain copies, please send us a completed order form (available from the publications page of our website), together with a cheque. We do not issue invoices or accept credit card payments. Supplies are free to public libraries and consumer advice agencies, such as citizens advice bureaux and trading standards departments.

The leaflet has recently been revised to take into account the fact that, from April 6 2007, businesses with a consumer credit licence are covered by the Financial Ombudsman Service. Firms that were already covered by the Financial Ombudsman Service before April 6 2007 can use up their existing supplies of the consumer leaflet before ordering copies of the new version.



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.