Ombudsman news

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

David Thomas, chief ombudsman (interim)

season of grievances and goodwill

The traditional season of goodwill – and the time to remember others – is approaching. But this doesn't mean there has been any slackening in the flow of complaints referred to us by consumers who remain dissatisfied with the response they have received from the financial business they complained to.

Thinking about those who are important to us is something we do all year round at the ombudsman service. We are here to provide a service to consumers and financial businesses, and to perform a public function alongside the courts, regulators and government. Over the last year we have taken a number of steps – ranging from extending the opening hours of our front-line customer-contact division to launching an online complaint-enquiry facility on our website – in order to make ourselves even more accessible to consumers.

We have also extended the help we provide to those smaller financial businesses that are unused to dealing with us. And, by publishing complaints data about individually-named businesses, we have encouraged those of the larger financial businesses that are better than others in handling complaints.

issue 82

Financial Ombudsman Service

Following nominations from the public, we recently won the award for '*website of the year*' (in succession to the BBC, last year's winner) from the Plain English Campaign – who said our website '*provides information on a complex subject in a straightforward manner and is accessible to all users*'. Our website provides a valuable window on our work. And the two-way conversation available in a phone call to our customer-contact division (for consumers) or to our technical advice desk (for financial businesses and advice workers) will often help get quickly to the real nub of an issue in an individual case.

When we are called on to decide cases, we act impartially – as a judge would do in court. But, unlike a judge, we talk widely to our stakeholders about the work we do, the approach we take and how complaints could be avoided. This can sometimes lead to a slight misunderstanding. Some organisations to whom we talk about general issues seem to think this means they can also lobby us privately about individual cases that we are called on to decide. They cannot.

When we decide cases, we do so as an alternative to the courts. We are not involved in a negotiation between ourselves and either party. We follow a fair process, giving equal consideration to the evidence and arguments provided by both sides, and then we decide. Our decision may sometimes disappoint one of the parties. That is an inevitable consequence of the important role Parliament has given us. And when businesses are handling *future* complaints, regulators require them to apply the results of our decisions made in previous cases – whether the businesses like them or not.

Ombudsman news is another way of seeing how the ombudsman's approach works in practice. The case studies in this issue – based on real-life complaints we have handled recently – focus on problems with direct debits, standing orders and continuous-payment authorities and on insurance disputes involving keys left in cars.

David Thomas
chief ombudsman (interim)

Financial Ombudsman Service

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consumer helpline
0300 123 9 123
open 8am to 6pm Monday to Friday

technical advice desk
020 7964 1400
open 10am to 4pm Monday to Friday

www.financial-ombudsman.org.uk

Complaints involving automatic payments made by direct debits, standing orders and continuous-payment authorities

Many consumers find it convenient to make automatic payments from a current account or credit card account for their regular financial commitments, such as mortgage or rental payments, utility bills, subscriptions *etc*. This spares them the trouble of having to remember when each payment falls due. They may also sometimes benefit from discounts offered by suppliers of goods and services to encourage the use of automatic payments.

Automatic payments are generally made by means of direct debits, standing orders or continuous-payment authorities. The exact nature of these arrangements is not something to which consumers generally give much consideration. But it can be important, if things go wrong.

At one time, standing orders were the most common means of making automatic payments. However, they are now used relatively infrequently. Consumers set up a standing order by issuing their bank with a standing written instruction to pay to a specified business, organisation or individual a certain regular amount (usually monthly, but sometimes quarterly or at other intervals).

Standing orders can be set up to continue '*until further notice*' or for a limited period of time. Any subsequent changes, for example to the amount payable or to the date on which the payment is made, must be initiated by the consumer.

Complaints involving automatic payments made by direct debits, standing orders and continuous-payment authorities

And if the consumer decides not to make any further payments, they must cancel their standing order instruction to the bank – it is not enough simply to inform the recipient of the payments that the arrangement has come to an end.

Direct debits work differently. They are put in place after a consumer gives permission to whoever will receive the payments (for example, a gas or electricity provider or a mobile telephone company) to debit their account with the payments due. This permission is known as a *direct debit mandate* – and the business or organisation receiving the payments becomes the *mandate holder*. The mandate need not be a signed, paper document and is often given over the telephone or through the internet.

The mandate holder tells the consumer's bank that it has the mandate, and at agreed intervals will then apply to the bank for the required payment. The amount and frequency of the payment can be changed by the mandate holder, so this is a convenient way of paying bills where the sum due is a variable amount. The arrangement leaves consumers with less control over the payments that can be taken from their account than they would have with a standing order. However, the *Direct Debit Guarantee Scheme* ensures that if a payment is made wrongly under a direct debit, the consumer is entitled to receive a refund from their bank – even if the fault lay with the mandate holder rather than with the bank itself.

The complaints we see indicate that many consumers find it difficult to distinguish between direct debit and standing order payments – and tend to confuse the features of the two. Unfortunately, such confusion can sometimes be shared by some bank staff too, as we illustrate in case studies 82/4 and 82/7.

Continuous-payment authorities can be set up using plastic cards such as credit and debit cards. They operate on the account to which the card is linked,

and appear similar in some respects to a direct debit – in that consumers give their mandate to the business they want to pay, and that business then has control over how much is debited from the account and when.

Unlike a direct debit, however, a continuous-payment authority is not covered by any bank guarantee and can only be cancelled by the business that holds the authority. Consumers often find this surprising. They generally assume the bank or credit card provider will ultimately be responsible for any overpayments, as we illustrate in case 82/1.

Because consumers frequently set up continuous-payment authorities over the telephone or through the internet, there is often no paper record of what was agreed. If a dispute later arises, this can make it difficult to establish exactly what happened. As in case 82/3, we sometimes have to reach a decision on the basis of whatever evidence *is* available.

Underlying the arrangements for continuous-payment authorities are agreements between the banks and the card networks. These contractual arrangements will be binding on those who are party to them. However, that does not include the consumer, who will have no knowledge of the agreement and will not have signed up to it. So in case 82/3 we were not persuaded by the bank's view that, even though the consumer had never given his mandate for the continuous-payment authorities, he should still be liable for the money taken out of his account.

Where a bank or credit card company has made a mistake in connection with an automatic regular payment, it can keep any resulting problems to a minimum by apologising and acting swiftly to put things right.

Complaints involving automatic payments made by direct debits, standing orders and continuous-payment authorities

Case 82/5 illustrates how, by taking extremely prompt action and being willing to '*go the extra mile*', a bank limited the amount of upset and inconvenience caused to the customers concerned. This in turn meant that although the bank was required to compensate the customers, we agreed that it was fair for it to pay only a very modest sum.

Because many automatic payments are for significant items, such as mortgage, rent or utility bills, problems can build up very rapidly for the consumer if mistakes are not remedied promptly. This is what happened in case 82/6, where the considerable amount of stress and inconvenience caused by the bank was reflected in the amount of compensation we told it to pay the customer.

The following case studies illustrate some of the cases we have dealt with recently concerning regular, automatic payments.

82/1

consumer complains that payments were taken incorrectly from his credit card account under a continuous-payment authority

Mr K set up a continuous-payment authority on his credit card account to pay £1.50 a month to an internet service provider. This payment covered an upgrade to his email account.

After a time, he decided to discontinue the email facility and he said that he asked the internet service provider to cancel the arrangement. However, some eleven months later he noticed that the payments were still being debited from his account.

Mr K asked his credit card issuer to cancel the continuous-payment authority and refund his account with the 11 monthly payments that he said the internet service provider had '*wrongly claimed*'.

The credit card issuer explained that it was only able to cancel the continuous-payment authority if asked to do so by the internet service provider. And it said that although it would attempt to

reclaim some of the payments for him, it would first need to see some evidence showing the date when he cancelled the arrangement.

Mr K was unhappy with this response. He said the credit card issuer had a responsibility to refund the payments and to prevent the internet service provider from taking any further sums from his account. Unable to reach agreement, Mr C complained to us about both his internet service provider and his credit card issuer.

complaint not upheld

We explained to Mr K that we would look into his complaint about his credit card issuer. However, as we did not cover his internet service provider, we could not help with that aspect of his complaint. We gave him details of a telecommunications dispute-resolution service that he could contact.

The information we obtained from Mr K's credit card issuer showed that the payments were taken under a continuous-payment authority that he had given his internet service provider.

Mr K was unable to send us any details of the contract he had entered into with the internet service provider, and he had nothing to confirm that he had asked the provider to cancel his payments. Given these circumstances, and taking into account the nature of continuous-payment authorities, we could not see that there was anything Mr K's credit card provider could have done to get his money back.

We were satisfied that the credit card provider was not liable, under the continuous-payment authority, for any overpayment made to the internet service provider. We also noted that the credit card provider had offered to try to get Mr K's payments back for him, if he could prove that he had asked the internet service provider to cancel the arrangement. We did not uphold the complaint.

82/2

consumer complains that payments were taken from her bank account under a continuous-payment authority she knew nothing about

Ms A complained to her bank about 12 monthly payments, each for £12.99, that had been made from her current account to an internet service provider. She asked the bank to refund this money and confirm that no further payments would be made, as she said she had never had any dealings with the company concerned.

... we said that there was no reason why the bank should refund the money.

The bank explained that it was unable to act on her instructions as the payments had been taken under a continuous-payment authority that she had given to the internet service provider. She would therefore have to contact the internet service provider herself and ask it to cancel the arrangement.

Ms A said she thought this was unreasonable, and she told the bank that any continuous-payment authority in her name must have been set up fraudulently.

Unable to reach agreement with the bank, Ms A referred her complaint to us. She explained that, as a final-year student, she had little time to deal with the complaint, so she authorised her father to pursue it on her behalf.

complaint not upheld

The evidence provided by the bank did not suggest that there was anything fraudulent about the continuous-payment authority. So we asked Mr A for some more information about his daughter's contact with the internet service provider. We also asked why she had not mentioned the problem to the bank until 12 payments had been taken from her account.

Mr A admitted that he was having difficulty obtaining much information from his daughter. However, she had told him that before contacting her bank she had been in frequent email contact with the internet company for almost a year, in an attempt to get the matter put right.

We asked to see copies of Ms A's email exchanges with the internet company. These indicated that she had agreed a 12-month deal for internet services – but had later tried to re-negotiate the monthly cost. In response to our queries about this, Ms A told us, through her father, that her emails had '*probably not reflected the exact position*', as she had '*felt intimidated*' by the internet company.

We were not convinced by this explanation. As we were satisfied, from the bank's evidence, that Ms A had given a continuous-payment authority on her debit card for the payments, we said there was no reason why the bank should refund the money. ■

82/3

consumer complains that money was taken from his bank account under two continuous-payment authorities set up without his knowledge

Mr C, who had recently started up in business on his own as a health and safety consultant, ordered some business cards from an online supplier, BG Ltd. The total cost was £9.99 and he paid online, using the debit card for his business account.

Several months later, while checking through his bank statements, Mr C noticed that regular monthly payments of £9.99 were being made to two separate businesses. He had never had any dealings with either of the businesses but recognised their names and believed them to be associates of BG Ltd.

He therefore contacted BG Ltd and asked it to arrange a refund. By that stage a total of £139.30 had been paid from his account to the two businesses. BG Ltd sent him only a partial refund, leaving £99.50 still in dispute.

Mr C's bank said it was unable to help, as he must have entered into continuous-payment authorities. Unable to persuade the bank to refund any of the money, Mr C then came to us.

complaint upheld

Mr C was able to provide clear and convincing evidence of his transaction with BG Ltd. We were satisfied that he had used his debit card to pay BG Ltd in full for the business cards. However, he had *not* provided any continuous-payment authorities to the businesses that had subsequently debited his account each month. So we did not consider that the bank had any authority to make those extra payments.

The bank argued that it should not be obliged to refund the money, since the terms of its agreement with the card payment network meant it had no option but to make the payments. We said that Mr C had not been party to the agreement – and had never authorised the payments – so we could not see that he was liable for them. We upheld the complaint and told the bank to refund Mr C's account with the outstanding amount. We said it should also pay him £100 for the inconvenience he had been caused. ■

82/4

consumer complains that bank ignored his request to cancel a standing order payment

Mr V phoned his bank to complain that it had wrongly paid a standing order from his account for £550.

He had set up the standing order to pay his monthly rent. But he said that he had written twice to the bank asking it not to make the payment one particular month, as he had already paid the rent by other means.

The bank told him it had never received his letters. However, it said it would arrange a provisional credit of £550 to his account until it could recall the payment from his landlord.

The following day the bank phoned Mr V and said it would not, after all, be able to recall the payment from his landlord. This was because his rent was paid by standing order, not a direct debit. The bank said it would have to debit the £550 again and it suggested that Mr V should ask his landlord to give him back the amount paid in error. Alternatively, the bank said it could write to the landlord on Mr V's behalf and ask him to send back the money. However, Mr V would first need to provide proof that he had paid the rent for the month in question.

Mr V said he did not consider it was up to him to '*put right a problem that the bank had caused*' and he asked the bank to re-credit his account with the £550. When it refused, he instructed it to close his account. There was a small overdrawn balance on the account and the bank said it would write this off, in recognition of the inconvenience he had been caused. Mr V then referred his complaint to us.

complaint not upheld

Mr V sent us handwritten copies of the two letters that he said he had sent the bank, asking it to stop the standing order payment for his rent for one month only. The bank insisted that it had no record of receiving the letters, and it said it considered it unlikely that both letters would have gone astray.

We asked Mr V why he had decided to pay the rent in a different way for just one month – and how he had paid it. He was unwilling to comment. So we then asked him whether he had tried and failed to get the overpayment back from his landlord. He told us that his landlord was entirely willing to refund the money as soon as he received a formal recall request through his bank account.

We offered to speak to Mr V's landlord to explain that the bank was not in a position to recall the payment in this way. However, Mr V would not consent to our doing this.

... he did not consider it was up to him to '*put right a problem that the bank had caused*'.

Overall, we did not find Mr V's evidence convincing and we did not uphold his complaint. In general, if a bank has caused a problem, the consumer is entitled to expect the bank to put it right. We noted that the bank had confused matters somewhat by making a provisional credit to Mr V's account – perhaps forgetting the difference between a standing order and a direct debit. However, we considered the amount it had written off when it closed Mr V's account (about £100) to be more than sufficient compensation for any inconvenience it had caused him.

82/5

consumers complain that bank fails to do enough to put matters right after it cancels direct debits in error

Mr and Mrs B noticed that, over time, duplicate direct debit mandates had been created for monthly payments to their water utilities company and for Mrs B's gym membership. Having established which direct debits were the active ones, they instructed their bank to cancel the old, inactive ones.

Unfortunately, the bank cancelled both the inactive *and* the active direct debits – and then wrote to the mandate holders to tell them the mandates were cancelled. The first the couple knew of this was when Mrs B next visited her gym. As she went to sign in at the reception desk, she was taken to one side and told that her bank had cancelled the direct debit for her monthly membership fee.

The following day, the couple received a standard letter from their water utilities company, asking them to complete a new direct debit mandate.

Mr and Mrs B then phoned their bank. It apologised for its mistake and said it would reinstate the active direct debits. It also offered the couple £50 to compensate them for the inconvenience they had been caused.

However, the couple said this offer was insufficient. They complained that the bank's actions had resulted in Mrs B feeling '*humiliated*' at her gym. And they said that the bank's letters to the water company and the gym represented a '*breach of confidentiality*'.

... the bank had taken immediate steps to apologise and put things right.

They therefore wanted £500 compensation. They said the bank should also provide an assurance that it would change its procedures, so that cancellation of a direct debit did not result in any letter being sent to the holder of the direct debit mandate.

The bank offered to write to the water company and the gym to explain that the problem had been down to an error on its part. However, it was not prepared to increase its offer of compensation or to change its standard procedures in relation to the cancellation of direct debits. Mr and Mrs B then brought their complaint to us.

complaint not upheld

The fact that the bank had made a mistake was not in dispute – and we agreed with the couple that the mistake had caused them some inconvenience. However, we were not persuaded that Mrs B had been '*humiliated*' at her gym. By her own account, she had been simply taken to one side by the receptionist and asked to check with her bank, as it appeared that there had been an error with her direct debit. We noted that Mrs B was a well-established member of the gym – and that the gym had been perfectly happy for her to continue using its facilities as normal while the problem was sorted out. We also noted that the gym was part of a large chain and would have been accustomed to dealing with occasional administrative glitches with members' direct debits.

We accepted that Mr and Mrs B were annoyed to find that the bank had sent out a standard letter informing the water utilities company and the gym them that the direct debits had been cancelled. However, we did not agree that the letters amounted to any breach of confidentiality. These two companies were, after all, the holders of the direct debit mandates.

The bank had taken immediate steps to apologise and put things right. We therefore considered that the modest payment it had offered Mr and Mrs B was proportionate and fair. We did not uphold the complaint. ■

82/6

consumer switches his account to a different bank – which then fails to set up his direct debits and standing orders

Mr E switched his personal account to a new bank (bank B). His old bank promptly sent bank B the details of all his direct debits and standing orders, as it was required to do at that time under the *Banking Code*.

Unfortunately, bank B did not administer the direct debit and standing order mandates correctly. As a result, Mr E's mortgage and credit card accounts (which were also held at bank B) went unpaid, as did his utilities accounts and other monthly commitments.

Mr E went abroad on an extended business trip very shortly after switching his account. It was therefore only after he returned home a couple of months later that he realised there was a problem. He had been sent a number of letters about various missing payments. And when he checked his most recent bank statements, he saw that he had incurred charges on his current account from the unpaid direct debits and standing orders.

As soon as he contacted his bank, it apologised for the mistake and assured him it would put matters right immediately. However, it was nearly two months before the bank had brought the payments properly up to date, amended the adverse credit reference information on his mortgage and credit card accounts, and refunded the charges on his current account. In the meantime, Mr E had to make a number of phone calls and write several letters to try and get things sorted out.

In response to Mr E's subsequent complaint, bank B offered him £250 compensation for the upset and inconvenience it had caused him.

Mr E did not think this was enough. He told the bank that its errors had led directly to his losing the opportunity to buy a holiday home abroad. This was because the errors had resulted in adverse credit reference information that stopped him getting the finance he needed to buy the property. He asked the bank for an additional £5,000 to compensate him for fees and other expenses associated with the failed property purchase. When the bank refused to increase its initial offer of compensation, Mr E brought the dispute to us.

complaint upheld in part

Bank B maintained that on top of its offer of £250 compensation, it had already paid Mr E '*extra compensation*', in the form of a refund of all the charges incurred on his account as a result of the problems with his regular payments.

We pointed out that Mr E would never have incurred these charges if the bank had processed the standing orders and direct debits correctly. So by refunding the charges, the bank was not providing any form of compensation – it was simply putting the account back to where it should have been.

We accepted that Mr E had been caused a considerable amount of upset and inconvenience. However, we were not convinced by his claim that the bank should compensate him for the failure of his property purchase abroad. Several significant difficulties, quite unconnected with anything the bank had done or failed to do, appeared to have prevented his buying the property. And he was unable to provide any evidence to support his claim that it was the adverse credit reference information – registered as a result of the bank's mistakes – that had prevented him from obtaining the finance he needed.

We did not uphold Mr E's claim for compensation of £5,000 for the failed property purchase. However, we told the bank that it should pay him more than it had offered him so far, to compensate him for the problems with his regular payments. The bank subsequently offered to pay Mr E £400. We told him we considered this, together with a full refund of all the bank charges he had incurred, to be a fair settlement. ■

82/7

consumer disputes bank's insistence that she was not entitled to recover incorrect direct debit payments under the direct debit guarantee

Miss D paid her membership fees for a sports club by means of a monthly direct debit on her current account. She received a letter from the club, saying that in eight weeks' time it would be closing for around three months, while extensive repair and renovation work was carried out. Members were offered two options for the period when the club was closed. They could suspend their membership for three months, or transfer it temporarily to another club some distance away.

The sports club asked members to respond by email, stating their preference. The club would then make all the necessary arrangements.

Miss D emailed the club to say she wanted to suspend her membership. She thought no more about it until a few weeks after the club's temporary closure, when she received a bank statement. This showed the direct debit for her club membership was still being paid.

Unable to contact any of the sports club staff by phone, Miss D rang her bank for advice. It told her she should pursue the sports club for a refund – and it suggested she should put her request to the club in writing, and keep a copy for future reference.

... the bank's response had been incorrect and unhelpful, and had added to the inconvenience she had been caused.

Miss D did that, but had no reply. And the following month a further club membership payment was taken under the direct debit. Miss D then contacted her bank again. She said a colleague had told her about the *Direct Debit Guarantee* – under which the customer is guaranteed a full and immediate refund by the bank if there is an error with a direct debit. The bank told her the *Direct Debit Guarantee* only applied if the error was made by the bank itself. Miss D said this did not tally with what her colleague had told her.

After some discussion, the bank conceded that the guarantee *did* cover mistakes made by the beneficiary of the payment, as well as those made by the bank. And it agreed to ensure that no further payments were made under the direct debit, for the time being.

However, it told her it could not arrange a refund, so she would have to contact the club herself and ask if it was prepared to pay back the money she thought she was owed. Miss D then brought her complaint to us.

complaint upheld

Miss D was able to produce a copy of the letter she had received from the sports club, together with a copy of her email confirming that she wanted to suspend her membership. She had responded promptly and to the correct email address. So we were satisfied that the club had made a mistake in continuing to take payments from her bank account.

Given these circumstances, Miss D was entitled to an immediate refund from her bank. The bank was unable to explain why its staff appeared not to have a proper understanding of the *Direct Debit Guarantee*. We said its response to Miss D's enquiries had been incorrect and unhelpful, and had added to the inconvenience she had been caused. So we told the bank that in addition to refunding the two payments taken in error, it should pay Miss D £100 compensation for its poor handling of the matter. ■

Can you credit it?

In this *ombudsman focus*, Jane Hingston – our lead ombudsman for banking and credit – talks to *ombudsman news* about her work on complaints involving consumer-credit businesses

It's now over two and a half years since the ombudsman's remit was extended to cover financial complaints about businesses with a consumer-credit licence. What's happened in this time?

As part of our plans for the extension of our remit to cover consumer-credit complaints (under the new *Consumer Credit Act* that came into force in April 2007) we consulted widely on the number of consumer-credit cases we could expect to handle.

It was agreed that initially the number would be low – but that it would increase within the first few years, as businesses got used to having formal complaints-handling arrangements for the first time – and as a much wider range of consumers started to hear about their new right to bring complaints to the ombudsman.

The number of consumer-credit complaints referred to the ombudsman service has increased in line with those forecasts (see the chart on page 18).

The 849 cases we received in the first year (2007/08) rose to 3,014 the following year (2008/09). And we received over 3,000 consumer-credit complaints in the first six months alone of the current financial year (2009/10).

Will the number of consumer-credit complaints continue to rise at this rate?

Back in early 2007 no one foresaw the economic crisis that was to break later the following year – with the subsequent impact of the UK recession on financial complaints. In our experience, recession and market downturns can cast a long shadow on complaints workloads, with issues such as arrears, repossessions and the affordability of loans.

This is why we are suggesting that the number of consumer-credit complaints referred to us could rise to 10,000 next year (2010/11). This is a figure we will be consulting on formally as part of our *corporate plan & budget*, to be published in January 2010.

Jane Hingston,
lead ombudsman for banking and credit

How many of these complaints have you upheld in favour of the consumer?
Last year (2008/09) we upheld 44% of consumer-credit complaints in favour of the consumer – compared with an overall average of 57% across all complaints we resolved. So far this current year, we have upheld 59% of consumer-credit complaints.

Over 100,000 businesses have a consumer-credit licence. Many are small enterprises, offering consumer credit just as an add-on to their main business. How do you make sure they all know what to do if they get a complaint?
You're right that we don't have direct individual contact with many smaller businesses – unless their customers actually refer complaints to us.

When we took on responsibility for handling consumer-credit complaints, we held roadshows nationwide, and we wrote to every business with a consumer-credit licence to tell them about the new complaints-handling arrangements and the role of the ombudsman.

What we do now is to focus on our relationship with a wide range of trade bodies and smaller-business networks. These organisations work hard to make sure that those of their members who carry out consumer-credit activities know what is required in the event of a customer complaint – including escalation to the ombudsman where appropriate.

This work includes our taking part in conferences, exhibitions and seminars that are attended by people working in consumer credit – both at businesses and across the free money-advice sector. I like to speak at events like these wherever I can. I find it very helpful to get feedback on the real issues ▸

Consumer-credit complaints* referred to the Financial Ombudsman Service

	financial year **2007/08** (12 months)	financial year **2008/09** (12 months)	financial year **2009/10** (first 6 months only)
'point of sale' loans	167	770	741
hire purchase	212	762	710
debt collecting	179	407	344
store cards	110	372	330
catalogue shopping	40	316	402
hiring/leasing/renting	26	92	175
credit broking	46	86	150
debt adjusting	28	80	111
debt counselling	19	83	77
other	22	46	49
	849	**3,014**	**3,089**

* These complaints specifically involve products and services covered since April 2007 by our consumer-credit jurisdiction. They do *not* include complaints about credit cards (18,590 cases in 2008/09) or unsecured loans (4,242 cases in 2008/09) relating to businesses that were already covered by the ombudsman *before* April 2007.

at grass roots. And much of the feedback I hear is that even those who haven't had direct experience of our service are interested in what we do – and understand the importance of having an impartial, knowledgeable decision-maker for those times when disputes can't be resolved in-house by the business itself.

What are you asked most often by consumer-credit businesses?

A recurring question is how businesses can avoid having any dealings with me – though I try not to take this personally! Actually this is a question I welcome, because encouraging businesses to improve their complaints handling – and to sort out customers' problems more effectively themselves – is a key part of the complaints-prevention work we take very seriously at the ombudsman service.

So what can businesses do to deal better with complaints?

From the wide field of complaints I see, one of the most effective ways to prevent disputes is to ensure clear and constructive communication with the customer from the moment there are the first signs of a problem. This becomes crucial where – as is so often the case these days – the consumer is facing some kind of financial difficulty. Failing to respond promptly to an approach from a customer – or responding

unsympathetically or unconstructively (for example, by ignoring what the consumer is saying and simply pressing on with debt-repayment proposals) – usually guarantees that the problem will escalate into a protracted and entrenched dispute.

It's not in anyone's interests for a straightforward matter to be allowed to deteriorate to the point where the customer relationship breaks down – simply because the business has failed to get to grips properly with a complaint. But all too often, in some of the cases that end up on my desk for a decision, that is exactly what has happened.

As soon as a business knows it has an unhappy customer, it should make sure it understands what exactly they are complaining about and why. If there's a chance the business may have done something wrong, it shouldn't be afraid to say so – and to offer to put things right. A genuine apology, together with an explanation of what can be done to correct the situation, can often be all it takes to settle matters amicably – and to secure a positive customer relationship going forward.

Is complaints handling as easy as that, then?

Clearly not every complaint is easy to resolve – particularly if the business and the customer are unable to agree on what happened or on whether matters should have been handled differently. If, after listening carefully to the customer and investigating their concerns, a business still genuinely believes it did nothing wrong, then it should tell the customer this, setting out its side of the story in a final response letter.

This letter should set out the facts and circumstances clearly and objectively, reminding the customer about their right to refer the matter to the ombudsman if they so choose. And businesses should bear in mind that setting out their position clearly and objectively doesn't mean they can't take a sympathetic and sensitive tone. Getting into lengthy, point-scoring arguments at this stage – or worse, just trading personal recriminations with the customer – simply makes a difficult situation even worse.

The requirement for businesses to send a final response letter within eight weeks of receiving a complaint provides them with a practical customer-relations tool – and the opportunity to formally record their version of events, clearly and constructively.

Together with the complaint form completed by the consumer – giving their side of the story – the business's final response letter is usually the first thing we look at when we receive a new complaint.

What about complaints involving financial hardship?

It is particularly important for businesses to provide a positive and sympathetic response, if they are made aware that a customer is experiencing financial difficulties. The best outcome will be achieved by first gathering all the necessary information and then coming up with proposals that are clear, fair and workable.

Processes or policies that are too rigid, or that apply arbitrary limits or deadlines, are unlikely to result in a fair approach. Where staff are given appropriate training – and have sufficient authority to be able to tailor a fair solution for an individual customer in financial difficulties – there is a far better chance of preventing matters from escalating into full-blown disputes.

Often all that is needed to help the customer through lean times is a simple measure, such as requiring only part repayments for an agreed period, re-scheduling a repayment date to fit in with benefits payments, or suspending interest for a time.

Of course, if a business has spent time and effort agreeing tailored arrangements with a customer, it's crucial that poor administration doesn't then spoil things. A disappointing number of the complaints we see involve businesses that have failed to keep to the agreed arrangements, or that have made errors in setting them up. Consumers in financial difficulty are likely to be more than usually vulnerable to the knock-on effect to their finances of this type of service failure.

Any other issues for consumer-credit businesses?

Some businesses misunderstand the ombudsman's remit – or their own responsibilities in law – in connection with complaints about the quality of goods acquired by the consumer using some form of credit.

'*Point-of-sale*' loans – as well as credit-card purchases – will normally carry with them liability for the provider of credit under section 75 of the *Consumer Credit Act 1974*. Hire-purchase contracts, which are also consumer-credit agreements, include certain terms about the quality of the goods supplied under the contract – whether or not these are set out explicitly in the wording.

Our consumer-credit jurisdiction enables us to deal with these sorts of complaints because of the statutory or contractual rights that the consumer has against the provider of the credit. So it is disappointing when a business wrongly argues about our remit to deal with a case like this – causing unnecessary extra work for everyone.

Providers of credit are sometimes reluctant to look into a customer's complaint about the quality of goods – instead encouraging them to go back to the outlet that provided the goods (for example, the store or car dealer).

In some cases, we have found credit providers wrongly quoting the law – such as telling the customer that they have to sue the retailer or supplier first, before they can make any claim under section 75. Where this results in the consumer incurring extra costs, or being put to unnecessary inconvenience, we are likely to take that into account in any settlement we decide.

And myths that need slaying ... ?

I sometimes hear it claimed that our jurisdiction '*doesn't cover*' the commercial judgement of a business – for example, on whether to lend and on what terms, or on adjustments to interest rates. But the idea that the ombudsman '*can't deal with complaints about commercial judgement*' is entirely wrong.

In fact, we can, and do, look at complaints about all sorts of issues around commercial judgement. For example – where the complaint is about an interest-rate change (or the lack of one), we take into account factors such as the account terms and conditions and any relevant law (often the *Unfair Terms in Consumer Contracts* Regulations 1999) when assessing whether we consider the business has done something wrong.

And your final message for consumer-credit businesses?

We all know that things don't always go to plan. Disputes can arise in the best of businesses. But taking the trouble to deal well with complaints, right from the start, can yield real results in terms of retaining customers and building a business's good reputation – more important than ever in today's climate.

Further information for consumer-credit businesses

- our online resource for consumer-credit businesses at: www.financial-ombudsman.org.uk/publications/technical.htm
- our guide, *the ombudsman and smaller businesses*
- our technical advice desk – for information on how the ombudsman service works and an informal steer on how the ombudsman might view particular complaints (phone 020 7964 1400 or email technical.advice@financial-ombudsman.org.uk)

Motor Insurance disputes involving keys left in cars

Almost all motor policies include a clause that excludes cover for theft, attempted theft or malicious damage, if the ignition keys were left '*in or on the vehicle*'. As we noted in issue 37 of *ombudsman news* (May/June 2004), the Court of Appeal's judgment in *Hayward v Norwich Union Insurance Ltd* was that the test of how such terms should be applied was whether the driver had moved too far away from the keys to make the prevention of theft likely. Since then, many insurers have reworded their clauses to exclude cover for theft if the vehicle was left '*unlocked and unattended*' or if the keys were '*left in or on the vehicle*'.

We are frequently called on to decide disputes where the consumer thinks the insurer has applied this exclusion unfairly in order to turn down a claim. When deciding such cases, we take account of all the circumstances of the incident, paying particular attention to:

- where the car was at the time of the incident;
- whether the driver was in a position to deter the thief, or make the theft unlikely;
- whether the driver was recklessly disregarding the risk of theft or inadvertently causing such a risk;
- any mitigating factors that caused the driver to leave the car and keys;
- the manner in which the policy was sold; *and*
- whether the exclusion was properly drawn to the consumer's attention.

The following case studies illustrate some of the motor insurance complaints we have dealt with recently where the policyholder has disputed the insurer's use of the '*keys in car*' exclusion.

82/8

insurer refuses to pay for theft of van when keys were left in the ignition and the van doors were locked

Mr B, who ran a local delivery company, complained about his motor insurer's refusal to pay out after his van was stolen. He had left the van in the road nearby while he delivered goods from a hardware store to a customer's home. He admitted that he had left the keys in the ignition and the engine running (apparently to avoid running down the battery while he was on his delivery round). However, he said he had taken care to lock all the van doors, with a spare key, before he had left the vehicle.

He said he returned to the road just a few minutes later to find that the van had gone. The police later told him that the thief had broken into it by smashing a window – and had then driven away. The insurer declined Mr B's claim, citing a '*keys in car*' policy clause that excluded cover for theft in certain circumstances.

complaint upheld

We noted that the '*keys in car*' exclusion in Mr B's policy was worded in an unusual way. It said the insurer would not provide cover for theft where the ignition keys were left in or on the vehicle *and* the vehicle was left '*unlocked and unattended*'.

Although Mr B did not dispute that he had left one set of keys in the ignition, he insisted that he had used his spare keys to lock the van before leaving it. And it seemed to us unlikely that the thief would have smashed the window unless he had found the doors locked.

We were satisfied that Mr B had not recognised the risk of theft as a result of leaving his keys in the ignition, and he had not acted recklessly. We told the insurer that as Mr B had not left his van '*unlocked*', it could not apply the exclusion. We therefore upheld the complaint and told the insurer to pay the claim.

... He admitted that he had left the keys in the ignition and the engine running.

82/9

motor insurer turns down claim for theft of a car when it was stolen from outside a fast-food restaurant

Mr G's car was stolen while he was having a meal in a fast-food restaurant. He said that after parking the car outside the restaurant he had removed the keys from the ignition and checked that all the doors were locked. He had then put his car keys in his coat pocket and gone in to the restaurant.

The restaurant was fairly quiet and Mr G left his coat and a newspaper on a table close to the food counter before going up to get his food. He admitted that he did not look over to the table to check his belongings, even though he stood waiting for several minutes before he was served. It was only after Mr G had eaten his meal and was getting ready to leave that he discovered the keys were missing from his coat pocket. He went outside and found that someone had taken his car.

The insurer refused to pay Mr G's claim. It said he had breached a policy condition that required him to '*take reasonable care*' of his car – and it considered he had been '*reckless*' in leaving his keys '*unattended*'.

complaint upheld

In 1993, the Court of Appeal considered '*reasonable care*' conditions in the case of *Sofi v Prudential Assurance*. It decided that in determining whether or not someone had taken '*reasonable care*' of their property, the test was whether they had deliberately courted a risk or taken measures that they knew were inadequate to protect the property. In either case, this lack of care was tantamount to '*recklessness*', and meant that the person in question did not care what happened to their property.

In the light of this judgment, in order to determine whether the insurer had been entitled to reject Mr G's claim, we had to be satisfied that Mr G had acted recklessly in leaving his keys unattended.

It was clear from the evidence provided by Mr G that the restaurant was relatively quiet; he had expected to be served right away; and he had left the keys just a couple of metres behind him. We were therefore satisfied that Mr G had not recognised the risk of theft and had not acted recklessly when leaving his coat – with the car keys in the pocket – on the table. Since we did not think Mr G had '*deliberately courted*' the risk of theft, we told the insurer to pay the claim.

82/10

motor insurer turns down claim for the theft of a van while the owner was working nearby

A construction worker, Mr K, complained about the way in which his motor insurer dealt with his claim for theft. His van was stolen one afternoon, while he was working on a building site. He said that an urgent problem had arisen with the mechanical digger he was operating, and he had gone to fetch some tools from the back of his van in order to fix the problem.

He had quickly gone back to the digger, which was just a few metres away from the van, and had left the back doors of his van open and the keys on top of his jacket, which was on the ground next to the van.

The theft took place while Mr K was mending the digger. He said the mechanical problem had not taken very long to fix – but it had been more complicated and had required more concentration than he had expected. He accepted that this must have diverted his attention briefly from the van, providing someone with the opportunity to steal it. However, he thought that his insurer had acted unfairly in telling him it was unable to pay out because he had left the van '*unattended*'.

complaint upheld

We noted that although Mr K had left the rear doors of the van open – with the keys nearby – he had never been more than a few metres away from the van. He had been working on private property that was sufficiently well secluded to prevent access by casual passers-by. And we accepted his view that, while mending the digger, he had been close enough to the van to be able to intervene if he saw anyone attempting to steal it.

So we were satisfied that Mr K could not be said to have left the van 'unattended' – nor had he acted recklessly, as he had not appreciated that the vehicle was at risk of theft. We therefore told the insurer to meet Mr K's claim.

82/11

insurer refuses claim for theft of a car left '*unattended*' in the driveway of the owner's house

Mrs D's insurer turned down the claim she made on her motor policy after her car was stolen from the driveway of her house. She said the car had been taken one morning, while she was preparing to leave for work. Several minor domestic problems had needed attention before she set out. Immediately before leaving the house she had therefore rung her manager to warn him she might be a little late.

She said she had already got into the car and started it up when she realised she still had the house phone with her. She left the car on the driveway, with the engine still running and the driver's door open, while she took the phone back to the house. Very shortly afterwards, she came out to find that the car had gone.

The insurer refused to pay out, as it said she had left the vehicle '*unattended*'. Mrs D disputed this and eventually referred her complaint to us. She said she had left the car where it was clearly visible to her husband. At the time he had been in the living room, which faced the driveway at the front of the house.

complaint not upheld

In this case there was no question that the keys had been left in the car and the doors unlocked – Mrs D admitted as much when making her claim. She maintained that the car could not have been out of her sight for more than 10 seconds. She said she had not seen anyone '*hanging around*' near the driveway, and she had neither seen nor heard the car being driven away.

After looking carefully at photographs showing the driveway and exterior of Mrs D's house, we concluded that her recollection of events surrounding the theft might not have been wholly accurate. We thought it unlikely that within so short a period of time anyone could have been in a position to have seen Mrs D leave the car – and to have then made their way to the vehicle, got in it and driven away – all without being seen or heard.

We also noted that although the car might have been left in a spot where it was visible from Mrs D's house, neither she nor her husband could have been watching it while she returned the phone – otherwise one or both of them would have seen the theft taking place.

In the circumstances, we were satisfied that the vehicle had been left unattended and that the risk of theft would have been apparent to Mrs D. We said it was reasonable for the insurer to have turned down the claim, citing the '*keys in car*' exclusion. We did not uphold the complaint.

... we concluded that her recollection of events might not have been wholly accurate.

82/12

Insurer refuses claim for theft of car left with door unlocked and key in ignition

Mrs J complained about her insurer's refusal to pay for the theft of her car. Her husband, who was included as a '*named driver*' on the car's insurance policy, had gone out in the car to the local supermarket. He had stopped off on his way home in order to post a letter. He said he had parked the car and crossed a busy road to reach the post box. As he turned round to make his way back to the car, he saw it being driven away.

The insurer cited the '*keys in car*' exclusion in order to turn down the claim. Mr J admitted having left his keys in the ignition and the car door unlocked when he got out of the car to post the letter. He acknowledged that he had been '*silly to take a chance*'. However, he said it was unfair of the insurer to rely on such an '*unreasonable*' exclusion, which he had not been told about and which meant he and his wife would lose the entire value of the car. Unable to reach agreement with the insurer, Mr and Mrs J brought their complaint to us.

complaint not upheld

The insurer sent us a recording of the phone call during which Mrs J had bought the policy. In the course of this call, the insurer had explained the '*keys in car*' exclusion to Mrs J. We noted that the exclusion was also clearly and prominently set out in the policy document.

We did not accept Mr J's view that the insurer was at fault for not telling him about the exclusion. Mrs J was the main driver and the insurer had properly drawn the exclusion to her attention. We thought it reasonable of the insurer to have expected her to pass on the information to her husband.

We concluded that, in view of the circumstances in which the theft took place, the insurer had not acted unfairly in applying the policy exclusion. We did not uphold the complaint.

For more information on our approach to disputes involving keys left in cars, see our technical note on this topic in our online technical resource (www.financial-ombudsman.org.uk/publications/technical.htm)

the Q&A page

featuring questions that businesses and advice workers have raised recently with the ombudsman's technical advice desk – our free, expert service for professional complaints-handlers

Q. Can you tell me more about your technical advice desk – and the questions you are asked most often?

A. The technical advice desk is a free resource for businesses covered by the ombudsman service and for advice workers (Trading Standards, Citizens Advice *etc*). As well as giving an informal steer on how the ombudsman might view particular complaints, our technical advice desk explains how the ombudsman service works and helps these professional complaints-handlers to find the information they need about the ombudsman service.

The technical advice desk handles over 300 enquiries a week – 71% of them from financial businesses and 29% from professionals who provide free support and advice to consumers. The businesses that contact the desk most regularly are general insurers, banks and financial advisers. Over the last few months, the ten most frequently-received enquiries have been about:

- the complaints-handling rules for financial businesses (FSA's 'DISP' rules)
- the ombudsman process
- the rules on our 'jurisdiction' (what we do and don't cover)
- our approach to complaints involving insurance claims for stolen vehicles
- complaints about the sale of payment protection insurance (PPI)
- disputes about repairs to damaged vehicles
- problems involving mortgage and loan applications
- complaints about administration relating to insurance claims
- complaints about theft and household insurance
- debt and financial hardship.

The technical advice desk can be contacted at technical.advice@financial-ombudsman.org.uk or on 020 7964 1400 (10.00am to 4.00pm, Monday to Friday).

Q. In issue 80 (October/November 2009), your chief ombudsman described surges of complaints relating to just a few financial products. Can you provide more information about this?

A. Since the Financial Ombudsman Service was formed in April 2000, half of our workload has related to just six areas of work. These six areas – listed below – have involved **456,406** individual complaints – out of 901,476 cases that we received *in total* over the last nine and a half years.

area of complaint	number of cases since April 2000	peak year for these complaints
mortgage endowments	297,233	2004-06
dual variable-rate mortgages	7,076	2003-04
split-capital investment trusts ('splits')	5,046	2003-04
bank charges	46,139	2007-08
credit-card charges	31,325	2008-09
payment protection insurance (PPI)	69,587	2008-09
all other financial products and services	445,070	
	901,476	

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