Ombudsman news

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

Natalie Ceeney, chief executive and chief ombudsman

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… 'the next big thing?'

It should be no surprise that PPI (payment protection insurance) continues to be a major issue for us. Complaints about these policies continue to form far and away the biggest workload we face. The delays caused by the recent PPI judicial review – with major businesses effectively putting customers' complaints on hold during their legal challenge – have left us with well over 100,000 cases still to work through.

Caroline Wayman, our principal ombudsman and legal director, led our response to the PPI judicial review. The interview with her on page 20 of this issue covers – among other matters – her views on the impact of that legal challenge on the ombudsman service. We have welcomed the FSA's announcement of a clear timescale within which certain banks must resolve their PPI complaints. And we are working closely with those banks and with the FSA to ensure these complaints are tackled promptly and effectively.

The case studies we feature this month concern cases that are brought to us – not by consumers themselves – but by third parties acting on their behalf. These third parties include consumer advice agencies and friends and family members who give their help for free – as well as third parties like solicitors and claims-management companies who ▸

Financial Ombudsman Service

charge consumers for bringing a complaint on their behalf. The case studies cover a variety of different financial products. Inevitably though, given that so many PPI cases come to us via claims-management companies – PPI predominates.

But increasingly, in my meetings with our stakeholders, I'm hearing people say, '*... yes, we know about PPI – but what's the next big thing after that?*' Well, I'm increasingly hopeful there won't be a '*next big thing*', if by this we mean another '*mis-sale scandal*'. Only yesterday I spoke about this at the launch of the new regulatory authority that will focus on consumer protection and markets – the FCA (Financial Conduct Authority). There's clear determination that the proposed new regulator will be '*tougher, bolder and more engaged with consumers*'. It will have a much greater focus on earlier intervention, preventing problems escalating and to stepping in more proactively – much earlier.

The ombudsman service will clearly have an important role to play in this new 'redress landscape'. Not, I hope, by having to sort out mass compensation when things all go wrong again. But by providing independent insight and intelligence, to flag up potential problems as soon as we see them – and by working with our stakeholders to get these problems sorted fast – to prevent them becoming '*the next big thing*'.

Natalie Ceeney
chief executive and chief ombudsman

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Making a complaint on your behalf – consumer complaints brought by third parties

Just under half of all the cases brought to us come direct from a consumer (or small business). The remainder are brought to us by a third party. In the last financial year, around 5% of our overall caseload consisted of cases referred to us on behalf of consumers by professionals such as solicitors or accountants. And 45% of cases were referred to us by claims-management companies.

This follows steady year-on-year increases in previous years – and is broadly in line with the growing volumes of complaints relating to payment protection insurance (PPI), where claims-management companies are most active. 76% of the 104,597 new PPI cases we received during the last financial year were brought by claims-management companies.

We have always stressed that consumers do *not* need help from a commercial third-party – such as a claims-management company or solicitor – in order to bring a complaint to us. We decide complaints by looking at the facts in each individual case, not at how well the arguments are presented, and we prefer to hear from consumers in their own words.

We aim to make it as easy as possible for people to use our service. And our research shows no difference in the outcome of cases, whether consumers ▸

bring them to us themselves direct, or pay someone to complain on their behalf. We are a free service for consumers – but commercial companies charge consumers for bringing a complaint for them. However, it is a matter of individual choice if a consumer wishes to employ a third party to act on their behalf.

Of course, not all 'represented' consumers *pay* for someone to bring a complaint on their behalf. We continue to deal with cases referred by family members, friends, colleagues and consumer advisers who help people *for free* if they need assistance in making a complaint. This includes more vulnerable people who rely on the support of others – from councillors and trading standards officers to care home managers and community workers.

The following case studies illustrate some of the complaints brought to us on behalf of individual consumers by a range of different third parties.

94/1
claims-management company complains on consumer's behalf about sale of PPI policy

After seeing on the TV news that some people were having problems with PPI (payment protection insurance), Mrs J started to have concerns about her own PPI policy. As it had been sold to her alongside her credit card, she contacted her credit card provider and asked if it would check whether the policy was right for her circumstances.

Mrs J was a single parent with two teenage children and she worked as a self-employed beautician. Over the previous year she had been obliged to cut down her working hours quite considerably. Caring for her elderly father was taking up much of her time, as he was in poor health and becoming increasingly frail.

Her credit card provider told her that if she was concerned about the suitability of her policy, she would have to make a formal complaint. She therefore did this – and in due course received a complex three-page letter from the card provider's legal department. The letter was aggressive in tone and it vigorously

... she liked the idea of having an '*expert complaints handler*' who would '*look after everything*'.

refuted Mrs J's complaint, telling her she would have to '*provide compelling evidence to support any allegation of a mis-sale*'.

Mrs J was confused by this response. It had not been her intention to complain about the policy being mis-sold. She did not know whether that was the problem – or indeed whether there *was* a problem. And she was unsure what '*evidence*' she would need to produce in order to pursue matters.

She was still wondering what she should do when an advert in the paper caught her eye. It was from a claims-management company that said it specialised in helping people with PPI claims. Mrs J liked the idea of having an '*expert complaints handler*' who would '*look after everything*', particularly as caring for her father was now so time-consuming. So she rang the claims-management company and arranged for it to take on her case.

The company contacted the credit card provider on Mrs J's behalf but found it was unable to make much progress. The card provider insisted that it would have given Mrs J all the information she needed in order to make an informed choice about whether to take out the policy. However, it said it had no paperwork relating to the sale of the policy. It appeared unable even to confirm when the sale had taken place. So the claims-management company told Mrs J it would refer the complaint to us, on her behalf.

complaint upheld

The claims-management company helped Mrs J complete our PPI questionnaire, giving us the details we need to look at a PPI complaint.

Mrs J said she had not taken out PPI when she first obtained her credit card. She was persuaded to do so some while later, when she rang her card provider to ask for an increase in her credit limit. During that call she had been asked to confirm details of her employment and had said she was a self-employed beautician.

She was certain no one had told her that self-employed people could get only limited benefits from the policy. ▸

Together with the completed questionnaire, the claims-management company sent us some information about Mrs J's business – and copies of two of her credit card statements. One of these statements dated from late 2001, before she had the PPI policy. The other statement was from early 2002 and showed the increased credit limit and a PPI payment.

We asked the credit card company to send us a copy of the terms and conditions that applied to its PPI policies in early 2002. It was clear from this that the circumstances in which a self-employed person could make a claim under the policy were very limited. This was a significant factor – and the credit card company should have made it clear. However, it was unable to provide any evidence that it had discussed the limitations of the policy with Mrs J.

We concluded that it was very unlikely she would have taken out the policy if she had been properly informed. We upheld the complaint. ■

... the claims-management company told him it was '*confident of a positive result*'.

■ 94/2 claims-management company complains about mis-sale of PPI on behalf of a consumer

Mr G was relaxing at home when he got a phone call from a claims-management company. He had not had any dealings with the company before – and he later said he had been annoyed at first to have his evening interrupted. However, he soon became interested in what the company told him.

He was asked if he had ever had a personal loan. When he said that he had taken out a loan '*sometime around 2003*' but had now repaid it, he was told it was '*highly likely*' that he was entitled to compensation.

The claims-management company urged him to '*act quickly*' and said it needed him to answer a few questions over the phone, so that it could complete a PPI (payment protection insurance) questionnaire for him. Mr G was not at all sure that he had taken out a PPI policy – and his answer to most of the questions he was asked was '*I don't remember*'. However, the claims-management company assured him that it was '*confident of a positive result*'.

Acting on Mr G's behalf, the company then sent a complaint to Mr G's loan provider, saying it had mis-sold a single-premium PPI policy when it

gave him the loan. The loan provider responded by stating that it had no record of ever having sold PPI to Mr G. It enclosed with its letter a copy of Mr G's loan agreement.

The claims-management company then referred the complaint to us. It told us the loan provider had persuaded Mr G to take PPI by telling him it was essential if he wanted to obtain a loan. The company also told us that the loan provider had failed to explain the cost of the policy to Mr G, or to draw his attention to the limitations on the policy benefits.

complaint not upheld

We asked the loan provider for information about its dealings with Mr G. It said it had only ever supplied him with one loan, which he had since repaid, and it had never sold him a PPI policy. It sent us a copy of Mr G's loan application and details of his payment history. Mr G had indicated clearly on his application form that he did not want PPI. And there was nothing to suggest that he had ever paid more than the monthly repayment amount shown on the application form.

We asked the claims-management company to send us any evidence it had to show that Mr G had taken a PPI policy. It was unable to do this.

It is understandable that consumers can sometimes be uncertain whether or not they were ever sold PPI in the past. In this instance, however, we noted that the loan provider had given the claims-management company clear evidence that it had never sold PPI to Mr G. We did not uphold the complaint.

In accordance with our rules, we decided the case was '*frivolous and vexatious*' – which is how we categorise fewer than 1% of the cases we decide.

94/3

consumer in financial difficulties asks claims-management company for help in dealing with her bank

At her bank's suggestion, Miss T took out a consolidation loan to help her repay an existing loan and a sizeable credit card debt. Two years later, she was forced to give up work because of ill-health. She was soon finding it difficult to manage the monthly loan repayments, so she decided to ring the bank and ask if she could reduce the payments.

She had expected the bank to agree right away, once she explained her circumstances. So she was taken aback when the bank told her it was '*unable to say*' if it would be able to do as she asked. It said it would send her a form called a '*common financial statement*'.

... we reminded the bank of its duty to behave positively and sympathetically to consumers in financial difficulties.

She would have to complete this, giving details of her income and expenditure, and then get the statement '*verified*' by a debt advice agency before returning it to the bank. The bank would then consider her request.

The statement arrived a few days later and Miss T began to fill it in. However, she left it unfinished because she couldn't work out what she needed to do with the form once it was completed. She had never heard of debt advice agencies and didn't know how to go about finding one.

She therefore thought it a stroke of luck when, later that same week, she heard an advert on the radio for a claims-management company, offering to help people sort out their financial problems.

Miss T rang the company and was told it could '*deal with the bank*' on her behalf. After taking detailed information from her about her income and expenditure, the company got in touch with the bank. However, it was far from happy with the bank's response, so it told Miss T it would refer the case to us.

complaint resolved informally

The work that the claims-management company had already done with Miss T, setting out the details of her financial circumstances, meant we did not need to start from scratch in obtaining this information. And we were able to assess very quickly that Miss T's circumstances warranted some flexibility by the bank over her loan repayments.

We contacted the bank to explain Miss T's current circumstances and to remind it of its duty under the *Lending Code* to behave positively and sympathetically to consumers in financial difficulties.

The bank then told us it was prepared to accept lower monthly repayments. It also offered a concession regarding interest payments. And it said it would refund any charges it had applied to Miss T's loan account since she first contacted it about the change in her circumstances.

We thought this was a fair offer and we passed on the details to the claims-management company.

Shortly afterwards it accepted the offer on Miss T's behalf. Miss T then rang us to say how pleased she was with the outcome.

She was aware she would have to hand over to the claims-management company some of the money she got back from the bank. She said she was happy to do this, as she would not have had the confidence to pursue matters on her own – particularly given the bank's initial response, which she had found '*unhelpful and intimidating*'. ■

■ **94/4**

consumer unhappy about fees charged by claims-management company acting on her behalf in PPI case

We upheld the complaint about payment protection insurance (PPI) that was brought to us by a claims-management company, on behalf of Ms A. We told the business responsible for mis-selling the policy that it should:

- re-structure Ms A's loan to remove the remaining PPI premium from the balance; *and*
- return the payments she had already paid towards PPI, together with interest.

The business offered to reduce the balance on Ms A's loan by £10,200, in order to remove the remaining PPI premium. It said it would also give her a cash payment of £2,100. We put this offer to Ms A's representative, saying we thought the offer was fair and reasonable.

Not long after that we had a phone call from Ms A. She said she had been very pleased when the claims-management company told her about the offer. However, she was now worried about the consequences, if she accepted it.

She had only just learned exactly how much the claims-management company would be charging her for its services. She said it had asked her to pay £3,690. It had explained that this was 25%, plus VAT, of £12,300 (the overall value of the offer).

Miss A said that to pay this fee she would have to hand over *all* of the £2,100 she would get in cash, as part of the offer. She would then need to find a further £1,590 to make up the total amount she owed the claims-management company. ▸

She told us she thought this '*fundamentally unfair*' – particularly as she would have no option but to take out another loan in order to obtain the £1,590. She asked if she could make a complaint to us about the claims-management company, as she said its charging structure was far from clear, and it had failed to explain exactly how its fee would be calculated.

It is not part of our role to look at complaints about claims-management companies, which are regulated by part of the Ministry of Justice. So we explained to Ms A why we were unable to help her further. We suggested that she could contact a free local law centre and get a legal view about her contract with the claims-management company.

Because we were seeing comments from a number of consumers regarding the fees of this particular claims-management company, we highlighted the issue as part of the regular dialogue we have with the Ministry of Justice.

... the claims-management company had failed to explain how its fee would be calculated.

94/5

consumer struggling with debts considers offer of help from claims-management company

Since his working hours had been reduced, some months earlier, Mr M had been finding it more and more of a struggle to afford the monthly repayments for his loan and credit card debts.

Out of the blue he received an email from a claims-management company, describing the many successes it had achieved in helping consumers with debt problems.

Mr M's curiosity was aroused, so he rang the company and explained the financial problems he was having. The person he spoke to seemed confident that the company would be able to help him, so he asked what kind of help he could expect and how much it would cost.

He was told he would need to pay a '*modest initial fee*'. The company would then contact his loan provider and credit card providers and make a complaint on his behalf. The company seemed to think that – as a result of this – at least some of Mr M's debts would be written off. The claims-management company would then charge him a percentage of those written-off debts.

... we gave him contact details for several reputable agencies that could help him – free of charge – to deal with his debt problem.

Mr M resisted pressure from the company to sign up for its services right away. He later told us he had doubts about what the company would actually be able to achieve for him. He had been perfectly happy with his loan and credit cards before the drop in his income. He was therefore uncertain what grounds there would be for any complaint.

Mr M discussed his worries with his daughter, the next time she visited him. She told him that one of her work colleagues had recently told her about the Financial Ombudsman Service. This colleague had picked up one of our leaflets when he'd visited our stand at a local consumer event. From what she'd heard, she thought it would be worthwhile for Mr M to give us a call.

complaint avoided

The next day, Mr M phoned our consumer helpline. He explained his worries about his debts and he told us about his conversation with the claims-management company.

He said he was concerned that by paying the company's initial fee he would be '*taking a gamble*'. It could result in his financial situation getting worse than it already was. From what he understood, the fee was non-returnable – and he was not convinced that any of his debts would be written-off. He was also nervous about the company's insistence that he should sign a legally-binding contract before it started work on his behalf.

Our consumer consultant explained to Mr M that we could not give specialised legal or debt advice. And we were unable to discuss individual claims-management companies. But we said that from what he had told us, it seemed unlikely that his were the kind of circumstances in which we would say the lenders should write-off his debts.

We said that, before he committed himself to anything, Mr M might find it helpful to see a qualified, free, debt adviser. We gave him contact details for several reputable agencies that could help him – free of charge – to deal with his debt problem.

We also explained that, if necessary, these agencies could contact his creditors on his behalf.

Mr M thought this was a much better option for him. He did not want to avoid paying his debts. And he didn't honestly feel he had cause to complain about his lenders. He just needed some expert help to arrange an affordable level of repayments.

94/6

free consumer advice agency helps consumer bring a complaint about a debt-collecting business

Mr K, a retired postal worker, was alarmed when a debt-collecting business wrote to him about money that it said he owed to a credit card company. He was not sure how the business had obtained his details as he was certain he did not owe any money. However he was very anxious that the debt-collecting business might refuse to accept that it had made a mistake.

When it wrote to Mr K, the debt-collecting business had enclosed a leaflet about a separate, free service that provided debt advice. The debt-collector's regulator required it to provide such information in these circumstances.

After reading the leaflet, Mr K decided that before responding to the business, he would phone the debt advice service. He was pleasantly surprised when the advice worker he spoke to, Mrs C, said she would contact the business on his behalf.

Initially, she was unable to get the business to accept that it had made a mistake. But after she had made a number of phone calls to the business and sent it several letters, it eventually accepted that it had been chasing the wrong person.

Mr K was relieved about that, but he told Mrs C that he was worried his credit history might now contain incorrect information about the debt. He also felt that he was entitled to what he described as '*significant compensation*' for the worry that the debt-collecting business had caused him.

Mrs C contacted the debt-collecting business again but it said it was unable to deal with any questions about Mr K's credit history and, '*as a matter of policy*', it never offered any compensation.

After discussing the situation with Mrs C, Mr K gave her permission to complain to us on his behalf about the debt-collecting business.

complaint upheld

We told the business that it was responsible for ensuring its mistake had not resulted in any inaccuracies on Mr K's credit record. We said the business should also apologise to Mr K for its error in chasing him for the debt.

We agreed with Mr K that he was entitled to receive some compensation for the difficulties the business had caused him. However, we thought the amount he appeared to be expecting was excessive.

We phoned Mrs C and explained our approach to compensation for non-financial loss. We told her we thought a payment of £250 would be fair and reasonable in this particular case.

Mrs C said she would pass on our comments to Mr K when he visited her office the following week. And a few days after that, she wrote to us. She said Mr K was disappointed that he would not get the large sum he had been hoping for. However, he would agree to accept £250. When we told the debt-collecting business this was an appropriate sum, in the circumstances, it sent Mr K a cheque for this amount.

94/7

PPI complaint made on consumer's behalf by a free consumer advice agency

Mr W, who had three small children, lost his job just a short time after the breakdown of his marriage. Uncertain what benefits he was entitled to receive – and anxious to ensure that proper arrangements were made for him to see his children – he visited his free local advice centre.

He was very impressed with the practical assistance he received from his caseworker at the centre, Miss G. With her help he was soon able to sort out his most pressing concerns. However, his financial situation remained a worry.

A couple of months later he returned to the advice centre. This time he saw a different caseworker, Mrs L. He explained that although he had managed to get *some* work, it was only part-time. He was anxious not to get further into debt, but was struggling to meet his current commitments.

After taking a detailed look at Mr W's situation, Mrs L suggested that he might have grounds for complaint about a payment protection insurance (PPI) policy, which had been sold to him with a loan some years earlier. She said that if she was right, Mr W might be due some compensation.

However, it was not at all clear which financial business was responsible for selling the policy. The business from which Mr W had obtained the loan did not appear to exist any longer. From what Mrs L could make out, it had been taken over by another company – which had in turn either been taken over itself or completely re-branded.

Only a few weeks earlier, Mrs L had attended one of the consumer advisers' training days that we run in different regions of the UK. As a result, she had a good understanding of the work of the ombudsman service and the kinds of help we can provide. She rang our consumer helpline while Mr W was still in her office and we were able to have a three-way conversation.

After asking them both a few questions we established which financial business the complaint needed to be sent to. We said we would arrange this by writing direct to the business on Mr W's behalf. We confirmed that we would ask the business to send a copy of its reply to Mrs L, as requested by Mr W. And we explained that if the financial business had not resolved matters within 8 weeks, then Mrs L or Mr W should let us know.

We heard no more until – several months later – a colleague of Mrs L's attended one of our training sessions for frontline advice workers. He said he had signed-up for the event on Mrs L's recommendation. He was aware of Mr W's case and told us that once the business became aware of our involvement, it had dealt with it speedily and satisfactorily. ■

94/8
consumer represented by her neighbour in a complaint about a catalogue-shopping business

Miss C was very worried when she discovered that her account with a catalogue-shopping business was in arrears. She had been a customer of the business for several years, buying clothes and household goods by mail order and paying in monthly instalments.

She had always taken care to make her payments promptly and in full, so she was certain there must have been a mistake. However, she was reluctant to get in touch with the business as she had only a very basic level of literacy.

... the business did not appear to accept that it might have made a mistake.

She was worried that if it proved impossible to sort matters out over the phone, she would then need to deal with complicated paperwork.

Miss C's neighbour, Mr H, was aware of her difficulties with reading and writing. When she told him about the problem, he offered to get in touch with the business on her behalf.

Unfortunately, even after making a number of phone calls to the business and writing several letters, Mr H was unable to resolve matters. The business did not appear to accept that it might have made a mistake. It simply kept repeating what it had told Miss C when it had first written to her – that her account was in arrears and that she needed to bring her payments up to date. So Mr H got in touch with us.

complaint resolved informally

We arranged to talk to Miss C over the phone, so we could gather some information from her about her account. She gave us the details we needed and confirmed she was happy for us to deal direct with Mr H.

The information we obtained from the business enabled us to establish that the problem had come about after it mis-applied one of Miss C's regular payments. The business had then assumed that she had failed to pay that month – and it had started adding late payment fees and other charges to her account. By the time Miss C became aware of what had happened, the total charges had risen to over £100.

As a result of our intervention, the business offered to remove all the charges. It said that in view of the worry and inconvenience caused to Miss C by its initial error – and by its subsequent failure to put matters right – it would credit her account with £50. We thought that was a fair outcome, and Miss C was happy to settle the complaint on that basis. ■

94/9
complaint about disputed credit card transactions brought on consumer's behalf by his mother

Mr B went to Spain with a group of friends, combining a belated celebration of his 21st birthday with a stag weekend for his former flat-mate.

Not long after he returned home he received his credit card statement. This showed several transactions that he did not recognise. Totalling almost £800, these transactions were all made on the same date at a '*gentlemen's nightclub*' in the Spanish city he had just visited.

Mr B showed the statement to his mother and said he thought he must have been the victim of a fraudster. He said he had visited a number of bars while he was in Spain, but had certainly never been to this nightclub.

His mother told him to contact his credit card company right away and query the transactions. He said he would do this. However, several weeks later his mother found he had still not got round to it, so she offered to sort things out for him.

After checking that Mrs B had her son's permission to act on his behalf, the credit card company told her there was nothing to suggest the transactions were fraudulent.

Mrs B thought the credit card company should '*investigate more thoroughly*'. She said it was clear that the transactions had been made by someone other than her son – and she wanted the card company to pay back into her son's account the total amount under dispute.

The credit card company refused to do this. It said it had no reason to suppose the transactions had *not* been made by Mr B, as his PIN had been entered correctly each time.

Unable to resolve matters, Mrs B eventually referred the complaint to us. She said it was '*insulting and degrading*' for the credit card company to suggest her son had visited a '*gentlemen's nightclub*'.

complaint withdrawn

We looked closely at all the evidence and noticed something that neither Mrs B nor the credit card company had commented on. On the same evening as the disputed transactions – and very close in time to when they had taken place – Mr B's card had been used to withdraw money from a cash machine. The cash machine withdrawal had taken place just two minutes before the last-but-one card transaction at the nightclub.

We asked Mrs B about this cash withdrawal. She confirmed that it was not one of the transactions under dispute.

... He said he had visited a number of bars when in Spain but had certainly never been to this nightclub.

Indeed, she said it was '*proof*' that Mr B could not have been in the nightclub. She said it showed he was at a different location – using his card in a cash machine – around the time that someone else was in the club, carrying out transactions with what was '*probably a cloned copy*' of her son's card.

We made further enquiries of the credit card company and established that the cash machine in question was located *inside* the nightclub. We put this to Mrs B. A few days later she told us she had discussed the matter with her son and now wished to withdraw the complaint. ■

94/10
consumer asks his solicitor to assist with dispute about bank's business-lending

Over the years, Mr D had borrowed heavily from the bank in order to support his business. Eventually, however, after his business failed and he was unable to meet his obligations, the bank 'called-in' all the money he owed it.

The previous year, Mr D had taken out a 5-year interest-hedging arrangement with the bank for his business loan. When the bank sent Mr D an itemised statement showing details of what he owed, he saw that it had added a substantial 'break charge' relating to that arrangement. He queried this and was told he was '*liable to pay the charge, to come out of the interest-hedge early*'.

Mr D then complained to the bank. He said the charge was '*unacceptable*' because he had never wanted to take out the interest-hedging arrangement. He said the bank had '*pressured*' him into agreeing to a transaction that he did not understand and that it had never explained to him.

Unable to reach agreement with the bank, Mr D referred the dispute to us. ▸

complaint not upheld

As well as looking in detail at Mr D's business-borrowing history, we obtained a number of letters and other documents from the bank, relating to the hedging arrangement. We also listened carefully to the bank's recordings of its telephone conversations with Mr D.

On the basis of this evidence we concluded that there was no substance to Mr D's complaint that he had been '*pressured*' into taking out the interest-rate hedge arrangement. The bank had discussed it with him at some length and had given him clear and accurate information.

The bank had taken proper account of Mr D's financial circumstances at the time. And it was evident that he was an experienced businessman who understood – and had previously benefited from – a variety of sophisticated forms of borrowing. We did not consider that the bank had done anything wrong in offering Mr D the hedging arrangement or in levying a charge to come out of it.

We told Mr D that we did not see any grounds on which we could uphold his complaint. He was not prepared to accept this. He said he wished to pursue his case through to the final stage of our process – an ombudsman's final decision – and he would be instructing his solicitor to present his case formally, on his behalf.

We explained that there is never a need – at any stage of our process – for consumers to be represented by a solicitor or other third party. However, Mr D said he was certain it would help his case if it was presented to us in a '*formal and official*' manner.

A few weeks later, the ombudsman reviewing Mr D's case received a letter from Mr D's solicitor. The points covered in the letter were expressed very formally, using legalistic language, but in essence they were the same as the points already raised by Mr D. There was one difference, however. When Mr D first contacted us he had stated the amount of compensation that he thought the bank should pay him. In the letter sent to us on his behalf by the solicitor, this figure had been increased to include the solicitor's fees.

After considering all the evidence, the ombudsman concluded that we could not uphold Mr D's complaint. It was difficult to see what value had been added to the case by the involvement of his solicitor.

Mr D told us he was unhappy with the size of the bill presented to him by his solicitor – and he intended to take a complaint about it to the legal ombudsman (a separate organisation).

94/11
solicitor complains to mortgage company on consumer's behalf

Mrs V struggled to pay all the household bills after her husband left her – and it wasn't long before she became really worried about the mortgage repayments. She was normally able to pay at least part of what she owed each month. However, she was concerned that arrears were starting to build up. She therefore wrote to the mortgage company to explain her situation.

She was surprised when she got no reply but she assumed from this that the mortgage company was content to leave matters as they were. For the next few months she simply carried on paying as much as she could manage. She was then shocked to get a letter from the mortgage company, threatening to take legal action against her because of mortgage arrears.

Mrs V was not at all sure what she should do. She didn't feel there would be any point in contacting the mortgage company, as she had already told it about her circumstances and received no response.

A local solicitor, Mr B, had been advising her about her divorce proceedings. So when she next went to see him about the divorce, she showed him the letter about the mortgage arrears.

Mr B told her he was surprised the mortgage company had failed to respond, when she told it of her changed financial situation. He said he was even more surprised that it had then sent her what he thought was an '*inappropriate letter*', and he told her she had grounds for complaint.

Mrs V didn't feel sufficiently confident to write a letter of complaint, so she asked if he would deal with the matter on her behalf. Mr B wrote to the company but never received a reply. He then referred the case to us.

complaint upheld

After questioning the mortgage company about this complaint, we concluded that it had failed in its obligation to treat Mrs V fairly and sympathetically. It had also made no effort to deal with her complaint. We therefore upheld the complaint.

We always advise consumers that if they pay a third-party to bring a complaint to us, they should not expect these costs to be refunded, even if they win their case. Unusually, in the particular circumstances of this case, we said that as part of the redress it paid Mrs V, the mortgage company should contribute to her legal costs relating to the complaint.

ombudsman focus: lawyering up

Caroline Wayman, a qualified barrister, was appointed to the ombudsman service's executive team earlier this year as *principal ombudsman and legal director*. She has over ten years' experience at the ombudsman service, including running the unit handling a quarter of a million mortgage endowment complaints, as well as leading the ombudsman's response to the recent PPI judicial review.

ombudsman focus catches up with Caroline to find out what life is like as the ombudsman's no.1 '*legal beagle*'.

When you started off studying law as a student, did you think you might end up in a courtroom challenge involving the major UK banks?

If you're studying law, I think you always imagine you'll one day be involved in the kind of courtroom action that will make a real difference. I remember being particularly inspired as a student by the ground-breaking legal case that single mother, Erin Brockovich, had just launched. It was against an American power company accused of polluting a city's water supply. Cases like that – with all their drama, human interest (and of course, movie potential) – showed that the law needn't be dry and academic. Issues fought out in court could alter people's lives and change society.

Back then I'm not sure I even knew what payment protection insurance was. And I probably wouldn't have thought the legal position on complaints-handling rules was changing the world, exactly! But the recent judicial review on payment protection insurance (PPI) was certainly a significant legal action, involving serious heavyweights from the legal world on all sides. And I found being involved was every bit as stimulating, challenging and absorbing as I always hoped the law would be!

Caroline Wayman
principal ombudsman and legal director

The IOB introduced me to the world of general-insurance disputes – and to the ombudsman's 'rule of thumb' on issues such as 'matching sets' in household insurance, which all these years later still underpins our general approach to complaints about these issues. Now that's consistency – in a world that in many other ways has changed significantly!

Your job title is *principal ombudsman and legal director*. Do you think of yourself first and foremost as an ombudsman or a lawyer?

My instinctive answer is *both*. The lawyer in me has needed to come to the fore recently. Much of my time and energy has been focused on the legal action brought against us in the PPI-related judicial review. But being an ombudsman is fundamentally all about being fair and reasonable to both sides in each dispute. And that's really at the very heart of who I am, where my values lie, and what I do here at the ombudsman service.

You've been with the ombudsman for over ten years now. How has your work changed over that period?

After qualifying as a barrister, I worked in the insurance industry for a few years. I then joined the Insurance Ombudsman Bureau (IOB), one of the predecessor ombudsman schemes that merged to form the Financial Ombudsman Service a decade ago.

When I transferred across to the new Financial Ombudsman Service, my first project was to look at new ways of working involving mediation – getting both sides to agree to recommendations or settlements as early as possible, and with even less formality than would usually apply. This included trialling greater use of the phone to contact the parties to a complaint – rather than always writing lengthy letters. This may now sound like standard procedure but it was pretty radical at the time – the *Twitter* approach of its day!

Then between 2004 and 2007 I ran the unit here dealing with mortgage endowment complaints. They were by far the most-complained about financial product during those years. At their peak, we were receiving up to 1,500 mortgage endowment cases a week. Though nowhere near as large as the volumes of PPI cases we are now seeing, that marked a very significant increase in our workload. It meant we had to introduce very different ways of working, to reflect the ramped-up scale of our operations. ➤

You learn a lot from experiences like this. The most important thing is to be able to identify what the key issues really are – so you can focus on what needs to happen to improve things. That's definitely where my skills as a barrister have helped – seeing the bigger picture while at the same time zooming in on vital detail.

What does your work as a principal ombudsman involve?

It's an important part of this role to oversee how we manage the consistency and professional leadership of our statutory panel of ombudsmen. The panel now includes over 80 ombudsmen and – in all – they will be making final decisions on over 25,000 cases this year. All of our ombudsmen are individual decision makers – responsible in law for the decision they make on each case. But it's vital that the overall approach they take to particular types of complaints is clear and consistent.

That's why we have five *managing ombudsmen*, each leading the day-to-day work of teams of ombudsmen who cover complaints in particular subject areas (for example, health insurance). We also have two *lead ombudsmen*, Caroline Mitchell and Jane Hingston, who head-up casework policy for, respectively, general insurance and investment, and banking, credit and mortgages. I co-ordinate the work of the ombudsman panel as a whole, working closely with our chief ombudsman, Natalie Ceeney, and with Tony Boorman (principal ombudsman and decisions director).

Are all the ombudsmen legally qualified – and if not, should they be?

The objectivity and analytical skills that lawyers bring can provide a really good grounding for being an ombudsman – and we have a number of ombudsmen who are legally qualified. But we also have people from a range of other professional backgrounds. This includes ombudsmen who have worked in financial services – and so bring experience and knowledge of the practical realities of the industry, as well as strong technical expertise. We also have ombudsmen who have worked with regulators and other complaints-handling bodies.

Ombudsmen are appointed by our non-executive board and they need to meet exacting criteria, which we test through a rigorous recruitment exercise. The key to success as an ombudsman is the ability to carefully weigh up evidence, to get to grips with difficult (and often technical) issues, and to reach fair and reasonable decisions, objectively and impartially.

As a principal ombudsman, do you make decisions on individual cases?

Yes, sometimes. Typically where there's a decision of particular significance – or simply where I want to keep my hand in. But generally, as I've said, my role is to oversee the work of all the ombudsmen – to help ensure consistency and professionalism. The decision of an ombudsman in any individual case is final – there can't then be an appeal to another ombudsman. So my role is *not* to handle appeals on individual decisions that people don't like!

You've talked about your work as an ombudsman but what about the other part of your role – as the legal director?

As legal director I lead our own in-house legal team and advise the executive team and our board on legal issues. As a dispute-resolution organisation issuing hundreds of decisions each week on individual cases, it's probably not surprising that at any one time we'll be dealing with several judicial reviews and other court actions against us. The qualified solicitors in our legal team handle these legal challenges and proceedings for us.

So what – in a nutshell – does the Court's recent judgment on the PPI judicial review actually mean for the ombudsman service?

Well, the first thing to say is that the court found that the approach the ombudsman had been taking on PPI complaints was correct. The judgment was a strong endorsement of some really important issues – such as 'principles-based regulation' and the 'fair and reasonable' jurisdiction of the ombudsman.

Some have said that the case was about 'retrospective' regulation – but that's not correct. The Court found that the high-level FSA 'principles' are always applicable – and they don't stop applying just because there are also detailed rules in place. That's a really important point. If that had been found *not* to be the case, the regulator would have to write down a rule for every possible scenario and circumstance. Clearly that would not be appropriate. ➤

As far as the ombudsman service is concerned, the really key part of the judgment was an endorsement of previous decisions (including by the Court of Appeal) about the role and position of the ombudsman in deciding cases. It's clear that the ombudsman service is required to decide cases on the basis of what is fair and reasonable, having regard to a number of things including the law and relevant regulatory rules.

In fact, in making decisions we generally start with the basic legal principles such as 'causation' and 'reasonable foreseeability'. So the law is a fundamental part of our decision making. It's simply never the case that we disregard it. But we *are* required to take account of all the other relevant factors as well, when we decide what's fair and reasonable in any particular case.

With the banks' legal challenge on payment protection insurance now over, are there still other legal issues for you to decide on PPI – or are the issues now operational rather than legal?

There's still a huge amount of work to do on PPI complaints. While they were waiting for the outcome of the judicial review, a number of major banks and other financial businesses had stopped co-operating fully with us. That made it impossible for us to progress most PPI complaints as quickly as we would have liked. As a result of the publicity caused by the court case, financial businesses received record high volumes of PPI cases – and those volumes increased again following the ruling in April.

Of course, the end of the legal action does not mean that everyone bringing a PPI complaint will win. The legal action did not decide *individual* complaints. It decided that the general approach we have taken to handling PPI complaints is correct. We now still need to look carefully at the particular circumstances of each individual complaint, to see whether the policy in question was mis-sold.

Given the huge volumes of cases involved, this isn't something – unfortunately – that can happen overnight. But we're working closely with the Financial Services Authority (FSA), to ensure financial businesses deal with their PPI complaints in as co-ordinated and efficient a way as possible. And we welcomed the FSA's recent announcement on the clear timetable it has set banks, to sort out the large numbers of their complaints that have built up during the legal challenge.

Do you think the PPI problem has been caused by claims-management companies?

The 'PPI problem' stems from very large numbers of PPI policies being sold inappropriately by financial businesses – so claims-management companies didn't create the problem. But they've certainly exploited it – and this has had a major impact on PPI complaints.

Faced with the complex complaints procedures that some financial businesses have made their customers go through, I can see why using a claims-management company could seem very attractive and reassuring to consumers who are just starting to think about making a complaint. This has made claims-management companies very effective in galvanising people to make a complaint who might otherwise not have got the compensation they were entitled to.

But we've also seen cases where claims-management companies have failed pretty dismally in their job of representing consumers professionally – or where they have provided a service of very doubtful value. Practices such as 'cold-calling' consumers, and pursuing PPI complaints where a PPI policy was never even sold (as in case study 94/2 on page 6 of this issue), reflect poorly on *all* claims-management companies. The more reputable ones clearly recognise that stronger regulation would help to drive higher standards and improve the sector's standing.

Shouldn't claims-management companies be regulated – with access to the ombudsman for complaints about them?

Claims-management companies are already regulated by an arm of the Ministry of Justice. We don't have powers under the law to handle complaints about them. But where we see poor behaviour by claims-management companies, we report it to the regulator – just as we do when we see poor behaviour by a financial services business.

And as I mentioned earlier, many people are now calling for stronger regulation of claims-management companies – with requirements on them to provide a level of professionalism comparable with other regulated sectors. ➤

As claims-management companies are responsible for so much of the ombudsman service's workload, surely they should have to contribute to your costs?

In our *annual review* published in May, we reported that 45% of the total number of complaints we received last year were brought on behalf of consumers by claims-management companies. In a further 5% of cases, consumers paid for professionals such as lawyers and accountants to bring complaints for them – and in another 5% of cases, complaints were made on behalf of consumers by friends, family and consumer representatives acting for free.

There's a vast difference in the personal circumstances involved in these cases. And it's ultimately a matter of individual choice for each consumer whether they want someone else to represent them in bringing their complaint – either to us or, in the first instance, to the financial business concerned. As the rules stand, we can't charge those who represent consumers. And I can see there could be unintended consequences for consumers, if that were to happen.

However, we've always made it very clear that consumers wanting to complain can do it themselves, that we don't see claims-management companies adding value, and that you're no more likely to win your case going through a claims company than if you complain directly.

With the PPI judicial review behind you, how long before you see the inside of a courtroom again?

Not very long I suspect! As I mentioned earlier, we are – by definition – an organisation that makes decisions. In fact, we make tens of thousands of decisions each year – and each one can have a real impact on the people involved. This makes legal challenges, and in particular judicial review, a pretty inevitable part of our work.

But the fact that we can be judicially reviewed by the courts is an important safeguard for organisations like ours. It means that the courts can – and do – scrutinise the decisions we make, to ensure the approach we have taken is in line with principles of administrative justice.

The ombudsman service very actively promotes itself as being an *alternative* to the courts. So isn't it a bit odd that you have such an active legal team?

Much of the work of our legal team involves dealing with litigation and threats of litigation. But the team also proactively supports our ombudsmen, in ensuring that their decisions are robust – and made in accordance with the statutory framework in which we operate.

What's your role on the executive team – and how do you interact with the board?

As a member of the ombudsman service's executive team, I'm part of the organisation's strategic leadership. Our non-executive board works with us on the strategy for the ombudsman service and is responsible for ensuring we fulfil our organisational objectives – not just for today, but in planning for the future.

If you weren't working at the ombudsman service, what would you be doing?

I'd probably be working in private practice as a barrister. But in all honesty I really wouldn't want to swap the job I do here at the ombudsman service for any other. I strongly believe we play a really important role in the world of administrative justice. And as an ombudsman, I'm very proud to see the positive difference we can make to increasing people's confidence in financial services.

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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. Should adjudicators have specific financial-advice qualifications?

A. The ombudsman service makes its decisions fully in accordance with the law. The law was laid down by the UK Parliament in the *Financial Services and Markets Act 2000*, when it established the ombudsman service as an alternative to the courts – but subject to oversight by the courts through judicial review.

Our adjudicators and ombudsmen do *not* give financial advice. Their role is to settle disputes – and this involves different skills. These skills – which are equally important for judges and magistrates – include the ability to stand back and listen to all sides of the story, weighing up the arguments to arrive at decisions fairly and impartially.

Individual judges and magistrates are not required to hold a qualification in the subject matter of every case they try – or to list their qualifications to demonstrate their ability to do the job. Similarly, we don't require our adjudicators to list their individual qualifications (which range from the 'G60' pensions qualification to legal qualifications).

All our staff have access to the wealth of legal and financial services expertise available within the ombudsman service. If, in an individual dispute, either side is dissatisfied with an adjudicator's decision, they can of course ask for the case to be reviewed by an ombudsman.

Q. Can you tell me more about the maximum compensation from the ombudsman increasing to £150,000?

A. In May 2011 – following public consultation – the Financial Services Authority (FSA) confirmed a package of measures to improve the way that the financial businesses it regulates handle customer complaints. These new rules for handling complaints include:

- abolishing the so-called 'two-stage' complaints process – unfairly used by some businesses to make it more difficult for consumers to pursue complaints;
- requiring businesses to identify a senior individual responsible for complaints handling; *and*
- requiring businesses dealing with complaints to take account of previous ombudsman decisions and customer complaints.

At the same time, the FSA also increased the maximum compensation that the ombudsman will be able to tell businesses to pay – from £100,00 to £150,000. This will take effect for complaints we receive from 1 January 2012. The £100,000 limit was first set in 1981 by our predecessor scheme, the Insurance Ombudsman Bureau – and it has not been increased in thirty years. We have updated our consumer leaflet, *your complaint and the ombudsman*, to reflect this change.

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