# ombudsman news

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

Natalie Ceeney,
chief executive
and chief ombudsman

issue 98



# PPI – still the big issue

In my foreword to an edition of *ombudsman news* earlier this year, I said that planning for the impact on our workload of payment protection insurance (PPI) complaints was one of the biggest challenges ahead of us.

At that time we were expecting to see a short-term fall in the number of these complaints being referred to us. The quarterly statistics we published last month did indeed show a drop in the number of new PPI cases we received in July, August and September. The figures also showed that during this period we upheld nine out of ten PPI cases in favour of the consumer. This reflected what happened over the summer – after the High Court had rejected the banks' legal challenge and the banks started settling their backlog of these cases, in line with our long-established approach and in accordance with special timetables set out by the FSA.

In the last couple of months, however, the number of new PPI cases being referred to us has climbed steeply – from fewer than 1,000 a week to over 3,000. This means we'll soon be getting our 300,000th PPI complaint.

These numbers are pretty unsettling for us. In the interview with our chairman, Sir Christopher Kelly, on page 14 of this issue, he identifies the operational uncertainties around PPI as one of the biggest ongoing challenges facing us over the next few years.

Financial Ombudsman Service

scan for previous issues

So it's hardly surprising that the impact of PPI came up as an issue for debate recently, at a meeting with a group of senior industry representatives at our industry funding forum. The meeting was part of the informal exchange we have with key stakeholders to discuss complaint trends, workload assumptions and budget projections in the lead-up to our formal consultation on our *plan and budget* early in the new year.

These industry representatives acknowledged that the banks and other financial businesses had already received a million PPI complaints from consumers this year – with at least the same levels likely next year. It was unclear what direct impact this would have on the ombudsman service – in terms of the numbers that would subsequently be referred to us by consumers unhappy with the way the businesses concerned handled their complaints. A significant part of this debate concerned the impact of claims-management companies – who now represent consumers in over 80% of the PPI complaints referred to us.

A better understanding of the numbers and issues around PPI is crucial to our ability to plan ahead efficiently and gear up our operations for next year. For us, this isn't just a question of the volumes and flow of cases. It's also about how well (or otherwise) the banks and other financial businesses, as well as the claims-management companies, will themselves have dealt with those cases that are subsequently referred to us to sort out and settle.

If all this means we'll need significantly more resource and capacity to handle ever-higher numbers of PPI complaints, then we need – now – to build this into the *plan and budget* we'll be consulting on in the new year.

The High Court ruling in April gave us legal finality on the approach that businesses should take on PPI complaints. But it certainly hasn't given us operational certainty on what complaints we can expect to see at the ombudsman service – how many and when. I'd be interested in hearing your views on this, as the consultation on our budget and workload moves forward.

**Natalie Ceeney**
chief executive and chief ombudsman

Financial Ombudsman Service

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consumer helpline
**0800 023 4567**
**0300 123 9 123**
8am to 6pm Monday to Friday
9am to 1pm Saturday

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

switchboard
**020 7964 1000**

**www.financial-ombudsman.org.uk**

# recent banking complaints involving cheques

This set of case studies illustrates some of the more common types of complaint we deal with that involve cheques.

These include cases where:

- the customer complains that the bank delayed payment unnecessarily, in order to query the authenticity of a signature or amendment on a cheque – or to obtain confirmation of the intended amount;
- the bank paid a cheque in circumstances where the consumer thinks it should not have done;
- there was a misunderstanding about whether or not a cheque had '*cleared*';
- the bank mislaid a cheque after a customer paid it in; *and*
- a customer was unhappy with the exchange rate applied to a foreign cheque that she paid in to her account.

There is more information on our website about our approach to disputes involving cheques – in the online technical resource, '*banking transfers, payments and cheques*'.

## 98/1

### consumer complains that bank should not have paid a cheque that had been amended

Mrs A was alarmed to find that her bank appeared to have mistakenly debited £5,000 from her account to pay a cheque for £500 that she had given to her daughter.

When she contacted the bank it denied having made a mistake. It sent her the cheque in question, pointing out that she had clearly entered on it, in words, '*Five thousand pounds*'. The bank also pointed out that although the amount originally entered in figures was £500, this had been amended to read £5,000 – and Mrs A's initials had been added next to the amendment.

Mrs A wanted the bank to refund £4,500 to her account. She said the bank had been '*completely in the wrong*' for failing to contact her before paying the cheque. She also said the bank should have noticed that, in addition to the '*clear discrepancy regarding the amount*', it was '*obvious*' that the initialled amendments were not in her handwriting.

The bank did not agree that it had done anything wrong. It told her that the amount written in words on a cheque '*trumped*' the figures and that it had paid the cheque in good faith. The bank also suggested that if she had only intended her daughter to have £500, then she should ask her daughter to pay back the remainder of the money.

Mrs A said this was not possible, as she was no longer in contact with her daughter. She then brought her complaint to us.

### complaint not upheld

Mrs A did not dispute that she had put '*Five thousand pounds*' in words when she was writing the cheque. She said this must have happened because of a '*momentary lack of concentration*'. She was certain, however, that she had entered '*£500*' in numerals – and that she had not made or initialled any amendment.

We asked to see the cheque, and noted that an extra '*0*' had been added to the '*£500*' that had originally been written in numerals. Mrs A's initials were next to the amendment. We did not agree with Mrs A that it was '*obvious*' that the amendment and initials were not in her handwriting.

## ... We explained that neither we nor the bank could '*force*' her daughter to pay back the £4,500.

The bank was able to produce another of Mrs A's cheques, for a much smaller amount, that it had paid around about the same time without any dispute. That cheque contained a minor amendment, with Mrs A's initials. In our view those initials were very similar to those on the disputed cheque. There was certainly no '*obvious difference*' that should have prompted the bank to query the amendment.

We were unable to conclude that it was more likely than not that Mrs A had only instructed the bank to pay £500.

We said that, in the circumstances, it had been reasonable for the bank to have paid £5,000. And we also explained to Mrs A that although we sympathised with her family difficulties, neither we nor the bank could do as she requested and '*force*' her daughter to pay back the £4,500. We did not uphold the complaint. ■

### ■ 98/2
### consumer complains of financial loss because bank delayed paying cheque while it queried the signature

Mr K complained to his bank after it returned a cheque for £6,000 that he had sent to his broker in order to buy some shares in a rights issue. Because of the delay before the bank finally paid the cheque, Mr K missed the deadline for applications and was unable to get the shares at a preferential rate.

On the same day that his broker told him there was a problem with his payment, Mr K got a letter from his bank saying it had not paid his cheque. The bank said it had been unable to '*verify*' his signature on the cheque as it did not have a sample signature for him. The bank added that, if the transaction was urgent, it would arrange to transfer funds by electronic money transfer, at no cost to him. ▸

## ... We said the bank should have phoned him to confirm the cheque was genuine.

By this time, however, the cut-off date for the rights issue had already passed. Mr K's broker was eventually able to buy the shares for him on the open market. However, they cost £2,000 more than if he had been able to get them earlier.

Mr K thought the bank should '*cover this loss*' by paying him £2,000. However, the bank did not agree. It said that if the payment had been urgent, Mr K could have taken up its offer to transfer the money electronically. Mr K then referred his complaint to us.

### complaint upheld

We accepted that, in view of the sum involved, it would have been reasonable for the bank to have returned the cheque unpaid if the signature differed from the specimen copy of Mr K's signature that it kept on file.

However, that was not the situation here. The reason why the bank had been unable to verify the signature was that it did not have a copy of Mr K's signature. We asked the bank why this was. It told us that it usually obtained a specimen signature for each customer when it set up an account for them. It was unable to explain why this had not happened in Mr K's case.

We noted that the bank had written to Mr K by first-class post to tell him it had not paid the cheque. We said that, in the circumstances, it would have been more appropriate for the bank to have phoned Mr K to confirm that the cheque was genuine. We thought that if it had done this, it would have been able to arrange payment in time for his share application to meet the deadline.

We said the bank should pay Mr K £2,000 to cover his loss. We said it should also pay him £200 in recognition of the inconvenience it had caused him. ■

## 98/3

### bank returns cheque unpaid because of discrepancy between words and numbers written on the cheque

Mr V complained to his bank after it returned – unpaid – a cheque that he had sent to one of his business clients. He had intended to pay the client £5,785 and had entered this sum correctly on the cheque, in numerals. However, when entering the amount in words he had mistakenly written, '*Five thousand seven hundred and eighty five thousand pounds*'.

Mr V subsequently complained that it had been '*entirely unnecessary*' for the bank to return the cheque. He said his intention had been '*perfectly clear*' and that the resulting delay in payment had '*irretrievably damaged*' his relationship with the client, who no longer wished to make use of his services.

When the bank rejected Mr V's complaint, maintaining that it had done nothing wrong, he referred the dispute to us.

### complaint not upheld

We could understand why Mr V felt that the bank should have processed the cheque despite the discrepancy. But given that he had stated the sum incorrectly in words, we said it was not unreasonable for the bank to have delayed payment until it could confirm his intentions.

The bank's records showed that before it wrote to Mr V, explaining why it had not paid the cheque, it had made a number of attempts to contact him by phone. However, Mr V had not answered any of these calls, nor had he responded to the messages the bank had left on both his business and his mobile numbers, asking him to get in touch '*as soon as possible*'.

We asked Mr V if he had any evidence to support his claim that the delay in paying the cheque had '*irretrievably damaged*' his business relationship with the client concerned. In response, he sent us a copy of a letter from the client.

We noted that the letter was friendly in tone and made no reference to the late payment. The client told Mr V she was '*no longer in a position*' to need Mr V's business services because of a '*marked decline*' in her own business. She said this had come about because of '*poor trading conditions and the overall economic downturn*'. We did not uphold the complaint.

# ... his bank mislaid a cheque for just under £1,000.

## 98/4

### consumer complains that bank mislaid a cheque after it was paid in

Mr G complained about the problems his bank had caused him after it mislaid a cheque for just under £1,000 that he had paid in.

He had recently rented out his flat, after moving back home to look after his elderly parents, and the cheque had been given to him by his tenant. When Mr G visited the local branch of his bank to pay it in, a member of staff suggested that it would be quicker for him to use the bank's '*quick drop*' deposit point rather than joining the queue for a cashier.

Mr G had never used this facility before, so the member of staff explained how it worked and filled in the paying-in slip for him. A few days later he looked at his balance and found that the cheque had still not been credited to his account.

When he called in at the bank branch to ask what had happened, he was concerned to learn that the bank had '*no record of the transaction*'. He was told that the bank would make further enquiries and contact him '*in a day or so*'.

Later that day, soon after he had asked his tenant to '*stop*' the cheque, the bank contacted him to say it had now located the missing cheque. The bank apologised for the inconvenience he had been caused. It explained that the member of staff who had filled in his deposit slip had made a mistake with his account number. As a result, the cheque had not been credited to his account.

Mr G asked to speak to the manager and complained that the bank's mistake had created '*considerable difficulties*'. He said the worry over the missing cheque had been very stressful. He had been very embarrassed about having to tell his tenant there was a problem with her cheque. And he said the delay before the cheque was paid in to his account had meant he was unable to use the money in the way he had planned.

The manager apologised for the mistake and offered to write a letter for Mr G to show to his tenant, explaining that the bank had been responsible for the problem with the cheque. The manager also said he would credit Mr G's account with £100 to compensate him for the inconvenience he had been caused.

Mr G did not think this was sufficient and he referred the complaint to us after the manager told him it would '*not be appropriate*' to increase the compensation to £500.

**complaint not upheld**

We noted that, in the particular circumstances of this case, the amount of compensation the bank had offered Mr G was fair and reasonable – and in line with our usual approach to compensation for non-financial loss.

We accepted that Mr G had found it embarrassing to ask his tenant to stop the cheque. However, we pointed out that the bank manager had offered to give him a letter explaining that the bank had been at fault.

We asked Mr G to tell us more about the plans that he said he had been unable to carry out, as a result of the delay in paying the cheque. He told us he had been '*thinking of buying a car*'. However, he admitted that he had not yet started to look for a suitable vehicle. He was unable to say what type of car he was hoping to buy – or the approximate sum he expected to pay. We did not uphold the complaint. ■

## 98/5

### consumer unhappy about the exchange rate applied when she paid in a cheque in a different currency

A couple of weeks after Miss D had paid in a cheque, she complained to her bank that it had '*failed to provide the service it promised*'.

The cheque concerned was made out in euros. Miss D had never before received a cheque in a currency other than sterling, so she asked at the local branch of her bank if any '*special procedure*' was needed to pay the cheque in to her current account. The cashier told her to pay in the cheque '*in the normal way*' and that the bank would then '*negotiate the exchange rate*'.

When Miss D checked her bank statement a few weeks later she was disappointed with the amount that had been credited to her account. She complained that the bank had not kept its promise to '*negotiate*' on her behalf and get the best exchange rate for her.

Miss D received a brief response from the bank, saying it had '*followed normal procedures for negotiating cheques*' and was sorry that she was disappointed with the rate used. Unhappy with this, Miss D referred her complaint to us.

**complaint settled**

It was clear to us that the bank's use of the term '*negotiate*' had caused a misunderstanding. Used within a banking context, this is a technical term meaning that the bank credits the customer's account straight away, using the exchange rate available at that time. The bank then waits to receive the funds from the foreign bank, taking a risk that the exchange rate would not have moved adversely in the meantime.

Understandably, in our view, Miss D had taken the term to mean that the bank would, quite literally, '*negotiate*' in order to obtain a good exchange rate for her.

We pointed out to the bank that the complaint could have been avoided if it had taken more care when explaining the transaction to Miss D.

We explained to Miss D how the misunderstanding had come about. We also explained that although she had been unhappy with the exchange rate applied to her cheque, it was broadly in line with the rate offered by other high street banks on the day in question. Once we had reassured her on this point, Miss D said she would not pursue her complaint further. ■

## 98/6

**consumer complains that bank failed to query signature before paying cheques drawn on his account**

Mr T complained that his bank had debited his current account for two cheques, totalling £500, that he was certain he had never written or authorised. He only found out about the cheques when looking through his bank statements, shortly after he had completed a three-month prison sentence.

When he contacted his bank it said it would not have paid the cheques if there had been anything '*suspicious*' about them. However, Mr T insisted that the cheques could not have been genuine and he asked the bank to send him copies.

**... the bank debited his account for two cheques, totalling £500, that he was certain he had never written or authorised.**

After seeing the cheques, Mr T complained to the bank. He said it should have been '*obvious*' that the signature on the cheques '*clearly differed*' from his own. And he said that as he had neither signed nor authorised the cheques, the bank should refund the money to his account.

The bank refused to do this. It said that it had noticed a '*slight discrepancy*' between the signature on the cheques and Mr T's '*usual signature*'. However, as Mr T's signature had '*often differed*' during the course of its dealings with him, it had decided to honour the cheques. Unhappy with that response, Mr T referred his complaint to us.

### complaint upheld

The bank confirmed that it retained copies of its account holders' signatures in order to help prevent fraud. And it was clear from the bank's records that it had been concerned about a discrepancy between the signature it held on file for Mr T and that on the two cheques. The bank had tried several times to contact Mr T by phone to ask him about the cheques. However, it had not been able to contact him. This was not surprising, as he had been in prison at the time.

The bank had then paid the cheques, even though it knew there was a risk that they were not genuine. In the circumstances, it did not seem fair to us that the bank should expect Mr T to cover the loss caused by its decision to take that risk.

We said that the bank should refund Mr T's current account with the value of the cheques. We said it should also pay whatever interest would ordinarily have accrued on the £500, if the money had remained in his account. ■

**... the bank knew there was a risk the cheques were not genuine.**

## 98/7

### consumer complains that bank misinformed him that a cheque had cleared

Mr B, a 20-year-old student, decided to try and sell his car on a specialist trade website. He advertised the car at a sale price of £1,000 and was very pleased when a prospective buyer, Ms J, agreed to buy the car at the stated price.

Not long afterwards, she sent Mr B a cheque for £1,200. She told him she had sent the extra £200 as she needed him to do her a favour. She said she was unable to collect the car in person, so had asked a friend to collect it and look after it for a few weeks. She had arranged to pay her friend £200 to cover his expenses – and she asked Mr B to forward this sum to him, on her behalf.

Mr B paid in the cheque at the local branch of his bank. Four days later, he went back to the branch and spoke to a cashier. He said he wanted to transfer some of the money to a third party and needed first to be sure the payment had '*cleared*'. The cashier told him the £1,200 was '*cleared for withdrawal*'.

Mr B then withdrew £200 in cash and, as requested by Ms J, took it to a money transfer bureau and arranged for it to be sent on to the third party.

Later that same day the bank rang Mr B to tell him the cheque was fraudulent. This meant that his account would not be credited with the £1,200 – though it would still be debited for the £200 he had already withdrawn.

Mr B then realised that Ms J had never intended to buy the car and had tricked him into parting with £200. He subsequently complained to the bank and asked it to refund that sum to his account. He said he had only withdrawn the money because the bank had told him it was '*safe*' to do so.

#### complaint upheld

It was evident that Mr B had been the victim of a scam and that there was no likelihood of his being able to get Ms J or her '*friend*' to repay his £200.

The bank did not dispute Mr B's recollection of the conversation he had with the cashier immediately before he withdrew the £200. However, it did not accept that the cashier had misinformed him. Instead, it said that Mr M had '*failed to understand*' that when the cashier had said the cheque was '*cleared for withdrawal*' – this did not mean that payment was guaranteed.

## ... the cashier should have explained the possibility that the cheque might be returned unpaid.

We said that the bank should not have assumed that Mr B would understand the specific technical meaning of this term, as used within the banking industry.

We thought it should have been evident that Mr B wanted to know if it was completely safe to withdraw the money.

In our view, the cashier should have explained that there was still a possibility that the cheque might be returned unpaid.

In the circumstances, it seemed unlikely that Mr B would have withdrawn the money and forwarded it to the third party if he had known this.

We said the bank should refund the £200 to Mr B's account, together with any charges and interest he had incurred by being overdrawn. We said the bank should also pay Mr B £150, in recognition of the inconvenience he had been caused.

# *ombudsman focus:*

# '... question, probe and challenge'

**Sir Christopher Kelly** steps down from the board of the Financial Ombudsman Service in January 2012 – after seven years as chairman and three years before that as a non-executive director. We catch up with him to ask about his management style, the highlights of the last decade – and whether he has any advice for the incoming chairman.

**in a nutshell, what's the role of the chairman of the Financial Ombudsman Service?**

Being the chairman involves leading our board of nine non-executive directors in determining strategy; managing the performance of the chief ombudsman in delivering that strategy; and acting as an ambassador for the service.

**how does your job fit in with Natalie Ceeney's role as chief ombudsman and chief executive?**

Natalie runs the organisation. It's my job as non-executive chairman to support her in doing that – which includes both encouraging and challenging her on where we can do better. My role as the chairman is part-time, while Natalie is very much full-time.

**how much time does this mean you spend at the ombudsman service – and is that enough?**

I spend around two days a week on ombudsman business, although that might not always mean I'm in the office all that time. More than two days and it could risk my becoming too 'hands-on' – which might then mean I'd cease to be a *non-executive* chairman. With a dynamic chief executive like Natalie, I feel that two days gives us the right balance.

**you were appointed chairman in January 2005, having previously served on the board for three years as a non-executive director. How different were the two roles – and was it a difficult job change?**

Being chairman is very different from being any other kind of board member. You take on much more responsibility. But I didn't find it too difficult to step up to the new role, because of the support I had from my non-executive colleagues and the quality of the executive team. And I also already had chairing experience in a variety of other organisations. Actually, in some respects, being a chairman is easier because you're much more in control.

**you're the third person to have chaired the board of the ombudsman service, following Andreas Whittam Smith and Sue Slipman. Has the role of chairman changed over time – or does the job remain essentially the same?**

Andreas Whittam Smith was chairman when the Financial Ombudsman Service was first being set up – which involved merging six existing ombudsman schemes and launching the new one. Sue Slipman was the chair for a relatively short period when the major issue we faced related to our mortgage-endowment complaints workload. So there were some very specific circumstances that presented particular challenges to my predecessor chairmen.

Allowing for the different circumstances over time, I suspect the essentials of the role have remained pretty much the same, though we all have our own ways of doing the job, of course.

**what's been the most challenging aspect of your work as chairman of the ombudsman service?**

It has to have been responding to the challenges posed by payment protection insurance (PPI) – both the operational challenge, in relation to managing the huge volumes of cases, and of course the legal challenge, in terms of the PPI judicial review brought by the banks. This has all absorbed a substantial amount of time, resource and energy for everyone involved – including the board, the executive team and the ombudsman service as whole.

And we're still dealing with the fall-out of PPI – with thousands of new PPI complaints still arriving each week, and a significant degree of uncertainty about the volume and type of cases we will continue to see into next year and beyond.


**the role of the non-executive board is to ensure the ombudsman service is properly resourced and able to carry out its work effectively and independently. The board has no involvement in deciding individual disputes. Can that be frustrating for you?**

This is something that has to be explained to new non-executive directors when they first join the board – and some find it a bit strange at first. But I think all of us quickly realise that it's an inevitable consequence of our statutory ombudsmen each being individually responsible for making quasi-judicial decisions.

Personally I don't find it frustrating at all. But that doesn't stop me, on occasions, from asking questions about the decisions we take – after the event – to satisfy myself that the process by which we make decisions is as robust and fair as we can make it.

**what were the issues that most preoccupied the board when you became chairman in 2005 – and what are the issues currently at the top of your agenda?**

Back in 2005 it was the strategic and operational challenges caused by the high volumes of complaints about mortgage endowments – at that time accounting for two thirds of our workload. Now, of course, it's PPI that continues to make up the largest chunk of our new cases. *Plus ça change*.

**you're also chairman of *The King's Fund* and of the *Committee on Standards in Public Life*. What do those organisations do – and how similar or different is your role there compared with your role at the ombudsman service?**

*The King's Fund* is a charity – and the leading 'think tank' in the UK on health policy.

The *Committee on Standards in Public Life* is a small group of people, with an even smaller secretariat, that provides advice to the Prime Minister and others about ways of maintaining high standards of behaviour in public life.

# *ombudsman focus:*
# '... question, probe and challenge'

For example, the Committee is about to publish a report on how political parties are funded and what should be done to prevent the suspicion, or reality, that people or organisations who give million-pound donations to the parties get inappropriate favours or influence in return. So the tasks of these bodies – and the work of the ombudsman service – are very different.

**technically, you're appointed by the Financial Services Authority with the approval of the Treasury. What does that mean in practice? Do you have to report to those two bodies?**

The Financial Ombudsman Service is funded by what, in practice, is a tax on the financial services industry – which inevitably finds its way ultimately into the prices charged to consumers. And as well as having significant financial implications for the industry, our decisions can have life-changing consequences for the consumers involved.

So it's essential that we are accountable – even while we guard our independence and impartiality strongly.

As part of our formal framework of accountability, the chief ombudsman and I go twice a year to meetings of the FSA's board – to talk about our work and current issues and to answer questions. And the FSA's board has to formally approve our annual budget, after we have consulted on it publicly.

Every three years our board commissions an independent external review – Lord Hunt of Wirral's report into our openness and accountability was the last one, published in 2008 – and the National Audit Office are currently carrying out a review for us of our efficiency.

We also report formally through our annual *plan and budget*, our *directors' report* and our *annual review*. And informally we carry out a very wide range of activities with all our stakeholders – to be as open and transparent as possible about what we do.

# *ombudsman focus:*
# '... question, probe and challenge'

**what achievement are you most proud of at the ombudsman service?**

Getting the right chief executive – or chief ombudsman in our case – is the most important thing any chairman can do. After our first chief ombudsman, Walter Merricks, announced in 2009 that after ten years he was stepping down, people told us he'd be a hard act to follow. The ombudsman service was then at a significant turning point in its evolution – ten years old and a million cases under its belt. Everyone recognised the vital importance of getting the right new chief ombudsman, going forward. I'm confident that the board's choice of Natalie Ceeney – responsible for leading the ombudsman service into the challenges of the new decade – was spot on.

**and is there anything you would have done differently?**

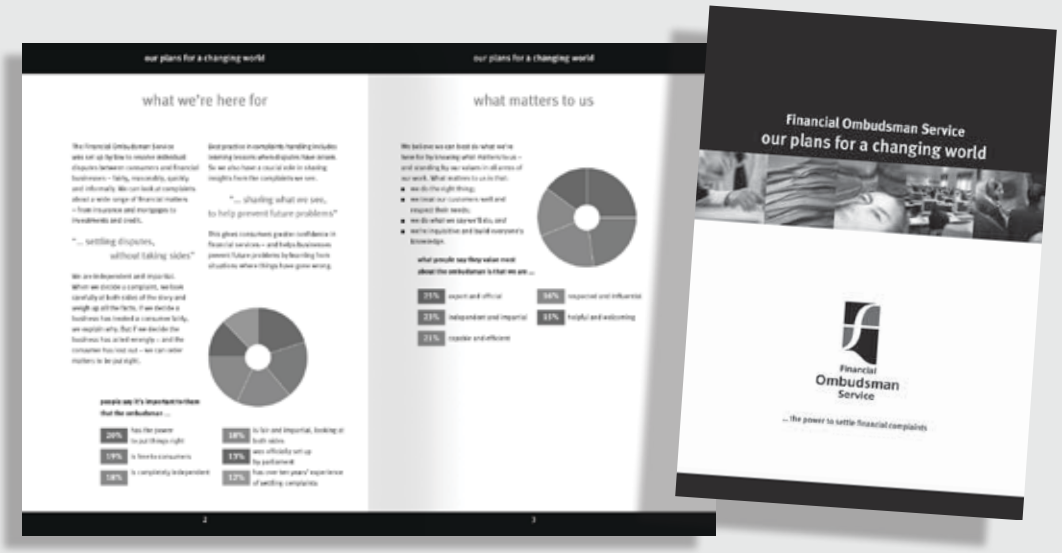
Of course. I'm a big believer that if people don't make mistakes, they're usually not trying hard enough. The important thing is to learn from where things didn't go so well, so that you can do better next time.

**what do you think the biggest challenges will be for the Financial Ombudsman Service over the next few years?**

I believe we'll be dealing with challenges in two key areas. First, PPI of course. Current indications as to the volumes of PPI complaints coming our way are very unsettling. And there's still no clear picture as to how well the banks and other financial businesses will themselves have dealt with these cases before they reach us.

Second, we've already identified – for example, in *our plans for a changing world*, published earlier this year – how society, business and technology are evolving and transforming – and how the ombudsman service needs to understand and respond to these changes, to be able to continue to meet the needs of our customers.

An example of this is in the area of mobile e-money. We recognise that, given the developing technology, the nature of the transactions, and the time-scales involved, it may no longer be realistic to expect people to wait eight weeks before the ombudsman service can step in. It may also not be realistic for the businesses involved to pay the current standard case fee for us to sort out what's likely to be a low-value transactional problem.




**any words of advice for your successor, the next chairman?**

You have a very good board and executive team. Trust them to get it right – but be ready to question, probe and challenge.

**have you yourself complained about anything recently? What happened – and how did you feel it was handled?**

I recently had to complain to the chief executive of a company that had installed some rather pricey new windows in my refurbished flat. I got back a somewhat antagonistic three-page letter. It set out in detail how blameless the company was – but totally failed to answer the basic point I was making.

I wasn't after any form of financial compensation. I just thought he ought to know what his company was doing, so that he could make it better for the next customer. He obviously didn't see it the same way. I won't be recommending his company to anyone else.

**has your attitude to complaining changed since you've been on the board of the ombudsman service?**

I'm not a natural complainer. But my time with the Financial Ombudsman Service has certainly helped make me appreciate how every organisation can learn from problems and improve – as long as they take complaints seriously, don't immediately get defensive, and try to see things from the customer's point of view.

**what will you miss most when you step down as chairman of the Financial Ombudsman Service in January?**

The people, of course.

# insurance disputes concerning storm and weather damage

The severe weather often experienced in parts of the UK around this time of year can sometimes give rise to the type of insurance complaints featured in this selection of recent cases.

Financial loss caused by storm damage is normally covered by most buildings insurance policies and we deal with a relatively small but steady volume of complaints on this topic. As this selection of cases illustrates, the complaints frequently centre on:

- what actually constitutes a '*storm*';
- whether the damage was caused by a storm; *and*
- whether damage that occurred *during* a storm was predominately caused *by* the storm.

In our view, a storm will generally involve violent winds, usually accompanied by heavy rain, hail or snow. However, storm damage can sometimes be caused to property even where the wind has not been particularly strong but where there have, perhaps, been extreme incidents of other forms of bad weather.

The online technical resource, '*buildings insurance: storm damage*,' on our website gives detailed information about the issues we consider when looking at complaints concerning storm damage.

## 98/8

### dispute over claim for storm damage to home contents while in temporary storage

Mr and Mrs Q made a claim on their household contents insurance for storm damage to some of their furniture and other belongings. The damage had occurred while these items were being stored in a marquee in the couple's garden.

They had bought the marquee specifically to store some of their belongings for around eight weeks while their house was being redecorated. Unfortunately, part of the marquee's canopy was dislodged by the wind during a period of stormy weather. As a result, wind and rain got inside the marquee, causing what Mr and Mrs Q estimated to be around £10,000-worth of damage to the items inside.

After appointing a loss adjuster to inspect and report on the damage, the insurer turned down the claim. It said Mr and Mrs Q should have notified it of the '*change in circumstances regarding the storage of household contents*'. The insurer also said that the couple had '*failed to take reasonable steps to prevent loss, damage or accident*'.

Mr and Mrs Q complained to the insurer, saying it had treated them unfairly, but it told them it was not prepared to reconsider the matter. They then referred the complaint to us.

### complaint not upheld

We looked at the terms and conditions of the policy. In our view these set out clearly the requirement for policyholders to '*take reasonable steps to protect their property*' and to '*notify the insurer of any significant change in circumstances which might affect the policy*'.

After obtaining information about the specific model of marquee that Mr and Mrs Q had bought, we concluded that it was not suitable for use as a storage facility. The sales brochure that the couple had been sent before they bought the marquee described it as being of '*superior quality*', as did the user manual they received when they bought it. However, both documents included prominent warnings that the marquee should be '*taken down in high winds*' and that '*leakages*' might occur.

In our view that made it particularly unsuitable to be used, as in this case, to store furniture during the autumn, when there was a strong likelihood of very wet and windy weather.

We noted, in addition, that the marquee appeared to present an increased risk of malicious damage or theft. It could not be locked and although it was visible from the street, it could not easily be seen from inside the house.

Having reviewed all the circumstances, we could not agree with the insurer that by storing their belongings in a marquee that was not entirely weatherproof or secure, Mr and Mrs Q had '*failed to take reasonable steps to prevent loss, damage or accident*'. They had taken steps to protect their property by buying the marquee and they said they had not expected such poor weather to occur.

The couple had, however, failed to tell the insurer of the '*change in circumstances regarding the storage of household contents*'. We pointed out to them that if the insurer had known how they were planning to store their belongings, it would in all probability have said they should make more appropriate arrangements, if they wished to remain covered by the policy.

The risk the insurer had agreed to cover was for contents inside a property – and not inside a temporary structure that might be vulnerable to sudden poor weather or other risks. We did not uphold the complaint. ■

## 98/9
## insurer refuses to pay claim for storm damage to roof and contents

Mr and Mrs A made a claim under their home insurance policy for storm damage. They said that '*as a result of the recent storm and the wet and stormy weather*' over the previous few months, water had been seeping into their home from the roof, causing damage to their décor and belongings.

The insurer appointed a roofing specialist to inspect the roof and the reported damage. The specialist noted that new guttering had been installed relatively recently and that some of the roof tiles had been cut back so that this guttering would fit. In the specialist's view, it was this that had resulted – over time – in water starting to come through the roof.

On the basis of the specialist's report, the insurer turned down the claim. It told Mr and Mrs A that there was no evidence the damage had been caused by an '*insured event*' (in other words, by something that was covered under the policy).

Mr and Mrs A were very unhappy with this. They sent the insurer a letter from the contractor who had installed their new guttering. The contractor stated

**... we concluded that it was unlikely that a one-off storm *had* caused the damage.**

that this work '*could not have caused or contributed to*' the problem with the roof. He did not say what he thought the cause of the problem might be.

The insurer told Mr and Mrs A there was nothing in the contractor's letter that would cause it to reconsider the claim. The couple then referred the dispute to us, saying that their insurance policy had let them down at the very time they needed it.

### complaint not upheld

We explained to Mr and Mrs A that, in common with any insurance, their policy only covered any loss or damage that was caused by a specific insured event, such as storm, fire, theft *etc*.

In this particular case, there was no dispute over the fact that there had been a storm shortly before the damage was reported. What we needed to decide was whether the insurer had acted reasonably when deciding that it was not the storm that had caused the damage.

After reviewing all the evidence, we concluded that it was unlikely that a one-off storm *had* caused the damage. Generally, any water damage caused by an identifiable storm tends to be confined to a specific area. In this case, the damage was more widespread.

We agreed with the insurer that the damage was more likely to have occurred gradually over time, as the result of general bad weather and perhaps also because of poor workmanship. And we noted that when making their claim, Mr and Mrs A had themselves said that the damage had been caused by the '*wet and stormy weather over the past few months*'. We did not uphold the complaint. ■

## 98/10

### policyholder questions insurer's view that wind speed was not strong enough to have caused storm damage

Mrs I was disappointed when her buildings insurer refused to pay her claim for storm damage to the stone cladding on the front of her house.

The insurer said there had been no reports of storm conditions in her town at the time she said the damage had occurred. It told her it could only consider claims for storm damage if wind speeds reached level 10 on the Beaufort scale (in other words, between 55 and 63 mph). The recorded wind speeds for the period in question had not been as strong as this.

Mrs I thought this was unfair. She said the fact that the wind had been strong enough to cause the damage '*regardless of its exact speed*' indicated that her claim should be covered under the policy.

She said that if the insurer insisted that the claim was not covered under the '*storm damage*' section of the policy, then the claim should be paid under the '*accidental damage*' section.

The insurer remained adamant that it would not pay her claim. It told her its investigations had shown that the damage had been caused by '*gradual deterioration and wear and tear*', which was not covered under *any* section of her policy.

### complaint upheld

We told the insurer that we do not consider the recorded wind speed, as measured on the Beaufort scale, to be the deciding factor in cases involving storm damage. This has long been our approach in such cases, and we take the general view that damage can occur even where the wind speed is lower than level 10 on the Beaufort scale.

Sometimes, for example, there can be extremely strong localised gusts in areas that are some way from the weather station, or where the particular layout of buildings has created unusual wind conditions. In this case, we noted that there had been reports of significant wind and rain in the area covered by Mrs I's postcode on the day she said the damage had occurred.

The insurer had told Mrs I that because of exclusions relating to '*wear and tear*' and '*gradual deterioration*', it was unable to consider her claim under *any* section of the policy. However, we pointed out that these exclusions applied only to claims for accidental damage, not to the other sections of the policy.

We upheld the complaint and told the insurer to deal with the claim under the section of the policy that covered storm damage.

# ... a retaining wall in his garden collapsed after heavy rainfall that he said amounted to a '*flood*'.

■ **98/11**

**dispute over claim for collapse of a retaining wall that policyholder says was caused by flooding**

Mr C put in a claim to his insurer when a retaining wall in his garden collapsed after heavy rainfall that he said amounted to a '*flood*'. His garden was on sloping ground and the wall, which was over 100 years old, had been holding back earth between the garden and the patio next to his house.

The loss adjuster appointed by the insurer inspected the damage and reported that it could not be attributable to an '*insured event*'. Instead, the loss adjuster said the main cause of the damage was gradual deterioration over a long period of time. As this was not covered under the policy, the insurer refused to pay the claim.

Mr C complained about this. He said he was sure the damage *was* covered – and that if the insurer would not meet the claim under the '*storm and flood*' section of the policy, then it should do so under the section that covered '*landslip*'.

The insurer disagreed. The policy stated that a claim for landslip could only succeed in these particular circumstances if Mr C's house or garage had been affected at the same time. This had not happened and the insurer re-stated its view that the cause of the damage was gradual deterioration over a long period of time, something that was not covered by the policy. Mr C then referred his complaint to us.

**complaint not upheld**

Typically, for a flood claim to succeed, there would need to have been an accumulation of water, even if it had built up gradually. In this case there was no evidence of any build-up of water behind the retaining wall.

**... we did not think the insurer had acted unfairly or unreasonably.**

The loss adjuster had established that the wall incorporated '*weep holes*' for drainage. So to '*flood*' the soil the amount of rainfall would have had to be very substantial in order to overwhelm the weep holes and accumulate behind the wall. We checked the local weather records for the day of the incident and concluded that there had not been sufficient rainfall to have caused this type of flooding in this location.

We also looked at whether the damage might reasonably be attributed to a '*storm*'. There was no dispute that there had been some heavy rainfall in the period leading up to the damage. However, there was no evidence of the high winds normally associated with storm conditions. And we thought it unlikely, in any event, that a storm could have been sufficient, on its own, to cause the wall to collapse.

We confirmed that the policy conditions excluded damage to the wall caused by landslip in the absence of damage to the house or garden.

We explained to Mr C why we did not think the insurer had acted unfairly or unreasonably. We did not uphold the complaint. ■

### 98/12
### insurer refuses to pay claim for damaged guttering caused by heavy snowfall

Mrs M put in a claim to her buildings insurer for storm damage when she discovered, after a week of heavy snowfall, that the guttering on the roof of her house had been damaged. The insurer would not pay out as it said the damage had been caused by the weight of the snow on the guttering over a period of time, rather than by an '*insured event*', such as a storm.

Unhappy with this, Mrs M brought her complaint to us.

**complaint not upheld**

We looked at the details of Mrs M's policy, which provided cover for a list of '*insured events*' including flood, fire and storm. For a claim to succeed under the policy, the damage had to have been caused by one of these '*events*'.

There was no dispute about the fact that there had been extremely bad weather around the time when Mrs M discovered the damage to the guttering. However, as we explained to her, the policy did not provide cover for damage arising simply from bad weather. The weather had to have been severe enough to constitute a '*storm*', so we would generally expect it to have involved violent winds as well as rain, hail or snow.

Local weather records for the period when the damage happened showed there had been heavy snow on several consecutive days. However, there was nothing to indicate that there had been a '*storm*', as there was no evidence of violent wind.

The damage that had occurred in this case, caused by the weight of snow over a few days, was of the type that can often be claimed for under the '*accidental damage*' section of a household insurance policy. But Mrs M's policy did not include cover for accidental damage and there was no other section of the policy under which she could have claimed.

So we explained that, in the circumstances, the insurer had not treated her unfairly in refusing to pay her claim. We did not uphold the complaint. ■■■

# 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. I've heard that Northern Ireland credit unions are coming under the ombudsman's remit. What is the ombudsman doing to prepare for this?**

A. The government and the Financial Services Authority (FSA) have been consulting on important changes to the way credit unions in Northern Ireland are regulated. On 31 March 2012 regulatory responsibility for these credit unions will transfer from the Department of Enterprise, Trade and Investment in Northern Ireland to the FSA.

This means that members of credit unions in Northern Ireland will then, for the first time, have the same degree of protection that is already available to other financial services customers – including access to the Financial Ombudsman Service.

We have covered credit unions based in England, Scotland and Wales since July 2002. And just as we did when those credit unions came under our remit, we are keen to engage with credit union organisations in Northern Ireland to help ensure that we – and they – are ready for cases. This includes providing information for their member publications about the complaints procedure and the role of the ombudsman service.

We understand the special characteristics of credit unions and their relationships with their members, taking into account the standards of service that these members reasonably expect, and having regard to an individual credit union's particular resources and organisation.

We know that many credit unions are run by volunteers on a part-time basis. Our previous experience of welcoming credit unions into our jurisdiction suggests that – initially – the procedures and time limits in the FSA's complaints-handling rules may represent some new challenges for Northern Ireland credit unions. But we hope they will soon come to recognise that the new arrangements bring considerable advantages. The existence of independent complaints-handling arrangements helps underpin consumer confidence and can bring finality to disputes, so they don't continue to rumble on.

Credit unions are able to take advantage of the wide range of information and practical support we offer to all the financial businesses we cover. These include (on our website) an online video for smaller businesses, together with an online information resource specifically for businesses that have little direct contact with – or experience of – the ombudsman.

Other free services we offer include:

- our technical advice desk (020 7964 1400) for queries about the ombudsman service and our general approach;
- our regular newsletter *ombudsman news*; *and*
- our involvement in a wide range of events – from hands-on workshops to formal conferences.

Our consumer helpline (0800 023 4567 *or* 0300 123 9 123) is now open from 9am to 1pm on Saturdays – giving consumers general advice and guidance on what to do if they have a complaint about a financial product or service

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