November 2015

Financial
Ombudsman
Service

just a number?

age, complaints and the ombudsman

Financial Ombudsman Service insight briefing

1 introduction

People will take out different financial products across the course of their lives, depending on their circumstances and needs. So the law on equality allows financial businesses to decide what products they offer to people in different age groups – in other words, to "discriminate" on the basis of age – as long as they've met particular requirements (see box 1).[1]

This can mean people get a better deal, like discounts from insurers who are only offering cover to certain age groups. It can also mean that consumers are excluded from products they'd like to take out.

This law came into force three years ago. But discussions and debates are ongoing – from how well the needs of people approaching or already in retirement are being met, to whether or not individual banks are lending responsibly. Some commentators have suggested that new financial products are needed for older people,[2] others that the whole concept of retirement has changed.[3]

The Financial Ombudsman Service has a unique perspective to bring to these discussions. We hear from consumers who feel they haven't been treated fairly because of their age – but we also hear from financial businesses about how they've made their decisions. And while we have to take into account the relevant law, our role is to decide what's fair in the individual circumstances of each case.[4]

As a service, we don't receive a large number of complaints from people who feel that they've been unfairly discriminated against because of their age. This might be because we only see problems where consumers and businesses haven't been able to resolve things directly – many issues will of course be sorted out without ever coming to us.

But given the widespread interest in fair treatment for all ages, and that it's the third anniversary of the law coming into effect, now is a good moment to share our insight in this area. This paper explores what we've seen and considers what lessons there could be for both industry and consumers.

The paper examines some of the age-related complaints we have received about mortgages, motor insurance and travel insurance in the last three years. Clearly, as complaints about fair

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[1] This was introduced as part of the Equality Act 2010, and the provisions for financial services became law on 1 October 2012.
[2] Council of Mortgage Lenders, "CML chairman on retirement borrowing: we could do better even if we can't do perfect", blog post, 29 September 2015.
[3] Building Societies Association, *Lending into retirement: interim report*, 12 November 2015.
[4] The Financial Ombudsman Service is governed by rules set out in the Financial Conduct Authority Handbook. Rule DISP 3.6.4 states that the ombudsman will take into account relevant, law, regulation and codes of practice.

treatment on the basis of age are often one part of a wider problem, it's possible that there are other age-related issues we haven't discussed here. There's more information about the cases we have reviewed in the annex.

The ombudsman deals with complaints from people across the country and in a range of different situations – and, excluding payment protection insurance (PPI) complaints, around one in three of the people who use our service are aged over 65.[5] So it's perhaps not surprising that many of the complaints we have reviewed were brought by older people – although we've seen examples of age-related complaints from younger people as well.

The following chapters set out some of the themes we've seen in the cases we reviewed:

- we've come across differing levels of understanding about what the law means – amongst both consumers and financial service providers;
- we've seen examples of untested or stereotypical assumptions being made, rather than reasonable commercial decisions or risk assessments connected to offering products to particular age groups; and
- we've seen a number of cases involving mortgages and retirement – with people experiencing difficulties moving home, paying off their mortgages, and taking out extra lending.

[5] For all complaints including PPI, 17% of consumers bringing complaints to the ombudsman in 2014/2015 were aged over 65. Source: Financial Ombudsman Service, *Annual Review 2014/2015*, 19 May 2015.

2 understanding of the law on age discrimination

In our case review, we found there was some confusion around what the exception for financial services in equality law really means. There were misunderstandings amongst both consumers and financial businesses.

In some cases we've heard from consumers who think that financial providers are breaking the law because age discrimination is unlawful for other services.[6] But in others, lenders or insurers have told us that they don't need to provide any further information because the law says they can discriminate on the basis of age.

box 1: the law on age discrimination and financial services

The Equality Act 2010 banned age discrimination in goods and services. But there is an exception in the law for providing financial services such as bank accounts, loans, insurance, credit cards, warranties, mortgages and investments.

This means that financial businesses can continue to use age as a factor in designing, pricing and offering their products. But where businesses carry out a risk assessment for the purposes of providing a financial service, the exception will only apply if the risk assessment, in so far as it involves a consideration of the person's age, is done by reference to information which is both relevant to the assessment of risk and from a source on which it is reasonable to rely.

Financial businesses are not allowed to behave towards consumers in a way that could be considered harassment due to age, and must not victimise consumers who make a complaint relating to age discrimination.

Consumers can challenge a financial business if they think a risk assessment, where it involves a consideration of the person's age, has not been carried out by reference to relevant information which is from a source on which it is reasonable to rely.

Source: Government Equalities Office, *Equality Act 2010 and age discrimination: what do I need to know? A quick start guide for financial services*, September 2012.

[6] Age discrimination in employment and vocational training has been unlawful since 2006. The new rules which came into force in October 2012 cover the provision of all services to the public, whether in the private, public or voluntary sector – for example leisure facilities, public utilities, sports centres, advice agencies, shops and hospitals. Source: Equality and Human Rights Commission, www.equalityhumanrights.com

"We introduced a new lending policy [in 2014]. One of these changes included the decision to change our future lending with regards to a customer's retirement age. This is a commercial decision we're allowed to make and it's not something that can be challenged or overruled."

bank's final response letter to consumer

"I was under the impression that to be denied services because of age is against the law."

consumer

"Insurance companies are making profits at the expense of older people."

consumer

"What the underwriter has chosen to do in our case is introduce an arbitrary age limit which has discriminated against us and consequently disadvantaged us."

consumer

"I think the company should have taken more care with an elderly client."

consumer's representative

"As there is an exception in the Act in relation to the provision of financial services I do not think we should be required to provide any further explanation beyond the fact that we are availing ourselves of that exemption."

bank letter to the ombudsman

"All loans are subject to our lending policy and are available to UK residents aged between 18 and 75, and are subject to status and conditions."

lender's website

Although the law says that financial providers don't need to justify objectively why they've treated someone differently according to their age, they do need to make sure that, if they're using risk assessments to make decisions about which ages to offer products to, these assessments are made on the basis of relevant information from a reliable source.

In insurance, there's an accepted link between age and pricing, but there are differences in how different types of insurance are evaluated and underwritten. The Association of British Insurers publishes annual data on motor and travel insurance to help consumers understand why age is relevant to risk assessments and pricing for those products.[7]

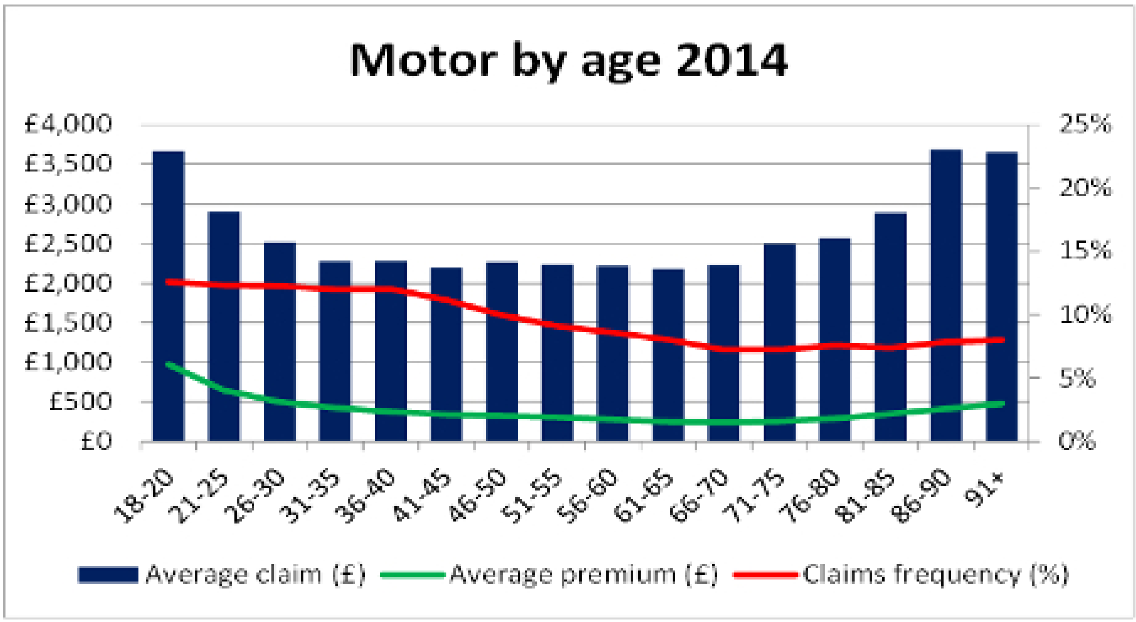
[7] Further information is available on the Association of British Insurers website: www.abi.org.uk.

“The existence of age limits on mass-market insurance is standard, accepted, and necessary industry-wide practice.”

bank

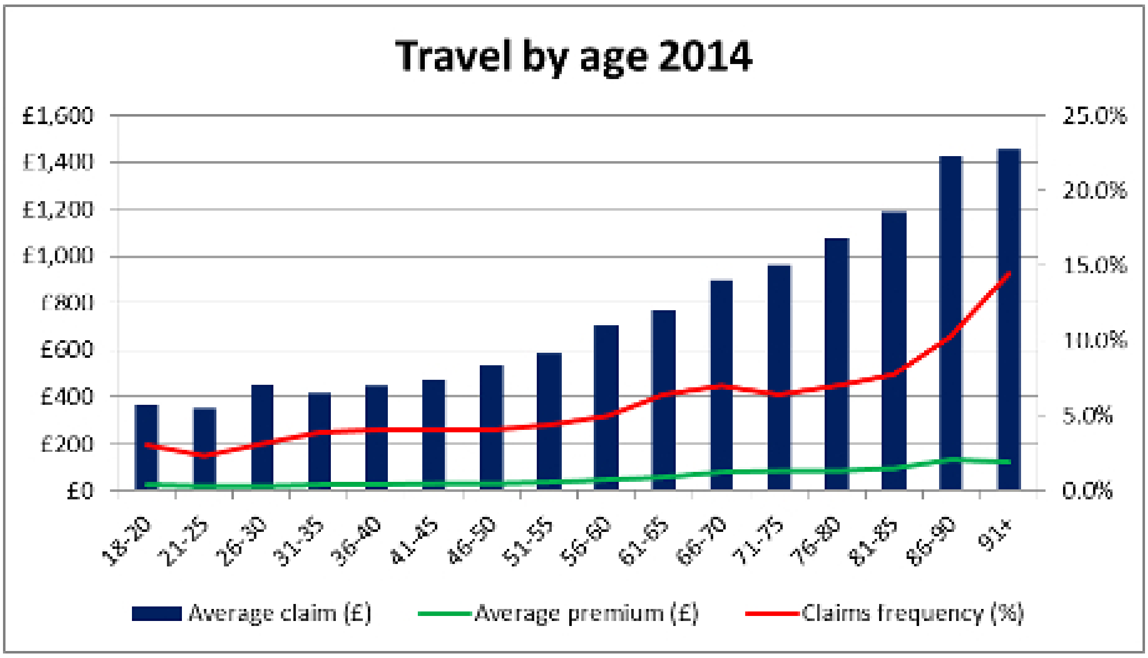
The most recently available data is reproduced below and shows that age can materially influence how likely people are to make motor or travel insurance claims and the value of the claim that they make.

chart 1: average claim, average premium and claims frequency for motor insurance by age, 2014



Source: Association of British Insurers website, www.abi.org.uk.

chart 2: average claim, average premium and claims frequency for travel insurance by age, 2014



Source: Association of British Insurers website, www.abi.org.uk.

Some of the people who've come to us felt that underwriters should be looking at their individual circumstances to decide prices. But when we look into complaints we wouldn't generally expect insurers to carry out an individual assessment if they can show they've made appropriate use of statistical or actuarial information about the general consumer population – and that they've treated people that share the same circumstances equally.

The following two case studies show different ways that financial businesses use information in their decision-making. In the first case we concluded that the consumer had been unfairly disadvantaged on the basis of their age; in the second that the insurer had legitimately used its commercial judgement.

ombudsman case study: older consumer denied 'free car insurance'

Mr A, in his early eighties, bought a new car. He was attracted by an offer which said that he'd receive one year's free motor insurance with his purchase. But when he bought the car he was told that the insurance was only available to people aged between 21 and 80.

Mr A queried this and the insurer explained that it was a business decision to put this age limit on the free insurance to 'minimise potential losses'. The insurer also provided Mr A with a separate quote for insurance but Mr A was able to find more competitively priced cover with a different insurer.

Mr A thought this was unfair age discrimination and referred the case to us. We asked the insurer to show us the information it relied on to make the decision to restrict free insurance to people within these age bands. The industry data the insurer used showed that drivers aged 21-25 were a higher risk than drivers in Mr A's age group of 81-85 and that there wasn't a significant additional risk for older drivers until the age of 86.

We decided that Mr A had been unfairly disadvantaged and ordered the insurer to pay for the alternative insurance that Mr A had taken out. We also told the insurer to make a further payment to Mr A for the trouble they'd caused him.

ombudsman case study: consumer feels circumstances not properly considered

Mr B had a packaged bank account for a number of years which included worldwide travel insurance as one of the features. Rules introduced in 2013 mean packaged bank account providers need to tell their customers each year what benefits they're eligible for. As Mr B approached his 70th birthday, his bank wrote to him to let him know that he would no longer be covered by the insurance – as it was only available to people under the age of 70.

Mr B felt the bank had unfairly discriminated against him – because they hadn't considered his personal circumstances – particularly that he was in good health. He said he didn't think his bank had used 'information on which it is reasonable to rely' to make their decision.

The bank told us they had an insurance scheme which best met the needs of a majority of their diverse range of customers and allowed them to offer good value premiums. And they also told us they reduced the cost of their packaged bank account once consumers reached the age of 70 to reflect the fact that they wouldn't have as wide a range of benefits.

When we looked into the case we found that the insurer used by the bank had relied on its own claims data to decide to limit cover to people under the age of 70. The data showed the costs and number of claims rising according to age and that people over 70 were more likely to make a claim than people under 70. So we thought that the insurer had used relevant information from a reliable source to assess the risk of insuring older consumers. As a result we didn't think Mr B had been treated unfairly.

When assessing mortgage applications, lenders will also carry out a risk assessment. But, because of the nature of the product, this *is* usually based on people's individual financial position rather than broader data about their age group. But in some of the cases we looked into, we found that lenders weren't considering individual affordability and were instead applying blanket age restrictions. This is something that the law allows lenders to do. But just as with insurance, where the age restriction is informed by a risk assessment relating to age, the risk assessment must be based on relevant evidence from a reliable source.

The following case studies show different ways in which this can affect people. In the first example, a married couple weren't given the mortgage deal that they'd agreed to. In the second case, a person was told he couldn't move his mortgage to a new property because of his age, whereas in fact it was for other reasons.

ombudsman case study: consumers given shorter mortgage term than requested

Mr and Mrs C had a fixed rate mortgage deal which was coming to an end. After shopping around they decided to take out a five-year fixed-rate deal with a new lender as they felt this was the most competitive deal for them.

The new mortgage was agreed and Mr and Mrs C started making their new payments. But when they received their annual mortgage statement they discovered the mortgage had only been given for a period of three years rather than the five year period they'd agreed with the lender.

When Mr C questioned this the lender said it was due to his wife's age. They said the term could be extended but only by a further ten months – until Mrs C's 75th birthday. Unhappy with the lender's decision, Mr C contacted us.

Mr and Mrs C's mortgage was interest-only and they were planning to repay the capital through the sale of another property. So we didn't think an additional 14 months – making it a five-year mortgage – would affect the affordability of the loan, as Mr and Mrs C's circumstances were unlikely to change.

We didn't think the lender had treated Mr and Mrs C fairly. We told it to honour the deal that it had originally made for a five-year mortgage and to pay compensation to Mr and Mrs C for the trouble and upset it caused.

ombudsman case study: consumer's age had no role in mortgage decision

Mr D took out an interest-only mortgage when he was in his late sixties. A few years later he wanted to transfer the mortgage to a new property but his lender said he couldn't because he'd be paying the mortgage beyond the age of 75. The lender said it had changed its age policy since Mr D took out the original mortgage.

When we looked into the case, it became clear that Mr D's application to transfer his mortgage had been turned down for a number of other reasons – not just his age. In particular, the lender had a policy of not providing mortgages for flats in blocks over a certain size. The property Mr D had wanted to buy was in a large block of flats.

As none of the other reasons were given to Mr D and he was told that he couldn't change his mortgage simply because of his age, we ordered the bank to pay compensation for the trouble and upset it caused. We acknowledged that Mr D's application would have ultimately been unsuccessful in any case – and we didn't think the lender's decision was unfair.

The cases we looked at to inform this paper show the wide range of interpretations around what the age exception for financial services means and how it should be put into practice – three years after the law came into force.

3 making assumptions based on age

The law allows financial providers to offer products to certain age *groups*, but it doesn't permit providers to make assumptions about *individuals* because of their age. In the cases that have come to us we've seen some consumers who've felt that a provider has made decisions based on preconceptions about their age.

box 2: types of discrimination

There are nine "protected characteristics" in equality law and it is unlawful to discriminate on the basis of these for services apart from financial services. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Direct discrimination is when someone is treated worse than another person because of one of the protected characteristics.

Indirect discrimination is when an organisation puts a rule, policy or way of doing things in place which has a worse impact on someone with a protected characteristic than someone without one – unless it can be "objectively justified".

Source: Equality and Human Rights Commission

ombudsman case study: consumer not allowed to contest insurance claim

Mrs E, in her late seventies, was driving alone when she was involved in a collision. She told her insurer that the other driver involved had caused the accident but the other driver said it was Mrs E who was at fault.

The insurer's accident investigator interviewed Mrs E and then told the insurer it wasn't a good idea to contest the claim any further. He advised against going to court saying that Mrs E shouldn't be put on the witness stand 'because of her age'.

Mrs E brought a complaint to the ombudsman. She was upset that assumptions had been made about her ability to contest the claim, and that there had been a knock-on effect on her insurance record through no fault of her own.

Mrs E was unable to say exactly what happened at the time of the accident. And as there wasn't another witness willing to provide a statement, we thought it was reasonable for the insurer to decide to settle the claim. This was based on a factual assessment, rather than Mrs E's age, although we did point out that the investigation could have been handled better.

ombudsman case study: young driver charged excess for 'act of God'

Mr F, in his early twenties, was insured as a named driver on his parents' car. He parked the car outside a friend's house, where strong winds caused a tree to fall on top of the vehicle. The car had to be written off.

When Mr F put in a claim for the loss of the vehicle, the insurer charged a young driver excess despite the damage having been caused by something outside of his control. After the case came to the ombudsman service, the insurer said that Mr F had been the last person to drive the car and so it was his fault that it was parked where it was.

We didn't agree. We said there wasn't any reason for the excess to be applied as the age of the last person to drive the car had no bearing on the likelihood of a tree falling on it. We ordered the insurer to repay the young driver's excess with interest.

On the other hand, we've also seen cases where consumers have been disappointed that *more* consideration wasn't given to someone's age.

ombudsman case study: insurer 'should check up' on older consumer

Mr G brought a complaint to us about the way an insurer had dealt with his father.

Mr G's father took out a new car insurance policy. When he spoke to the insurer to buy his policy over the phone, he mentioned one previous driving offence and the insurer adjusted the quote accordingly. Mr G's father then had an accident, which was when it came to light that he had actually had several previous driving convictions. So the insurer cancelled his policy.

Mr G explained that his father suffered from memory problems and this was why he hadn't told the insurer about all his previous offences. He also felt that the insurer should have done more to check the information his father had given because he was in his late seventies.

When Mr G asked for our help, we looked into the discussions between Mr G's father and the insurer. We found that there hadn't been anything to make the insurer question what they were told. The insurer pointed out that Mr G's father had had an opportunity to check what he had disclosed in the documents that were sent to him to sign and that, legally, they couldn't make assumptions just because of his age.

We understood what Mr G told us about the fact that his father hadn't intended to deceive the insurer but we felt, on balance, that it was reasonable for the insurer to assume it had been given the full picture. And that it was fair to cancel the policy.

These complaints illustrate the fine line financial businesses sometimes have to tread between providing the right support for people according to their needs, and avoiding making wholesale assumptions about capability, or circumstances, based on people's age.

4 lending and retirement

A number of the cases that we looked at for this paper have related to mortgages. People have come to us with concerns that they have been treated differently because of their age when wanting to move house, when wanting to change the term of their mortgage, and when using property as an investment to boost their retirement income.

> "I notice you're 65 but without speaking to you I am unsure of your current work status."
>
> **bank's final response letter to consumer**

According to the latest statistics on housing in England,[8] most first time buyers are aged over 25 and 8% are 45 or over. At the same time, more than half (56%) of first time buyers in 2013/14 had between 20 and 29 years to run on their mortgage when they took them out, and 38% took mortgages with a term of 30 years or more. So it's likely that a number of people taking out mortgages for the first time will be making repayments into their retirement in the future.[9] Indeed, at the end of 2014 lending to borrowers who will be older than 65 when they repay their mortgage made up 35% of all lending.[10]

At the same time, people are working longer following the end of a default retirement age in the UK in 2011. At the end of 2014, over a million people aged over 65 were in work[11] and polling suggests that nearly half of people want to continue working between the ages of 65 and 70.[12] These demographic trends are reflected in some of the cases that have come to the ombudsman. The following case study examples show that household income – and with it the ability to repay lending – isn't necessarily related to "expected" retirement age.

ombudsman case study: age limits and consumer circumstances

Mr and Mrs H had seven years left on their existing mortgage when they decided to move house. They found a new property and applied to their existing lender to increase the size of their mortgage.

The lender initially turned them down because Mr H was over the age of 70. Mr and Mrs H pointed out that they were allowed to port their existing mortgage so the lender looked at the case again. This time, Mr and Mrs H were offered the option to move their existing mortgage to a new property but with a lot less additional borrowing than they needed to buy their new house. Mr and Mrs H felt they had no option but to sell their house and

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[8] Office for National Statistics, *English housing survey 2013 to 2014: household report*, chapter 1, 16 July 2015.

[9] Overton, L. and Fox O'Mahony, L., *Consumer demand for retirement borrowing: a report prepared for the Council of Mortgage Lenders,* November 2015.

[10] Building Societies Association, *Lending into retirement: interim report*, 12 November 2015.

[11] Department for Work and Pensions, "Older People's Day: 1 million in work over 65: 3 years since end of default retirement age", press release, 1 October 2014.

[12] Building Societies Association, *Lending into retirement: interim report*, 12 November 2015.

move into rental property while looking for a new home. This meant they had to pay an early repayment charge to the lender.

When Mr and Mrs H asked us to look into the complaint they told us that Mrs H was in full time employment and that Mr H had business and rental income. Their circumstances hadn't changed since they took out the mortgage.

Mr H was aged 62 when Mr and Mrs H had taken out the 15-year mortgage, meaning that the lender had always known he would turn 70 before the mortgage was due to be repaid. When they'd taken out the loan, their lender had told them that the mortgage could be moved to a new property.

We said that applying the new mortgage criteria wasn't fair because the lender had always known that Mr H would turn 70 during the mortgage and nothing else about their circumstances had changed. So we ordered the lender to repay the charges Mr and Mrs H had paid to redeem their mortgage, and to make a further payment for the inconvenience it had caused.

ombudsman case study: lender insists on 'compulsory retirement age'

Mr I, in his thirties, worked in the armed forces. He applied to his mortgage lender for new borrowing to move to a bigger house and asked for an extension to his existing mortgage term to make sure that the repayments stayed affordable. The lender refused to extend the term of the mortgage because this would have taken Mr I past the age of 60, the compulsory retirement age for the armed forces.

Mr I explained that he intended to continue working beyond 60, and pointed out that people in different professions changed job over the course of their mortgage term. He also pointed out that his state pension age was 67 so he expected to work until then. The lender still turned down the application. Mr I felt he had no choice but to move to a different lender that was willing to offer a longer term, and had to pay an early repayment charge to redeem his existing mortgage.

Mr I brought his complaint to the ombudsman. We noted that the lender had flexibility in their lending criteria and that it lent to people up to the age of 70 unless the customer said they were retiring sooner. As Mr I had explained to the lender that he wasn't planning to retire at 60, we felt it hadn't looked properly into his personal circumstances and that this was unfair.

We told the lender to reassess the application based on when Mr I had said he was planning to retire. We said that if the lender found that the application would have been successful it should refund Mr I half of the early repayment charge, as he would have been required to pay a reduced 50% early repayment charge had he stayed with his existing lender and made the changes he wanted to. We also said the lender should refund any fees he'd had to pay to set up the new mortgage with another lender.

There's been more scrutiny of how the mortgage market is operating in recent years, particularly following the growth in lending prior to the 2008 financial crisis. The Financial Conduct Authority carried out a review which led to new rules coming into effect in 2014[13].

box 3: the Mortgage Market Review

The Mortgage Market Review was a comprehensive evaluation of the mortgage market, carried out by the Financial Conduct Authority.

The review came about because the regulator recognised that the rules weren't strong enough to stop high-risk lending and borrowing.

The review led to a new set of rules, including clarifying that lenders are always responsible for assessing income and affordability, even when they lend through a broker. They are also allowed to continue to offer interest-only mortgages but only where there is a credible way to repay the capital.

The review said that lenders can provide new mortgages or deals to their existing customers even if they don't meet the new requirements, as long as there isn't an increase in the amount being borrowed.

The complaints that we looked at for this paper reflected that the mortgage market is in a period of transition, with the new rules affecting how some older mortgage consumers – most of whom have existing deals – are being treated.

Although the Mortgage Market Review makes it clear that existing customers can still be offered new deals for existing borrowing – even if the lending policies have changed for new borrowers – this doesn't seem to always happen in practice. The following case study shows that existing customers are sometimes left in difficult circumstances because of changes in mortgage policies.

[13] Financial Conduct Authority, *Mortgage Market Review* webpage, last modified 28 September 2015.

ombudsman case study: consumers given conflicting advice about porting their mortgage

Mr and Mrs J were looking to move as part of their plans for retirement. This depended on them being able to port their existing flexible offset mortgage to the new property. When they checked this with their current mortgage provider they were told they could do this.

As they got into the final stages of the process for porting their mortgage, the lender told Mr and Mrs J that their mortgage term would be reduced to less than three years as Mr J would then reach age 75. This meant reducing the current term by five years– an unaffordable situation for Mr and Mrs J who felt they had no choice but to pull out of their plans to move house.

When Mr and Mrs J complained, the lender said that as existing customers they would be able to have a mortgage beyond the age of 75 if affordability criteria were met and that they'd look at this. Mr and Mrs J were unhappy that they'd had to pay solicitors' fees and lost the opportunity to buy a new home. They brought their case to the ombudsman.

After the case came to us, the lender offered to pay all of Mr and Mrs J's costs and to consider any new application to port their mortgage in the following 12 months.

"My original mortgage was taken out specifically to end at my 70th birthday. At no time have I been informed that the taking out of a new fixed term product, for a third time, would be refused because there had been a change in policy."

consumer

We've also seen a number of cases from people reaching the end of their interest-only mortgage terms. As these were popular products in the 1990s, there's likely to be a steady increase in the number of interest-only mortgages reaching maturity in the coming years: the Financial Conduct Authority has estimated that 600,000 interest-only mortgage borrowers will come to the end of their term between 2013 and 2020,[14] and that just under half of these borrowers face a shortfall in repaying the capital. And Citizens Advice has estimated that 934,000 people currently have interest-only mortgages and don't have a plan to pay the debt off when their term ends.[15]
The two case studies below show how the financial climate has altered the extent to which lenders are willing to risk lending on an interest-only basis, which can have a serious impact on people who've planned their finances around these deals.

[14] Financial Conduct Authority, "The FCA publishes findings of review into interest-only mortgages and reaches agreement with lenders to contact interest-only borrowers", news release, 2 May 2013.
[15] Citizens Advice, "1 million mortgage holders have no plan on how to repay", press release, 4 September 2015.

ombudsman case study: interest-only term extension turned down

Mr and Mrs K took out an interest-only mortgage. To make sure they'd be able to repay the capital amount at the end of the loan they also took out endowment policies. But these didn't perform well and so they decided to sell them and used the money to invest in some buy-to-let properties.

When they were approaching the end of their interest-only mortgage term Mr and Mrs K asked their lender for a five-year extension. But the lender refused as both Mr and Mrs K would be over the age of 75 at the end of the additional five years.

When we looked into what had happened, we could see that age wasn't the main reason the lender turned down the request for an extension. The lender was more concerned about how Mr and Mrs K would repay the loans – they would have needed house prices to rise, which couldn't be guaranteed.

We understood why the lender was concerned. Having considered all the circumstances of the case, we didn't think it had treated Mr and Mrs K unfairly.

ombudsman case study: consumers facing financial hardship due to lack of flexibility on interest-only mortgage

Mr and Mrs L were both made redundant from their jobs and had two mortgages on their home. The first mortgage was paid through Pension Credit payments but, because they'd lost their jobs, they couldn't afford to make payments on the second mortgage.

The second mortgage was an interest-only deal and, because the lender didn't offer this product to consumers over the age of 65, they insisted that it had to be repaid in full before Mr L reached his 65^{th} birthday. This meant that their monthly mortgage repayments doubled, and arrears quickly built up. But they couldn't sell the property to pay off the loan as house prices remained low in their area.

We worked with both the lender and Mr and Mrs L to put a repayment plan in place. The lender agreed to extend the loan past Mr L's 65^{th} birthday if he was fully retired and on a guaranteed income which enabled repayments to be made at the existing level.

Mr and Mrs L were relieved to be able to stay in their home while they found a way to improve their financial situation.

The Council of Mortgage Lenders and the Building Societies Association have both identified two distinctive challenges facing their members: lending *into* retirement and lending *during* retirement.[16] A particular area where we have seen cases involving lending during retirement is when people have been looking for a mortgage to help provide a retirement income plan – generally a buy-to-let product. In some cases this has been a new product, but in others people have been looking to change or extend the term of their existing mortgage.

ombudsman case study: consumer 'too old' for buy-to-let mortgage

Mr M, who was aged 80, applied for a mortgage to buy an additional buy-to-let property. He'd already taken out two buy-to-let loans with the same lender which were due to come to an end when he reached the age of 90. But the lender told Mr M it had changed its lending criteria and new applicants had to be aged under 70 at the time of making the application.

Mr M felt the lender was discriminating against him because of his age and brought his complaint to the ombudsman.

The lender told us that it had introduced a maximum age for applications because the majority of its buy-to-let landlords viewed their investment property as the main source of their retirement income. So capping new applications at age 70 helped to ensure people could benefit from income through their retirement and was – in the lender's view – more responsible lending. The lender also pointed out that it didn't set a maximum age for mortgages to be paid back, which was why Mr M could repay his existing mortgages up to the age of 90.

We understood why Mr M was disappointed about this but felt these kinds of changes to lending criteria represented commercial decisions lenders were entitled to make. We didn't feel that Mr M hadn't been treated unfairly.

In a recent survey, 61% of people aged over 55 said they would welcome the opportunity to borrow in retirement.[17] This trend is reflected in the cases we've seen, with people telling us they want the flexibility to take money from their mortgages to meet their current spending needs. But the following case study shows that this isn't always straightforward in practice.

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[16] See: Council of Mortgage Lenders, *Pension tension: the challenges for older borrowers*, 19 June 2015, and Building Societies Association, *Lending into retirement: interim report*, 12 November 2015.
[17] more2life, *Lending in retirement: the way ahead for customers and advisers*, 8 September 2015.

ombudsman case study: consumers unable to take advantage of additional lending due to age

Mr and Mrs N had a mortgage with flexibility that allowed them to withdraw up to £75,000 from the loan at any time up to their 75th birthdays. When they were both 68, they asked to borrow £15,000 from their mortgage to carry out some home improvements. But they were told that the lender's new rules meant that that type of borrowing was no longer available to anyone over the age of 68.

Mr and Mrs N told us they were very disappointed about this decision and that they'd only chosen this particular mortgage because of the 'drawdown' facility. Following our involvement, the lender agreed to look again at whether it could offer additional borrowing as an 'exception' to its usual rule. The lender decided that Mr and Mrs N could have the facility up to the age of 75 as originally agreed. It also made a payment for the inconvenience caused.

It's clear that people who are approaching, or who are in, retirement are experiencing a number of different problems around their mortgages. While every problem is unique, we've heard from a number of people who've been in financial difficulty, or who have potentially been pushed into financial hardship through a lender's action. Others have told us they've been unable to take their retirement in the way that they planned – or had lost out financially by not being able to rely on the products that they've taken out.

"Due to the lender's refusal, we have to accept lowering our status and…go into a rental property."

consumer

"The [bank] wants to reduce the length of our repayment terms due to my age! This would take our monthly payments from approx. £460.00 a month to £617.00 a month; this is an increase we simply can't afford."

consumer

5 discussion

The interaction between age and financial products seems likely to continue to generate debate. Our review of some of the age-related complaints that have come to the ombudsman service highlights a number of issues which it may be useful to consider.

- There doesn't seem to be consistent or widespread understanding of the law around age discrimination and financial services. For consumers, this is perhaps made more confusing by the fact that it's illegal to discriminate on the grounds of age for other goods and services.

- Financial businesses don't always share the reasons behind their pricing or lending decisions with consumers. But when we've asked for the details after cases have come to the ombudsman, it's often made it much easier for consumers to understand what has happened – or for the business to acknowledge where they might have got things wrong.

- In some cases consumers have been told they're not eligible for a product because of their age but actually it was for a completely different reason. In others, businesses have realised that they haven't conducted a proper assessment and looked at their decision-making again. Sharing more information earlier on – and giving clear, common sense explanations for decisions – might stop problems escalating to the point where the ombudsman service needs to step in.

- The UK mortgage market is in a state of flux – lenders have a duty to lend responsibly but they also need to remember their obligations to existing borrowers. In some of the cases we looked at for this review, consumers had been pushed into financial hardship, or stopped from moving home, by the actions of lenders. It's important for financial businesses to have constructive conversations with their customers to find workable solutions when people find themselves in difficulties.

- On the other hand, the changed economic climate means that consumers won't necessarily be able to rely on the products that they've had in the past – the number of interest-only and buy-to-let mortgages has decreased in recent years, for example. Withdrawing from, or limiting exposure to, these markets might be a legitimate commercial decision for lenders to take, providing that risk-based decisions related to age are made according to what the law requires. There might be an impact on the way that consumers will need to plan their finances over the coming years.

The nature of financial products and services means that businesses will often need to consider age when deciding what they offer to consumers. But the cases that we've seen show that that isn't always straightforward, and businesses may need to look at the circumstances of their customers more closely to make the fairest decisions.

annex more information about the cases we reviewed

To inform this paper we reviewed a sample of complaints from older and younger consumers involving mortgages, motor insurance or travel insurance.

We chose these three products following initial case analysis that suggested that these were the areas where we'd most likely be able to identify problems around treatment based on age.

We first selected all complaints relating to these three products that were brought by people aged under 25 or over 60 and closed by our service between January 2013 and July 2015. We then manually analysed the archived material in those complaint files. Our aim was to identify all complaints from that period that were about treatment on the basis of age.

This analysis identified 75 complaints about treatment on the basis of age. 48 of these cases were about mortgages with the remainder related to insurance products.

We also spoke to ombudsmen and adjudicators working on these types of complaints to get their perspective on what we've seen.

The complaints included in this briefing paper are not representative of a wider population of consumers, but they do reflect the themes that we found across the cases that we analysed.