

ombudsman news

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

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Financial

**Ombudsman
Service**

lasting impressions

For me, there's always a "back-to-school" feeling about September. Even for those of us whose days in the classroom are well behind us, with summer over we're definitely into the second half of the financial year. For younger people especially, it can be a month of anticipation – with many preparing for college, university or working life, and all the new experiences those bring.

Perhaps things were simpler in the past, but I don't think the "skint student" stereotype reflects the real complexity of money matters for young people. Whether they're living with parents or moving out, alone or with others, young adulthood is generally a time of increasing independence. And whether it's managing a household budget, using a car or bike to get around, or buying and protecting their belongings, a good part of that independence relies on financial services.

It's also likely that – particularly considering the host of other challenges and uncertainties many younger people have to deal with – using financial services for the first time may be daunting. From a business perspective, getting off on the right foot with their youngest customers may play a key part in keeping them in the long term.



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meet us

in October we're in:
 ◆ Southampton
 ◆ Great Yarmouth

for more events see page 15



scan for
previous issues



Caroline Wayman

But from the situations we see, it's clear that treating younger customers fairly – and avoiding problems – isn't simply a question of offering products to match their lifestyles, or just about using the latest technology to interact with them. In fact, as our case studies in this issue highlight, it's seemingly simple steps like explaining things extra clearly that can make all the difference to those first and lasting impressions.

In this *ombudsman news*, we also take a closer look at the complaints we receive from the very smallest companies and traders – who together account for 95% of businesses in the UK. In a recent review of complaints that reach us, we found two thirds of businesses who used our service were made up only of one or two people. And while these people may be experts in their own field, they're rarely experts in the financial products and services their livelihoods depend on.

Unfortunately – for everyone involved – it seems some business people felt let down by the support they'd received from a financial provider.

Rather than something going technically wrong, we often found there'd been a simple – but crucial – misunderstanding about what support was actually ever available. Again, it's just common sense that understanding customers' experience and expectations – bearing in mind their individual circumstances and stage in life – can prevent difficulties and disappointment later on.

Of course, it's important to talk about the good news, too. It's really encouraging to see indications that, compared with other sectors, many financial businesses are doing well – and getting better – in their customers' eyes.

And every day at the ombudsman, we see examples of the care and effort businesses take in putting right problems and addressing customers' concerns.

While September may not mean new adventures for everyone, the "beginning of term" is a time to take stock and look forward. And making sure we're all understanding what other people need from us – and the impressions they're getting right from the start – seem a good focus for the months ahead.


Caroline

*... simple steps like explaining things extra clearly
that can make all the difference*

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Monday to Friday 8am to 6pm

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ombudsman news is not a definitive statement of the law, our approach or our procedure. It gives general information on the position at the date of publication. The illustrative case studies are based broadly on real life cases, but are not precedents. We decide individual cases on their own facts.

complaints involving sensitive details

To provide their services, most organisations need to collect and keep a wide range of information about their customers. And together, financial businesses deal with an enormous amount of data and details – relating to the financial activities and personal circumstances of most people in the UK.

Some of this information is necessarily going to be sensitive. So it's understandable that some people may be extremely worried at the prospect of it being passed on without their knowledge or agreement – whether that's deliberate or accidental on the business's part.

Each year we receive a number of complaints from people who are worried that a business might have misused their personal information. People point to a range of consequences, from embarrassment that others have found out about their financial difficulties to actually being threatened with physical harm – for example, because their address has been wrongly revealed.

In some cases, people tell us they believe a business has breached the Data Protection Act. We (and often the business when they're investigating the complaint) generally refer these cases to the Information Commissioner's Office (ICO), which is responsible for establishing whether there's been a breach of the law.

On the other hand, we can help people to understand exactly how any breach happened – and the impact on the individual customer involved. We'll decide whether the business failed in their general duty of confidentiality to their customer. And if they did, we'll consider whether they could have known the effect this would have.

Because of the personal nature of the information involved, people often feel very strongly that we should punish businesses that have acted wrongly. We're careful to explain that it's not our job to fine a business. Our job is to help a business make up for both the financial and non-financial consequences of any error, including any upset someone's experienced as a result. While the ICO is responsible for fining organisations that breach data protection law, it can't compensate their individual customers.



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... it turned out the letter had been sent to his neighbour

case study 128/1

consumer complains that bank sent his financial details to the wrong address twice

Mr N applied for a credit card in his local bank branch. When he didn't hear anything after two weeks, he phoned the bank to check on his application.

The bank told Mr N they'd written to him the day after he'd visited the branch to ask for some more information. When they confirmed the address they held for Mr N, it seemed they had his neighbour's address – and had sent the letter there.

Mr N corrected his address and asked the bank to resend their letter. After a few days, it hadn't arrived – and again, it turned out the letter had been sent to his neighbour.

Mr N then cancelled his credit card application and made a complaint. He told the bank he'd previously been assaulted by his neighbour – and was extremely concerned that the neighbour would misuse the information in the letter the bank had sent out.

The bank didn't agree that they'd done anything wrong, saying they'd written to the address that Mr N had given them. But Mr N maintained he'd given them the correct address – and brought his complaint to us.

complaint upheld

We needed to understand how the bank's letters had ended up being sent to the wrong address.

We checked the application form, but found the handwriting very difficult to read. We confirmed with Mr N that it was his own handwriting. But given how difficult it was to read, we thought that the bank should have realised how easily a mistake could have been made and double-checked Mr N's address before sending anything out.

Mr N also told us he'd phoned the bank to tell them what had happened – so it was clear that the bank had been given the chance to correct Mr N's address. And they'd still gone on to resend the letter to the wrong address. The bank checked the letter they'd sent – and confirmed that it would have contained some sensitive information.

So it was clear that sensitive information had been sent to Mr N's neighbour – but we needed to look at the impact that this had actually had. Mr N told us he had a very bad relationship with his neighbour. He'd been assaulted a few months previously and the police had been involved. He was very worried that his neighbour might now have his financial details and use these against him in some way.

Given the circumstances, we thought that the bank could've prevented the sensitive information being sent to Mr N's neighbour. While Mr N hadn't lost any money, we told the bank to pay him £200 to reflect the stress and upset their mistake had caused and checked that the bank now had the correct address. Mr N's bank also agreed to help him monitor his credit file to make sure there were no problems after his neighbour had seen his details.

case study 128/2

consumer complains after debt collector left debt details on his front door

As Mr M arrived home from work, he was told by a neighbour that a debt collector had been asking after him. He then found that the debt collector had left a note on his front door, explaining they'd visited about arrears on his loan.

Mr M complained to the loan provider, saying he was very embarrassed that his neighbour now knew he was in debt – and that this had been displayed in a note for anyone to see.

The loan provider apologised and offered to reduce Mr M's arrears by £25. But Mr M didn't feel this made up for the embarrassment of having people know about his financial circumstances – so he brought his complaint to us.

complaint upheld

The loan provider had accepted that their debt collector shouldn't have left the note. But to decide whether they'd done enough to put things right, we needed to understand what the impact had been on Mr M.

Mr M sent us the note – and a photo he'd taken of it pinned to his door. The note included specific details about how much he owed – and it had been clearly visible. Mr M said that one of his neighbours had read the note and talked to the debt collector. He said that when this neighbour was telling him about the debt collector's visit, some of his other neighbours were nearby and could have overheard.

Mr M told us he was extremely embarrassed by what had happened – and was now worried about bumping into his neighbours.

We pointed out to the loan provider that industry guidance for debt collection clearly states that companies shouldn't disclose debt details to third parties. In our view, while the debt collector hadn't given any details directly to Mr M's neighbours, the fact they'd left the note clearly visible on his front door meant they'd breached this guidance.

The incident had been very upsetting for Mr M – and we agreed that the loan provider hadn't fully recognised the impact on him. We told them to increase their offer to £400 to better reflect the worry and embarrassment their actions had caused.

... we agreed that the loan provider hadn't fully recognised the impact

... Mr H and Miss A's relationship had ended shortly after Miss A had found out about the arrears

case study
128/3

consumer complains that mortgage company told partner about arrears – causing relationship breakdown

Mr H lived with his partner, Miss A, and their children. The mortgage on their house was in Mr H's name. He'd been having problems keeping up with his repayments for some time, but hadn't told Miss A he was significantly in arrears.

Worried that their home would be repossessed, Mr H asked Miss A if she could make a repayment. Mr H called the mortgage company to make the payment and Miss A gave her payment details over the phone. During the call, the mortgage company told Miss A the account was significantly in arrears and by how much.

A few days later Miss A left Mr H and moved away with their children. Mr H complained to the mortgage company, saying they shouldn't have given Miss A details about the mortgage and the arrears.

Mr H believed that Miss A wouldn't have left him if she hadn't known about his money problems.

He said that he now had to travel a long way to see his children and didn't have Miss A's income to help with daily expenses, making his financial position even worse.

The mortgage company apologised for giving out the information – but didn't agree that they were responsible for Miss A leaving Mr H. Mr H then contacted us, saying he didn't feel the mortgage company appreciated the consequences of their mistake.

complaint resolved

Mr H was adamant that if the mortgage company hadn't told Miss A about the mortgage arrears, she wouldn't have left him.

We could see that Mr H and Miss A's relationship had ended shortly after Miss A had found out about the arrears. But that didn't mean we could say for sure that this was the reason she'd left him.

So while the mortgage company had clearly made a mistake, we didn't think it would be fair to blame them for Mr H's underlying financial problems. And since the mortgage company hadn't known that Mr H was keeping information from Miss A, we didn't think they could have anticipated that the couple would have split up if the arrears had come to light.

However, we pointed out to the mortgage company that they had made a serious error in disclosing sensitive information to a third party. Whether or not this was responsible for his relationship breaking down, it had caused him a considerable amount of stress and embarrassment.

When we explained the impact this had on Mr H, the mortgage company offered to pay him £450 to recognise the upset they'd caused. And after talking things through with Mr H, he said he recognised that his family troubles were more down to his own difficult financial situation – and agreed that £450 fairly reflected the mortgage company's mistake.

... she said that her brother claimed he hadn't known she'd cashed the bond

case study 128/4

consumer complains that bond provider passed on confidential information to her brother

After their sister died, Mrs G and her brother, Mr P, were appointed joint executors of the estate. Mrs G's sister had left her the proceeds of an investment bond – which she'd put towards the cost of her sister's husband's care.

Over the next few months, Mrs G and her brother were involved in a dispute over their sister's estate. During this time, Mrs G's brother's solicitor wrote to the bond provider, arguing that the brother was entitled to a share. The bond provider replied that the bond had already been cashed in.

When Mrs G found out about the bond provider's contact with her brother's solicitor, she made a complaint. She said that since the bond had been intended for her alone, the provider shouldn't have disclosed any details to a third party. She said that her brother claimed he hadn't known she'd cashed the bond – and he was now taking court action against her.

The bond provider replied that they'd checked with their lawyers before passing information to the brother's solicitor. Still unhappy, Mrs G contacted us – saying the provider had breached data protection rules and should pay her court costs.

complaint not upheld

We told Mrs G that we could consider what impact the bond provider's actions had had on her. And – when she asked for a regulatory investigation – we explained the role of the information commissioner in looking into whether there had been a breach of data protection rules.

Mrs G told us that – even if the bond provider had been allowed to pass on information to her brother's solicitor – she felt she should have been told in advance. She said if she had been, she would have asked the provider not to reply.

Mrs G said she'd incurred significant legal costs, which she felt were a result of the provider passing on the details.

We asked to see a copy of the bond provider's letter to the brother's solicitor. We couldn't see that they had provided specific details about the bond. They'd only replied that it was now closed. And the fact the brother's solicitor had written to the bond provider – quoting the policy number – indicated that it already formed part of the ongoing legal dispute between Mrs G and her brother.

It also appeared that legal proceedings were already planned at the time the bond provider sent their letter to Mr P's solicitor. In light of this, we thought that it was most likely that what had happened to the bond would have come up as part of the proceedings. So even if the bond provider hadn't replied at all, Mrs G would still have been in the same position – having to explain what had happened to the investment.

We recognised that both the dispute with her brother and the complaint against the bond provider had been upsetting for Mrs G. But given everything we'd seen, we didn't think the bond provider's actions had disadvantaged her – so we didn't think it was fair to tell them to pay compensation.

case study 128/5

consumer complains that investment provider wrongly paid surrender value of mortgage endowment to ex-wife

Mr O and his wife had taken out a mortgage endowment policy – but split up before the mortgage and the policy matured.

Concerned that his wife, Mrs O, would try and cash in the policy, Mr O got in touch with the investment provider. He told them not to agree to any requests from Mrs O to transfer the policy to her name only – and to send any letters about the policy to his new address.

But Mr O later received an email from his wife – while they were trying to sort out their joint arrangements as part of their separation – saying that she'd surrendered the policy herself. Mr O complained to the investment provider, pointing out that he'd given them specific instructions, and that he'd now lost his half of the money.

The investment provider apologised for the mistake, but said that Mrs O had told them that she'd already effectively given Mr O half the value of the endowment. The provider said there was nothing else they could do – and suggested Mr O raise the matter as part of any divorce proceedings in court.

Unhappy with this response, Mr O complained to us.

complaint upheld

We asked the investment provider why they'd surrendered the policy with just Mrs O's signature. They told us that when Mrs O had written to them she'd put "we", rather than "I", in the letter – so they'd assumed she'd had Mr O's consent as well.

When we asked the provider what they'd done after Mr O had told them about the separation, they told us they'd put a note on their internal system.

It was clear that the investment provider had made an error. They accepted that they shouldn't have surrendered the policy without also having Mr O's consent.

Mr O had told the investment provider he wanted them to compensate him by paying him what the policy would have been worth at the end of its term – rather than when his ex-wife surrendered it. But we explained that, because we couldn't say exactly what the policy would have been worth in the future, we'd only tell the investment provider to pay Mr O what he should have got when his ex-wife surrendered it. The provider also offered Mr O £150 for not handling his concerns as well as they could have.

... Mr O later received an email from his wife saying that she'd surrendered the policy herself

... we didn't think that Mr B's ex-partner's mental health difficulties necessarily meant she was likely to cause harm to Mr B

case study 128/6

consumer complains that insurer's mistake meant ex-partner was given his new address

Mr B and his partner had insured their cars together on one policy. When the couple split up, Mr B contacted the insurer to update his details and switch to his own policy.

About a month later, the insurer wrote to Mr B to say they hadn't been able to set up the new direct debit for him – and asked him to contact them to confirm his payment details.

When Mr B phoned the insurer, he found out that the insurer still had his ex-partner's email address as the contact for his account – and that a copy of the letter about the direct debit had been sent to her email address.

Mr B complained. He told the insurer that during a previous argument, his ex-partner had damaged their house. And now she had his new address from the email, he was concerned that she could do the same again – or cause other problems for him and his new partner.

The insurer apologised for the mistake and offered Mr B £100 to make up for the upset they'd caused him. But Mr B felt there had been a serious breach of confidentiality. He asked for £2,000 compensation and for the insurer to waive the rest of his premiums for the year.

When the insurer wouldn't change their position, Mr B complained to us.

complaint partially upheld

We explained to Mr B that we couldn't fine the insurer for any "breach of confidentiality" – but that the Information Commissioner's Office would be able to look into his concerns.

Instead, we told Mr B that we would consider whether the insurer had dealt with his complaint fairly – and whether the compensation they'd offered was reasonable.

Mr B told us that the reason he was so worried about his ex-partner finding out his new address was because they'd had serious domestic issues. He said his ex-partner was violent and had recently been admitted to a psychiatric hospital.

When we spoke to the insurer, they said Mr B had told them when he contacted them to change his policy details about previous incidents between him and his ex-partner. They explained that they'd checked if she'd been in contact – or had taken any action – after they'd mistakenly sent the email. Mr B had told the insurer that he hadn't heard from his ex-partner since then.

Mr B hadn't reported any domestic incidents to the police – either before or after the insurer's mistake. And we didn't think that Mr B's ex-partner's mental health difficulties necessarily meant she was likely to cause harm to Mr B.

While Mr B hadn't been hurt, it was clear the insurer's mistake had caused him a significant amount of upset and stress. We told the insurer that, based on everything we'd seen, we thought compensation of around £500 was more appropriate.

complaints from smaller businesses

Thinking about financial “agony aunt” columns – and other money features in the media – problems encountered by smaller businesses generally receive less attention than those raised by individual customers. Where businesses’ experiences come to the fore, it’s often in the context of more controversial issues like the selling of interest rate “swaps”.

But in the same way as individual customers, smaller businesses rely on financial services providers, for example, to help them meet both their essential daily expenses and ongoing, long-term commitments.

So while we see small numbers of complaints about higher-profile, complex financial products, the majority of problems that smaller businesses refer to us involve everyday services such as business banking, insurance and loans.

In this *ombudsman focus*, we look at the complaints we receive from smaller businesses – and the lessons that can be learnt from the problems we’re asked to resolve.

which businesses can use the ombudsman service?

We can look into complaints made by “micro-enterprises” – an EU term meaning businesses with an annual turnover of less than 2 million euros and fewer than ten employees.

complaints from smaller businesses



Financial Ombudsman Service, annual review 2014/2015

the people behind the businesses

Each year around 5,000 complaints are registered with us in the names of businesses. But we know some business owners, particularly self-employed people, complain in their own name – so we think the real number could be far higher.

Given the size of the businesses in question, it isn't surprising that the people involved may feel a complaint is a personal matter. In our recent detailed review of 200 small business complaints, more than half of the businesses were made up of only one or two people – significantly below the ten-employee limit for complaining to us. Only around one in ten had more than five employees.

These smallest businesses – “micro-enterprises” – account for 95% of businesses in the UK. Even the relatively small number of complaints we reviewed highlighted the diversity of the UK small business sector – and how many aspects of everyday life depend on these businesses.

pub
farmer dentist
driving instructor
motor garage
therapist
hairdresser
decorator
plumber
hotel
caterer
landlord
business consultant
taxi driver
shop owner
restaurant
window cleaner

► what's behind complaints from smaller businesses?

their knowledge of money matters

Our review of complaints brought to us by smaller businesses suggests they're not necessarily more knowledgeable about financial services than individual customers. Fewer than one in ten smaller businesses had any legal or accounting support during the events that led to their complaint. Few employed a paid professional to complain, with more than four in five businesses bringing their complaints to us themselves. Of those who were represented, the very smallest businesses were the most likely to be supported by a friend or family member.

problems with terms and conditions

More than half the complaints we reviewed from smaller businesses involved terms and conditions, exclusions or other features of financial products. Smaller businesses often complained that they didn't know about one or more of these – or disagreed with the financial provider over how they should be interpreted. We found problems sometimes arose because of an oversight on the part of the micro-enterprise – and sometimes because of a failing by a financial provider.

their expectations of financial providers

In one in five complaints that smaller businesses referred to us, we had to explain things that we found hadn't been properly explained before. Many smaller businesses told us they were unhappy with the level of support offered to them by financial providers. A quarter felt the financial provider hadn't supported them enough – or hadn't fulfilled a "duty of care".

In some cases we saw, there was an indication that smaller businesses expected a commitment by their financial provider *beyond* what was in the formal contract – particularly where the relationship involved lending.

**more than half of complaints
from smaller businesses involved terms
and conditions, exclusions or other
features of financial products**

taking together the main and additional reasons, smaller businesses complained to us about ...



Sam – adjudicator, banking

From the smaller businesses I talk to, it's clear their understanding of financial products and services can vary enormously. People are obviously experts in their own particular line of business, but they're relying on financial providers to be the experts in that sphere. So unfamiliar financial terms and jargon can cause a lot of problems – even if a financial provider hasn't otherwise acted unfairly.

While some smaller businesses I talk to have a great relationship with their business manager – who's gone to great lengths to support them – I sometimes hear from small businesses who've been referred to different or specialist areas, and who feel the team they're now dealing with doesn't know them or understand their business.

Whether this is perception or reality, it seems to me that open and honest communication – on both sides – can go a long way in resolving some of these concerns.

Better communication could also help to prevent other types of problems from escalating. For example, smaller businesses don't always understand why their bank is asking them to repay a debt – or has reached a decision not to lend further. These may be legitimate commercial decisions, but based on the complaints I see, they're less likely to feel unfair if they're clearly and sensitively explained.

Tim – adjudicator, insurance

The type of business that's brought a complaint to us – and what they've complained about – will have a big bearing on the impact the problem's having and how I'll need to go about sorting things out. At any one time, I might be talking to a solicitor or dentist in dispute with their professional indemnity insurer – or a corner shop owner having trouble with a water damage claim.

In my experience, small business owners often have no more knowledge than a private customer about the financial products they're using.

In more complex or confrontational disputes, one or both sides may have felt the need to get legal representation. But that isn't generally the case, and of course it isn't necessary – it's a key part of my job to explain things that perhaps haven't been clear in the past.

It's always important to bear in mind the full consequences of what's happened – whatever the outcome of the complaint. That applies whether someone's new to what they do – for example, because they've just set up a new company – or has built up their business over many years. The prospect of losing their livelihood – and what that could mean for their family and employees – means problems can have a very emotional, as well as practical impact on a lot of people.

If I agree a smaller business has been treated unfairly, putting things right may be as straightforward as telling an insurer to pay a claim. But in some cases, more may need to be done.

For example, while a limited company itself clearly can't be personally upset or distressed, it may experience inconvenience or financial loss as a result of a financial provider's mistake.

I often see complaints involving insurance where a small business, their insurer and a loss adjuster have essentially fought themselves to a standstill over a long period of time. We often find they welcome our involvement – as the only practical way of breaking the deadlock – but also have very entrenched positions.

So it's essential for an adjudicator to listen and understand where everyone's coming from. And it's always very satisfying to mediate a way forward and have all the parties thank you for your help. They may not have got exactly what they wanted at the beginning, but they're relieved that everything's been brought to a close so they can finally move on.

sharing our experience

micro-enterprises and financial services – available on our website – gives an insight into the problems smaller businesses bring to us, based on a review of over 200 complaints we resolved last year.



upcoming events ...

for consumer advice workers

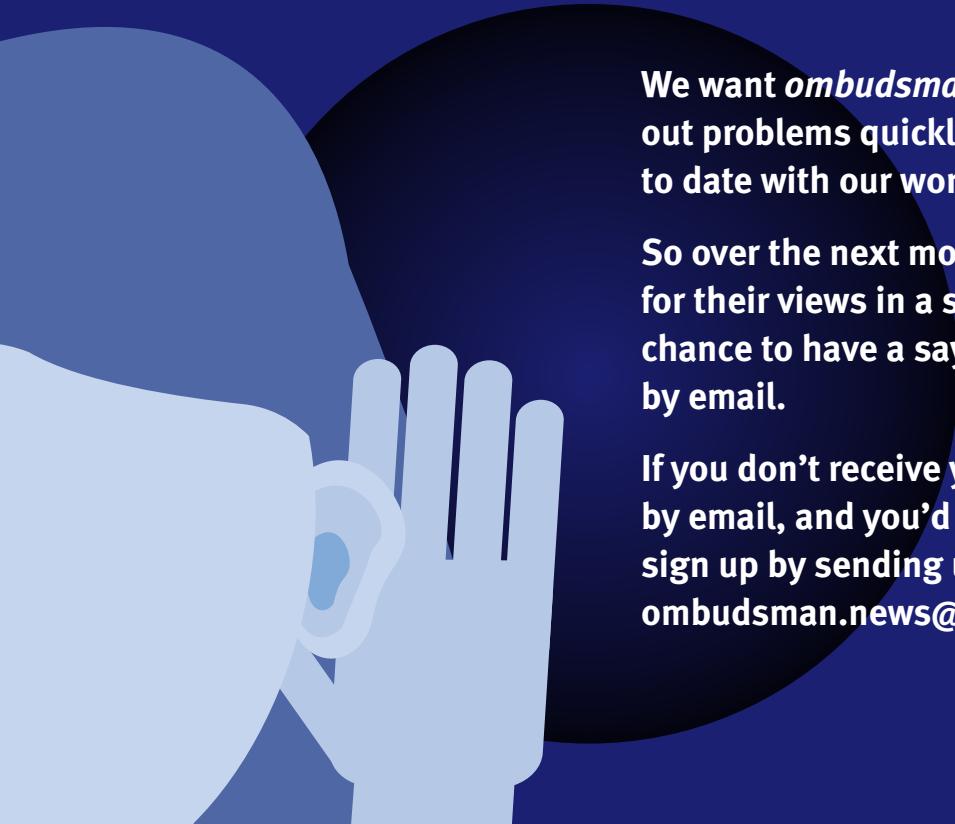
<i>working together with the ombudsman</i>	7 October	Isle of Wight
	8 October	Southampton
	20 October	Scarborough
	21 October	Middlesbrough

smaller business

<i>meet the ombudsman roadshow</i>	7 October	Isle of Wight
	14 October	Great Yarmouth

For more information – and to book – go to *news and outreach* on our website.

want to tell us what you think about ombudsman news?



We want *ombudsman news* to help people sort out problems quickly and fairly – and to keep up to date with our work.

So over the next month, we'll be asking people for their views in a short survey. Watch out for your chance to have a say when your next issue arrives by email.

If you don't receive your copy of *ombudsman news* by email, and you'd like to have a say, you can sign up by sending us a quick email at ombudsman.news@financial-ombudsman.org.uk

complaints from younger people

Our own research shows only one in ten people aged under 25 say they have experienced a problem with a financial business – compared with four in ten people in the next age group up. It would be easy to assume that, given their age, younger people haven't come into contact with as many financial products and services.

But under-25s are at a stage where their increasing independence – moving out, going to college or university, having a job and a social life means they're increasingly using financial services in their own right, on and offline. And while only 1% of complaints we received last year came from people aged under 25, that still represents a significant number of young people who've encountered difficulties or confusion.

Last year under-25s were more likely than any other age group to complain to us about their bank account. And another significant proportion of complaints from under-25s related to car or motorbike insurance. Both these areas may involve products that are tailored or attractive to younger people.

For example, we see complaints about student bank accounts, as well as car insurance involving "telematics" or "black box" technology monitoring people's driving – which younger people may use with the aim of reducing their typically higher premiums.

At the very beginning of their life-long relationship with financial services, it's understandable that someone may have a less developed knowledge of how things work – and how problems can be avoided. Depending on the situation we've been called in to resolve, this may be something we need to consider when deciding on a fair way forward.



Financial
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... although the dance floor wasn't within arm's reach of the booth where he'd left his jacket, it was very close and well within sight

case study 128/7

consumer complains after insurer rejected his mobile phone claim – because he'd left the phone unattended

After a night out with friends, Mr V went to call a taxi from outside the club they'd been to. But his phone was no longer in his jacket pocket.

The next morning, he called his insurer to report his phone as stolen. He gave some details of what had happened over the course of the night, and waited for the insurer to investigate the claim.

When the insurer got back to Mr V, they said they weren't going to pay out because they believed he'd left his phone unattended – against the terms and conditions of his policy.

Mr V complained, saying he'd kept his jacket and phone with him all evening. But when the insurer maintained he'd breached the terms of his policy, he brought his complaint to us.

complaint upheld

We asked the insurer for a copy of the terms and conditions of Mr V's policy. These said that the insurer wouldn't pay out where a gadget had been "*left unattended*" or where "*reasonable precautions*" hadn't been taken to prevent a theft or loss.

The insurer said that when Mr V contacted them to report the theft, he'd told them he and his friends had been sitting in a booth in a club. But he'd apparently gone to the dance floor during the evening, leaving his jacket, with the phone in the pocket, back in the booth.

The insurer pointed out that "*unattended*" was defined in the policy as "*not within your sight at all times and out of your arm's length reach*". They felt that since the dance floor was out of arm's length reach of the booth, Mr V's phone had been "*unattended*".

The insurer also argued that the nightclub would have been dark and busy – so Mr V should have taken extra care.

We asked Mr V for his side of the story. He told us he had briefly left the booth to say hello to a friend on the dance floor, but had returned within thirty seconds. He said that while he was gone, he'd left his jacket and phone in the booth, where his small group of friends were still sitting.

Mr V sent us pictures of the nightclub and showed us where he'd been standing when he spoke to his friend. Although the dance floor wasn't within arm's reach of the booth where he'd left his jacket, it was very close – a few feet away, and well within sight.

Given this, we didn't agree that it was fair to say Mr V had left his phone unattended – or that he'd acted carelessly in leaving it for a short time with people he knew. So we decided that the insurer should have paid his claim.

It appeared that Mr V had bought a new phone in the meantime, so we told the insurer to pay him the cost of the replacement phone.

... he'd lost his no-claims discount – and his premiums had increased significantly

case study 128/8

consumer complains that car insurer unfairly settled third party claim – causing premiums to rise

Mr K drove to college each day in a car with a telematics "black box" – which measured how he drove to help him get lower premiums. A few months into his insurance policy, the insurer received an accident claim against Mr K, which they agreed to settle "without prejudice".

Mr K denied being involved in the accident – and asked to see the evidence the insurer had received. The insurer explained that a third party had said Mr K had hit and damaged their car. According to the insurer, data from Mr K's black box showed he'd been driving on that particular road at the time.

The insurer then sent an engineer to inspect Mr K's car. While the engineer found no damage to the car, the insurer told Mr K that the accident wouldn't necessarily have caused any damage.

Having lost his no-claims discount and now paying a higher premium, Mr K complained about the insurer's decision. When they wouldn't change their position, he contacted us.

complaint upheld

Mr K wasn't sure what it meant for an insurer to settle a claim "without prejudice". We explained that it meant the insurer had offered to settle the claim without accepting Mr K was legally at fault. And the offer couldn't be brought up in court later on.

But it still meant Mr K would have a "fault" claim on his records because the insurer had paid out a claim without being able to get that money back. And as a result, he'd lost his no-claims discount – and his premiums had increased significantly.

We accepted that the terms and conditions of Mr K's insurance allowed the insurer to settle, or defend, any claims made against him. But we told the insurer that we'd need to check that their actions were reasonable – in light of all the evidence about what had happened.

We asked the insurer to provide data from the black box. This confirmed that Mr K had been at the roundabout where the accident supposedly happened.

When we asked Mr K about this, he explained – and we checked – that the roundabout was on his route to college, so he went over it every day. The black box hadn't recorded any incidents on the day of the accident. And an independent engineer had found no signs of damage to Mr K's car.

We asked the insurer for the account of the accident they'd received from the third party. The statement, from a learner driver, was one sentence long – simply saying Mr K had run into the back of their car. There was no statement from the driving instructor – and no diagram or further details about the incident.

Given the lack of evidence for what had happened, we didn't think it was reasonable for the insurer to have settled the claim as they had. There had also been long delays in notifying Mr K about what had happened – and then in dealing with his complaint.

To put things right, we told the insurer to remove any reference to the accident from Mr K's records, to restore his no-claims discount, and to refund him the extra money he'd had to pay in premiums, adding interest.

And, in light of the unnecessary delays, upset and inconvenience the insurer had caused Mr K, we also told them to pay him £300.

*... as he needed the money urgently,
he'd decided to lie about his age*

**case study
128/9**

consumer complains that payday loan was “illegal” because he was under 18 when he took it out

After Mr E’s credit card application was turned down, he found that a marker had been placed on his credit file by a payday loan company he’d used a couple of years previously.

Upset about now finding it difficult to get credit, Mr E complained to the payday lender. He accepted he’d got into difficulties with the loan, but argued that the lender shouldn’t have given him the money in the first place – as he’d only been 17 at the time. Mr E felt that, because the loan had been “illegal”, the lender should refund the money and remove the marker from his credit file.

The payday lender said that according to their records, Mr E had told them he was 18 when applying for the loan. They said they’d relied on the information Mr E had given them – as well as making appropriate credit checks – when making their decision to lend to him. So they refused to agree to his request.

Unhappy with this response, Mr E complained to us.

complaint resolved

Mr E told us that when he was 17, he’d needed to repair his car so he could get to work. The loan application form had said you needed to be 18 – and as he needed the money urgently, he’d decided to lie about his age.

Mr E explained he’d been an apprentice engineer at the time and had managed to repay half the loan before he’d begun to struggle and miss payments. His story matched the payday lender’s records – which also showed that he’d arranged to repay the loan in smaller amounts over a longer period, and had eventually repaid it in full. The marker on his credit file related to this arrangement.

When we spoke to the lender they told us that they relied on the accuracy of the information in application forms and the results of credit reference checks to decide whether to lend to someone. And based on the information they’d had, the payday lender had lent Mr E the £350 he’d asked for.

We looked at the questions the lender had asked – and could see they’d carried out the credit checks they’d mentioned.

We thought it was reasonable for them to rely on the information Mr E had provided about his age – without necessarily investigating further.

We also explained to Mr E that, although most financial business don’t lend to under-18s, it’s not illegal for under-18s to take out a loan. Instead, under-18s can cancel the loan – and therefore the contract – before they turn 18. So they wouldn’t have to pay any remaining debt – but wouldn’t get back what they’d already paid.

Taking everything into account, we didn’t think it was fair to ask the lender to refund Mr E the money he’d already spent on his car and had already paid back.

However, following our involvement, the payday lender said they’d reviewed Mr E’s situation. They said that given his young age and the future impact it might have they’d remove the marker from his credit file.

... it wasn't possible to change the account she had to a student account so soon after it had been opened

case study 128/10

consumer complains that bank's errors left her without a student account when starting university

Ms J already had a current account but a few weeks before she went to university she tried to open a student bank account. But the bank told her that she couldn't have both her existing current account and a student account open at the same time.

The bank told Ms J to open a new current account with them – which they would change to a student account once her existing current account had been closed. But a week later – and having closed her account with the other bank – Ms J's new account still hadn't been changed to a student account.

When she phoned the bank a different adviser told her that the request to change her current account to a student account had been declined. They told her they'd try to make the change again on their system – but it didn't work.

After several more phone calls and a trip to the bank in person, Ms J still couldn't resolve the problem. And it still hadn't been resolved by the time she went to university. When she visited the university bank branch, she was told the original information she'd been given was wrong. She shouldn't have been told to open a new standard current account – as it wasn't possible to change the account she had to a student account so soon after it had been opened.

Frustrated, Ms J made a complaint. Several phone calls later, she received a letter apologising for the problem, which had apparently been caused by "human error" at the bank.

Ms J didn't feel that an apology was enough, so she brought her complaint to us.

complaint resolved

When we asked the bank about what had happened, they accepted their customer service hadn't been good enough.

It seemed that Ms J had made more than ten phone calls and made two separate trips to the bank to try to sort things out. Looking at the bank's internal notes, it appeared there was a way of upgrading the account – but no one had taken this forward.

Ms J told us she'd wanted that particular account because of the discount cards it came with. She explained that these extras would have saved her money while living away. So when it seemed she couldn't get the discount cards from the bank, she'd had to buy them herself.

We pointed out to the bank that, while they'd apologised, they hadn't made up for the stress and inconvenience their errors had caused Ms J. Not only that, but she'd also lost out financially – spending her own money on the discount cards that she would have had for free with the student account.

During our involvement, the bank said they'd like to offer Ms J £200 – to cover the cost of the extras and to recognise the trouble she'd been put through. They also arranged for her account to be upgraded to a student account immediately.

Ms J was happy to accept the offer.

case study 128/11

consumer complains that his bank didn't warn him about the consequences of agreeing to a repayment plan

After graduating from university the previous summer, Mr Q still had a student account with a free overdraft facility – and was around £900 overdrawn.

He knew that his account was due to be converted to a regular account – without a free overdraft – a year after he graduated. Worried that he wouldn't be able to clear his overdraft in time – and that he'd have to start paying interest or charges – he got in touch with his bank.

The bank offered to set up a "payment plan" and extend Mr Q's free overdraft facility for 18 months.

Mr Q agreed to go ahead with the plan. But a few months later, he got a free credit report and found his bank had put "default" and "arrangement to pay" markers on his file.

When Mr Q questioned this with the bank, they accepted they'd made a mistake recording the default marker and agreed to remove it. But they said the "arrangement to pay marker" was an accurate record that he'd agreed a payment plan with them.

Mr Q complained, saying that if he'd known the consequences of going on the payment plan, he would have asked his parents for the money instead.

But the bank refused to remove the marker.

Mr Q didn't think this was fair, so he contacted us.

... we couldn't find any evidence that he'd been told about the impact on his credit file

complaint upheld

Mr Q told us he was certain that his bank didn't warn him that being on a payment plan would affect his credit record. And when we asked the bank for their records of their contact with Mr Q, we couldn't find any evidence – from call recordings, notes or letters about the arrangement – that he'd been told about the impact on his credit file.

The bank argued that the terms and conditions of the account allowed them to record information like this without having to warn Mr Q. But we disagreed. We pointed out to the bank that the Lending Code says that, when reaching arrangements for repaying debt, businesses should tell their customers whether any information will be passed to credit reference agencies.

Since this hadn't been explained to Mr Q, we didn't think that he'd been able to make an informed decision about his options for repaying his overdraft. He also sent us information about his parents' finances, which confirmed that they could have covered the money.

In light of this, we decided that if Mr Q had known the full implications of agreeing to the payment plan, he wouldn't have gone ahead with it. We told the bank to remove the "arrangement to pay" marker from Mr Q's credit file – and to record his debt as being paid when he first contacted them about his overdraft.

We explained to Mr Q that this meant he was in the position he would be in if the bank had given him the full facts in the first place – and he'd chosen to borrow the money from his parents instead.

We also told the bank to pay Mr Q £150 for the worry and inconvenience they'd caused.

... she'd bought insurance in her name, rather than her son's, to get a cheaper premium for him

case study 128/12

consumer complains that insurer voided his policy for “fronting”

After the car he drove was stolen and burnt out, Mr L – a student living at home – contacted his car insurer to make a claim. The insurer said they'd look into the claim, sending out a loss adjuster and providing a hire car in the meantime.

A few days later, the insurer phoned back to speak with Mr L's mother, Mrs L – who was the policyholder – to say they'd be withdrawing the hire car and investigating further.

They told Mrs L that throughout the claims process, Mr L had repeatedly referred to the car and insurance policy as his own. But on the application form, Mrs L had said that she was the main driver – and Mr L was just the “named” driver.

Mrs L told the insurer that she didn't think it should matter who drove the car more often – because it was still her car. But the insurer said if Mr L drove the car most of the time, then he was the main driver – meaning Mrs L had given the wrong information when buying the policy.

The insurer told Mrs L that, because of this, they'd be “voiding” her policy – refusing to deal with her claim and refunding all the premiums she'd paid. Maintaining she hadn't done anything wrong, Mrs L then asked us to step in.

complaint not upheld

The insurer told us they believed Mrs L had been “fronting” – that is, she'd bought insurance in her name, rather than her son's, to get a cheaper premium for him.

We asked the insurer for recordings of the calls from the claims process. Listening to these, it seemed Mr L had consistently referred to *his* car. He'd mentioned several times that he was the main driver – at one point explaining that while everything was in his mother's name, it was actually his car. Looking at the insurer's records, it appeared he'd also confirmed this to the loss adjuster.

We looked at the online application that Mrs L had filled out. In our view, the insurer had asked clear questions about who owned and drove the car – which had been answered as if Mrs L was the owner and main driver.

Mr L told us that it was possible he'd been driving the car more often over the last month or so because it had been raining a lot. But we explained that, based on what we'd seen and heard, we thought it was more likely that he was the main driver. And in the circumstances, the insurer hadn't acted unfairly.



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Q? &A

why do you need adjudicators and ombudsmen?

Last year we received almost two million phone calls, emails and letters from people with questions and concerns about money matters. Because our helpline was able to resolve many problems in a matter of days – and often on the spot – only one in five of these initial enquiries needed any further involvement on our part.

We were set up to be an informal service – an alternative to the courts. Our adjudicators have the necessary technical expertise in the particular products and services involved in the complaints they look into.

But equally importantly they're problem solvers – experts in unpicking what might have gone wrong and agreeing a way forward. And nine times out of ten, this problem solving work – listening to both sides and helping them see eye to eye – is enough to sort out even the most complicated problem.

But a small proportion of the situations we're called into are particularly entrenched – often long before we become involved.

If either side – or both – doesn't want to accept our adjudicator's answer to their dispute, they have the right to ask an ombudsman to take an independent look and make a final decision on what's fair.

Our ombudsmen play a key role in training and supporting our adjudicators, to make sure our answers are consistent and right first time. And in the vast majority of cases – around 90% – the ombudsman reaches the same conclusions as the adjudicator.

I'm dealing with a customer's complaint. I don't think the ombudsman would uphold it – and I want something to confirm that. Where's the best place to look?

You can search our decisions database by outcome, product area and key words. It now has almost 80,000 decisions published and is updated all the time. So if you're looking for answers we've already given about a particular product or service, that would be a good place to start.

For more practical examples of how problems can arise and how we've resolved them, you can also look through previous issues of *ombudsman news* – either on our new app or by searching on our website.

But it's worth remembering that each decision and case study will be based on a very specific set of circumstances. So while reading them should give you a good idea of our general approach – and of course, businesses are *required* to learn from our decisions – you shouldn't rely on them to conclude we'd *definitely* reject your customer's complaint.

If you'd like to talk though what's happened – and how to apply our approach in your customer's individual circumstances – you can phone our technical advice desk on 020 7964 1400. And – after responding to feedback – the desk is now open from 8am to 6pm.



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